Highlights
May 2026 Edition

Highlights for May, 2026 ***Subdivision Law and Growth Management***

1. **Sixth Circuit held that developer failed to state a substantive-due-process claim that current zoning scheme violated its right to use the parcel as it saw fit.** In Lifestyle Communities, Ltd. v. City of Worthington, Ohio, 165 F.4th 1013, 2026 WL 206210 (6th Cir., January 27, 2026), a real estate developer brought an action against the city under 42 U.S.C.A. 1983 asserting regulatory takings claims under the United States and Ohio constitutions, as well as due-process claims, equal-protection claims, free-speech claims, and retaliation claims. The claims arose from the city's denial of its application to rezone, for mixed-use development, a vacant parcel of land on which a youth home had operated. The real estate developer also sought a declaration that the property's current zoning was unconstitutional. The United States District Court for the Southern District of Ohio granted the city's motion to dismiss all but the takings and declaratory judgment claims, subsequently denied the developer's motion for reconsideration, and denied the developer's motion for summary judgment on its remaining claims and granted the city's cross-motion. The developer appealed.

   The United States Court of Appeals for the Sixth Circuit affirmed, holding that the developer did not have a reasonable investment-backed expectation that the city would approve its rezoning application. Also, the character of the city's actions weighed against finding that the city council effected a regulatory taking. The city did not effect a regulatory taking when it denied the developer's rezoning application and amended the city's comprehensive plan to emphasize more contiguous greenspace on the parcel. Additionally, it was not beyond fair debate that the parcel's current zoning was unconstitutional under Ohio law. The developer could not premise its void-for-vagueness challenge, under the Due Process Clause, to the city's rejection of its application to rezone the parcel. Moreover, the developer did not have a cognizable due-process property interest in city's discretionary decision to rezone the parcel. Finally, the developer failed to state a substantive-due-process claim that the current zoning scheme, which permitted only parks, hospitals, churches, parochial schools, and other public or institutional uses, violated its right to use the parcel as it saw fit.

2. **District Court granted summary judgment motion to bar plaintiffs' due process claims.** In Infinium Builders LLC v. Metropolitan Government of Nashville & Davidson County, 803 F.Supp.3d 639 (M.D. Tenn., August 8, 2025), applicants for building permits, who were property owners and builder, brought putative class action against municipality, alleging 42 U.S.C.A. 1983 claims that the sidewalk ordinance conditioning issuance of building permits on construction of sidewalks or payment of fees in lieu of constructing sidewalks constituted an unconstitutional taking. It was alleged that the municipality violated due process by misusing the fees paid. The municipality filed a motion for summary judgment.

   The United States District Court for the Middle District of Tennessee held that it would exercise its discretion to rule on summary judgment prior to class certification. The owners' takings claims were ripe. The affirmative defense of voluntary payment under Tennessee law did not bar the owners' takings claims. Equitable estoppel did not toll one-year statute of limitations. Property owners who were added to the amended complaint were entitled to American Pipe tolling of statute of limitations so that their claims related back to filing of original complaint. The takings causes of action based upon payment of fees accrued, and one-year limitations period began to run under Tennessee law, when fees were paid. Finally, the plaintiffs lacked present entitlement to funds, barring their due process claims. The motion for summary judgment was granted in part and denied in part.

3. **California Court of Appeals held that EIR for general plan did not have to analyze site-specific environmental impacts of potential development.** In Committee for Tiburon LLC v. Town of Tiburon, --- Cal.Rptr.3d ----, 2026 WL 266411 (Cal., February 2, 2026), an environmental organization filed a petition for writ of mandate challenging the adequacy of a program-level Environmental Impact Report (EIR) prepared by the town under the California Environmental Quality Act (CEQA) for general plan update based on failure to analyze specific environmental impacts of developing housing on one of 17 sites identified in the general plan's housing element that would accommodate the town's projected regional housing needs. The Superior Court granted the organization's petition. The town appealed. The California Court of Appeal re-

versed and remanded, holding that the EIR for the general plan did not have to analyze site-specific environmental impacts of potential development for the listed site if the local government was updating its general plan and housing element site inventory. No specific housing project had been proposed for that site.

4. California Court of Appeal found in favor of developers who challenged city's housing element. In New Commune DTLA LLC v. City of Redondo Beach, 115 Cal.App.5th 111 (Cal., October 10, 2025), developers brought an action against charter city, challenging the city's housing element and seeking a writ of mandate and declaratory relief. The Superior Court denied the developers' petition and complaint. The developers appealed and the California Court of Appeal reversed and remanded, with instructions, holding that the overlay zone failed to comply with statutory requirements. The presumption of validity for housing element was rebutted by failure of the overlay zone. Substantial evidence supported the city's identification of a parking lot as a site that could accommodate 486 lower income housing units. However, substantial evidence did not support the city's determination that the existing use of other parking lot would be discontinued or not impede the development of 175 housing units.

5. **California Court of Appeal determined that the municipal affairs doctrine did not apply to the general law cities.** In City of Rancho Palos Verdes v. State of California, 114 Cal.App.5th 13 (Cal., September 4, 2025), general law cities filed a verified complaint and petition for writ of mandate challenging the constitutionality of state law that amended the Government Code to require ministerial approval of certain housing projects and subdivision of urban lots in single-family residential zones. The Superior Court sustained the state's demurrer to the cities' amended complaint without leave to amend and entered judgment for the state. The cities appealed. The California Court of Appeal affirmed, holding that it would take judicial notice of the trial court judgment in a separate case. The municipal affairs doctrine did not apply to the general law cities. The cities failed to show that the complaint which posed questions of law presented an exception to the general rule that constitutional challenges may be resolved at the pleading stage. Finally, the Court of Appeal declined to take judicial notice of a recent executive order suspending state law in areas affected by certain wildfires as irrelevant to determining whether to allow cities to amend complaint.

6. **Connecticut Appellate Court held that variance not rendered moot by subsequent amendment to**

zoning regulations. In Sargent v. Zoning Board of Appeals of Town of Fairfield, 236 Conn. App. 269 (Conn., November 11, 2025), an adjoining landowner appealed the decision of the town zoning board of appeals that upheld the zoning enforcement officer's issuance of a certificate of zoning compliance to property owners for the construction of a proposed beachfront residence with a height that relied on a previously granted variance. The property owners intervened as defendants. The case was transferred from the Judicial District of Fairfield to the Judicial District of New Britain and then to the Judicial District of Hartford. The Superior Court, Judicial District of Hartford dismissed the appeal and the adjoining landowner appealed. The Appellate Court affirmed, holding that the trial court was not required to consider the entire record when determining whether any conditions were attached to the variance. The variance did not have conditions attached to it and thus could be considered by the board when reviewing the issuance of a certificate of zoning compliance. Finally, the variance was not rendered moot by subsequent amendment to the zoning regulations that allowed height permitted under the variance as of right.

7. **Georgia Supreme Court found that ordinance subject to referendum under Home Rule Provision.** In Bailey v. McIntosh County, 921 S.E.2d 382 (Ga., September 30, 2025), the county brought an action against the probate court judge for declaratory judgment and writ of prohibition to stop a referendum on the repeal of zoning which purportedly increased allowable maximum dwelling size in the historic district on Sapelo Island. The Superior Court concluded that the county's exercise of its zoning powers was not subject to the referendum process, granted the county's petition, and issued a writ of prohibition against the probate judge, but also enjoined enforcement of the ordinance pending appeal. The county residents and probate judge appealed, and the county appealed the injunction. The Georgia Supreme Court held that the absence of the ordinance in the appellate record did not preclude the Georgia Supreme Court from considering the legal question of whether the ordinance was subject to the referendum procedures in the Home Rule Provision of the state constitution. The ordinance was subject to referendum under the Home Rule Provision. The probate judge had the authority under the Home Rule Provision to consider the referendum petition and set a special election for the referendum. The Georgia Supreme Court could not take judicial notice of the ordinance and its predecessor not in the appellate rec-

ord and thus could not consider the county's arguments for reversal of the injunction.

8. **Hawaii Supreme Court held that Land Use Commission failed to apply preponderance of evidence standard in findings of fact.** In Honoipu Hideaway, LLC v. Land Use Commission, 156 Hawai'i 367 (Hawaii, August 28, 2025), littoral property owner appealed from the decision of the Land Use Commission (LUC) denying its petition for declaratory order requesting the LUC determine conservation district boundary, due to the belief that the LUC relied on outdated maps showing incorrect location of a road to draw the LUC map. The appeal was transferred nunc pro tunc to the Hawaii Supreme Court which vacated and remanded. The Hawaii Supreme Court held, as a matter of first impression, that the LUC must apply the preponderance of the evidence standard to its findings of fact on the district boundary interpretation absent rulemaking to the contrary. The LUC failed to properly apply the preponderance of the evidence standard. Finally, the LUC committed reversible error when it applied a heightened burden of proof in its findings of fact.

9. **Idaho Supreme Court determined that subdivision's master plan did not include dedication of land to public use.** In Vintage II, LLC v. Teton Saddleback Vistas Homeowners Association, Inc., 575 P.3d 916 (Idaho, September 10, 2025), landowners brought quiet title action against subdivision's homeowners' association seeking declaration that their properties that adjoined subdivision and that were formerly part of plans for subdivision were not subject to subdivision's covenants and restrictions. After a bench trial, the Seventh Judicial District Court, Teton County denied quiet title action and denied motion for reconsideration. One landowner appealed. The Idaho Supreme Court held that the subdivision's master plan was relevant to quiet title claim. As a matter of first impression, the subdivision's master plan did not create restrictive covenants limiting the landowners' use of their properties. The master plan did not include a dedication of land to public use. The association was not a prevailing party for purposes of appellate attorney fees and costs. Finally, the landowner was not entitled to attorney fees on appeal.

10. **Illinois Supreme Court concluded that property owner's procedural due process rights were not violated.** In Clark v. City of Galena, --- N.E.3d ----, 2025 WL 3033881(Ill., October 30, 2025), a property owner brought an action against the city and a developer seeking declaratory and injunctive relief regard-

ing the city's zoning decisions approving a preliminary planned unit development (PUD) plan and rezoning for the developer's neighboring property. Following a stipulated bench trial, the Circuit Court ruled in favor of the city on all counts except one, finding that the city violated the owner's procedural due process rights by not allowing the owner to cross-examine the developer at public hearings held by the zoning board of appeals. The city and the developer appealed the ruling on the procedural due process claim. The Illinois Appellate Court reversed, holding that the property owner had a private property interest that would be affected by the PUD and rezoning, as the first Mathews v. Eldridge factor in determining whether her procedural due process rights were violated. There was little risk that the procedures used would result in the erroneous deprivation of the owner's private property interest, and little probable value in additional direct questioning of developer by owner, as the second Mathews v. Eldridge factor. Proactively offering cross-examination would impose an additional burden for little benefit, as the third Mathews v. Eldridge factor. On balance under Mathews v. Eldridge factors, the owner's procedural due process rights were not violated.

11. **Kansas Court of Appeals determined that conditional use permit did not violate comprehensive plan.** In Pierson v. Board of Pottawatomie County Commissioners, 66 Kan.App.2d 20 (Kan., August 1, 2025), a landowner's neighbor appealed the decision of the board of county commissioners granting a conditional use permit for a quarry on agricultural land. The District Court affirmed the board's decision and the neighbor appealed. The Kansas Court of Appeals affirmed, holding that the factor addressing character of neighborhood did not render the board's decision unreasonable. The conditional use permit did not violate the comprehensive plan.

12. **Louisiana Court of Appeal ruled parish council entitled to immunity from liability for damages.** In Falcon v. Parish of Jefferson, 424 So.3d 1163 (La., November 19, 2025), property owners brought an action against the parish and the parish council, asserting claims for damages related to the denial of their application to re-subdivide residential property. The District Court granted defendants' motion for partial summary judgment, and the owners appealed. The Louisiana Court of Appeal affirmed and held that council was entitled to immunity from liability for damages arising from its erroneous denial of the re-subdivision application.

13. **Maine Supreme Judicial Court addressed issues dealing with subdivision ordinance.** In Cannon v.

Town of Mount Desert, 345 A.3d 115 (Maine, August 28, 2025), village residents sought judicial review of the town planning board's decision approving the developer's application for proposed six-dwelling-unit subdivision. Following transfer of the case from the Superior Court, the Business and Consumer Court affirmed the board's decision. The residents appealed. The Maine Supreme Judicial Court vacated and remanded with instructions, holding that the proposed subdivision did not create three or more lots and thus was not subject to access-road requirements of the subdivision ordinance. The subdivision ordinance's section allowing workforce subdivisions to have greater density than other types of subdivisions did not require the board to truncate to whole number the number of permissible units in preliminary steps in calculation of final permissible number of units. Remand to the board to make calculation of open space that was required for proposed subdivision was warranted.

14. **Maryland Appellate Court found planning director's letter not appealable.** In Chiusano v. Two Farms, Inc., --- A.3d ----, 2026 WL 221133 (Md., January 28, 2026), judicial review was sought of the county board of appeals' decision approving the developer's project's designation as a planned drive-in cluster under the county zoning regulations. The Circuit Court, Baltimore County, affirmed. An appeal was taken by the aggrieved parties who protested the decision. The Maryland Appellate Court held that the planning director's letter was not appealable because he lacked the authority to interpret the zoning regulations. The letter was not appealable because it was not a final action. The letter was not appealable because notice was not provided to the aggrieved parties. The matter was reversed and remanded with instructions.

15. **Massachusetts Appeals Court held town planning board's decision was not unreasonable, whimsical, capricious, or arbitrary.** In Cline v. Planning Board of Framingham, 106 Mass. App. Ct. 191 (Mass., October 16, 2025), homeowners brought an action against the town planning board and developer. They claimed that the board's decision to grant zoning relief to the developer for the construction of a carwash and coffee shop was arbitrary, capricious, and legally untenable. The homeowners further alleged that the project would harm their property interests by causing severe safety concerns. The Superior Court Department, Middlesex County allowed the board and developer's motion for summary judgment and concluded that the homeowners lacked standing and failed to support their claim. The homeowners appealed.

The Massachusetts Appeals Court affirmed, holding that the homeowners who owned properties within the requisite proximity to the proposed construction project enjoyed presumptive standing as abutters who were aggrieved persons under the Zoning Act. The developer's affidavits provided in response to the abutters' allegations that the proposed construction project would cause harm provided evidence that the allegations were unfounded or de minimis. Thus, the developer rebutted the abutters' presumed status as aggrieved parties that had standing to challenge board's zoning decision. The evidence was sufficient to substantiate the allegations of aggrievement brought by the homeowners by showing that there was reasonable likelihood of harm to their properties. Therefore, the homeowners established standing in their challenge of the board's decision. Finally, a detailed record of the town planning board's proceedings clearly set forth its reason for the decision. Accordingly, the board's decision was not unreasonable, whimsical, capricious, or arbitrary, although the homeowners had provided sufficient evidence to establish standing to challenge the board's decision.

16. **Massachusetts Supreme Judicial Court concluded that road was a public way.** In Town of Concord v. Rasmussen, 496 Mass. 450 (Mass., August 15, 2025), the town brought an action against the abutters of a disputed road. The town sought a declaration that the public had access and use rights to the road. Following a bench trial, the Land Court Department, Middlesex County, entered judgment in favor of the town. The abutters appealed. The Appeals Court modified judgment and affirmed. The abutters sought further appellate review, which was granted. The Massachusetts Supreme Judicial Court held that direct, as opposed to circumstantial, evidence documenting that a public way was laid out is not required to support a finding that a particular way is public on basis of layout by a public authority in accordance with statute.

The evidence was sufficient to support the finding that the particular portion of the road was properly laid out and thus, was a public way. The county commissioners' adjudication that road should be a "private way," pursuant to statute providing for adjudication of way as a private way whenever common convenience and necessity no longer required such way to be maintained in a condition reasonably safe and convenient for travel, did not eliminate public access to road but rather simply removed the requirement that town maintain the road. The trial court acted within its discretion in excluding the abutters' proffered evidence as to the status of the other public roads which had been adjudicated "private ways" pursuant to the same statutory provision as was at issue in the instant case.

17. **Mississippi Supreme Court ruled that supervisor's vote for denial of developer's application was not arbitrary and capricious.** In Elliott Land Developments LLC v. Board of Supervisors of Jackson County, 421 So.3d 1206 (Miss., October 30, 2025), the developer appealed the decision of the county board of supervisors to deny an application for rezoning to develop a subdivision. The Circuit Court, Jackson County, affirmed, and the developer appealed. The Mississippi Supreme Court affirmed and held that the appeal of the county planning commission's approval of the developer's rezoning application was properly before the county board of supervisors. The issues of whether there had been a sufficient change in the character of the neighborhood and whether a public need existed to warrant rezoning were fairly debatable. Finally, the supervisor's vote for denial of the developer's application was not arbitrary and capricious.

18. **New Hampshire Supreme Court decided that public interest in cul-de-sac outweighed landowner's private interest.** In Taylor Community v. City of Laconia, 2025 N.H. 38 (N.H., August 27, 2025), a landowner that had previously dedicated a cul-de-sac to the city for public use appealed from the decision of the city planning board that denied its application to remove the cul-de-sac and install a T-shaped road instead and from the decision of city council that, upon petition, voted to lay out the cul-de-sac as a public highway. The Superior Court, Belknap County, denied the landowner's motion for summary judgment, granted the intervenors' motion for summary judgment, and denied the landowner's motion for reconsideration. The landowner appealed. The New Hampshire Supreme Court affirmed, holding that public interest in the cul-de-sac, which remained subject to unreleased dedication, outweighed the landowner's private interest, as a factor supporting the conclusion that there was an occasion for city to lay out cul-de-sac as a public highway. The public interest in the layout of the cul-de-sac as a public highway outweighed the burden the layout imposed upon the city, as a factor supporting conclusion that there was an occasion for city to lay out cul-de-sac as a public highway.

19. **Oregon Court of Appeals found that statute did not allow city to grant easement to lot owners.** In Haystack Rock, LLC v. Roberts, 343 Or. App. 244 (Oregon, September 4, 2025), a neighbor brought an action against the city and lot owners regarding the city's authority to grant a private easement over a public

right-of-way, dedicated as a public avenue, to lot owners to construct a driveway. On cross-motions for summary judgment, the Circuit Court granted summary judgment for the city and lot owners. The neighbor appealed. The Oregon Court of Appeals reversed and remanded, holding that the city was not the fee owner of the avenue which had been dedicated to the public on the plat. The ordinance noting the city's jurisdiction and regulatory control over each public right-of-way acquired by dedication did not grant the city authority to transfer the easement rights. The statute did not allow the city to grant an easement to the lot owners.

20. **South Carolina Supreme Court determined that restaurant owner's easement rights were nonexclusive.** In Gulfstream Café, Inc. v. Georgetown County, 447 S.C. 1 (S.C., October 29, 2025), a restaurant owner that held easement rights over a shared parking lot in a planned development brought an action against the county. The restaurant owner challenged the validity of an ordinance allowing the construction of a new restaurant in the planned development. The restaurant owner alleged due process and takings claims. It was further asserted that the ordinance was invalid due to the county councilmember's improper involvement with the original application for new restaurant. After a bench trial, Circuit Court, Georgetown County, entered judgment for the county, denied the restaurant owner's claim for attorney fees, and granted the county's motion for costs. The restaurant owner appealed. The South Carolina Supreme Court affirmed and held that the restaurant owner's easement rights were nonexclusive. Furthermore, the ordinance did not violate substantive due process. The ordinance was not a per se taking and was not a regulatory taking. Also, the ordinance was not a taking on theory of regulatory inverse condemnation. Moreover, the ordinance was not invalid due to the councilmember's improper involvement with the original application. Finally, procedural due process was satisfied.

21. **Utah Supreme Court dismissed action as moot.** In Mathews v. Tooele County, 573 P.3d 1276 (Utah, August 7, 2025), sponsors of a referendum to repeal a site specific zoning ordinance, which had rezoned a parcel in an unincorporated area of the county from agricultural to planned-community zoning, brought an action against the county and the governor after the county clerk rejected a referendum petition due to lack of signatures. After the ordinance went into effect, and the parcel became part of the newly-incorporated city, the Third District Court, Tooele County, granted summary judgment for the county and granted the gover-

nor's motion for judgment on the pleadings. The sponsors appealed. The Utah Supreme Court held that the action was moot considering the incorporation of the town and the parcel's location within the new town's boundaries. The potential impact on the developer's alleged vested rights in the zoning ordinance did not save the action from mootness. The appeal was dismissed as moot.

About the Author

James A. Kushner is Professor of Law Emeritus at Southwestern Law School in Los Angeles, where he has taught courses in land use planning, housing, community development, environmental law, and constitutional law, property and local government law, as well as during visits at the law and urban planning schools at the University of Barcelona, Master en Derecho Urbanistica (Master of Land Use Law), El Llustre Colegio de Abogados de Barcelona (Bar Association of Barcelona), University of British Columbia, the University of California at Berkeley and Los Angeles, Dortmund University School of Regional Planning in Dortmund, Germany, Seattle University, Saxion University, in Deventer, in the Netherlands, Greenwich University in Kent, England, the University of Southern California, the University of Missouri at Kansas City, the Polytechnic University of Torino in Italy, Utrecht University, in the Netherlands, and at the School of Architecture at the University of Virginia and was appointed the Irwin R. Buchalter Professor of Law at Southwestern University School of Law in 1989 and the Irving D. and Florence Rosenberg Professor of Law in 2000, and awarded a Fulbright Scholarship in 2011.

Professor Kushner began his legal career as legal consultant to the National Urban League, and subsequently served as Director of Housing for the Office of Economic Opportunity in Ohio, where he oversaw affordable housing projects and assisted neighborhood groups facing urban renewal. Professor Kushner later practiced law as Director of Law Reform for Legal Aid of Western Missouri, specializing in housing and redevelopment litigation, and as Project Attorney for the National Housing and Economic Development Law Project, then part of the Earl Warren Legal Institute at the University of California at Berkeley.

During full-time law teaching, Professor Kushner has served as a cooperating attorney with the NAACP Legal Defense and Education Fund, as President of the Board of Directors of the Fair Housing Council of Southern California, and as a member of the Board of the American Civil Liberties Union of Southern California. In addition, Professor Kushner has served as a Temporary Judge and Referee for the Superior Court of Los Angeles County from 1981 to 1990.

A frequent lecturer on civil rights and urban planning, Professor Kushner has published numerous articles in law and planning journals, is the author of *Apartheid in America* (1980), *Fair Housing: Discrimination in Real Estate, Community Development* *and Revitalization* (2d ed. 1995 & Supplement 2000), Government Discrimination: Equal Protection Law and Litigation (2020), and The Post-Automobile City (2004) Housing and Community Development Law (4th ed. 2011) and Land Use Regulation (4th ed. 2012). Healthy Cities—The Intersection of Urban Planning, Law, and Health (2007); Global Climate Change and the Road to Extinction: The Legal and Planning Response (2009).

Professor Kushner received his undergraduate degree in finance from the University of Miami and graduated from the University of Maryland School of Law, where he served as an editor of the Maryland Law Review.

Professor Kushner resides in San Francisco, California.

Preface

This treatise arose out of my experience as court-appointed referee in two lawsuits that have shaped the City and County of Los Angeles. In *Federation of Hillside and Canyon Associations, Inc. v. City of Los Angeles,* No. C-526616 (Cal. Super. Ct. 1985), California law requiring consistency between the city's comprehensive plan and its zoning ordinance was enforced. The resulting settlement called for an implementation plan to reclassify a quarter of a million parcels so as to reduce the city's population capacity from ten million to a maximum build-out of four million. This herculean feat was accomplished by overlay height-limit downzoning districts, an appeal procedure providing for exemptions favoring affordable housing, an aggressive three-year plan providing for a combination of downzoning and up-planning where appropriate, and new controls on downtown commercial development.

In *Coalition for Los Angeles County Planning in the Public Interest v. Board of Supervisors*, Civ. No. C-366464 (Cal. Super. Ct. Apr. 28, 1987), litigation ongoing for fifteen years challenging the County's comprehensive plan was resolved through the adoption of a negotiated implementation technique referred to as the Development Monitoring System (DMS). The DMS is a computer-driven plan implementation system designed to assure the availability of adequate facilities and dramatically reduce sprawl development.

My experience as a referee in these cases taught me that the law regulating land development was greatly misunderstood and constantly changing. Following the settlement of the Los Angeles County case, and with support from Southwestern University and Clark Boardman Callaghan, I took a sabbatical from teaching to research and produce the first draft of this treatise.

There are few issues in America which present both the controversy and the legal complexity of urban growth management. As the nation approaches the twenty-first century, state legislatures and the courts will undoubtedly continue to be immersed in political and legal confrontations over questions of growth policy. *Subdivision Law and Growth Management* may be the only book devoted solely to the fundamental problems of growth management techniques which is committed to remaining current on the evolving law and experience of growth management.

The subject of growth management and subdivisions has been a problem for treatise writers because individual state experiences have varied depending on the jurisdiction's legislation and planning doctrine. Yet states often borrow the judicial reasoning of other states both in deciding litigated issues and in resolving conflicts in the legislative process. In this treatise, I have attempted to capture the nuances of local legal results and to present judicial and legislative trends together with policy choices and strategies for legal challenges and defenses. The approach should provide direction for the formation of growth management techniques that are effective and least vulnerable to judicial challenge and invalidation. It is my hope that a clearer understanding of the law of growth management will result in a reduction of disputes, enhance opportunity for the settlement of disputes and litigation, and advance the missions of rational growth management: management which addresses the concerns of the environment, the quality of urban life, the need for accessibility to affordable decent housing and the economic needs of the community.

Subdivision Law and Growth Management places primary emphasis on subdivision administration, which remains the most significant process for managing and financing growth and community design. Chapter 1 provides an overview to the land development process and an introduction to growth management techniques and the subdivision review process. Chapter 2 catalogues the many growth management techniques available to communities, and reviews the literature and litigation experiences associated with them. Chapter 3 surveys the various theories of legal challenges and limitations to which growth management strategies may be subjected. Chapter 4 provides an interdisciplinary review of the literature analyzing the efficiency, effectiveness and impact of growth management systems. Chapter 5 presents an overview of subdivision control, with emphasis on the jurisdiction and reach of subdivision statutes and ordinances. Chapter 6 catalogues alternative methods for financing capital improvements, and presents a unified legal analysis of the power to impose conditions and exactions on development. Chapter 7 presents the subdivision administrative process and subdivision planning standards. Chapter 8 presents the law of subdivision administration and the legal bases to approve, deny, modify, and litigate administrative subdivision decisions. Chapter 9 surveys methods and techniques for the enforcement of subdivision controls, including measures to guarantee the completion of facilities and infrastructure and remedies for law violation. Chapter 10 presents the complex problem of vested development rights when developers attain the entitlement to complete projects in the wake of rapidly changing development standards and growth policies.

James A. Kushner
San Francisco, California