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Paul Stanton Kibel
Golden Gate University School of Law, pkibel@ggu.edu

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INTRODUCTION TO THE ISSUE: METROPOLITAN VANTAGE POINT

BY PAUL STANTON KIBEL*

The notion of ecology as an independent discipline is relatively new.¹ Until recently, in fact, perhaps within the last 40 years, the field of ecology did not exist.² It was fragmented into a number of subdisciplines, such as agriculture, botany, forestry, zoology and marine biology. The emergence of ecology, as both a term and focus of inquiry, is significant. It reflects a growing recognition of the underlying interconnectedness of the natural environment and of environmental problems.³ The logic of ecology also points to a new policy objective: protecting and restoring the integrity of ecosystems.

At about the same time that the field of ecology began to gain acceptance, a new concept also emerged in city planning circles. This new concept was the "metropolitan area," which was formally adopted as a classification by the United States Census Bureau in 1949.⁴ The Latin root of the word metropolitan, metropolis, translates as "mother city," and prior to 1949

* Adjunct Professor, Golden Gate University School of Law, and Faculty Editor for *The City and the Environment* issue of the Golden Gate University Law Review; Environmental Attorney, Fitzgerald, Abbott & Beardsley (Oakland); LL.M. Candidate, University of California at Berkeley, Boalt Hall; J.D., Willamette; B.A., Colgate.

1. See generally, EUGENE ODUM, BASIC ECOLOGY (4th Ed. 1983).

2. Although ecology as a scientific field of inquiry is relatively new, the term ecology is not. It was first coined in Germany in the late 19th Century by Ernst Haeckel. The term, however, was only adopted by the scientific community and mainstream language much later. See PETER REED & DAVID ROTHENBERG, WISDOM IN THE AIR: THE NORWEGIAN ROOTS OF DEEP ECOLOGY 3 (1983).

3. See Daniel A. Farber, *Stretching the Margins: The Geographic Nexus in Environmental Law*, 48 STAN. L. REV. 1247, 1270 (1996).

4. See WITOLD RYBCZYNSKI, CITY LIFE 225 (1996).

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the word metropolis had generally been used as a synonym for city.⁵ Similarly, the word metropolitan had generally been used as a synonym for urban, or urbane. In the context of the Census Bureau, however, the term metropolitan took on a different meaning. The Census Bureau recognized that, increasingly, satellite suburbs ringed city centers, and that these suburbs could not be accurately classified as independent towns. Rather, both economically and identity-wise, these towns were still tied to and part of the city center, or city centers, they surrounded. The emergence of the term metropolitan, therefore, is a recognition that city centers and surrounding suburbs are not distinct entities: they are interconnected and part of a larger collective community.

In the context of environmental law, ecological and metropolitan concepts act as catalysts for reform, changing both the goal and vantage point of natural resource and environmental policy. They call for us to look at city woodlands, undeveloped hillsides, urban waterfronts, and inland waters not as mere recreational opportunities, but as integral parts of living ecosystems. They illustrate how the pollution, contamination and health risks associated with urban decline are impacted by, and in turn impact, the development of suburban communities. If taken seriously, ecological and metropolitan thinking challenges us to develop institutions and laws that operate at the same scale as our problems.⁶

In this special edition of the Golden Gate University Law Review, entitled *The City and the Environment*, we take stock of how well environmental law is meeting this challenge. Although the articles in this issue cover a broad spectrum of topics, all of the authors are essentially responding to a common question: are the legal regimes presently in place adequate to deal with the environmental problems facing our cities?

The first article focuses on the San Francisco Bay Conversation and Development Commission (BCDC), the primary

5. *See id.*

6. *See Myron Orfield, Metropolitica: Coalitions for Regional Reform, THE BROOKINGS REVIEW, Winter 1997, at 6, 8.*

agency charged with regulating waterfront land around San Francisco Bay. Over the past thirty years, BCDC has managed to build a strong coalition of support among environmentalists and local government. It has also, however, been the target of many attacks by private developers, the California Department of Transportation and California Governor Pete Wilson. Jonathan Smith, Senior Counsel with BCDC, and Alan Pendleton, former Executive Director of BCDC, discuss the charged political context within which the agency must often operate, and consider how these politics affect the agency's ability to fulfill its conservation objectives.

Next, we are offered two perspectives on the Presidio Trust, a new government corporation created by Congress in 1996 to manage the Presidio in San Francisco. Donald Hellmann, Deputy Assistant Director of Legislative and Congressional Affairs for the National Park Service, chronicles the development of the Presidio Trust, providing important analysis of how the legislation reached its final form. As the Presidio Trust moves from legislative concept to functioning governmental entity, this analysis should prove useful both for Presidio Trust staff and for those monitoring the Presidio Trust's performance. In the second piece on the Presidio Trust, Johanna Wald of Natural Resources Defense Council places the debate over the Presidio in the larger context of the debate over federal lands policy. Wald contends that, although the Presidio Trust was certainly better than many of the other Presidio proposals put forth by the 104th Congress, it still cannot be justified from an environmental and public accountability standpoint. Wald further maintains that application of the Presidio Trust model to the rest of our National Parks would represent a fundamental betrayal of the conservation values for which the National Park system was established.

Leaving the Presidio, we then consider the nexus between environmental law and ballot measures. San Francisco voters recently approved initiatives relating to the construction of a new baseball stadium in China Basin and a new football stadium in Hunters Point. Although normally these projects would be subject to the environmental impact assessment requirements under the California Environmental Quality Act

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(CEQA), their adoption as ballot measures may place them outside CEQA's scope. This, in turn, may enable the projects to go forward without resolving critical issues relating to traffic congestion, public transportation and toxic remediation of stadium land. Jon Rainwater, President of the San Francisco League of Conservation Voters, and Susan Stephenson, of San Francisco Tomorrow, examine the issue and set forth strategies to ensure that CEQA's goals are not undercut by the ballot measure process.

The last article analyzes the effectiveness of private enforcement actions under the federal Clean Water Act. Drawing heavily on his experience with stormwater pollution in the Bay Area, Michael Lozeau, Attorney and Executive Director of San Francisco BayKeeper, explains why private enforcement actions are often either too little or too much. For large polluters, the fines are insufficient to force compliance, while for small polluters, defending and complying with an enforcement action can drive an operation out of business. Lozeau argues that alternative enforcement options could improve this situation. More specifically, he proposes an enforcement system in which both the costs of enforcement, and the costs of compliance, could be greatly reduced. The key to this alternative enforcement proposal? Minimizing the role of lawyers.

Collectively, the articles in *The City and the Environment* issue turn our focus inward, towards the inner workings and ecology of our cities. This focus is significant in that it takes what are often highly abstract policy issues and places them in a very real geographic context.⁷ It reminds us that the debates over waterfront development, public lands management, environmental impact assessment and pollution control enforcement are about much more than mere legal theory. These debates are about the places where we live.

7. See Eric T. Freyfogle, *The Land Ethic and Pilgrim Leopold*, 61 U. COLO. L. REV. 217, 231-32 (explaining that land stewardship values "can develop fully only in the particular places where we let them take root").