SUSTAINABLE LIVING: THEME OF THE FUTURE OR A ONE-HIT WONDER?

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I. INTRODUCTION

Look out America; we have a “smug alert.” No, not smog, “smug.” According to the notorious cartoon, South Park, people who buy hybrid cars feel so good about saving the Earth, they become increasingly smug, which leads to all-out disaster.¹ Fortunately, for the town of South Park, one of its native children, Stan, convinces everyone it’s alright to own a hybrid without being smug. Should we pass this episode off as another entertaining late night Comedy Central special, or have Matt Stone and Trey Parker stumbled onto a form of satire that’s true in form and educational in its moral?²

For purposes of this article, South Park’s hybrid episode rings true of a rising fad: sustainable living. However, it emphasizes the possible driving force behind this change in lifestyle as wealthy smugness rather than environmental concern. Birkenstock-wearing treehuggers of the past have given way to the environmentalists of the future – affluent communities and businessmen looking to expand their property developments. This is an interesting change - but how long will it last? Is the switch from SUVs to hybrids only temporary, or is it just the first step of the permanent change Americans must make if they’re to outsmart rising gas prices and a projected unsustainable future?

With any luck it will be the latter. Unfortunately, sustainability comes with a price tag, and most Americans do not have the finances to invest. Unless you have money for solar power, hybrid cars and organic foods, sustainable living is out of your reach.

Change rests in the hands of industry and the government. Regrettably, there has been

little push from the United States federal government in the past couple of years to decrease greenhouse gas emissions, invest in renewable energy sources and promote individual conservation. In fact, the United States is only one of very few industrialized countries that refused to ratify an international treaty calling for a world-wide reduction in harmful emissions – the Kyoto Protocol (“the Protocol”).

Many governmental leaders have advocated against restrictions on greenhouse gas emissions, calling the Protocol a useless drain on the economy.\(^3\) Despite this lack of government leadership, the United States is not doomed to withstand climate change catastrophe. Some American corporations, state governments and even individual citizens are quietly taking action.

In response to the federal government’s decision to withdraw from the Protocol, Seattle Mayor Greg Nickels launched the climate protection idea on Feb. 16, 2005 – the same day the Protocol became law for the 141 countries that ratified it.\(^4\) Since its initiation, the idea has produced the Mayors Climate Protection Agreement and has amassed the signatures of more than 200 mayors across the country.\(^5\) Under the agreement, the mayors pledged to: reach Protocol targets in their own communities, and urge their governments and Congress to enact policies toward supporting emissions reductions and a national trading system for emissions.\(^6\)

Where governments are failing to invest in clean water, efficient and renewable energy, and sanitation, corporations can fill the gap with schemes that are "not

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5 See id.
6 Id.
exploitative." In an address in Washington, D.C., Andrew Liveris, President, CEO and Chairman of The Dow Chemical Company, announced the company's sustainability goals for the next decade.

Our industry as a whole is the world’s single most intense consumer of fossil fuels. They are not only our energy source, they are also our raw material. .... It is now clear that world’s climate is impacted by increases in greenhouse gasses, of which CO2 created by the burning of fossil fuels, is the single largest component. Some have said our industry’s intense appetite for fossil fuels disqualifies us somehow from being part of the solution. On the contrary, no one in the world is more intensely aware of the need, ultimately, to reinvent our dependency on oil and natural gas than we are. In other words, we will lead the way on energy transformation, because we have to.

Small groups of American citizens are following the corporate sector and taking charge of their own destinies. Rising gas prices and conclusive scientific evidence on global warming are putting a bug in the ear of numerous environmentally-concerned citizens. Organic food stores are increasing their attendance in wealthy areas. Hybrids are becoming more and more popular on the roads. Even sustainable mixed-use communities are becoming popular around the country. These sustainable options are, unfortunately, useful only to those who can afford them. Therefore, they become a luxury for the affluent rather than a standard of living for the masses.

In order to truly sustain our environment, regulations, such as the Protocol, need to be implemented. This will ensure any passing environmental fad is ingrained in our society as a necessity rather than an en vogue luxury. Regulations, government subsidies and tax

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9 Id.
breaks can aid industry in making sustainable alternatives more affordable in production, and, consequently, more affordable to the average consumer. Federal regulations can also compel change where it may be slower than is required.

The endless demand for oil – used to fuel cars, homes and businesses – is depleting supplies across the world, weakening our economic security and worsening global warming. Fortunately for the environment, state governments are catching on and passing the necessary legislation. Mass state legislation and corporate initiatives may override the necessity of the Protocol, confirming the federal government was correct in deeming it a “useless drain on the economy.”\(^{10}\) However, if sustainable living proves to be just a passing fad – a reaction to higher gas prices and the threat of global warming after natural disasters – perhaps the Protocol is essential to our future.

II. **BACKGROUND ON THE KYOTO PROTOCOL**

Although each country is responsible for its own pollution, the global problem needs to be handled on an international scale. The United Nations came to this realization in the late 1980s. In 1988, the World Meteorological Organization (WMO) and the UN Environment Program (UNEP) established the Intergovernmental Panel on Climate Change (IPCC).\(^{11}\) Responding to calls for a global treaty to address the problem of human-induced climate change, the UN General Assembly launched negotiations of a framework convention on climate change.\(^{12}\)

\(^{10}\) See *supra* note 3.


\(^{12}\) See e.g., *A Guide to the Climate Change Convention Process, supra* note 22; Carter, *supra* note 15, at 943-945.
The Intergovernmental Negotiating Committee conducted negotiations and, on May 9, 1992, adopted the United Nations Framework Convention on Climate Change.\textsuperscript{13} The Convention is approaching universal membership as 186 governments are now Parties.\textsuperscript{14} The Convention divides countries into Annex I Parties and non-Annex I Parties – the former being industrialized countries who have historically contributed the most to climate change, and the latter group made up of all remaining (mainly developing) countries.\textsuperscript{15}

The framers of the Convention set as its ultimate objective the stabilization of atmospheric concentrations of greenhouse gases at levels that would prevent “dangerous” human interference with the climate system.\textsuperscript{16} However, this objective was not strict enough to rectify 150 years worth of industrial damage. Five years after implementing the Convention, more than 160 nations negotiated the Kyoto Protocol.\textsuperscript{17} The 1997 Kyoto Protocol “significantly strengthens the Convention by committing Annex I Parties to individual, legally-binding targets to limit or reduce their greenhouse gas emissions.”\textsuperscript{18} Each of the participating developed countries must decide how to meet its respective greenhouse gas reduction goal during a five-year period (2008-2012).\textsuperscript{19}

\textsuperscript{13} See e.g., A Guide to the Climate Change Convention Process, supra note 22; Carter, supra note 15, at 943-945.
\textsuperscript{14} See A Guide to the Climate Change Convention Process, supra note 22, at 7.
\textsuperscript{15} Id. at 8-10.
\textsuperscript{16} Id. at 8.
\textsuperscript{18} A Guide to the Climate Change Convention Process, supra note 22, at 12.
\textsuperscript{19} This report was prepared by the Energy Information Administration, the independent statistical and analytical agency within the Department of Energy. The information contained herein should be attributed to the Energy Information Administration and should not be construed as advocating or reflecting any policy position of the Department of Energy or of any other organization. Energy Information Administration, Briefing Paper, What Does the Kyoto Protocol Mean to the U.S. Energy Markets and the U.S. Economy?, October 1998, http://www.eia.doe.gov/oiaf/kyoto/kyotobtxt.html.
The Protocol set specific emissions reduction targets for each industrialized nation, but excluded developing countries. To meet their targets, most ratifying nations would have to combine several strategies: “(1) place restrictions on their biggest polluters; (2) manage transportation to slow or reduce emissions from automobiles; and (3) make better use of renewable energy sources—such as solar power, wind power, and biodiesel—in place of fossil fuels.”

The Protocol was opened for signature on March 16, 1998. The agreement would not take effect until ninety days after it was ratified by at least fifty-five countries involved in the UNFCCC that represented at least fifty-five percent of the world’s total carbon dioxide emissions for 1990. Four years later, the first condition was met when Iceland became the fifty-fifth country to ratify the treaty. The second condition was satisfied with Russia’s ratification in November 2004.

The Protocol entered into force on February 16, 2005 with the United States as a signatory, but without U.S. ratification. The Clinton Administration signed the Protocol, and, according to a CRS Report for Congress, indicated its intent to eventually seek ratification. The United States is still waiting for ratification, while it takes on the draining fossil fuel economy problem.

III. SMART GROWTH: WHAT IS IT?

Nations across the globe have signed onto the Protocol, reducing emissions and investing in sustainable development. Despite the fact that there are more than 76 million residential buildings and nearly 5 million commercial buildings emitting greenhouse gases...
gases in the United States today, the government declines to sign the Protocol. Instead, the country is relying on corporate and state self-regulation in the emissions arena.

If self-regulation does not commence a restructuring of development and transportation, the United States will be forced to succumb to the consequences of climate change. “If Americans keep building as they are, by the year 2010, another 38 million buildings are expected to be constructed.” The 81 million buildings present today already use one-third of all the energy consumed in the U.S. and two-thirds of all electricity. Not only do these buildings cause urban air pollution, they produce 35 percent of the country's carbon dioxide emissions—the chief pollutant blamed for climate change in the Protocol.

In communities, businesses and university campuses across the nation, there is a growing concern that these current development patterns—dominated by "sprawl"—are no longer in the long-term interest of our cities, suburbs and rural communities. Though growth is ingrained in our society, communities are starting to question the economic costs of abandoning infrastructure in the city, only to rebuild it further out.

Spurred by demographic shifts, a strong environmental ethic, increased fiscal concerns and more nuanced views of growth, communities are becoming increasingly interested in and increasingly involved in smart growth. The challenge will be to build future communities and businesses smart and green, “so they use a minimum of nonrenewable energy, produce a minimum of pollution, and cost a minimum of energy

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28 Id.
29 See id.
30 See id.
32 Id.
dollars, while increasing the comfort, health, and safety of the people who live and work in them.” If these principles can be implemented nationwide, then the importance of the Protocol may fall by the wayside.

Smart growth is defined as a principle of land development that embraces multiple facets. Not only does it emphasize mixing land uses, increasing the availability of affordable housing, and using compact design, smart growth also supports preserving open space and critical environmental areas, strengthening existing communities, providing a variety of transportation choices, making development decisions predictable, fair and cost effective, and encouraging community and stakeholder collaboration in development decisions.

The main goal of smart growth advocates is to prevent future sprawl, and to repair the damage caused by existing sprawl, which naturally results in major transportation problems and over-consumption of space. However, the advocates each have differing views of the best way to achieve smart growth. Some view smart growth as “slow growth,” while others view it as “no growth,” relying on it as a means to prevent development of land, control sprawl and preserve open space. Another perspective is that smart growth should be used to improve and develop inner cities and Brownfields areas.

33 Supra note 27.
37 Id.
Whichever theory of smart growth a community decides to embrace, government can and should play a key role. However, before government invests in smart growth, it must come to grips with the legal concepts of eminent domain and just compensation. Private property laws will most likely restrain government from purchasing significant parcels of property to limit development.

Most states have given local municipalities strong powers with respect to development of local property – some of these powers are even enshrined in state constitutions. A municipality is protected by the constitution in its authority to thwart smart growth. The only way to override local government opposition is for the state or federal government to impose its own plan for controlling growth. The other side of the coin is “a local government committed to smart growth has very strong constitutionally protected powers with respect to land use, and can effectuate smart growth and a developmental philosophy by exercising its local powers, limited only by constitutional takings rules.”

Although the federal government has declined to become involved in smart growth legislation as of yet, in 2003, the Environmental Protection Agency (EPA) announced a “Smart Growth” plan to encourage cleanup projects to integrate state and local initiatives on preserving open space and coordinating redevelopment with community needs. Nine communities were selected after they established they were incorporating smart growth principles into their redevelopment projects.

38 Id.
39 Id.
41 Id.
Smart growth concepts provide various other opportunities and technologies to make buildings greener and cleaner. Green building practices create buildings and communities that are energy and resource efficient. Such buildings “promote resource conservation; consider environmental impacts and waste minimization; create a healthy and comfortable environment; reduce operation and maintenance costs; and address issues such as historical preservation, access to public transportation and other community infrastructure systems.” Green building principles mandate the entire life-cycle of the building or neighborhood be considered, as well as the economic and environmental impact and performance.

Just as important in communities as buildings, is the way people travel to and from those building. Vehicles are major contributors to global warming. Not only does the pollution cause severe health problems, but traffic congestion is expected to triple in coming years, wasting more productivity and fuel and worsening air quality. Our auto dependency has caused increasing reliance on oil imports, much of it coming from unstable parts of the world. “In 1970, 23 percent of America’s petroleum was imported. Today, we import more than 54 percent of our petroleum needs, and this number is estimated to reach more than 60 percent by 2010.”

Hybrids and cars that run on alternative fuels (biodiesel or hydrogen fuel cells) can provide solutions along with an increase in mass transportation and communities that provide walkable access to necessary locations. However, as stated previously, not everyone can afford a hybrid. Also, not every community has the finances to restructure itself with an eye to mixed-use living. Sure, there are new sustainable communities

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42 Supra note 27.
43 Id.
44 Id.
popping up in various states, but those communities are not geared toward the average spender. In order to implement these energy efficient alternatives pervasively, government needs to become a major player in sustainable planning.

The concept of smart growth must be expanded even further into the area of individual mindsets. In order to make use of any mass transportation systems or carpooling schemes, Americans need to forgo their individualistic tendencies in favor of community principles. “In search of a better life for themselves and their families, many individuals freely choose to endure longer commutes and greater inconvenience in exchange for larger, more affordable homes in safe neighborhoods.”45

A major theme in smart growth is commitment to community perspective. Citizens will have to work together to change development patterns in a larger sense, while working to alter their individual lifestyle patterns. Unfortunately, this is easier said than done, and this may be one time where government needs to intervene over individual autonomy for national well-being.

IV. SUSTAINABLE COMMUNITIES – EASIER SAID THAN DONE

Communities are stepping up to the plate around the country. But citizens are finding smart growth implementation is met with heady challenges, sometimes from businesses and other times from citizens who believe their rights of property development override any need for sustainable living.

A Massachusetts case provides us with a study of local government’s commitment to smart growth. In Evarts v. City of Somerville, plaintiff’s, concerned about traffic problems, noise and pollution, challenged an amendment to the city’s Zoning Ordinance that created new zoning districts known as the Assembly Square

45 Supra note 35, at 296-297.
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Mixed-Use District (ASMD). Defendants, the Municipal and Assembly Square Limited Partnership, argued a municipality has valid zoning power to enact smart-growth provisions in a situation where all landowners are treated the same and know in advance how they will be treated. Citing W.R. Grace & Co.-Conn. v. City Council of Cambridge, the defendants argued that the public interest purpose of the amendment is smart-growth objectives for the City.

The Court acknowledged the City’s choice that smart growth is in its best interest, and that it ought to encourage such development and redevelopment of the underutilized Assembly Square by enacting the Amendment. However, the Court held the amendment was not “uniform within the district for each class or kind of structure or uses permitted.” This decision served a huge blow to Somerville’s smart growth initiative.

In Bollech v. Charles County, Md., the court discussed Maryland’s Smart Growth Areas Law, which set priorities for state spending on growth-related projects to preserve neighborhoods and environmental resources. The law directs local government to

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46 Plaintiffs argue the Amendment violates the uniformity requirement of G.L. c. 40A, § 4 because it treats similar properties differently allowing improper zoning determinations, not only by municipal boards but by landowners as well. Municipal Defendants argue the Amendment does not violate the uniformity requirements. The Amendment states that the ASMD was enacted by the City “to encourage the best use of Assembly Square physically, economically, environmentally and socially while promoting the best interests of residents of the City.” Evarts, supra note 34, at *1-2.

47 Id. at *2.

48 “Underlying these principals [of zoning uniformity] is the requirement that zoning differentiations be adopted in the service of some defensible public interest, not merely to benefit or harm a particular parcel.” Id at *5, quoting W.R. Grace & Co.-Conn. v. City Council of Cambridge, 779 N.E.2d 141, 152 (Mass. App. Ct. Nov. 25,2002).

49 See Evarts, supra note 34, at *5.

50 Id. at *8.

51 Id.

52 This case arises from a dispute between real estate developers John B. Bollech, et al. ("Developers") and Charles County, Maryland et al. ("County") over the meaning of a 1989 Development Agreement ("the Agreement") governing a proposed residential development on a tract of land known as Potomac Cliffs. Developers assert that the County impaired the obligation of contract in violation of the Contracts' Clause of the United States Constitution and breached the Agreement when it rezoned Potomac Cliffs and reclassified it for a lower level of water and sewage use. This rezoning prevented the development of the 252 residential units contemplated by the Agreement. The County argues, in contrast, that it did not breach
establish Priority Funding Areas and mandates that Maryland may not provide funding for a growth-related project not located within those set areas.\textsuperscript{53} Prior to the case, the County developed a plan that rezoned for a higher level of residential density, which prevented the development of certain residential units contrary to an agreement between the County and the developers.\textsuperscript{54}

The \textit{Bollech} court concluded that, at the time the County rezoned Potomac Cliffs and reclassified it for water and sewer use, thereby reducing the allowable density of residential units on the property, there existed no enforceable contract obligating it to the developers.\textsuperscript{55} Therefore, the court granted the County’s motion for summary judgment, upholding the County’s public interest in smart growth.

Maryland’s Smart Growth laws have been realized in Bethesda, Maryland. Bethesda Row is a suburban downtown area revitalized into a mixed-use, walkable shopping and restaurant district. “Both the sidewalk design and parking solutions are key to making the project a walkable neighborhood. Brick sidewalks, trees, fountains, plazas, and outdoor seating all encourage residents and visitors to walk around the mix of local, regional, and national retailers and restaurants.”\textsuperscript{56}

In addition to 230,000 square feet of retail and restaurant space, Bethesda Row also includes 110,000 square feet of office space.\textsuperscript{57} The location along the Capital Crescent Trail provides a convenient connection to downtown Washington, D.C. by bicycle, in-line skate, and foot, while its proximity to the metro enables a connection by

\textsuperscript{53} \textit{Id.} at 450-451.
\textsuperscript{54} \textit{Id}
\textsuperscript{55} \textit{Id.} at 459.
\textsuperscript{57} \textit{Id.}
public transit. Congress has cited Bethesda Row as a successful model project of New Urbanism.

Virginia faces similar judicial issues with regard to smart growth. In Crutchfield v. County of Hanover, Va., plaintiffs sought to override and redefine the stated purpose of the County's project to build its own wastewater treatment plant. The Army Corps of Engineers approved the project after defining the purpose as very broad: "to provide additional wastewater treatment capacity so that the County may implement [its] adopted comprehensive plan for "Smart Growth," limiting high density, suburban-style growth to a small portion of the County and preserving the rural character of the remainder of the county."

Contrary to plaintiffs' assertions, the Court held the Corps was justified in concluding that the project could accomplish its stated goal. According to the Court, municipal plans for the location and construction of sewer lines involve so many variables that virtually the only sure thing about them is that they will change. Growth in a county slows and accelerates, and the distribution of growth within the county shifts and fluctuates. For all these reasons, the Clean Water Act does not require counties to set in stone their infrastructure plans for the next fifty years.

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58 Id.
59 Id. New Urbanism promotes the creation and restoration of diverse, walkable, compact, vibrant, mixed-use communities composed of the same components as conventional development, but assembled in a more integrated fashion, in the form of complete communities. New Urbanism, http://www.newurbanism.org/pages/416429/index.htm (last visited May 9, 2006).
60 Owners of 900 acres of farmland brought suit against Army Corps of Engineers and the County to enjoin the construction of a wastewater treatment plant and its associated sewage conveyance systems and to strike down the Army Corps' approval of those facilities. The United States District Court for the Eastern District of Virginia upheld property owners' challenge to the approval, and defendants appealed.
61 Id.
62 Id. at 222.
63 Id.
64 Id.
In its decision, the Court stressed that not only did no private environmental group intervene in an effort to stop or modify the County's plans, but there is ample evidence to suggest that Hanover County's proposal is an environmentally-sound project that promises to benefit the County in the long run.65 This is one instance where Smart Growth outsmarted an individual’s property rights as the court decided, “the treatment plant and supporting infrastructure is intended to play a critical role in Hanover County's environment-friendly ‘Smart Growth’ policy,” because it would enable concentrated development tracts and minimize the footprint of housing developments.66

Communities aren’t the only areas investing in sustainable development. Campuses nationwide are undertaking the principle of “ground zero,” a plan to reduce the greenhouse gas emissions to zero. Some universities are going even further and adopting the emissions policies of the Protocol.

In 2001, Cornell University students convinced administration the university needed to respond to climate change and adopt the goals of the Protocol.67 Cornell is committed to doing everything within its ability, consistent with university obligations for teaching, research, service and extension, to implement the Protocol standards. This will mean bringing greenhouse gas emissions seven percent below 1990-levels by 2008 to 2012.68 To help execute the standards, the university created the “Energy Conservation Initiative,” whose goal is a 20-percent reduction in energy demands by 2010.69 Since

65 Crutchfield, 325 F.3d at 224.
66 Id. at 222.
68 Id.
69 To accomplish this goal, four full-time technicians have been added to continuously “tune-up,” or commission, the building energy and air conditioning systems. In addition, there are on-going energy conservation capital construction projects: retrofits at existing buildings and design considerations in new buildings. Id.
then, as a result of the Energy Conservation Initiative, carbon dioxide emissions have been reduced 15 percent.\textsuperscript{70}

Cornell and other universities have also begun green building projects guided by LEED certification.\textsuperscript{71} University of Washington, Tacoma received a landmark certification for sustainable design from the U.S. Green Building Council.\textsuperscript{72} According to Richard Chapman, associate vice president for capital projects at Washington, LEED buildings are “respectful of the environment and economical to operate because they are more efficient. They’re using less water, less steam for heating and less power for air conditioning.”\textsuperscript{73} University of Richmond is also looking to join the team by making its future law school addition LEED-certified.

Students are adding to the green by “doing it in the dark.” Williams College students are saving energy by turning off lights when they leave the room, unplugging cell phone chargers when not in use and taking advantage of daylight or using precise task lighting at night.\textsuperscript{74} In order to participate, all students need to do is measure how much energy their university is consuming and emitting, and then develop a comprehensive plan to reduce fossil fuel consumption.\textsuperscript{75}

V. SUSTAINABLE TRANSPORTATION

Sustainable communities are definitely a partial solution, but they only solve half the problem. Motor vehicles emit 25 percent of the U.S. carbon dioxide (CO\textsubscript{2})

\textsuperscript{70} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Thomas L. Friedman, \textit{The Greenest Generation}, NY TIMES, April 21, 2006.
\textsuperscript{75} See id.
emissions. The Protocol promotes research and creates initiatives to work toward a sustainable transportation system. Such a system should include not only hybrid cars, but alternative fuels, mass transportation and a community favorably-arranged to biking and walking. If worldwide transportation trends continue, along with energy use in homes and businesses, emissions will continue to increase and contribute to global climate change.

Today’s transportation systems are not sustainable, and the transportation community must do its part along with other consumers of fossil fuel if a solution is to be found.

The United States regulates the transportation community by Corporate Average Fuel Efficiency (CAFE) standards. Unfortunately for the fossil fuel economy, the federal government declined to include SUVs in the automobile CAFÉ standards, instead classifying SUVs as light-duty trucks. In the past decade, the SUV fad has led to a major increase in CO₂ emissions.

The Bush administration recently proposed higher CAFE standards for SUVs and minivans with a new regulatory system that sets different mileage goals for six sizes of vehicles, replacing the current single standard for all light trucks. Currently, light trucks include SUVs, pickup trucks, minivans and other similar models that make up more than half of all new vehicles sold in the United States. If the new proposal was implemented “fuel economy would be calculated for six different segments of these vehicles, from the

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77 See id.
78 See id.
smallest, such as the Chrysler PT Cruiser and the Toyota Rav4, to the biggest, such as the GM Silverado and Nissan Titan.\textsuperscript{80}

Administration officials say the regulations would result in more fuel savings than any previous increase in efficiency standards for larger vehicles. But environmentalists argue the complex proposal adds up to little real change and continues to reward the automobile industry for building bigger vehicles.\textsuperscript{81}

Changing the CAFE standards for SUVs might not be as dire if the recent interest in hybrid vehicles marks the start of a new era in transportation. However, how lasting is this interest? During the gas crisis of the late 1970s and 1980s, Americans bought small cars such as Toyotas and Hondas. The stability of the 1990s and the new millennium brought big vehicles back. Recent energy crisis and rising gas prices have seen the return of the compact car. According to global warming and climate change predictions, the United States cannot afford another big vehicle comeback in 10-20 years.

The government has a few options for making hybrids look more attractive to the average Joe consumer or the SUV lover. Some states are taking it upon themselves to employ these options. However, to ingrain the hybrid and the idea of sustainable transportation into our society, the federal government needs to mandate that states incorporate these regulations nation-wide.

At the beginning of 2006, new and improved hybrid car incentives took effect. For most hybrid car buyers, the new full-dollar tax credits are more valuable than the

\textsuperscript{80} Under current standards, automakers must maintain an average of 27.5 miles per gallon for passenger cars and 21 mpg for light trucks. The light-truck standard is already scheduled to rise to 22.2 mpg for the 2007 model year. The new regulations would start affecting light trucks in the 2008 model year, and all such vehicles would have to comply by 2011 models. For the smallest category of trucks, the final fuel efficiency target would be 28.4 mpg; for the largest SUVs and pickups, it would be 21.3 mpg. \textit{Id.}

\textsuperscript{81} \textit{Id.}
prior federal tax incentives, which were a reduction of taxable income. In April 2006, the I.R.S. ruled on exact credit amounts for Toyota and Ford vehicles, but car buyers will need to wait for more official announcements from the I.R.S. to determine exact hybrid tax credit amounts for other models.

The basic rules are clear: purchase and take delivery of a qualifying vehicle on or after Jan. 1, 2006; purchase the vehicle new, not used; and purchase the vehicle with the intention of using it, not re-selling it. The rules get foggy after carmakers reach 60,000 hybrids, at which time there is a limit on the new tax credit.

Another way for the federal government to encourage states to support sustainable living is with transportation bills. In Aug. 2005, President George Bush signed the federal transportation bill, which legislates that “states can issue stickers to owners of hybrid vehicles, allowing them to drive solo in High Occupancy Vehicle (HOV) lanes.”

Schools and businesses have also given hybrid drivers more advantages, with hybrid-only parking spaces.

Private companies are going one step further and helping employees purchase hybrids or implementing policies that encourage employees to avoid driving altogether. Google has implemented a “Fuel-Efficient Vehicle Incentive Program.” The company offers its employees a $5,000 subsidy toward the purchase of a vehicle with an EPA fuel

82 Hybrid car buyers in 2004 or 2005 could claim a $2,000 one-time deduction on 2004 or 2005 tax returns. Because the tax break was a deduction, its value varied, depending on your tax bracket. If you're in the 33 percent tax bracket, a $2,000 deduction reduced your tax bill by as much as $600. If you're in the 15 percent tax bracket, it might have been worth $300. Hybridcars.com, New Tax Credit for 2006, http://www.hybridcars.com/tax-deductions-credits.html#prior (last visited May 9, 2006).
83 See id.
84 Id.
85 See id.
economy rating of at least 45 mpg or $2,500 toward leased vehicles. The company places no limit on the number of employees who can take advantage of the program. Google also runs low-emission shuttle buses to and from its Silicon Valley headquarters.

High technology companies are not the only ones focusing on sustainable transportation. ABR, Inc., an environmental research firm in Anchorage, Alaska, pays its employees $3 a day if they don’t use a car. Another Anchorage firm, Ecology and Environment, Inc., offers $1 a day for employees using alternative transportation, such as the bus or a dogsled. Employees of MOM's - My Organic Market, in Rockville, Maryland, can qualify for $3,000 as an incentive to purchase and continue to drive a hybrid vehicle. MOM's employees who have been with the company for more than two years are entitled to a $1,000 bonus/reimbursement of their down payment on any car that averages 45 mpg or more.

Northern Virginia, infamous for its sprawl and traffic problems, is considering mass transit extensions to alleviate gas use and traffic pollution. In 2002, the DC metro system formalized plans to bring a 23-mile extension to the Orange Line from near the West Falls Church station to Route 772 in Loudoun County, Virginia. This extension would include a connection to Reston, Tyson’s Corner and Dulles Airport. Unfortunately,
it does nothing to curb sprawl. Instead, it brings more convenience and incentive to move out from the city infrastructure.

VI. SUSTAINABLE DEVELOPMENT LEGISLATION

States are passing smart growth legislation, but its force, unfortunately, is one to be reckoned with. While Americans promote open space and protecting farmlands, this protection only goes as far as does not interfere with personal property rights. The Rehnquist and Berger courts of the past couple of decades saw a rebirth of focus on property rights. Supporters of property rights see private property ownership as diffusing political power and strengthening autonomy from governmental control.95

Smart growth legislation is not meant to take away this essential element of being a free person. Instead, it is trying to make private owners understand the importance of smart growth laws in upholding property rights. Like most things in life, the two are interconnected. This is another area where the federal government needs to strengthen smart growth laws so that in the future, Americans will have property to develop. Furthermore, if government requires compensation to landowners where necessary, property rights law will ensure that “principles of fairness are practiced, which in turn will help deflect opposition to future Smart Growth efforts.”96

Government has been reluctant to step into the world of smart growth, despite the major role it played in encouraging sprawl. “Certain government activity, such as extensive road-building, tax policies, and government-subsidized and guaranteed mortgage loans, may have inadvertently encouraged sprawl.”97 Instead, the federal

95 Porter, supra note 35, at 284.  
96 Id. at 302.  
97 Id. at 292-294,
government has left the job of legislating smart growth to the states. While some states have embraced smart growth, others have encountered fierce opposition.

Laws against sprawl are feeling the pressure in Oregon after a voter-approved law upholds trumping growth restrictions with property rights. The property-rights law, known as Measure 37, “compels the government to pay cash to longtime property owners when land-use restrictions reduce the value of their property – or, if the government can’t pay, to allow owners to develop their land as they see fit.” Proponents of Measure 37 argue smart-growth laws direct development to areas served by existing roads and utilities and restrain new residential and commercial construction that will inevitably sprawl out to rural areas.

Oregon’s new law has had an impact across the country, forcing anti-sprawl legislation to lose political momentum. “In the Washington suburbs, where only Maryland has passed smart-growth legislation, momentum for the enforcement of those laws began to wane under Gov. Robert L. Ehrlich Jr. (R) well before Oregon voters approved Measure 37.” Ehrlich cut funds for acquiring open space, eliminated a smart-growth secretary from his Cabinet and supported road projects that encourage sprawl.

Restrictions on land-use began to trigger a national voter backlash as early as the 1990s, when Florida, Texas, Louisiana and Mississippi passed property-rights laws to protect landowners from financial losses caused by zoning. “But none of these laws was broadly written and none has had a significant impact on local land-use regulation.”

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99 Id.
100 Id.
101 Id.
102 See id.
103 Harden, supra note 97.
according to John Echeverria, executive director of the Georgetown Environmental Law and Policy Institute.\textsuperscript{104}

Fortunately, several states are keeping a grip on their smart-growth legislation. A West Colorado statute discusses cluster development. According to the statute, it’s in the public interest to:

Encourage clustering of residential dwellings on tracts of land that are exempt from subdivision regulation by county government ... thereby providing a means of preserving common open space, of reducing the extension of roads and utilities to serve the residential development, and of allowing landowners to implement smart growth on land that is exempt from subdivision regulations. ... A process should be available for the development of parcels of land for residential purposes that will authorize the use of clustering, water augmentation, density bonuses, not to exceed two units for each thirty-five acre increment, or other incentives, and the transfer of development rights and fulfill the goals of the county to preserve open space, protect wildlife habitat and critical areas, and enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations.\textsuperscript{105}

The Louisiana Purchase Commemorative Act Commission joins Colorado in encouraging the development of smart growth principles. The Act promotes the identification and contribution of funds to purchase or develop land which can then be preserved as green spaces when the land around it is developed.\textsuperscript{106} This land identification includes land available to a public entity. The Maryland Code also supplies its state with smart development principles in its statute for application for community legal plans or projects.\textsuperscript{107}

\textsuperscript{104} Id.
\textsuperscript{105} Legislative Declaration, CO. STAT. ANN. tit. 30, § 28-401 (West 2005).
\textsuperscript{106} Louisiana Purchase Commemorative Act Commission, LA. STAT. ANN. tit. 41, § 1752 (West 2006).
\textsuperscript{107} An application shall set forth certain standards including: ...the strength and quality of partnerships created among the federal government, the State government, political subdivisions, community development organizations, and other private organizations to develop the community legacy plan or carry out the community legacy project, including: (i) financial support; (ii) dedication of staff and resources; and
New York is among the states which are trying to put smart growth legislation into practice. The Smart Growth for the New Century Act illustrates how state government may attempt to deal with the various concerns of all of the stakeholders. The bill explains that “local governments need to focus on soundly planned growth, or smart growth, through a collaborative community-based effort to arrive at a workable plan generated by the community, which responds to the economic, social, and environmental needs of the municipality and the region.”

VII. CONCLUSION: IS THE GOVERNMENT RIGHT?

Taken together, the sustainable communities and transportation, legislation and business incentives will have a major positive effect on the United States’ sustainable living problem. Are the politicians right – is the Kyoto Protocol a waste of time? Although the federal government is correct that the United States is implementing certain regulations on its own that make the Protocol seemingly redundant, it is by no means unnecessary in the fight against global warming and depleting oil reserves.

The Protocol calls for a much more dramatic shift than is currently taking place in the United States. It calls for a global community to take on the problems of climate change – including the federal government of the United States. Such a monumental task cannot be left up to the state and local governments to take on at their whim.

Furthermore, the role of emissions-reducing cannot be left voluntarily in the hands of the public. Citizens must and should take responsibility in reducing their actions to a sustainable level. However, people are going to consume what’s offered to them. If

(iii) commitment to and development of local smart growth policies... Applications for Community Legacy Plans or Projects, MD. STATE. ANN. tit. 6, § 6-205 (West 2006).
108 Bill Number A.8800, known as the Smart Growth For The New Century Act, was introduced by Assemblyman Thomas P. DiNapoli and others. See Armentano, supra note 36, at 82-83.
109 Id.
government does not set industry and community anti-sprawl standards that are sustainable, most citizens can do little to help.

In order to make sustainable living a lifestyle change and not just a passing fad, the government needs to work with industry to offer Americans this change at an affordable rate. By using industry as a middle man, Americans will be less likely to feel as if the federal government is trying to repress their individual autonomy. We will still have choices. But, instead of having to choice between unsustainable and sustainable, our choices will be between sustainable alternatives.

When the DVD player came out with its technology superior to the VCR, the VCR industry did not try to make a superior product. Instead, they succumbed to the infiltration of the DVD player into society. Automobile manufacturers need to stop building Hummers and monstrous SUVs and let hybrids and other sustainable vehicles become pervasive throughout the world. If those are the only cars that are offered, the supply will go up faster than the demand, and the prices will fall. Sustainable living won’t be for the wealthy anymore, and any smugness Americans once had about saving the environment, will fade away into a settled and sustainable way of life.