



# Land Lines

QUARTERLY MAGAZINE OF THE LINCOLN INSTITUTE OF LAND POLICY

WINTER 2015

---

Anchor Strategies Lift All Boats  
Large Landscape Conservation  
Common Interest Communities  
Colorado River Revitalization

**EDITOR**

Maureen Clarke

**PRESIDENT & CEO**

George W. McCarthy

**CHAIR & CHIEF INVESTMENT OFFICER**

Kathryn J. Lincoln

**DESIGN & PRODUCTION**

Sarah Rainwater Design  
www.srainwater.com

**PUBLICATIONS COORDINATOR**

Susan Pace

**THE LINCOLN INSTITUTE OF LAND POLICY** is a private operating foundation whose mission is to improve the quality of public debate and decisions in the areas of land policy and land-related taxation in the United States and around the world. The Lincoln Institute's goals are to integrate theory and practice to shape land policy and to provide a nonpartisan forum for discussion of the multidisciplinary forces that influence public policy concerning the use, regulation, and taxation of land.

We seek to inform decision making through education, research, demonstration projects, and the dissemination of information through publications, our website, and other media. Our programs bring together scholars, practitioners, public officials, policy advisers, and involved citizens in a collegial learning environment. The Lincoln Institute of Land Policy is an equal opportunity institution.

*Land Lines* is published quarterly in January, April, July, and October to report on Institute-sponsored programs and related activity.

Lincoln Institute of Land Policy  
113 Brattle St, Cambridge, MA 02138

T (617) 661-3016 or (800) 526-3873  
F (617) 661-7235 or (800) 526-3944

**EMAIL FOR EDITORIAL CONTENT**  
mclarke@lincolnst.edu

**EMAIL FOR INFORMATION SERVICES**  
help@lincolnst.edu

[www.lincolnst.edu](http://www.lincolnst.edu)

## Contents

### FEATURES



---

## 4 Anchors Lift All Boats

### Eds & Meds Engaging with Communities

Civic engagement has become the norm at some of the nation's leading hospitals and universities, yielding vibrant neighborhoods and thriving business corridors that attract patients, students, and residents alike. The synergy starts with the right strategy.

*Beth Dever, Omar Blaik, George Smith, and George W. McCarthy*

---

## 14 Private Regimes in the Public Sphere

### Optimizing the Benefits of Common Interest Communities

Common interest communities are a longstanding American tradition and a growing trend, representing 25 percent of U.S. home ownership. The author considers strategies to minimize common problems related to association housing.

*Gerald Korngold*

---

## 24 One Backyard

### The First National Workshop for Large Landscape Conservation

In October 2014, the Lincoln Institute gathered with federal agencies and other NGOs to discuss how to enhance regional wildlife conservation, water quality and quantity across large watersheds, and sustainable production of food, fiber, and energy.

*Tony Hiss*

## DEPARTMENTS

### 2 President's Message

Institutions That Protect the  
Common Interest

### 30 Faculty Profile Summer Waters

An interview with Summer Waters,  
Director of Western Lands and  
Communities: Shaping the Future  
of the American West

### 34 New Publishing Collaboration

*The Property Tax and the Financing  
of K-12 Education*

### 37 Announcements

Ray LaHood and Mimi Brown join the  
board of the Lincoln Institute

**EDITOR'S NOTE:** *We delayed publication of the January 2015 edition of Land Lines in order to start the year with a new look designed to make the content more readable and engaging.*



Cover photo: The Colorado River meets the Sea of Cortez (see p. 30). © Pete McBride



## Institutions that Protect the Common Interest

---

HUMAN DEVELOPMENT IS OFTEN CHARACTERIZED as a war between the contradictory goals of individuation and conformity. We struggle to distinguish ourselves from the herd, but we panic at the prospect of social isolation. Our social sciences, especially economics, are similarly conflicted. The cult of the individual is a dominant social meme, and this dominance is exacerbated by the rise of economic fundamentalism—the unquestioning faith in unregulated markets and the concomitant distrust of government and social systems. Starting with Adam Smith’s invisible

term results that are destructive to all. Examples include the Malthusian nightmares of famine and pestilence curbing population growth, the prisoner’s dilemma, or the tragedy of the commons, which was described in a 1968 essay by Garrett Hardin. Hardin warned about the hazards of population growth through a parable about unmanaged use of common grazing land. The inevitable over-use of the land by individual herders maximizing their flocks would destroy the land and make it unsuitable for everyone. The solution, according to Hardin and others, is some form of enclosure of the commons, through privatization or public ownership that can establish coercive mechanisms to ensure that individuals behave in ways that protect the common interest.

Luckily, most humans do not subscribe to economic theory and instead develop their own ways to reconcile these contradictions between individuation and conformity. And public intellectuals such as Elinor Ostrom, the 2009 Economics Nobel laureate (and the only woman so honored), have advanced our knowledge about the ways we mediate these two very human tendencies. We do it through institutions—groups of humans voluntarily organizing themselves to harness the benefits of individual effort while avoiding the pitfalls of isolated individuals run amok. According to Ostrom and others, various institutional arrangements—formal organizations, rules of engagement, public policies, to name a few—organically emerge to prevent unfortunate events like the tragedy of the commons. In this issue of *Land Lines*, we feature stories about a number of such institutional arrangements that have emerged to protect us from ourselves or to manifest mutual benefits. In our interview with

In this issue of *Land Lines*, we feature stories about a number of institutional arrangements that have emerged to protect us from ourselves or to manifest mutual benefits.

hand, scores of economists built careers devising theories based on methodological individualism, the idea that “social phenomena must be explained by showing how they result from individual actions, which in turn must be explained through reference to the intentional states that motivate the individual actors,” according to the *Stanford Encyclopedia of Philosophy*. These theorists uniformly praised unfettered individuals and markets as the best way to achieve the joint goals of prosperity and fairness and promoted (or prevented) public policies buttressed by this view.

At the same time, other mainstream economists have warned about the “isolation paradox,” a category of scenarios in which individuals, acting in relative isolation and guided only by their short-term self-interest, generate long-

Summer Waters of the Sonoran Institute (p. 30), we learn about efforts to promote the economy and protect the ecology of the Colorado River watershed and reintroduce the flow of fresh water to the river's delta.


We've only begun to study systems that organically emerge to manage commons, but we know even less about how we create commons. This might be a result of our tendency to treat commons like manna—conveyed from heaven, not created by humans. However, as reported by Tony Hiss (p. 24), thousands of people have come together voluntarily to create a new commons—millions of acres of land conserved to protect vast ecosystems, to save habitat for endangered species, to provide green space for densely packed urban dwellers, and to realize a variety of other long-term goals. From the point of view of orthodox economists, it's a world gone crazy. Not only are formerly isolated individuals acting in ways that prevent the tragedy of the commons, they are taking action to create new ones.

Ironically, the story of America's first public park, Boston Common, is often used as a cautionary tale to illustrate the tragedy of the commons. Truth be told, it is one of the first examples of individuals self-organizing and subordinating their short-term interests to create a shared resource for the long term. Boston Common was created in 1634 when members of the Massachusetts Bay Colony voted to tax themselves to purchase and protect the parcel of land to train troops and graze cattle. These citizens understood that, with some 2,500 people joining the colony annually, it would not be long before all habitable land was developed and all urban open space would disappear, according to Jim Levitt in his forthcoming book, *Palladium of the People*.

Public education is another man-made commons, as are most public goods. We organize and tax ourselves to support the provision of this critically important institution. And over time, we need to revise the way we manage and maintain it, like any commons. In this issue, Daphne Kenyon and Andy Reschovsky offer a window into the analyses of the challenges cities face in financing their schools—and some ideas about how we can address these problems (p. 34). We also explore

how universities and hospitals can work with their neighborhoods and cities to pursue mutually beneficial collaborative goals, in the feature on anchor strategies from Beth Dever, et al. (p. 4).

For some economists, creation of new commons is a theoretical impossibility. In his first book, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Mancur Olson hypothesized that people will endure the complications of acting together only if there is a sufficient private incentive; and large groups will not pursue collective action unless motivated by significant personal gain (economic, social, etc.). Theory and practice clearly have collided, and the impact is and will continue to be profound. As Hiss notes, in his essay on large landscape conservation, "The first thing that grows is not necessarily the size of the property to be protected, but the possibility for actions, some large, some small, that will make a lasting difference for the future of the biosphere and its inhabitants, including humanity."

It doesn't stop there. In the United States, a bastion of the free market, some 65 million citizens belong to common interest communities, such as condominiums and homeowners' associations, as reported by Gerry Korngold (p. 14). A quarter of the nation voluntarily has limited its own autonomy to protect and preserve common interests. As noted by Korngold, this wouldn't have surprised de Tocqueville, who described the U. S. as "a nation of joiners." In *Democracy in America*, in 1831, he wrote, "I have often admired the extreme skill with which the inhabitants of the United States succeed in proposing a common object to the exertions of a great many men, and in getting them voluntarily to pursue it." Perhaps it is time to organize a cult of collective action to celebrate the incredible things we are able to do when we work together. We might find that the policies, practices, organizations, and institutions that we create to mediate our internal war between individuation and conformity have contributed more to human advancement than the individual achievements we more often celebrate. 

# ANCHOR



Great Lakes Coffee, on Woodward Avenue in Detroit, has helped to revitalize the neighborhood since it received façade and security grants from Midtown Detroit Inc., a nonprofit community development corporation supporting the work of local anchor institutions. Credit: David Lewinski

Eds & Meds Engaging with Communities

# HORS

## LIFT ALL BOATS

*by Beth Dever, Omar Blaik, George Smith, and George W. McCarthy*

**LARGE INSTITUTIONS—UNIVERSITIES, HOSPITALS, AND NONPROFIT ORGANIZATIONS**—are referred to as anchors because of their permanence and their stabilizing physical and social ties to surrounding communities. Beyond fulfilling their respective missions to educate, heal, cultivate the arts, or provide other services, these “eds and meds” are proven economic engines. They employ large workforces, occupy and manage big pieces of real estate, purchase vast quantities of goods and services, attract investment through capital projects and research activities, and provide local constituents access to food, retail, and other amenities. In many instances, anchor institutions are the largest nonpublic employers in their cities. Indeed, HUD estimated that eds and meds employed more than 7 million people and generated \$1 trillion in economic activity in 2009 (Brophy and Godsil 2009).

In some instances, a mutually beneficial dynamic evolves between an anchor institution and its community, creating economically sustainable commercial corridors, vibrant streets, and dense, diverse neighborhoods. Plenty of great college towns across America showcase this productive interplay. But in many

other cases, especially in underserved urban areas, institutional and civic leadership must be more entrepreneurial, actively championing projects, programs, and policies to achieve these outcomes. This process, known as an anchor strategy, provides the framework that guides local efforts to work with institutions to capitalize on and maximize the impact of their presence.

In theory, the value of engaging anchor institutions to achieve positive neighborhood or community outcomes is self-evident: all parties benefit, and it’s a smart way to do business. But in practice, the community and its institutions must work together to redefine how to align and leverage their goals, economic interests, and activities to achieve a win-win outcome. This article explores why it is difficult to undertake meaningful anchor strategies that fundamentally change how the anchor and its community relate to one other. We also draw on some of the lessons learned from successful efforts in areas such as Philadelphia, Detroit, and Cleveland, where comprehensive civic engagement has become the norm at some of the country’s leading medical and educational institutions.

## Parameters for Success

The important thing to stress is that individual tactics are necessary but insufficient to constitute a strategy. A strategy is a long-term engagement, implemented through tactics that evolve over time. In addition, anchor strategies involve partnerships with multiple organizations and people in the surrounding community—relationships that must also evolve over time to respond to community needs and goals designed to make the area more livable.

Effective and transformative anchor strategies have three fundamental features: they are place-based, institutionally embedded, and comprehensive.

### PLACE-BASED

Place-based strategies have a specific and easily identified geography that the anchor directly affects, including the buildings, open spaces, gateways, and street networks that connect an institution to its community. Beyond the physical orientation of an institution are the places that its constituents—its employees, students, patients, clients, or visitors—live in and patronize. Strong mixed-use neighborhoods

Placemaking activities increase an anchor institution's attractiveness to potential students, patients, and staff while generating goodwill among residents and local officials.

surrounding institutions support the street life that defines a vibrant district, encourage pedestrian activity, and create the residential density that in turn creates community.

An anchor's "placemaking" activities—communally shaping public spaces to heighten their shared value—must engage tactically with other stakeholders to be considered strategic. Such tactics may include reinvesting in the neighborhood through housing construction and rehabilitation; supporting targeted commercial and retail development; improving public spaces and public safety; and strengthening local

---

## THE ADVANTAGE OF INTERMEDIARIES

Many anchor strategies benefit from having strong local partners to shepherd the work. These intermediaries often buttress anchor staff capacity to pursue broader local engagement and benefits. A properly funded community development corporation (CDC) or community development financial institution (CDFI) with a local representative at its helm can be an effective intermediary.

Intermediaries are more nimble than large anchor institutions and thus able to negotiate among numerous partners and take actions unencumbered by bureaucracy. Most successful intermediaries are local organizations with long histories in the region, credibility within the community so that they are not seen as tools of the anchor or funders, and the ability to provide neutral ground for discussing and pursuing the anchor work. If the community is skeptical of a fully anchor-driven effort, a partnership with a local, trusted intermediary can provide legitimacy.

A local CDC's ability to leverage an anchor-sponsored initiative in Detroit provides a good example. Midtown Detroit Inc. ([midtowndetroitinc.org](http://midtowndetroitinc.org)) manages Live Midtown ([livemidtown.org](http://livemidtown.org)), an employer-assisted housing program supported by Wayne State University, Henry Ford Medical System, and Detroit Medical Center. As MDI's President Susan Mosey notes, "It is important to have local people shepherding this work on a day-to-day basis. This builds familiarity with the initiatives and creates the credibility and buy-in that the anchor strategies need to be successful." Indeed, with MDI's help, the anchor institutions' financial commitment of \$5 million over five years was matched by contributions from local funders and the state housing finance agency. This success spurred major downtown employers—including Quicken Loans, DTE, Compuware, and Blue Cross Blue Shield—to create their own \$5 million Live Downtown program. Between the two programs, more than 1,600 employees have moved to midtown and downtown Detroit, reducing vacancy rates in the corridor to less than 3 percent (Welch 2014).





Village of Shiny Stars Child Care Center, in Detroit's Brightmoor neighborhood, received assistance from Tech Town, a nonprofit business incubator founded in 1999 by Wayne State University, the Henry Ford Health System, and General Motors. Credit: David Lewinski

services such as schools, nonprofits, and community resources. These activities benefit the anchor in a number of ways and create a stronger neighborhood, thus increasing the institution's attractiveness to potential clients (students, patients, and staff) and generating goodwill among residents and local officials.

### INSTITUTIONALLY EMBEDDED

An anchor strategy must be part of an institution's DNA. This integration starts when leaders commit to their organization's role as an anchor and communicate it throughout the entire organization. Leadership then follows through by committing significant amounts of time and resources across all institutional functions.

To be effective, anchor work usually requires changes in the organizational culture, such as altering the reward structure, adopting new mission statements and success metrics, and critically examining internal and external communications. Once internal programs, administrative units, facilities management personnel, and governing boards are all working together toward collective goals, an anchor strategy can begin to transform the surrounding community.

### COMPREHENSIVE

Eds and meds touch their surrounding communities in a multitude of ways—by employing local residents, occupying vast physical footprints, educating or healing community members, and producing waste, among other impacts. In addition to placemaking, a comprehensive anchor strategy must address the following intersections.

#### Personnel

Given that anchor institutions are often a city's largest employer, hiring decisions and the provision of employee benefits can have a profound impact on the social and economic fabric of the community. By increasing the percentage of workers drawn from within its footprint, the institution can simultaneously lift the neighborhood economy, provide jobs to those who may be un- or under-employed, and create goodwill among its neighbors. Employer-assisted housing is another critical investment in both personnel and the surrounding neighborhood (Webber and Karlstrom 2009). When employees can live closer to the anchor institution, it's a win-win, reducing housing and transportation costs for workers while lowering turnover and absenteeism for employers.

## Procurement

The purchasing power of large anchor institutions can be vast, with annual outlays for goods and services in the hundreds of millions of dollars. Capturing even a portion of the procurement stream for local companies can have a significant impact on the local economy. For example, the University of Pennsylvania was able to inject \$57 million into the West Philadelphia economy with only 9 percent of its annual purchasing (ICIC and CEOs for Cities 2002).

## The University of Pennsylvania was able to inject \$57 million into the West Philadelphia economy with only 9 percent of its annual purchasing

The benefits of local procurement are obvious, but redirecting that process and realizing the benefits is not a trivial undertaking. For example, the anchor may incur substantial indirect costs for community outreach as well as training to ensure reliable supplies of locally produced goods and services. In addition, the existence of reliable, cost-competitive local providers is not a given. Moreover, large institutions may have highly decentralized purchasing processes, and getting each department to adhere to new policies can take time and effort (ICIC and CEOs for Cities 2002). Again, trusted local intermediaries can help to facilitate the shift to local suppliers.

## Policy

The relationship between anchor institutions and local or regional governing bodies is often complicated. As private institutions, anchors may feel that they do not need to answer to local government. Indeed, they may see local government as ineffective, inefficient, or obtrusive to executing their optimal business strategies. For their part, local and regional governments may view anchor institutions as free riders that consume public services and other public benefits while enjoying exemptions from property taxes—the main revenue source for local governments. To ease these tensions,

some institutions have voluntarily provided “payments in lieu of taxes” (PILOTs) to compensate municipalities for this lost revenue (Kenyon and Langley 2010). But a successful anchor strategy will determine additional ways to promote mutually beneficial work that enhances the future of the institution while addressing local/regional policy issues. Wim Wiewel, president of Portland State University, has been especially clear on this point, citing his institution’s adoption of “Let Knowledge Serve the City” as its motto in the early 1990s. In his words, “We serve the metro area and we are proud of it.”

## Planning

Someone has to coordinate these elements into a cohesive initiative. Large anchors have a great deal of in-house planning skill and regularly engage in long-term planning for their enterprises. When they decide to take on a strategy, anchors can utilize this skill to determine the best ways to engage with the community and local and regional stakeholders. In addition, working through the anchors’ strategic planning processes is a way to institutionalize the anchor strategy so that it outlasts the term of a president or CEO and becomes the normal way of doing business.



NewBridge Cleveland Center for Arts and Technology offers youth programs and adult workforce training, funded by the city’s multi-anchor Greater University Circle Initiative. Credit: NewBridge

## Understanding Anchor Institutions

A successful anchor strategy is neither created nor implemented in a vacuum. For any of the above activities to be part of a genuine anchor strategy, anchors must undertake them in strategic concert with other stakeholders in the area. For example, initiating an employer-assisted housing program or setting local purchasing goals can benefit employees or community residents, but these efforts are not part of a comprehensive anchor strategy unless they are connected to an overall, institution-wide approach to local engagement and interaction. To achieve this type of interaction, it is important to understand how anchor institutions work.

Large, nonprofit institutions such as eds and meds are fundamentally risk-averse and slow to change or take on new roles. Embarking on an anchor strategy thus entails a fundamental shift in the way anchor leaders think and how their organizations operate—something that may take time, involve important and difficult discussions or negotiations, and require strong leadership and incentives from both inside and outside the organization.

Universities and hospitals are anchor institutions not only because they are rooted in place and have a critical impact on the local economy, but also because they are big. With size come layers of bureaucracy, multiple players who need to participate in anchor work, and an inability to make quick, nimble moves.

Figure 1 depicts the typical structure of a university. At the top is the board of trustees, drawn from civic, industrial, and scientific leadership and generally composed of alumni or other school affiliates. Trustees interact with the campus intermittently and focus on managing the university's reputational and financial risk.

The president is typically an academic who may or may not have a background in management. Presidents concentrate on fundraising and managing the university's reputation. Academics usually see universities as places for free thought, insulated from market and capital forces. They often view the administration with

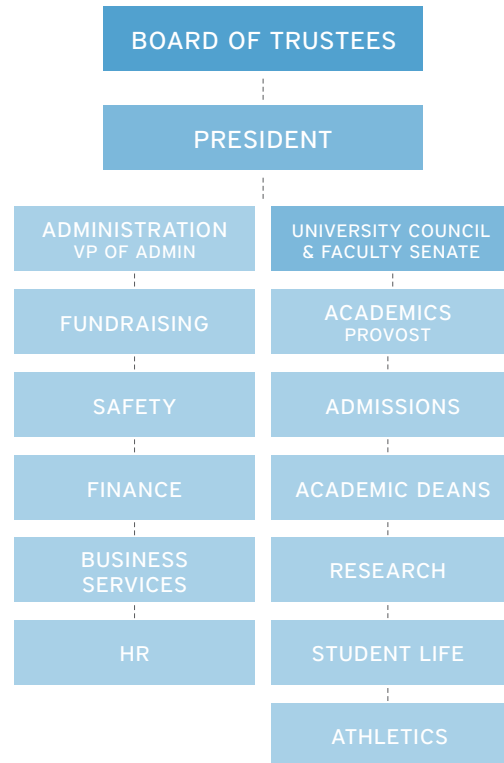


FIGURE 1  
THE TYPICAL STRUCTURE OF A UNIVERSITY

suspicion or skepticism. Administrators typically have accounting or management backgrounds and prioritize job security. These priorities and attitudes combine to create a culture that does not reward risk and punishes failure.

Hospitals have similarly large bureaucratic structures. The main decision-making bodies are generally the board and the CEO, both of which focus on minimizing institutional risk and handling finances responsibly and profitably. Administrators prioritize meeting the requirements of their positions and ensuring job security through institutional protection, while healthcare professionals such as doctors and nurses may focus on treating patients or conducting research while looking no farther than the borders of the hospital campus.

These cultures produce decisions that may seem logical for the institutions themselves, but they often do not align with community goals. For example, the university may build parking lots around the school, often at the edges of campus, to provide easy access for faculty, staff,

and students. But doing so incentivizes employees and students to drive, curbing the chance that they will live in neighborhoods within walking distance and visit nearby shops. Parking lots also create an asphalt barrier that insulates the campus from the community. Similarly, the institution's procurement policies may be based on getting the lowest price for the most predictable outcomes, meaning that they contract with large, often national vendors for their goods and services rather than with local providers. Finally,

## Large anchors have a great deal of in-house planning skill, which they can utilize to determine the best ways to engage with the community.

a university often locates open space, recreational facilities, and other amenities within its confines, allowing only limited interaction with community members. To change how these types of decisions are made, it is essential to alter the anchor leadership's view of the institution in relation to its community and understand how to change ingrained habits and mindsets.

## Promoting Community Engagement

There are a number of ways that local leaders, philanthropists, community groups, and other stakeholders can move an anchor institution toward a new role in the neighborhood.

### IDENTIFY CHAMPIONS

Leadership is often the key to a successful anchor strategy. The philosophy and approach of the chancellor, president, or CEO can determine whether an institution sees itself as an anchor, how it acts once it defines itself as such, and whether those actions are enduring. As Benjamin Kennedy of The Kresge Foundation advises, "Be opportunistic! Every single person at an institution doesn't have to buy in—only the

key people do. Your champions are the ones who will transform the institution and instill the anchor outlook."

A strong leader committed to an anchor strategy can lay the foundation for meaningful community engagement and impact. The approach must be embedded within the senior administration and trickle down throughout the institution, so that staff members who are directly responsible for particular pieces of the strategy—such as human resources staff, procurement officers, and professors engaged in community research projects—understand their new priorities. This transition can be achieved in part through changing the reward structure and communicating strategically, by amending the vision statement, and regularly describing anchor work and accomplishments in internal messaging.

An anchor strategy has a greater chance of success if multiple parties actively echo support for it. Within the anchor institution, it can be immensely helpful to identify staff members who champion the idea of community engagement and work with local groups to devise mutually beneficial strategies. Outside the anchor, it is useful to recruit local leaders to push the institution to take on a new role. For example, local philanthropy in Cleveland and Detroit played a large part in coaxing institutions to come together to devise anchor strategies for their surrounding communities.

### EXPLORE MULTI-ANCHOR OPPORTUNITIES

If a neighborhood houses more than one anchor institution, multiple organizations can participate in the effort. This approach has proven highly successful in Cleveland, where hospitals, universities, and cultural organizations, along with local philanthropies, financial institutions, and the City of Cleveland, have joined together to implement the Greater University Circle Initiative.

Although a multi-anchor strategy adds complexity by increasing the number of people and organizations that must buy into the work, it can also magnify the initiative's impact by bringing additional resources to the table and



Hundreds of residents gather in New Center Park for Midtown Detroit's free outdoor summer movie series. Credit: Doug Coombe

expanding the number of champions. Furthermore, the leaders of each anchor institution can encourage and reinforce each other's work, while distributing perceived risk.

### IDENTIFY SELF-INTEREST

At a basic level, a hospital or university may undertake an anchor strategy because its leaders believe that improvements to the surrounding community would benefit the institution. For example, Dr. Wallace D. Loh, president of the University of Maryland, College Park, has focused on improving quality of life in the neighborhood because he was concerned that local conditions detracted from the university's ability to attract and retain faculty and staff.

Anchor strategies have other, more indirect benefits. While a university or hospital may make unilateral decisions about what happens on its own land, it can also face issues that require support from outside forces, including local government and community residents. Creating strong and longstanding relationships with local leaders through anchor work can help the organization win support for future plans. By thinking holistically about their relationship with the surrounding community, anchor leaders are often encouraged to reconceptualize their basic goals of educating or healing. Dr. Lucy Kerman, vice provost, University and Community Partner-

ships at Drexel University, sums it up this way: "Anchor work must be aligned with the university's self-interest, and be rooted in the appropriate role of the institution. We may not be directly creating affordable housing or running a school, but we are partners in a system that creates mixed-income opportunities and provides strong educational opportunity."

### BRING RESOURCES TO THE TABLE

Of course, it may all come down to resources. Financial incentives encourage institutions and their partners to take on anchor work, strategize about their role in the community, meet regularly with stakeholders, and invest in anchor activities. For their part, local stakeholders may see the opportunity to engage the anchor institution but lack the ability or tools to get involved without new funding.

In Detroit, for example, the anchors came to the table for many reasons, but one key factor was the financial resources offered by the two partners that brought them together: the Hudson-Webber and Kresge Foundations. Their capital kick started the conversation and continues to undergird the work today. By offering matching money for specific tactics,

the foundations incentivized the anchors to commit their own funds. Today, the anchors not only support specific initiatives but also provide operating resources to Midtown Detroit Inc., the neighborhood planning and development organization that supports and staffs much of the anchor work. In this way, philanthropic resources seeded the initiative while helping to create the infrastructure necessary for its successful implementation and sustainability.

## Connecting Strategy to the Community

At first glance, community needs and goals—good schools, safe streets, amenities and services, job opportunities, public spaces, and housing—do not correlate directly with an anchor’s outputs. Indeed, if an institution generates successful graduates, high-quality health care, and top-notch research, it concludes that it has done its job as both a local and a global citizen.

But by aligning community goals with an institution’s inputs—faculty, staff, patients, students, visitors, real estate, goods and services—anchor strategies can connect the institution’s mission to community aspirations. Hiring local residents for institutional jobs

enhances an anchor’s economic impact within the community, aiding local households as well as the overall area. When institution staff members shop, live, and dine in the neighborhood, it stimulates the local economy. Using the framework of the five Ps, anchor/community engagement can advance community aspirations from goals to outcomes.

- **Placemaking.** Both the community and institution can benefit from thoughtful implementation of an institution’s real estate programming, which can promote an open campus with active edges and limit uses such as parking or storage. Improving the condition of blocks surrounding the university or hospital, opening up access to public spaces, and focusing on issues such as street lighting or storefront improvements all make for a safer and healthier environment for residents, prospective students and patients. The inputs that could play a role in this process are faculty, staff, students, patients, visitors, and real estate. The community goals that can be affected include safe streets, amenities and services, job opportunities, public spaces, and housing variety.
- **Personnel.** By hiring locally, an anchor strategy provides job opportunities for area residents. As the employment rate rises, the community

As part of its 53rd St. Placemaking initiative, the University of Chicago recruited chef Matthias Merges, whose Michelin-recognized restaurant A10 uses produce grown by Cook County Jail inmates. Credit: Matthias Merges




will become safer, benefiting both residents and the anchor institution. The main input in this case is staff.

- **Procurement.** The anchor institution can bolster the local economy by contracting with local vendors, creating job opportunities, safer streets, and more amenities and services. The anchor can also generate positive public relations regarding its local outreach. Again, staff is the main input.
- **Policy.** By directing its research and teaching prowess toward local issues, the anchor can help to meet community aspirations for good schools, improved public safety, job opportunities, and health care, thus bolstering its own reputation in the region. To accomplish this, the anchor can tap staff, faculty, students, and visitors for activities such as service learning, health care outreach, and experiential teaching.
- **Planning.** Crafting all of these efforts into a cohesive mission requires that leaders of anchor institutions link each input with community aspirations. An anchor can also provide planning talent to help build concurrence between its own plans and the plans of the neighborhood or municipality. The lead input in this case is staff, with anchor employees working together to identify how various strategies align with community goals in order to create win-win propositions.

## Conclusion

A place-based, institutionally embedded, and comprehensive anchor strategy can have significant impacts on a local and regional economy. But building and implementing such a focused strategy takes a great deal of time and patience. Putting all the elements together—getting the partners involved, convincing them of their self-interest in undertaking anchor work, identifying strong leaders and using them to change the ethos of their institutions, identifying intermediaries and ensuring they have the capacity to play their roles, lining up financial incentives—requires the commitment and coordination of many moving parts.

In many cases, the anchor work is based on

trust, often among groups that have not worked together in the past. Building these relationships involves in-person contact and the development of strong alliances. Furthermore, this effort must occur within the context of working with large anchor institutions. Those who wish to work with anchors to change the way they do business must understand how and why institutions act the way they do, and how they make decisions. When all these components come together, anchor strategies can transform the community, the region, and the anchor itself. 

---

## ABOUT THE AUTHORS

**Beth Dever** is an independent consultant working for the Ford Foundation. **Omar Blaik** is CEO and **George Smith** is vice president of U3 Advisors. **George W. McCarthy** is president and CEO of the Lincoln Institute of Land Policy.

---

## REFERENCES

Brophy, P., and R. Godsil. 2009. "Retooling HUD for a Catalytic Government: A Report to Secretary Shaun Donovan." Philadelphia: Penn Institute for Urban Research.

Initiative for a Competitive Inner City (ICIC) and CEOs for Cities. 2002. "Leveraging Colleges and Universities for Urban Economic Revitalization: An Action Agenda." Boston: ICIC and CEOs for Cities.

Kenyon, Daphne A., and Adam H. Langley. 2010. *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*. Cambridge: Lincoln Institute of Land Policy.

Webber, H., and Mikael Karlström. 2009. "Why Community Investment is Good for Nonprofit Anchor Institutions: Understanding Costs, Benefits, and the Range of Strategic Options." Chicago: Chapin Hall at the University of Chicago.

Welch, Sherri. 2014. "Midtown Detroit Expands Boundaries for Housing Incentives." *Crain's Detroit Business*. April 28.

Common interest communities have become more accessible since the founding of Gramercy Park in Manhattan in 1831—the first homeowner association, whose members still enjoy exclusive use of the 2-acre green space they privately maintain. Credit: © AA World Travel Library / Alamy (top), Trust for Architectural Easements (bottom)



# PRIVATE REGIMES

IN THE



# PUBLIC SPHERE

OPTIMIZING THE BENEFITS OF  
COMMON INTEREST COMMUNITIES



by Gerald Korngold

A *New Yorker* cartoon by Jack Ziegler captures the essential irony of buying into condominiums, cooperatives, and other homeowner associations. A car is entering a driveway that leads to a group of townhouses in the distance, and a sign by the entrance proclaims, “Welcome to Condoville and the Illusion of Owning Your Own Property” (Ziegler 1984).

Despite this ambiguity, about a quarter of the American population now lives in association housing situations, collectively known as common interest communities (CICs). Figure 1 shows the tremendous increase in CICs over the past several decades. From 1970 to 2013, the number of housing units in such communities spiked from about 700,000 to 26.3 million, while the number of residents multiplied more than 30-fold from 2.1 million to 65.7 million.

With their growing popularity, common interest communities have raised policy challenges and legal issues that require ongoing resolution. These conflicts generally reflect either external concerns that CICs segregate the wealthy from the rest of society or internal disagreements between individual owners and their associations’ governing bodies. This article examines some of the controversies associated

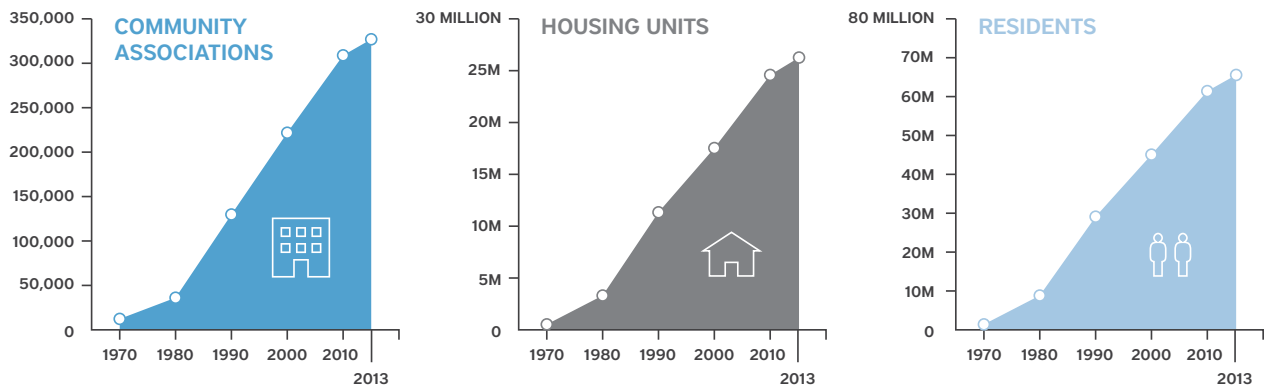
with the CIC model and its governance, and suggests approaches for enhancing the benefits of common interest communities for both property owners and society at large.

## The Rise of Common Interest Communities

With increasing industrialization during the 19th century, the intrusion of pollution, traffic, noise, and disease led many planners and citizens to favor the separation of residential, commercial, and industrial uses. (Zoning had not yet emerged as a planning tool and would not be validated by the Supreme Court of the United States until 1926.) Some residential developers thus imposed “servitudes”—covenants, restrictions, and easements—on their subdivision projects. Servitudes generally restricted the properties to residential uses and often created shared rights to communal facilities and services in exchange for fees. Lot purchasers agreed to the servitudes, and once the restrictions were recorded, subsequent purchasers were also legally bound. The common law proved to be an effective vehicle for creating high-end residential areas, including New York City’s Gramercy Park (1831) and Boston’s Louisburg Square (1844).

After a slowdown during the Great Depression

FIGURE 1  
GROWTH IN COMMUNITY HOUSING ASSOCIATIONS, HOUSING UNITS, AND RESIDENTS 1970–2013



Source: Foundation for Community Association Research, *Statistical Review 2013*

and World War II, construction of CICs began to boom in the late 1960s, after the Federal Housing Administration (FHA) recognized the condominium as an insurable ownership vehicle, and state statutory authorization followed. FHA mortgage insurance encouraged developers to build middle-class condominiums, which gained market acceptance as a result of the “new town” movement—exemplified by early planned communities such as Reston, Virginia (1964), and Columbia, Maryland (1967). The passage of California’s Proposition 13, the initiative that

and subject to the law of contract rather than public administrative and Constitutional law (see Box 1).

## Economic Benefits of CICs

CICs bring substantial economic benefits to owners and to society at large. Residents who buy into these communities have determined that shared facilities, such as recreational areas, are a better value than, say, personal swimming pools and other private facilities. Similarly, those joining CICs have determined that certain restrictions—such as a prohibition on parking mobile homes in driveways—increase property values.

These communities help to achieve efficient use of land as well. The costs of organizing and administering a private residential community are lower than in a public system (Nelson 2009). Transaction costs and rent-seeking through the political system are also reduced. Finally, because it is free from statutory and constitutional restraints, a private community has greater flexibility in the substance of its rules and operations, freeing it from adherence to public guidelines when entering into contracts with service providers and suppliers.

American courts have recognized these efficiency benefits when enforcing CIC arrange-

## A quarter of the American population now lives in common interest communities.

limited property taxation in 1978, and similar measures in other states also spurred an increase in CICs, as cash-strapped local governments, under increased pressure to provide more services, were unwilling to absorb the infrastructure and service costs from new development. As a result, they tended to approve new developments only in CIC form, where the developer (and ultimately the owners) covered the costs.

Today, CIC owners are generally subject to a variety of constraints related to their private units, from limitations on the layout and design of buildings and the type of construction materials used, to restrictions on visible home decorations, ancillary structures, and landscaping. There are often controls on the owner’s behavior and use of the property, which is typically limited to residential occupancy. Noise, parking, and traffic rules may also be imposed, along with vehicle restrictions. In some cases, political signs, leafleting, and related activities are also prohibited.

In exchange for their association dues, owners have access to common facilities, such as roads and recreational areas, and to private services, such as security, trash collection, street cleaning, and snow plowing. The CIC is usually administered by a private residential government and various committees, elected by the owners



---

BOX 1

## COMMON INTEREST COMMUNITY MODELS

CICs typically create a private government elected by the owners to administer and enforce contracts, and to promulgate rules to advance community interests. While the exact form of the arrangement may vary, the basic concepts are similar.

### Homeowner Associations

Unit owners hold fee title to their individual properties, which are usually single-family or townhouse homes. The association holds title to common areas and grants the owners easement rights for their use. These can be created by common law or under statutes in some states. Homeowner associations make up more than half of community associations nationally.

### Condominiums

Unit owners receive fee title to their units plus a percentage ownership in the common areas. The association administers the common areas but does not hold title to them. Condominiums may be vertical (high-rise) or horizontal (single-family or townhouse homes), and they are created exclusively pursuant to state statute. Condominiums represent 45 to 48 percent of community associations.

### Cooperatives

A cooperative corporation owns the building, and the owners receive shares in the corporation and automatically renewable, long-term leases on their individual units. Unlike condominium and homeowner associations, the corporation can control transfer of leases and shares by cooperative owners. Only 3 to 4 percent of community associations are organized as cooperatives.

Middle-class condominiums gained market acceptance in the 1960s, as a result of early planned communities such as Reston, Virginia. Credit: BB\_Image / iStock

ments and the owners' reliance on them. As one court noted, "It is a well-known fact that [covenants] enhance the value of the subdivision property and form an inducement for purchasers to buy lots within the subdivision" (*Gunnels v. No. Woodland Community Ass'n*, Tex. Ct. App., 17013 [1978]).

## External Concerns: Secession from the General Community

Despite these benefits, various commentators have argued that the services and private facilities of CICs are available only to those who can afford them and facilitate the separation of the wealthy from the rest of society. The rest of a CIC's municipality is forced to do without, creating a permanent, two-tier system of housing. Critics also claim that privatization of infrastructure and services isolates CIC residents and reduces their stake in broad communal issues.

By this logic, CIC dwellers are less willing to engage with public government on civic matters and more likely to resist tax increases, given that the CIC rather than the municipal government provides many services. Where community associations are part of suburban developments, isolation from the urban core may be acute. These concerns often center on a fear of class and economic segregation. As former Secretary of Labor Robert Reich wrote in a *New York Times* article called "Secession of the Successful": *In many cities and towns, the wealthy have in effect withdrawn their dollars from the support of public spaces and institutions shared by all and dedicated the savings to their own private services. . . . Condominiums and the omnipresent residential communities dun their members to undertake work that financially strapped local governments can no longer afford to do well* (Reich 1991).

## FREEDOM OF CHOICE

This characterization of community associations, however, is at odds with the fundamental American values of freedom of contract and freedom of association. It is a shared value that people may spend their money for lawful

purposes as they wish and enter into contracts as they please. The law intrudes on freedom of contract only in rare instances when major policy considerations are at stake. Courts have recognized freedom of contract as an important consideration for upholding private servitude arrangements: *We start with the proposition that private persons, in the exercise of their constitutional right of freedom of contract, may impose whatever restrictions upon the use of land which they convey to another that they desire to impose* (*Grubel v. McLaughlin*, D. Va. [1968]).

## CIC owners pay property taxes at the same rates as other citizens, even though they privately purchase services such as trash collection, street cleaning, and security with their community association dues. This amounts to double taxation.

CICs also reflect the American belief in freedom of association, exemplified in a long tradition of utopian communities and other belief-centered networks. Residents in modern CICs might share common interests, such as the homeowners living in golf or equestrian communities. Other residents may simply share a desire for neighborhood tranquility or character. In *Behind the Gates*, Setha Low suggests that CICs allow “middle-class families [to] imprint their residential landscapes with ‘niceness,’ reflecting their own aesthetic of orderliness, consistency, and control” (Low 2004). Whatever the reason, community associations are consistent with de Tocqueville’s observation about American interactions: *Americans of all ages, all conditions, and all dispositions, constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds—religious, moral, serious, futile, extensive or restricted, enormous or diminutive* (de Tocqueville 1835).

Moreover, the available evidence indicates that CIC residents are generally happy with their choice. In a 2014 survey conducted by Public Opinion Strategies for the Community Associa-

tions Institute, 64 percent of owners were positive about their overall experience, and 26 percent were neutral. While 86 percent of respondents indicated that they wanted either less or no additional governmental regulation, 70 percent maintained that association rules and restrictions protect and enhance property values.

## THE ISSUE OF DOUBLE TAXATION

While the rise of CICs reflects a variety of factors, the constrained finances of municipalities following the property tax revolts in the 1970s were key. In fact, a different take on the “secession” narrative is that some owners in common interest communities believe that municipal government abandoned *them*.

CIC owners pay property taxes at the same rates as other citizens, even though they privately purchase services such as trash collection, street cleaning, and security with their community association dues. This amounts to double taxation, charging association owners for a service they are not receiving.

If a no-service policy were in effect before an owner purchased a unit in a CIC, theoretically the buyer could lower the offer price to reflect the lack of municipal services and the double-taxation-effect. The unit owner would be protected, and the developer would absorb the loss. But if a municipality reduces services but not taxes after the unit purchase, the owner suffers an uncompensated loss. This outcome would be bad policy in that it permits rent seeking, allowing the majority of citizens in the town to select one group of residents to bear an extra tax burden even though they do not create extra costs. This offends notions of both fairness and efficiency, and it’s antithetical to community building and civic trust.

It is especially important for legislatures to avoid the use of double taxation as a matter of policy, given that judicial challenges are unlikely to succeed. The few courts that have entertained attacks on double taxation have been unsympathetic to claims that it violates due process of law, offends the equal protection clause of the Constitution, or works a taking of property without compensation. While double taxation may

	MEAN			MEDIAN		
	All	Single Family	Condos/Coops	All	Single Family	Condos/Coops
2008	\$198,100	\$196,600	\$209,800	\$242,700	\$241,700	\$250,500
2009	\$172,500	\$172,100	\$175,600	\$216,900	\$217,000	\$216,300
2010	\$172,900	\$173,100	\$171,700	\$220,000	\$220,600	\$215,700
2011	\$166,100	\$166,200	\$165,100	\$214,000	\$214,300	\$211,300
2012	\$176,800	\$177,200	\$173,700	\$225,400	\$225,800	\$222,200
2013	\$197,100	\$197,400	\$194,900	\$245,000	\$245,700	\$244,300

FIGURE 2  
EXISTING HOME PRICES 2008–2013

Source: Clifford J. Treese, Association Data, Inc., compiled from National Association of Realtors Data

be bad policy, it is not unconstitutional. The courts should not overturn such legislative decisions, because these are essentially political outcomes that the public should challenge at the ballot box.

#### THE QUESTION OF INEQUALITY

The “secession of the wealthy” argument appears to be based on the notion that only higher-income owners with higher-value homes live in common interest communities. The available data, however, do not clearly support this assumption. As Figure 2 indicates, prices for condominiums and cooperatives—half of the units in CICs nationally—are below those for all existing homes (including condominiums, cooperatives, and single-family homes inside and outside of community associations). While these estimates are not deeply segmented (for example, they do not break out single-family homes inside and outside CICs), they do show that the values of condominiums and cooperatives are consistent with those of homes generally.

Housing affordability and access are significant challenges in the United States, but community associations are not necessarily the cause of these deep-seated, complex problems. Employed before CICs became popular, exclusionary zoning imposed by local governments in the form of large lot requirements has prevented developers from building affordable housing. CICs have in fact been found to lower the costs

of home purchases. Multi-unit housing, such as condominiums and townhouses, is more affordable than single-family homes because it cuts the cost of land, infrastructure, and building (Ellickson & Been 2005). Affordable housing cooperatives permit restrictions on resale prices and owner income, thus ensuring that housing opportunities remain available for lower-income families. For these purposes, developers operating under city requirements or incentives often designate condominium units within a project as affordable units.

**Affordable housing cooperatives permit restrictions on resale prices and owner income, thus ensuring that housing opportunities remain available for lower-income families.**

It is therefore simplistic and counterproductive to see community associations as a battleground between rich and poor. Similarly, pejorative use of the term “gated” communities to describe those CICs with limited public access does not advance understanding. Indeed, a moderate-income cooperative with a front door locked for basic security reasons falls within the definition of a “gated” community.

## GUIDING PRINCIPLES

In what ways should the “secession of the successful” critique affect our understanding, acceptance, and authorization of common interest communities? The issue is complex and does not lend itself to binary choices. Instead, it is a matter of accommodating competing interests according to the following principles:

- Acceptance of the CIC model has increased over time. These types of housing arrangements represent the free choice of many people, and the law enforces their contracts in most instances.
- CIC owners should relate to the municipal government and the CIC structure under what might be termed “augmented federalism.” Under this notion, residents have additional contractual duties to the CIC, but these obligations do not excuse them from duties to and participation in federal, state, and local governments. In return, legislators should base policy decisions affecting CIC owners on considerations of fairness, efficiency, and community building.

- Housing access and affordability require comprehensive solutions. These issues should be discussed and debated directly, and the political process should determine the course of action. Viewing these issues only as a CIC problem is unwarranted and will not bring effective results.

## Internal Conflicts: Individual Owners vs. the Community

In his groundbreaking book *Privatopia: Homeowner Associations and the Rise of Private Residential Governments* (1996), Evan McKenzie warned that: *CICs feature a form of private government that takes an American preference for private home ownership and, too often, turns it into an ideology of hostile privatism. Preservation of property values is the highest social goal, to which other aspects of community life are subordinated. Rigid, intrusive, and often petty rule enforcement makes a caricature of . . . benign management, and the belief in rational planning is distorted into*

---

### BOX 2

#### CONFLICTS MAKE GOOD COPY

While the following headlines fail to represent the myriad positive interactions between individual owners and associations, they do suggest some of the difficult interactions that can occur.

- “Marine’s Parents Sued Over Sign of Support in Their Bossier City [La.] Front Yard.” The 3 ft. x 6 ft. sign displayed a picture of their son in uniform, before deployment to Afghanistan, with text that read, “Our son defends our freedom” (Associated Press, July 25, 2011).
- “Bucks County Woman Fined by Homeowners’ Association For Colored Christmas Lights.” Association members had previously voted in favor of permitting white lights only (CBS Philly, December 2, 2011).
- “Dallas Man Suing Rabbi Neighbor Who Uses House as a Synagogue.” The plaintiff claimed that the use of the home for a 25-person congregation violated the residential restriction (KDFW Fox4 Online, February 4, 2014).
- “A Grandfather Is Doing Time For Ignoring A Judge’s Order in a Dispute Over Resodding His Yard.” The association won a judgment of \$795 against the owner who claimed that he could not afford to resod his browning lawn. When the owner failed to pay, the court jailed him for contempt (*St. Petersburg Times*, October 10, 2008).
- “Hilton Head Plantation Resident Disputes Gate Toll for Unpaid Fees.” An owner brought suit after an association imposed a \$10 entrance gate fee on homeowners delinquent on their annual association dues (*Island Packet*, August 29, 2014).

an emphasis on conformity for its own sake.

Conflicts between residents and CIC associations or boards often revolve around two general issues: the substance of the restrictions and the procedures for enforcement (see Box 2). As Figure 3 shows, disputes may focus on a range of topics, from landscaping restrictions to assessment collection. Indeed, 24 percent of CIC residents responding to the 2014 Public Opinion Strategies survey had experienced a significant personal issue or disagreement with their associations. Of this group, 52 percent were satisfied with the outcome and 36 percent were dissatisfied; in 12 percent of cases, the issue was still unresolved.

There are indeed certain risks that community associations can overstep with respect to the substance and enforcement of restrictions, but legislation and judicial supervision can address these substantive and procedural policy concerns.

### FREEDOM OF CHOICE

As discussed earlier, individuals exercise their freedom of choice by purchasing homes in CICs and agreeing to be subject to their rules. Associa-

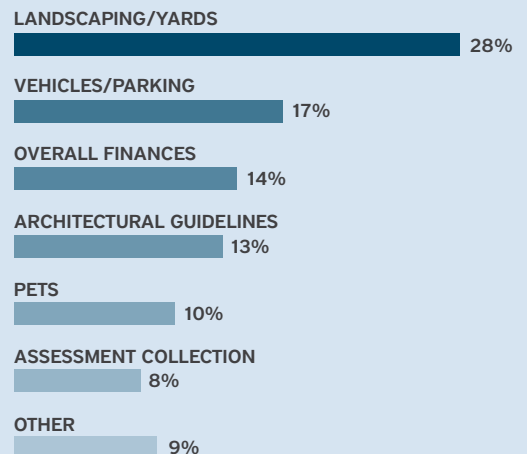
tion living may not be for everyone, but the expectation of people who choose the CIC life should generally be respected and not be frustrated by someone who subsequently seeks to violate the compact. The courts generally reflect this view, as suggested by this 1981 ruling: *[The original] restrictions are clothed with a very strong presumption of validity which arises from the fact that each individual unit owner purchases his unit knowing and accepting the restrictions to be imposed. . . . [A] use restriction in a declaration of condominium may have a certain degree of unreasonableness to it, and yet withstand attack in the courts. If it were otherwise, a unit owner could not rely on the restrictions found in the declaration . . . since such restrictions would be in a potential condition of continuous flux (Hidden Harbour Estates v. Basso, Fla. Ct. App. [1981]).*

There are several scenarios, though, where homeowners may have no freedom of choice. First, it is possible that the only new housing available to buyers would be in CICs—i.e., developers are no longer building new homes outside of associations. Indeed, a recent report



The owner of this home in St. Petersburg, Florida, ended up in jail for refusal to resod his browning lawn or pay the resulting \$795 fine from his homeowner association. Credit: © Lance Aram Rothstein/Tampa Bay Times/ZUMA Press

FIGURE 3  
SOURCES OF DISAGREEMENTS BETWEEN OWNERS AND ASSOCIATIONS



Source: Public Opinion Strategies 2014

found that in 2003, 80 percent of all homes being built at that time were in associations (Foundation for Community Association Research 2014). In addition, municipal government may require developers to create associations as a condition for subdivision approval. (Recent legislation in Arizona prohibiting this practice indicates that it still occurs.) Finally, some courts have suggested that while rules in place at the time of purchase should be enforced, a rule subsequently enacted

ities) from one owner to the rest of the community. They should not, however, enforce restrictions that limit the nature or status of the occupants or the behavior within a unit that does not create externalities. This approach is based on the theory that the primary purpose of CIC regimes is to enhance economic value and encourage efficient exchanges. Thus, if the owner creates no externalities, the courts should not enforce bans on the particular behavior. Moreover, some values of personal autonomy are too important and trump the usual rules of contract. We do not, for example, permit contracts of indentured servitude or the sale of human organs.

By this standard, limiting noise and banning smoking (because of seepage of odors) in multi-family units would be legitimate, but restrictions based on the marital status of residents would not. Some situations are trickier—for example, restrictions on pets. Under the suggested guidelines, it would usually be legitimate to bar pets because of the potential noise and the reluctance of some residents to share common areas with them. In the case of service animals, however, the unit owner’s health needs may trump community concerns.

First Amendment-type issues present special challenges. Free expression—such as political or issue-related signage, leafleting, demonstrations, or other manifestations—can cause spillovers that may include noise, aesthetic interference, and disruption of the community’s general ambience. At the same time, however, free speech is fundamental to our republican form of government, arguably whether it is addressed to the larger public government or the private government. In expression cases, courts might apply the longstanding doctrine that prohibits covenants that violate public policy, rejecting total bans on speech in favor of reasonable restrictions on time, place, and manner. This would allow expression but limit, if not eliminate, spillover on the community.

Religious freedom is another fundamental American value. Restrictions on the placement of a mezuzah on doorposts and the display of crèches, statues of saints, and Christmas lights limit free exercise of religion. While it would open

## Association restrictions raise concerns when they threaten the personal autonomy and fundamental individual rights of owners.

by the association or board under a reserved power should not be enforced if an owner can show that it is “unreasonable.” Other courts disagree: *Homeowner should not be heard to complain when, as anticipated by the recorded declaration of covenants, the homeowners’ association amends the declaration. When a purchaser buys into such a community, the purchaser buys not only subject to the express covenants in the declaration, but also subject to the amendment provisions. . . . And, of course, a potential homeowner concerned about community association governance has the option to purchase a home not subject to association governance. . . . For this reason, we decline to subject the amendments . . . to the “reasonableness” test (Hughes v. New Life Development Corp., Tenn. Sup. Ct. [2012]).*

## Guidelines for Protecting Personal Autonomy

Association restrictions raise concerns when they threaten the personal autonomy and fundamental individual rights of owners. Constraints of this type might include prohibitions of political signs or messaging, and restriction of occupancy to “traditional” families.


Courts should enforce restrictions if they limit spillovers (also known as fallout or external-



a Pandora's box to engage in balancing the religious importance of colored versus white Christmas lights against CIC standards, it would nevertheless be appropriate for the courts to impose a general standard of reasonable accommodation on CIC regulations that affect religious practices.

Finally, in the development and enforcement of association rules, CIC property owners have a right to expect certain behavior from associations and boards. This expectation traces from the obligation of good faith and fair dealing that is incumbent on all parties to a contract. Thus, an owner should have a right to fair procedures, including notice and an opportunity to be heard; to be treated equally to other similarly situated owners; and to be free from bias, personal animus, and bad-faith decision making by the board and its members.

## Conclusion

Common interest communities are a large part of the American residential landscape, currently providing homes for a quarter of the U.S. population. While CICs bring great economic advantages to residents and society in general, these types of housing arrangements do require nuanced interactions between the community association and the municipal government, and association rules can impinge on the personal autonomy of members. However, strategies are available to mitigate if not overcome these problems. Indeed, these approaches can make ownership of a home in a CIC less of an illusion and more of a reality. 

---

## ABOUT THE AUTHOR

**Gerald Korngold** is Professor of Law at New York Law School and a visiting fellow at the Lincoln Institute of Land Policy. He teaches and writes in the fields of property and real estate law. He can be reached at [gkorngold@nyls.edu](mailto:gkorngold@nyls.edu).

---

## REFERENCES

- De Tocqueville, Alexis. 1835. *Democracy in America*. London: Saunders and Otley.
- Ellickson, Robert C. & Vicki L. Been. 2005. *Land Use Controls*. New York, NY: Aspen Publishers, 3rd edition.
- Foundation for Community Association Research. 2014. "Best Practices. Report #7: Transition." [www.cairf.org/research/bptransition.pdf](http://www.cairf.org/research/bptransition.pdf).
- Foundation for Community Association Research. 2013. "National and State Statistical Review for 2013." [www.cairf.org/research/factbook/2013\\_statistical\\_review.pdf](http://www.cairf.org/research/factbook/2013_statistical_review.pdf).
- Grubel v. McLaughlin Gunnels v. No. Woodland Community Ass'n*, 17013, Texas Court of Appeals (1978).
- Hidden Harbour Estates v. Basso*, Florida Court of Appeals (1981).
- Hughes v. New Life Development Corp.*, Tennessee Superior Court (2012).
- Low, Setha. 2004. *Behind the Gates: Life, Security, and the Pursuit of Happiness in Fortress America*. London: Routledge.
- McKenzie, E. 1996. *Privatopia: Homeowner Associations and the Rise of Private Residential Governments*. New Haven, Connecticut: Yale University Press.
- Nelson, R. H. 2009. "The Puzzle of Local Double Taxation: Why Do Private Communities Exist?" *The Independent Review*. 13 (3) (Winter) 345–365.
- Public Opinion Strategies. 2014. "Verdict: Americans Grade Their Associations, Board Members and Community Managers." Falls Church, Virginia: Community Associations Institute.
- Reich, Robert. 1991. "Secession of the Successful." *The New York Times Magazine*. January 20.
- Treese, C. J. 2013. Association Information Services, Inc., compiled from National Association of Realtors data. [https://docs.google.com/document/d/1L2LgTIYSqR4nLPRxN-HtCV-o0FK\\_QqN1AcO5JJTw-g/edit](https://docs.google.com/document/d/1L2LgTIYSqR4nLPRxN-HtCV-o0FK_QqN1AcO5JJTw-g/edit).
- Ziegler, J. 1984. *The New Yorker*. September 3.



ONE

# BACKYARD

The First National Workshop on Large Landscape Conservation

*The Lincoln Institute of Land Policy partnered with a team of nonprofit organizations and federal agencies to host the National Workshop on Large Landscape Conservation (NWLLC) on October 23 and 24, 2014, at the Ronald Reagan Building in Washington, DC. The meeting drew some 700 participants to consider how—working across the public, private, civic (NGO), and academic sectors; across disciplines; and across parcel, town, county, state, and even international boundaries—large landscape conservation practitioners could achieve creatively conceived, strategically significant, measurably effective, transferable, and enduring results on the land in this era of climate change.*

*The policies, practices, and case studies discussed at the NWLLC offered a broad spectrum of solutions and promising paths for enhancing wildlife conservation efforts on a regional level; substantially improving water quality and quantity across large watersheds; achieving sustainable production of food, fiber, and energy; and protecting internationally significant cultural*

*and recreational resources. The conference organizers greatly appreciate the productive contributions of all participants—ranging from Interior Secretary Sally Jewell, Iroquois elder Sid Jamieson, and National Wildlife Federation President Collin O'Mara, to on-the-ground land managers, scientists, and project coordinators from Alaska's Bering Strait to the Florida Keys.*

*A version of this article originally appeared in Expanding Horizons: Highlights from the National Workshop on Large Landscape Conservation, the complete NWLLC report. Prepared by the Lincoln Institute and three conference partners—the National Park Service Stewardship Institute, the Quebec-Labrador Foundation/Atlantic Center for the Environment, and the Practitioners' Network for Large Landscape Conservation—the full report is available on the Practitioners' Network website ([www.largelandscapenetwork.org](http://www.largelandscapenetwork.org))*

—James N. Levitt  
Lincoln Institute of Land Policy and the  
Harvard Forest, Harvard University

---

by Tony Hiss

Big ideas about nature and people and a new approach to conservation cascaded through the first-ever National Workshop on Large Landscape Conservation. So much happened so quickly that the usual phrases for describing heartening and enlivening events don't fit.

**A watershed event?** It felt more like white-water rafting down Niagara Falls or along an Ice-Age Flood.

**A coming of age?** Perhaps, if what you're thinking about is the "rocket stage" in the growth of a

longleaf pine tree: the tree can spend years looking like no more than a clump of grass, although it's been invisibly sinking a deep taproot; then, in a single season, it leaps four feet toward the sky, putting it past the reach of ground-hugging wildfires.

**Variety of input?** The medieval Spanish king, Alfonso the Wise, is remembered for saying that if he'd been present at the Creation, he could've offered some useful hints. But at the oversubscribed Large Landscape Workshop, 117 hours of experience, advice, and data had to be packed into seven sets of concurrent sessions that occupied most of the 17 hours of the conference. There were thoughtful talks and panels and carefully prepared reports and slideshows by 269 presenters from inner cities, remote rocky

Left: Nahanni National Park, in Canada's Northwest Territories, is part of the Yellowstone to Yukon Conservation Initiative—one of the world's few landscapes with the geographic variety and biological diversity to allow species threatened by climate change to adapt. Credit: © Radius Images / Corbis

heights, far-flung islands, and landscapes of all types across the United States, with connections to Canada and Mexico.

**Continuing momentum?** Ben Franklin said on the last day of the U.S. Constitutional Convention in Philadelphia in 1787 that, after spending three months listening to back-and-forth debate and looking daily at a gilded sunburst on the back of the president's chair, he finally had the happiness of knowing he was seeing a rising sun, not a setting one. But Secretary of the Interior Sally Jewell, one of two cabinet members to address the NWLLC audience and applaud its efforts, told a lunchtime plenary session on the very first day: "This room is bursting with vision. You will be pioneers of landscape-level understanding, as Teddy Roosevelt was of conservation a century ago. Let's make it happen!"

**LANDSCAPE-LEVEL CONSERVATION**—the term is still relatively new—is a different way of making sense of the world, and of assessing and nurturing its health. It steps beyond the laudable but limited 20th-century practice of designating reserves and cleaning up pollution. Taking a wide-angle, big-picture view of things, it sees every landscape, designated or not, as an intricately connected network of living beings

sustained by a wide-ranging community of people. Landscape-level conservation has been reenergizing and broadening the environmental movement. And as its perspective is adopted, the first thing that grows is not necessarily the size of the property to be protected, but the possibility for actions, some large, some small, that will make a lasting difference for the future of the biosphere and its inhabitants, including humanity.

Many of these inaugural projects were on display in the workshop presentations and in the 34 posters that adorned the vast Reagan Building atrium. At times, the workshop felt like an enormous bazaar, displaying programs, concepts, research findings, explorations, cooperative agreements, and other early successes, as well as questions to ponder. Unexpected jewels, efforts hitherto known only to small groups, gleamed brightly in corners and were freely offered to all.

Yellowstone-to-Yukon, known as "Y2Y," is perhaps the granddaddy of citizen-generated large-landscape projects—an idea for a connected, binational wildland corridor 2,000 miles long, from Yellowstone National Park north to the Alaskan border along the world's last intact mountain ecosystem. At the NWLLC, Y2Y was literally coming of age, celebrating its 21st birthday. In 1993, only 12 percent of this 321-million-acre landscape had been conserved, but by 2013 the total had surged to 52 percent.

National Heritage Areas, honoring this country's history and achievements, are even more well-established: the program embraces tens of millions of acres, including the entire state of Tennessee. It has just turned 30.

Y2Y has inspired plans for "H2H"—a 50-mile corridor of land that has been identified as a "resilient landscape," just beyond the affluent northern suburbs of New York City, stretching from the Housatonic River, in Connecticut, to the Hudson River, in New York. Once protected, it could dramatically slow the effects of climate change.



Bison graze near Old Faithful in Yellowstone National Park, the only U.S. landscape where the species has roamed continuously since prehistoric times. Credit: © Idamini / Alamy



Barometers of ecosystem health, grizzly bears have demanding habitat requirements that ensure benefits for a host of other wildlife, making the species a focus of Y2Y's conservation efforts. Credit: Peter Mather / National Geographic Creative / Corbis

The Staying Connected Initiative—a coalition of Canadians and Americans working across 80 million acres of forested land in four provinces and four states anchored by northern New England (a landscape the size of Germany)—calls itself “the very young cousin to Y2Y that, 15 years from now, they’ll call its northeast equivalent.”

Shortly before the workshop began, an Oregon county sewerage agency began adding trees and shrubs to the meandering banks of the 80-mile-long Tualatin River west of Portland, Oregon, to keep the fish in the river cool; it will have planted a million of them by World Environment Day on June 5, 2015.

The effect, workshop participants told me during breaks (there were a few), was somehow both exhilarating and sobering. Landscape-level conservation is hope-propelled rather than fear-accelerated. It’s a banding together in the face of grave environmental threats of extinctions and degradation. By widening our horizons, the focus shifts from salvage operations to the astounding number of things that can and need to be undertaken to restore, replenish, safeguard, protect, and celebrate the long-term integrity of this gigantic continent’s astonishing natural and cultural heritage.

When human ancestors first stood upright millions of years ago and could see over the tall savanna grasses of East Africa, their world went in an instant from being about 20-to-30 feet wide

to something like 20-to-30 miles wide. This redefined what was practical, necessary, and possible to think about. In a similar fashion, scaling up or accelerating our own awareness of conservation to the landscape level is a useful way of dealing with the ever-proliferating complexities of modern America, a country of 320 million people that within half a century will have 400 million.

It’s a country where, the last half-century of science tells us, existing conservation methods aren’t enough to protect these places properly—in part because plants and animals move across lines drawn on a map and because, as these places become more isolated, former inhabitants can’t move back in again, either for full-time or part-time residence. Even high-flying Alaskan shorebirds, which winter in Mexico or China or New Zealand, are finding their round-trips impeded by oil spills in San Francisco Bay and invasive mangroves in New Zealand; Tom Tidwell, chief of the United States Forest Service, calls birds, bats, and butterflies the “winged messengers” of landscape-scale conservation. In recent years, we’ve also seen that, though maps and land designations remain stationary, places may soon be on the move in their entirety, as climate change nudges one ecosystem aside and draws in another.

Perhaps mapping itself is finally entering a non-Euclidean, or post-Jeffersonian, phase. For almost 230 years—ever since 1785, when Thomas Jefferson, even before the Constitutional Convention, suggested that geometry should trump topography for surveying what were called the “vacant lands” west of the Appalachians—we’ve had the “Jeffersonian grid,” still inescapably seen from the windows of any transcontinental flight in the way roads and fields are laid out. This grid used the otherwise invisible (and only recently computed) lines of longitude and latitude to partition the landscape into square-mile “sections” for property lines that ignored ecosystems, watersheds, and even mountain chains. It created a right-angled reality for settlers moving west to set up towns, unencumbered by what they were inheriting—the natural organization of the

landscape and the age-old ways and knowledge of its previous human inhabitants.

**Banding together.** If working across more of the land is something that follows the realization that there's more to the land (and beneath it and above it), the new conservation equation places as much emphasis on the *who* part of the work as it does on the *what* of it. In yet another departure from traditional practices, another thing to grow is the number and kinds of people who need to get behind any landscape-scale project. The entire process, said Dan Ashe, director of the U.S. Fish

The average age of a forest landowner is 62½, and “affinity to the land,” one commentator pointed out, “can be harder to pass along than a legal deed.”

and Wildlife Service, relies on “epic collaboration,” which became the workshop’s most frequently repeated phrase. Epic resonated because it spoke of reaching across so many divides. “De-railers” was another popular workshop word:

**Private landowners partnering with public-land managers.** The migration path of the pronghorn antelope, which traverses both public and private land, has been protected, but it’s the last of what were seven such corridors, and the others have all been expunged. Working with 953 ranchers across 11 Western states, the National Resources Conservation Service’s Sage Grouse Initiative has moved or marked with white plastic tags 537 miles of barbed-wire fences, so these low-flying birds won’t impale themselves. “I work with the hopefuls, not the hatefuls,” one rancher said.

**Private landowners partnering with their next owners.** Tens of millions of acres of farms and ranches will change hands within the next 20 years, along with more than 200 million acres of “family forests.” The average age of a forest landowner is 62½, and “affinity to the land,” one commentator pointed out, “can be harder to pass along than a legal deed.”

**Public-land managers working with other**

**public-land managers.** Too many sister agencies have longstanding habits of treating each other as disdained step-sisters, or they function like the three Gray Sisters in Greek myths, sharing a single eye. Over the last 30 years, the Bureau of Land Management has developed a Visual Resource Management (VRM) system for evaluating intrusions on lands in the West that includes listing scenic qualities at various distances from Key Observation Points (KOPs). But VRM methods have not yet made it back East, where the Federal Energy Regulatory Commission tends to approve without question all proposals for new gas pipelines and electric-transmission corridors, even if they might affect views from a National Historic Landmark such as Montpelier, the Virginia estate surrounded by old-growth forest where James Madison drafted an outline for the U.S. Constitution.

**Other disparities yet to be bridged.** Eighty-five percent of Americans live in urban areas, leading to a generation of kids who have “walked only on asphalt.” Within the workshop, most presenters were male—engaged in “mansplaining,” as one woman said. Another participant was shocked to find the conference so “overwhelmingly white.” Dr. Mamie Parker, retired assistant director of the Fish and Wildlife Service (the first African-American woman in that position), was a plenary speaker who got a sustained ovation equaled only by Secretary Jewell’s. “For many years,” Dr. Parker said, “we’ve been stuck, stalled, and scared of nontraditional partnerships. Fear has kept us from reaching out to people who want to feel respected, to know that they’re a valued member of the team.”

“CHANGE HAPPENS AT THE RATE OF TRUST,” said one workshop participant. “I don’t think we’ve tested the trust yet,” said another. It’s abundantly clear that, from here on out, successful conservation is going to need a lot of successful conversations, many of which might be awkward at first. It will be a challenging stretch—standing upright brought human ancestors out of their comfort zone; a sense of belonging to other tribes is something we’re still working on.

*City People*, a groundbreaking book by the

historian Gunther Barth, showed how 20th-century American cities became cohesive places because of late-19th-century inventions: millions of small-town Americans and Eastern European immigrants learned how to live and work together thanks to apartment houses, department stores, newspapers (which gave them the same information base), and baseball parks (which taught them the rules of competition and cooperation). Public libraries and public parks could be added to the list.


Baltimore's Masonville Cove, the country's first Urban Wildlife Refuge Partnership, launched in 2013, is perhaps a new kind of public library for the large-landscape era. A waterfront neighborhood in the southernmost part of town—torn up after World War II for a harbor tunnel thruway, and littered with abandoned industrial sites that have regenerated and then been rediscovered by 52 species of birds—the Masonville Cove Urban Wilderness Conservation Area now offers classes taught by staffers from the National Aquarium about the Chesapeake Bay and its 64,000 square-mile watershed (the size of 18½ Yellowstones). There are also field trips, walking trails, a kayak launch, and opportunities to help clean up charred debris, which may date back to the Great Baltimore Fire of 1904.

Nationally, landscape-scale conservation has an informal and unofficial steering committee—the Practitioners' Network for Large Landscape Conservation, an alliance of government land managers, land trusts, academics, citizens, and national nonprofits who save lands and protect species. And officially, as the result of an early Obama administration initiative, there's now a nationwide underpinning to the work: a network of federal fact-finders and conveners, organized as 22 Landscape Conservation Cooperatives. The LCCs don't own anything or run anything, nor do they issue regulations, but they generate and compile reliable scientific data about all of the country's landscapes (and many of the adjoining landscapes in Canada and Mexico), creating a shared information base. They necessarily cover a lot of ground and water (one LCC takes in both Hawaii and American Samoa, 4,000 miles to the west). And they bring a lot of people together;

each LCC has at least 30 partners who represent separate government agencies, nonprofits, and tribal governments.

**What's next?** That was the question asked over and over, with excitement and urgency, in the building's sprawling, mall-length hallways. There were those buoyed by a recent survey showing that Americans think 50 percent of the planet should be protected for other species (Brazilians say 70 percent). Some foresee a seamless continental system of interlocked large landscapes, and the establishment of an international peace park on the U.S.–Mexico border to complement the one set up in 1932 across the U.S.–Canada boundary. There were, on the other hand, those in anguish who see all efforts falling short, confining North Americans to a continent with more development, less biodiversity, and fewer wolves, salmon, and spotted owls. There were those who thought that, at the next national workshop, partnership must be made an official part of the proceedings, built into the planning of sessions, into their presentations, and into follow-up discussions and initiatives.

**What is next?** People may need to take some time to assimilate the ascendancy of a new insight, a permanent expansion in the perception of landscapes. No more NIMBY (“Not In My Backyard”); there's only one backyard (OBY), and it's our care and delight, our inheritance and responsibility.

When you gain a new capacity, where will you set your sights? If someone gives you a telescope, what will you look at first? 

---

## ABOUT THE AUTHOR

**Tony Hiss** was a *New Yorker* staff writer for more than 30 years and is now a visiting scholar at New York University. He is the author of 13 books, including *The Experience of Place* and, most recently, *In Motion: The Experience of Travel*.



Summer Waters is the third director of Western Lands and Communities—a joint program established in 2003 by the Lincoln Institute of Land Policy and the Sonoran Institute to inform policy related to the use of land and natural resources in the Intermountain West. Summer has a B.S. in biology from the University of South Florida and an M.S. in civil engineering, with concentrations in environmental and water resources engineering, from the University of Colorado at Boulder. Before joining the Sonoran Institute, she spent 15 years working in urban planning and natural resources for government entities including the University of Arizona Cooperative Extension and the County of San Diego, where she won an Emmy award for coproducing an educational video.

## Shaping the Future of the American West

**LAND LINES:** What attracted you to the challenge of directing this joint program between the Lincoln Institute and the Sonoran Institute?

**SUMMER WATERS:** The chance to help shape the future of the American West. The Lincoln Institute of Land Policy is a thought leader in this realm, and the Sonoran Institute is well known throughout the region for its dedication to collaborative work with local communities and other organizations. Our shared mission is ambitious, but each organization has complementary attributes that make it successful. Our mutual, longstanding commitment gives the joint program depth and flexibility.

**LL:** Why is this job the right one at the right time for you?

**SW:** My interest in the natural world led me to study biology as an undergraduate, and my desire for a solutions-oriented career led me back to school for engineering. After graduation, I gravitated toward planning, because it allowed me to work with both the natural and built environments. After gaining professional experience, I began to recognize how the use of land, water, and energy interconnects with economics and community development. And I appreciated Western Lands and Communities' holistic approach to the challenges facing the region.

**LL:** Both the Lincoln Institute and the Sonoran Institute have recently undergone leadership changes. What challenges and opportunities does this transition afford you?

**SW:** Both Stephanie Sklar, the new CEO of the Sonoran Institute, and Lincoln Institute President and CEO George McCarthy are motivated leaders who inspire me personally and professionally. Stephanie is ambitiously embarking on a strategic planning process that will guide the Sonoran Institute through its 25th anniversary as an



organization. Her breadth and depth of knowledge inform the process and ensure that we both celebrate and evaluate our work. George McCarthy is a courageous and visionary leader guiding the Lincoln Institute through a similar transition. His appreciation for the West was obvious when he recently visited our Phoenix office. He comprehends the challenges we are facing and the importance of demonstration projects, such as our Colorado River Delta Restoration effort, in shaping the future of this region.

**LL: How is Western Lands and Communities contributing to the Sonoran Institute's effort to restore the ecology and economy of the Colorado River Delta?**

**SW:** Western Lands and Communities supports the implementation of Minute 319, the binational agreement between the United States and Mexico that guides the sharing and delivery of water on the Colorado River under the 1944 treaty through 2017. Perhaps the most significant event resulting from this agreement was the release of a "pulse flow" of 105,000 acre-feet of water into Mexico in the spring of 2014. This intervention was designed to mimic what would have been the Colorado River's natural flow cycles under spring conditions, when snowmelt from the mountains once ran through what is now seven U.S. states and two countries, ultimately to the Sea of Cortez. This historic effort breathed life into the desiccated delta, and in May 2014 the river reached the sea for the first time in years. In the spring of 2015, we will convene a group of NGO representatives, academic professionals, and agency scientists at the one-year anniversary of this event. Participants will discuss the impact of renewed flows on critical ecosystem functions in the region and evaluate the implications of this temporary agreement between the U.S. and Mexico. Through this process, we hope to inform future policies related to the allocation of this precious resource to the natural environment.

**LL: I understand this project fits into your broader agenda to conserve large landscapes. Tell us more about that effort.**

**SW:** Public land ownership in the Intermountain West is vast. At first glance, a map of the region depicts a disconnected pattern of various land agencies and managers with very different missions and approaches. Working lands and tribal lands further complicate that scenario. Landscape-scale conservation relies heavily on the full range of people who live within this picture; in order to avoid "random acts of conservation," and to achieve more coordinated and meaningful results, collaboration among public entities, individual land owners, and tribes is key. Fortunately, Westerners—regardless of political viewpoints, upbringing, or economic status—typically unite around a shared goal of preserving a way of life that is intertwined with the landscapes they inhabit. The way forward involves capitalizing on this shared vision, engaging communities in shaping their own future, and connecting practitioners with stakeholders in a meaningful manner.

**In the spring of 2015, we will convene a group of NGO representatives, academics, and scientists at the one-year anniversary of the pulse flow on the Colorado River Delta.**

**LL: How does Western Lands and Communities help communities respond better to the major challenges for the future of the Intermountain West?**

**SW:** The West faces essentially the same challenges as other areas of the United States, but under a unique set of circumstances. We have a growing population, which triggers changing economies and demographics. Both urban and rural areas struggle to balance growth with natural resource protection. Given the sheer scale and grandeur of the natural environment in the West, it is easy to view our vast natural resources as infinite—a misperception that can lead to sprawl and other issues associated with natural resource extraction. Our expansive landscapes also create specific challenges related to transportation, which contributes

In March 2014, the Colorado River flowed from Lake Mead to the Sea of Cortez after a coordinated binational effort authorized the release of a “pulse flow.” Credit: Pete McBride



to climate change—a force that exacerbates all other problems. The joint program assists communities through the development of planning tools, webinars on smart growth and sustainable development topics, and compilations of successful case studies from communities across the West.

**LL:** Western Lands and Communities is engaged in exploratory scenario planning—a unique approach to long-range planning that explicitly challenges communities to evaluate their proposals against an uncertain future. How is exploratory scenario planning different from traditional planning, and how is it being applied in the West?

**SW:** Exploratory scenario planning is a process that encourages imagination in the planning process. Through the engagement of stakehold-

ers, community members, and experts, we develop a variety of plausible scenarios and acknowledge the complex forces, such as climate change, that could lead to a significantly different future. We help participants to view their particular issues in terms of the broader social, political, economic, and natural forces that shape communities in general. While some scenarios currently seem more probable or desirable than others, each receives equal consideration throughout the workshops. Most importantly, this process is more flexible, engaging, and dynamic than traditional planning, requiring participants to develop multiple strategies in response to a spectrum of future uncertainties. Western Lands and Communities has helped communities across the West apply this approach to General Plan updates, watershed plan development, and preparation for

the economic impacts of changing climate and weather conditions. Ultimately, exploratory scenario planning is designed to help communities adapt to change better by addressing complex issues that are embedded in great uncertainties. The foresight and strategies generated through this process prepare leaders to guide their communities toward a more sustainable future.

**LL: What are the special challenges of planning for climate change in the Intermountain West and how have WLC's approaches recognized those issues?**

**SW:** In the West, climate change affects ecosystems that are predominately arid and often exhibit high variability, compounding problems. In the past, we have built large reservoirs to cope with fluctuating water supplies due to cycles of drought. But that solution is no longer sufficient, as we are seeing droughts of unprecedented severity punctuated by extreme floods. Communities must now tackle issues that could once be left to the federal government. They must determine for themselves how to cope with diminishing water resources, increasing temperatures, migrating ecosystems, and extreme weather. The approach that Western Lands and Communities takes is to help communities identify priorities and develop policies to create resilience.

We have to be cognizant of the fact that neighboring communities can be very polarized when it comes to climate change. While some communities have embraced the reality of it, others hold onto a past way of life that is essential to the character of the region, yet leaves little room for adaptation. The West has large populations of American Indians and Latinos who are particularly vulnerable to climate change impacts. We recently began working with urban Latino communities in Arizona to address their disproportionate exposure to the effects of global warming. We do this by convening leaders, crafting messages that resonate with Latino communities, and working with organizations to train community

members to educate others on this topic. Every community is a little different, so we blend replicable methods with adaptive management.

**LL: The scope of Western Lands and Communities' work has widened considerably since it started with an exclusive focus on the needs, challenges, and opportunities for state trust lands. What is the significance of that original mission and the resulting relationship, built over time, with state trust land managers?**

**SW:** Historically, state trust lands have been poorly understood by the general public and natural resource professionals alike, particularly with respect to their fiduciary responsibilities. People rely on state trust lands for their livelihoods, as do children and young adults who need access to quality public education. Here in Arizona, we have seen unprecedented cuts to funding for public schools and universities in recent years. Our work has brought greater understanding of state trust lands as a source of funding for public schools and as natural systems with important biological functions that need to be protected. Mitigation banking and land exchanges help to integrate state trust lands into the broader context of large landscape conservation and sustainable development. But most state trust lands managers face regulatory challenges when they try to implement conservation practices. Reform is necessary to remove barriers that hinder implementation of the full array of practices that provide for both conservation and profit.

The economic and environmental benefits of state trust lands will continue to be significant. Ultimately, our commitment to western communities through our work with state trust lands will remain intact. Although the focus of the program may change as states encounter new and different challenges, the need to educate people about the state trust land mandate to create value for the trust beneficiaries will remain constant in the years to come. 📖

# Property Tax and the Financing of K–12 Education

## A Special Issue of *Education Finance and Policy*

Daphne A. Kenyon and Andrew Reschovsky

IN THE AFTERMATH OF THE GREAT RECESSION, the financing of U.S. public elementary and secondary education has become particularly challenging, given the close link between school finance and property taxation. Across the nation, the sharp drop in housing prices that triggered the recession led to reductions in property tax revenues. Public schools derive more than 80 percent of their local own-source revenue from the property tax (McGuire, Papke, and Reschovsky 2015), and nearly half of total property tax dollars collected in the United States are used to finance public elementary and secondary education (U.S. Census Bureau 2014, U.S. Census Bureau 2013).

As a means of encouraging new research on these issues, the Lincoln Institute of Land Policy organized a conference on “Property Tax and the Financing of K–12 Education” in Cambridge, MA, in October 2013. The Fall 2014 issue of *Education Finance and Policy* features five of the conference papers along with two additional works submitted as part of the journal’s call for papers for the special issue, which underwent the journal’s peer review process. We served as guest editors, working closely with the journal’s editors, Thomas A. Downes and Dan Goldhaber. Thanks to funding from the Lincoln Institute, the special issue is available for free downloading until January 2016 from the website of the Association of Education Finance and Policy ([www.aefpweb.org/journal/free-fall-2014](http://www.aefpweb.org/journal/free-fall-2014)).

### CHALLENGES FOR FUNDING K-12 EDUCATION

Using revenue data from the National Center for Education Statistics (2014), we determined that in real per pupil terms, total revenues devoted to public education fell by 6.2 percent from September 2008 to June 2012. Although comprehensive figures are not yet available for the most recent years, existing evidence points to a continued decline in financial support for public education. Data from the U.S. Census Bureau’s *Quarterly Summary of State and*



Edited by Daphne A. Kenyon and Andrew Reschovsky (guest editors) and Thomas A. Downes and Dan Goldhaber (journal editors)  
 2014 / 602 pages / Paper / MIT Press / ISSN: 1557-3060  
[mitpressjournals.org/efp](http://mitpressjournals.org/efp)

*Local Tax Revenue* indicate that per capita real local government property tax revenues (for school and nonschool purposes) were 2.7 percent lower at the end of fiscal year 2014 than they were at the end of fiscal year 2011. And a survey conducted by the Center on Budget and Policy Priorities found that, in at least 35 states, real per-student state education aid was lower in fiscal year 2014 than in fiscal year 2008 (Leachman and Mai 2014).

Many school districts around the country responded to reduced revenues by laying off employees. In fact, the U.S. Bureau of Labor Statistics (2013) reports that between the employment peak in June 2009 and the trough in October 2012, education employment by local governments fell by 357,400—a decline of 4.4 percent. During this same period, public school enrollment grew by 0.9 percent (National Center for Education Statistics 2013).

Current projections signal significant increases in both K–12 enrollment and cost per pupil. The National Center for Education Statistics (NCES 2013) projects that per pupil expenditures will increase from an average of \$10,518 in the 2009–10 school year to \$12,530 in 2021–22. The NCES also projects substantial increases in public school enrollment,

although growth projections for specific states vary and are generally much higher for the southern and western states (8.9 percent and 12.7 percent from 2010 to 2021) than for the Northeast and Midwest (2.2 percent and 2.4 percent). Although public policies and priorities can change, based on current policies and revenue projections, it is unlikely that revenues in support of public education will grow fast enough to match the projected growth in student enrollment and in costs.

National data indicate that in 2011–12, 10 percent of total public education revenue came from the federal government, with the rest split fairly evenly between state and local government sources (U.S. Census Bureau 2014). Federal government programs in support of education are classified as domestic discretionary expenditures. While to date Congress has done little to rein in the growth of spending on entitlement programs, it has mandated strict limits on the growth of domestic discretionary expenditures through the Budget Control Act of 2011 and the fiscal year 2014 Congressional budget agreement. The Congressional Budget Office (2013) predicts that, relative to GDP, domestic discretionary spending will decline through at least 2023. Given these overall spending caps, along with competition from other pressing domestic needs, reductions in real per pupil federal education support appear likely.

School funding systems vary tremendously across states, and future trends in state support for public education will differ greatly across states as well. However, many state governments face several long-run structural problems that are likely to constrain future state funding for public education. On the revenue side, many states have narrow sales tax bases that exclude many services and, as a result, fail to grow proportionally to their economies. The revenue problems

are exacerbated by the inability of states to collect sales taxes on many Internet and mail order purchases. In the past few years, a number of states have adopted individual income tax cuts. These tax cuts have generally been enacted with no offsetting revenue increases, or they have been funded using revenue from one-time state budget surpluses.

On the spending side, funding for K–12 education must compete with other priorities. In many states, spending on Medicaid will grow faster than state tax revenues, a trend influenced in part by the aging of the population. Many states are also facing large and growing unfunded pension liabilities. Addressing these unfunded liabilities will undoubtedly require substantial increases in state government pension contributions. Although polls indicate that voters favor increased spending on education over spending in other areas, unless state governments make politically difficult decisions to increase taxes, states' growing Medicaid and pension obligations may crowd out spending on K–12 education (Pew Research 2011).

With diminished prospects for growth in funding from federal and state governments, local school districts will likely play an increasingly important role in funding public education. Increasing local government funding for public education will require the politically difficult step of increasing property taxes, or, if that proves impossible, the development and widespread adoption of alternative sources of local government revenue. Neither strategy will be easy to implement.

This rather bleak picture of the prospects for public education funding raises a number of research questions. For example, can state governments adopt policies that would make the property tax more publicly acceptable? What role do alternative local sources of revenue play in funding public

education? Can their role be increased? Is it possible to design state education aid systems that result in a more steady flow of state aid during economic downturns? Can state policies aimed at providing property tax relief be made more effective? Can state aid systems be reformed in ways that increase the educational opportunities of all students? The *Property Tax and the Financing of K–12 Education* considers these and other questions.

## CONCLUSION


Three central themes emerge from this special issue. The first is the potential for unintended consequences to arise from state legislation. Eom et al. find that New York's prominent property tax relief program, STAR, induces voters to increase school spending and raise property taxes, thereby undercutting much of the intended property tax relief. Jeffrey Zabel finds that property tax overrides in Massachusetts have led to increased racial segregation. And Phuong Nguyen-Hoang finds that the use of TIFs in Iowa has led to modest reductions in education spending.

A second theme is the potential for state school finance and property tax policies to provide greater advantages for high-wealth or high-income school districts than for low-wealth or low-income districts. In some cases, this pro-wealthy tilt is an explicit program feature. For example, the sales price differential adjustment factor in STAR channels a disproportionate amount of property tax relief to the wealthiest school districts. Likewise, Michigan's state aid system sends about 7 percent more state aid per pupil to the wealthiest districts. In other cases, the tilt toward wealthier districts arises in more indirect ways. Chakrabarti et al. find that high-wealth school districts are likelier to increase property tax revenues in response to cuts in state aid. Zabel notes that higher income towns are more likely to pass property tax overrides.

Nguyen-Hoang finds that TIFs have a greater negative effect on school spending in low-income or low-wealth districts than in high-income or high-wealth districts. Finally, Nelson and Gazley find that well-off districts are more likely to receive revenue from school-supporting nonprofits, and their per-pupil contributions tend to be higher.

A third theme is the enduring importance of the property tax as a funding source for public education in the United States. Papers by both Nelson and Gazley and by Downes and Killeen demonstrate that non-tax revenue plays a relative minor role in the funding of public schools. And no evidence suggests that the share of revenue from student fees and charges, school-supporting nonprofits, or from miscellaneous non-tax revenues has increased during or after the Great Recession.

These findings suggest that in order to ensure sufficient funding for public education into the future, efforts should be made to make the property tax a more appealing source of revenue. These property tax improvements might include the expansion of well-designed targeted property tax relief programs, such as circuit breakers, the adoption of property tax deferral programs for taxpayers facing high property tax burdens or rapid increases in their property tax bills, and improvements in tax administration that focus on increased transparency.

Given the great diversity in school finance and property tax systems across the U.S. and the fiscal challenges ahead, the papers in this special issue cannot possibly provide insights into the full range of policies needed to assure adequate and equitable funding for public education. However, it is our hope that these papers will be thought-provoking for both policy makers and researchers, and also inspire additional research on property taxation and school funding. 

---

## CONTENTS

**Introduction to Special Issue on the Property Tax and the Financing of K–12 Education** *Daphne A. Kenyon and Andrew Reschovsky*

**Did Cuts in State Aid During the Great Recession Lead to Changes in Local Property Taxes?** *Rajashri Chakrabarti, Max Livingston, and Joydeep Roy*

**Michigan and Ohio K–12 Educational Finance Systems: Equality and Efficiency** *Michael Conlin and Paul Thompson*

**The Unintended Consequences of Property Tax Relief: New York’s STAR Program** *Tae Ho Eom, William Duncombe, Phuong Nguyen-Hoang, and John Yinger*

**Unintended Consequences: The Impact of Proposition 2½ Overrides on School Segregation in Massachusetts** *Jeffrey Zabel*

**Tax Increment Finance and Education Expenditures: The Case of Iowa** *Phuong Nguyen-Hoang*

**The Rise of School-Supporting Nonprofits** *Ashlyn Aiko Nelson and Beth Gazley*

**So Slow to Change: The Limited Growth of Non-Tax Revenues in Public Education Finance, 1991–2010** *Thomas Downes and Kieran M. Killeen*

---

## ABOUT THE AUTHORS

**Daphne A. Kenyon, Ph.D.**, is an economist who is a fellow at the Lincoln Institute of Land Policy and principal of D. A. Kenyon & Associates. Contact information: [dkenyon@lincolninst.edu](mailto:dkenyon@lincolninst.edu).

**Andrew Reschovsky, Ph.D.**, is a fellow at the Lincoln Institute of Land Policy and a professor emeritus at the University of Wisconsin-Madison. Contact information: [areschovsky@lincolninst.edu](mailto:areschovsky@lincolninst.edu).

---

## REFERENCES

Congressional Budget Office. 2013. *Updated Budget Projections: Fiscal Years 2013 to 2023*. Washington, DC (May). [www.cbo.gov/sites/default/files/cbofiles/attachments/44172-Baseline2.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/44172-Baseline2.pdf).

Leachman, Michael and Chris Mai. 2014. “Most States Funding Schools Less Than Before the Recession,” Washington, DC: Center on Budget and Policy Priorities, Updated September 12. [www.cbpp.org/cms/index.cfm?fa=view&id=4011](http://www.cbpp.org/cms/index.cfm?fa=view&id=4011).

McGuire, Therese J., Leslie E. Papke, and Andrew Reschovsky. 2015. “Local Funding of Schools: The Property Tax and Its Alternatives,” chapter 22 in *Handbook of Research on Education Finance and Policy*, revised edition, edited by Helen F. Ladd and Margaret Goertz, Routledge, 376–391.

National Center for Education Statistics (NCES). 2014. “National Public Education Financial Survey Data,” School Year 2010–11. <http://nces.ed.gov/ccd/stfdis.asp>.

National Center for Education Statistics (NCES). 2013. “Projections of Education Statistics to 2021.” [nces.ed.gov/programs/projections/projections2021/index.asp](http://nces.ed.gov/programs/projections/projections2021/index.asp).

Pew Research. 2011. “Fewer Want Spending to Grow, But Most Cuts Remain Unpopular.” Center for People and the Press. February 10. [www.people-press.org/2011/02/10/fewer-want-spending-to-grow-but-most-cuts-remain-unpopular](http://www.people-press.org/2011/02/10/fewer-want-spending-to-grow-but-most-cuts-remain-unpopular).

U.S. Bureau of Labor Statistics. 2013. Table B-1a: Employees on Non-Farm Payrolls by Industry Sector and Selected Industry Detail, Seasonally Adjusted. Current Employment Statistics, Establishment Data. [www.bls.gov/web/empsit/ceseeb1a.htm](http://www.bls.gov/web/empsit/ceseeb1a.htm).

U.S. Census Bureau. 2013. *2011 Annual Survey of State and Local Government Finance*, State and Local Government Data. [www.census.gov/govs/local/](http://www.census.gov/govs/local/).

U.S. Census Bureau. 2014. *2012 Data, Public Elementary-Secondary Education Finance Data*. [www.census.gov/govs/school/](http://www.census.gov/govs/school/).

## Ray LaHood and Mimi Brown Join the Board of the Lincoln Institute

---

**FORMER U.S. TRANSPORTATION SECRETARY** Ray LaHood, a leading advocate for infrastructure investment as cochair of Building America's Future, and Mimi Brown, until last year the commissioner of Rating and Valuation for the government of Hong Kong, have joined the board of directors for the Lincoln Institute of Land Policy.

"We welcome Ray LaHood and applaud his leadership in transportation and infrastructure, which are critical components of our work in global urbanization, sustainable cities, and land policy," said Kathryn J. Lincoln, chair and chief investment officer for the Lincoln Institute. "Mimi Brown's expertise and experience in the property tax and valuation will further enhance our global reach."

LaHood, who served from 1995 to 2009 in the U.S. House of Representatives from the 18th District of Illinois, was transportation secretary from 2009 to 2013 under President Obama, overseeing an agency with more than 55,000 employees and a \$70 billion budget in charge of air, maritime, and surface transportation. His tenure as secretary was marked by landmark efforts to improve safety in every mode of transportation, new fuel efficiency requirements, and improvements to America's infrastructure, including building or replacing 350,000 miles of highway, repairing 20,000 bridges, and renewing or constructing 6,000 miles of rail track.

As a lifelong Republican, LaHood worked across party lines and frequently reminded partisans that, "there is no such thing as a Democratic road or a Republican bridge." He joined Building America's Future—a bipartisan coalition of elected officials dedicated to bringing about a new era of U.S. investment in infrastructure—as a cochair in January 2014.

Founded by former Governor Edward Rendell of Pennsylvania, former Governor Arnold Schwarzenegger of California, and former Mayor Michael Bloomberg of New York, BAF boasts a politically diverse membership of state and local elected officials from across the nation. BAF is currently co-chaired by LaHood, Bloomberg, and Rendell. LaHood is also a senior policy advisor at the global law firm DLA Piper.

**There is no such thing as a Democratic road or a Republican bridge.**

Mimi Brown qualified as a chartered surveyor in 1979. She is a member of the Royal Institution of Chartered Surveyors and is a fellow of the Hong Kong Institute of Surveyors, which she helped form nearly 30 years ago. She is a member of the board of advisors of the International Property Tax Institute and a member of the International Association of Assessing Officers Special Committee on International Outreach.

She began her career at Gerald Eve & Co. in London and joined the Hong Kong government in 1977. Throughout her career with the Hong Kong SAR Government, she amassed extensive experience not only in the field of rating and valuation work, but also in public policy formulation and administration. From 1995 to 2000, she worked in the Government Property Agency and was responsible for the portfolio management of all nonspecialized government properties situated locally and overseas. She retired in 2014 from her post as the commissioner of Rating and Valuation.

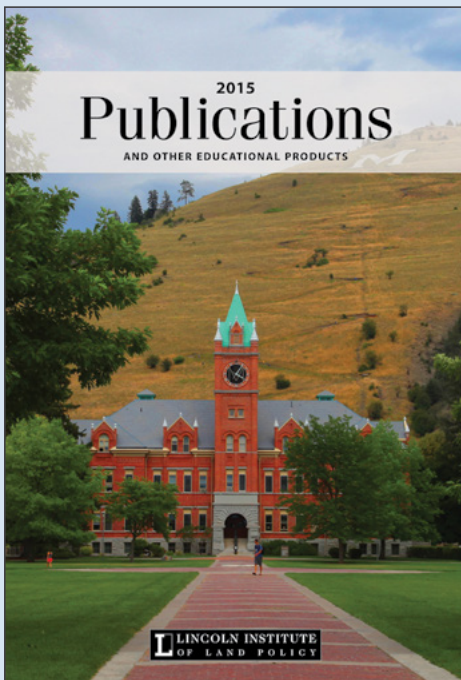
---

Land Lines  
113 Brattle Street  
Cambridge, MA 02138-3400 USA

RETURN SERVICE REQUESTED

---

Non-Profit Org.  
U.S. Postage  
**PAID**  
Boston, MA  
Permit No. 57852



## 2015 Publications Catalog

The Lincoln Institute's 2015 Publications catalog features more than 125 books, ebooks, Policy Focus Reports, and multimedia resources. These publications represent the work of Institute faculty, fellows, and associates who are researching and reporting on property taxation, valuation, and assessment; urban and regional planning; smart growth; land conservation; housing and urban development; and other land policy concerns in the United States, Latin America, China, Europe, Africa, and other areas around the globe.

All of the books, reports, and other items listed in the catalog are available to purchase and/or download on the Institute's website, and we encourage their adoption for academic courses and other educational meetings. Follow the instructions for requesting exam copies on the Publications homepage. The entire catalog is posted on the website for free downloading. To request a printed copy of the catalog, send your complete mailing address to [help@lincolnst.edu](mailto:help@lincolnst.edu).

[www.lincolnst.edu/pubs](http://www.lincolnst.edu/pubs)