

# Comment on Paul G. Lewis's "Can State Review of Local Planning Increase Housing Production?"

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## *Abstract*

Paul G. Lewis finds that California's mandatory housing element does not predict new housing starts. This is unfortunate but not surprising for California. Lewis offers important lessons for all states—lessons that must be heeded before the housing crunch gets worse.

This comment highlights the pending housing crunch, embellishes on Lewis's California findings through the lens of hazard mitigation, offers some anecdotal evidence of what appears to be a successful mandatory housing element (Portland, OR), elaborates on lessons we have learned about effective institutional arrangements, and calls on state legislatures to provide more than lip service in meeting the nation's housing needs.

**Keywords:** Affordability; Housing policy; State and local governments

## **The big picture**

In the next 30 years, this nation will need to build about 60 million housing units or about 2 million annually (Nelson 2004). We are producing homes at this level but probably only because of favorable interest rates. Still, it appears that the demand exceeds the supply. In 2004, housing prices nationally rose 7.3 percent (National Association of Realtors 2005), while personal incomes rose only 5.4 percent (Bureau of Economic Analysis 2005), clearly a signal of a housing market that is stretched. There are numerous examples of how housing is becoming stretched even further.

1. More than a third of the nation's 36.4 million single-earner households spend more than 30 percent of their income on housing (Joint Center for Housing Studies 2004, table A-1).

2. Median wages for new jobs added since the recession of 2000 are 21 percent lower than wages for the jobs that were lost, and more than half of the fastest-growing occupations are service jobs paying median wages of less than \$20,000 a year (Joint Center for Housing Studies 2004).
3. More than a third of the nation's nearly 22 million elderly households spend more than 30 percent of their income on housing (figure derived from U.S. Bureau of the Census 2004a), and this group spends more on medical care than all other age groups.

Moreover, between 2000 and 2003, immigrants accounted for 45 percent of the increase in the nation's population (calculated from U.S. Bureau of the Census 2004b), but immigrants are becoming increasingly crowded: Crowding (more than one person per room) among the foreign-born has increased steadily since 1980, rising from 8 to 26 percent, compared with a drop from 4 to 3 percent among native-born Americans (Joint Center for Housing Studies 2004). The reason is that immigrant households with low to moderate incomes and a desire to live in the suburbs, where the most jobs are, often join forces to buy or rent housing for their collective families.

And these are the good times for housing. With a weakening dollar, growing trade deficits, and ballooning federal debt, interest rates will be subjected to upward pressure. As rates climb, the affordability of homeownership may dampen even if housing prices fall somewhat to reflect the higher costs of financing. However, this is not my concern: Rather, I am concerned that as the cost of money increases, so does the cost of home construction.

Given sluggish growth in personal income, new housing may need to be smaller or denser or both to offset likely increases in the cost of construction. Suburban communities, where the lion's share of new housing is centered (and will continue to be centered), are usually not sympathetic to small homes or higher density or both. The reasons are rooted in self-interest and worse. Self-interest is reflected in the fiscal zoning proclivities of many suburbs, where there is a bias in zoning schemes favoring more expensive homes over less expensive ones (Nelson, Sanchez, and Dawkins 2004). The second is racism, where communities arrange zoning to segregate the population by income, which is a proxy for race, or even to prevent lower-income households from moving in at all (Downs 1975, 1994).

In my view, these practices may prevent the United States from meeting its future housing needs. Table 1 compares the total number of new housing units expected to be constructed between 2000 and 2030 with units in place in 2000 for the 16 states facing the greatest percentage change (the top 15 plus California, which is number 16 but which is also the state with the largest

**Table 1.** Top 16 States in Change in Housing Units, 2000 to 2030

Rank	State	Housing Units in 2000*	Housing Units in 2030*	Growth-Related Units*	Units Lost from 2000 to 2030	New Housing Units Needed, 2000 to 2030	Percentage of New Units Built after 2000
1	Nevada	827,457	1,596,484	769,027	155,620	924,646	111.7
2	Arizona	2,189,189	3,863,065	1,673,876	411,721	2,085,596	95.3
3	Utah	768,594	1,326,928	558,334	144,549	702,883	91.5
4	Florida	7,302,947	11,396,531	4,093,584	1,373,465	5,467,049	74.9
5	Idaho	527,824	818,873	291,049	99,268	390,317	73.9
6	Colorado	1,808,037	2,792,037	984,000	340,038	1,324,038	73.2
7	Texas	8,157,575	12,457,257	4,299,682	1,534,195	5,833,877	71.5
8	New Mexico	780,579	1,162,857	382,278	146,803	529,081	67.8
9	Oregon	1,452,709	2,135,376	682,667	273,211	955,878	65.8
10	Washington	2,451,075	3,579,681	1,128,606	460,974	1,589,579	64.9
11	Georgia	3,281,737	4,753,392	1,471,655	617,196	2,088,852	63.7
12	North Carolina	3,523,944	5,095,389	1,571,445	662,748	2,234,193	63.4
13	Tennessee	2,439,443	3,422,891	983,448	458,786	1,442,234	59.1
14	South Carolina	1,753,670	2,458,148	704,478	329,813	1,034,291	59.0
15	Virginia	2,904,192	4,030,007	1,125,815	546,191	1,672,007	57.6
16	California	12,214,549	16,878,904	4,664,355	2,297,190	6,961,545	57.0

Source: Nelson 2004.

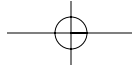
\*In thousands.

number of units to be constructed). Clearly, with new housing units in these states ranging from 57 percent to more than 112 percent of all presently existing units during the period, the challenge will be to meet the need in a planned, rational manner. Without planning, more sprawl could be induced if new construction is displaced from cities and suburbs into the exurbs.

What can be done? We know one thing for certain from Lewis's work: We cannot rely on California-style mandatory housing elements in local plans. As I will discuss next, we probably cannot rely on local governments to face looming housing challenges, so states will need to exercise leadership.

*More lessons from California*

How do we address these looming needs? Probably not by relying on local suburban governments alone because it is in their interest not to prioritize affordability. One can understand the fiscal and social exclusion motivations for local governments not wishing to open their doors to lower-income house-



holds, but their self-interest does not stop there. In work we did for the National Science Foundation on the heels of the Northridge earthquake of 1994, we learned that California's mandatory seismic hazard element was not given faithful oversight by the Department of Housing and Community Development—the very agency that oversees the mandatory housing element. What we found was that in choosing between protecting life and property from seismic events and allowing development around especially hazardous areas, the typical community would allow development, presumably to reap the financial benefits despite the risks (Nelson and French 2002).

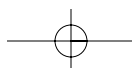
### *What works*

Just because California-style oversight does not work does not mean that all oversight is ineffective. Lewis alluded without elaboration to some success in metropolitan Portland (OR). More should be made of its unique, surprisingly builder-friendly institutional framework. I will do so here in terms of price, supply, process, and oversight.

*Price.* The style of regional planning in metropolitan Portland (OR) has attracted much attention in recent years because some interests allege that its regional urban containment strategies have raised housing prices (Mildner, Dueker, and Rufalo 1997). Rigorous work by Downs (2002) has shown that this is not the case. He used a unique data set to compare housing prices in metropolitan Portland with those in other metropolitan areas and found that housing price increases correlate more with wage increases than with anything else and that indeed there was no correlation per se between housing prices and the urban growth boundary (UGB). He surmised that the UGB was simply too large to affect supply.

In another study, Phillips and Goodstein (2000) found that Portland's prices are probably lower than they should be, perhaps by an average of \$10,000. They surmised that the UGB probably should have affected prices, so even if their study did not find a correlation, they supposed that one would emerge eventually. There is another explanation for why housing price effects are not detectable: supply.

*Supply.* Lewis did mention that state housing policy requires metropolitan Portland to achieve a 50/50 balance in detached/attached housing but gave no figures. Census figures show that between 1990 and 2000, metropolitan Portland attained a 54/46 (detached/attached) share in new construction (U.S. Bureau of the Census 2003). By contrast, in metropolitan Sacramento (as good a comparison with Portland among California metropolitan areas as may be



possible<sup>1</sup>), the share was 85/15.<sup>2</sup> Portland did not quite hit its target, but it is clearly more successful at increasing the supply of higher-density residential land than Sacramento is, and both have UGBs. This might be one reason why sales prices for Portland's existing single-family homes averaged \$219,000 in the fourth quarter of 2004, while Sacramento's averaged \$344,000. Why is metropolitan Portland more successful in producing a housing mix that by its nature is more affordable than Sacramento's? The answer is process.

*Process.* Metropolitan Portland's UGB is perhaps most famous for its unearned reputation as a supply-restricting mechanism when in fact the process is required by and implemented, at times perhaps overzealously, by state and regional agencies. The way it works is this: Inside the UGB, sufficient land must be identified by all affected local governments (three counties and 26 cities) to meet all urban development needs over a planning horizon. That land must be shown on a map and zoned to achieve the target development capacity. This is in stark contrast to most of the rest of the nation. More typically, the comprehensive plan may establish overall population and housing unit targets, but the zoning map does not provide enough capacity to meet the needs. In these situations, land must be rezoned, and this leads to opposition from interests that prefer the status quo. The result is implementation through incremental rezoning procedures fraught with controversy, delay, concessions, proffers, and conditions.

Oregon law also requires "clear and objective" standards of review that have dramatically reduced (albeit not eliminated) arbitrary conditions from being attached to development approvals. Moreover, developers are entitled to a land use decision within 120 days, or else the permit that has been requested is issued through a writ of mandamus (these are issued frequently). Appeals of land use decisions go to a tax court—like Land Use Board of Appeals, which has 120 days to render a decision based strictly on the local government record—*de novo* procedures do not apply. Appeals of the board's decisions must be ruled on by the Oregon Court of Appeals within 120 days. In many ways, these institutional mechanisms, more than the UGB, are responsible for metropolitan Portland's apparent success in keeping costs down (at least relative to other metropolitan areas on the West Coast) primarily by being responsible for higher-density supply. That it works as well as it does is remarkable. Why does it work so well? Because of oversight.

<sup>1</sup> In 2000, the Portland primary metropolitan statistical area had 1.9 million residents and 1.2 million workers, while Sacramento had 1.8 million residents and 1.1 million workers; both grew substantially during the 1990s (26 percent and 19 percent, respectively); both had roughly comparable household incomes in 2000 (\$75,317 and \$74,243); and both have regional UGBs.

<sup>2</sup> Author's calculations based on the 1990 and 2000 censuses (U.S. Bureau of the Census 2003). (Clark County, WA, was removed from the analysis.)

*Oversight.* Lewis alluded to work by Burby and May (1997) that should be essential reading for planners. In an even more definitive work on institutions and processes, Weitz (1999) posits that the right balance between ensuring that the broad public interest is served through a state-level agency but also ensuring sensitivity to local conditions can create an effective partnership between state and local interests. This is certainly not easy, but it is necessary.

### *Legislative role*

Blame for the failure of California's mandatory housing element to affect housing starts falls clearly in the lap of the legislature. Given California's sustained growth (which will approach 50 million residents by 2040), it will be compelled to do something probably sooner rather than later, especially in light of the continuing debate over affordability. Other states face similar pressures. What should legislatures do?

First, we need to learn more about the effectiveness of alternative planning and housing policy regimes. Lewis has done us all a great service by creating a method for similarly analyzing other states. It could easily be the foundation for a project in graduate-level statistics or research design courses or conducted independently by researchers with probably only modest financial support. I would recommend that his method be applied to Florida, New Jersey, Oregon, and Washington state.<sup>3</sup> Key features of each state's efforts include:

1. New Jersey-style affordable housing allocations to local governments could set targets they would need to meet.
2. Florida-style fast-track process for qualifying affordable housing projects. In Florida, state law requires local governments to put projects qualifying as affordable housing development at the head of the land review process queue—effectively bumping other projects.
3. Oregon-style clear and objective review standards, long-range planning identifying needs and allocating land and resources accordingly, streamlined review (the 120-day time limit), and a special land use court merit consideration.
4. Washington-style requirement that local governments in urban counties project and provide for all housing needs, and a county-based Growth Management Hearing Board that referees land use decision-making disputes.

<sup>3</sup> California recently required local governments to revise procedures allowing for accessory dwelling units by right under certain conditions. This could be the subject of a future Lewis-style analysis in California.

Although those states use different approaches, they stand alone in making local provision of affordable housing a state planning mandate. It would be interesting to see whether Lewis's method would show us which (if any) of these alternative regimes makes a difference.

Second, the lessons learned from these additional studies can lead to a prescription for state-regional-local institutional mechanisms.

Third, we know this much: Whatever mechanism is devised must have teeth. Both Florida and Oregon have laws allowing state agencies to plan for local governments that do not prepare plans consistent with state interests. The idea of a state agency sending people to local governments to plan for them is probably a nonstarter, because this "stick" has never been used. Oregon also has a revenue-sharing withholding option by which local governments whose plans do not comply with state goals could lose certain state revenues. In truth, the amount of state revenue-sharing is modest at best, so some local governments could conclude that it is better to lose that revenue than to lose local control.<sup>4</sup> Florida law allows its Department of Community Affairs to fine a noncomplying local government. Oregon has never withheld money, while Florida has fined only one local government (for a token amount). One can only speculate as to why these sticks were not used or were used only in a token manner. Perhaps it was because compliance was achieved in the end, albeit more slowly in some places than in others.

However, one stick has been used effectively. Oregon learned that a very effective enforcement device is to impose a building permit moratorium on local governments that refuse to prepare plans consistent with state goals. The moratorium applies to *all* construction, including remodeling, expansion, and so forth. (There are health and safety exceptions.) It is dramatic, but Oregon has used this mechanism twice, with the result that all cities and counties came into compliance with statewide goals and have continued to remain so through numerous planning updates.

While sticks are rare, "carrots" are more common. In Georgia, a "qualified local government" is one that has its plan approved by the state Department of Community Affairs. A local government that does not enjoy this status is not eligible for state public safety, certain transportation, open space acquisition, utility financing, and other state revenues or low-interest loans. Of course, the carrot is a stick, but Georgia has found the right semantic balance: "If you plan acceptably, you are eligible for revenues." This is

<sup>4</sup> The primary source of state revenue-sharing was alcoholic beverage proceeds from state-run liquor stores, which often amount to less than 1 percent of local government budgets.

different from “If you do not plan acceptably, you will be punished.” Often, semantics is everything. Unfortunately, Georgia’s mandatory planning laws are lax when it comes to meeting affordable housing needs.

The latest version of the carrot approach is Maryland’s priority investment designation. In that state, agencies are prohibited from investing state funds in local infrastructure projects that are outside state-imposed infrastructure investment boundaries. These boundaries have the effect of reshaping development patterns. This law has little to do with providing affordable housing, however, nor are there other provisions in Maryland planning law that mandate that local governments meet affordable housing needs.

### **Toward an effective mandatory housing regime**

Lewis provides us with important insights. His analytic method should be applied to other states so we can learn which planning regimes work when it comes to affordable housing and why. What can we learn from applying his method to Florida, New Jersey, Oregon, and Washington state? I suspect we may get reasonably definitive answers to such questions as:

1. Does New Jersey–style state-level allocation of affordable housing work?
2. Is Florida’s fast-tracking of affordable housing projects effective?
3. Is Oregon’s comprehensive supply-process-oversight approach effective?
4. Does Washington’s reliance on Growth Management Hearings Boards produce more affordable housing?

The knowledge gained from replicating Lewis’s analytic method in these and perhaps other states can help us reform state-level planning regimes to make them more sensitive to the production of affordable housing.

The stakes are high. During the next 30 years, we will see the construction of 60 million new homes, roughly equivalent to *half* of all existing units. More homes may be constructed during this period than during any other. States, especially growing ones, need to construct effective mandatory housing regimes so that all units of government are obligated to accommodate their fair share of the state’s affordable housing obligation.

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### References

- Burby, Raymond J., and Peter May. 1997. *Making Governments Plan: State Experiments in Managing Land Use*. Baltimore: Johns Hopkins University Press.
- Bureau of Economic Analysis. 2005. *News Release: Personal Income and Outlays*. World Wide Web page <<http://www.bea.doc.gov/bea/newsrel/pinewsrelease.htm>> (accessed February 19).
- Downs, Anthony. 1975. *Opening Up the Suburbs*. New Haven, CT: Yale University Press.
- Downs, Anthony. 1994. *New Visions for Metropolitan America*. Washington, DC: Brookings Institution.
- Downs, Anthony. 2002. Have Housing Prices Risen Faster in Portland Than Elsewhere? *Housing Policy Debate* 13(1):7–31.
- Joint Center for Housing Studies. 2004. *The State of the Nation's Housing*. Cambridge, MA: Harvard University.
- Mildner, Gerard C. S., Kenneth H. Dueker, and Anthony M. Rufalo. 1997. *Impact of the Urban Growth Boundary on Metropolitan Housing Markets*. Portland, OR: Portland State University, Center for Urban Studies
- National Association of Realtors. 2005. *Existing Home Sales*. World Wide Web page <<http://www.realtor.org/Research.nsf/Pages/EHSdata>> (accessed February 19).
- Nelson, Arthur C. 2004. *Toward a New Metropolis*. Washington, DC: Brookings Institution.
- Nelson, Arthur C., and Steven P. French. 2002. Plan Quality and Mitigating Damage from Natural Disasters: Case Study of the Northridge Earthquake with Planning Policy Considerations. *Journal of the American Planning Association* 68(2):194–207.
- Nelson, Arthur C., Thomas W. Sanchez, and Casey J. Dawkins. 2004. The Effect of Urban Containment and Mandatory Housing Elements on Racial Segregation in U.S. Metropolitan Areas, 1990–2000. *Journal of Urban Affairs* 26(3):339–50.
- Phillips, Justin, and Eban Goodstein. 2000. Growth Management and Housing Prices: The Case of Portland, Oregon. *Contemporary Economic Policy* 18(3):334–44.
- U.S. Bureau of the Census. 2003. *1990 & 2000 Decennial Census Data Set*. World Wide Web page <[http://factfinder.census.gov/servlet/DatasetMainPageServlet?\\_lang=en](http://factfinder.census.gov/servlet/DatasetMainPageServlet?_lang=en)> (accessed February 19).
- U.S. Bureau of the Census. 2004a. *American Housing Survey for the United States, 2003*. Washington, DC.
- U.S. Bureau of the Census. 2004b. *Cumulative Estimates of the Components of Population Change for the United States and States: April 1, 2000, to July 1, 2003*. NST–EST2003–04. Washington, DC.
- Weitz, Jerry. 1999. *Sprawl Busting*. Chicago: American Planning Association.

