All Sprawled Out: How the Federal Regulatory System Has Driven Unsustainable Growth

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Abstract

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The United States faces a serious threat that grows more troublesome every year; one whose negative effects run the gamut from environmental concerns to social and fiscal harms.

The threat—often called sprawl—is evidenced by the proliferation of unsustainable land development patterns throughout this country.

Significantly though, sprawl is not simply a problem of bad design or planning. These are, in fact, merely symptoms of a much more prolific cause. Indeed, the true driving force behind sprawl has been a series of federal laws and regulations that, over the last century, have facilitated development patterns in the United States that are neither fiscally sound nor physically sustainable.

This article examines three specific areas of federal regulation that have exacerbated sprawl: federal tax policy, federal transportation policy, and federal housing policy. It analyzes these laws and regulations within a historical context to determine why and how they came to be.

To accomplish this, the article surveys specific examples of federal laws within each of these categories that have served to promote the near unfettered growth of American sprawl. By doing so, the article identifies those areas of federal regulation that, if modified or repealed, can facilitate a move away from sprawl growth and toward a more sustainable land development strategy.

Ultimately, this article exposes the federal laws that have driven sprawl in this country—and, by doing so, have exacerbated the numerous negative impacts of sprawl on our society.
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I. Introduction

When it comes to land planning and development, the United States faces a serious threat that grows more troublesome every year; one whose negative effects run the gamut from environmental concerns to social and fiscal harms.\(^1\)

The threat—often called sprawl—is evidenced by the proliferation of unsustainable land development patterns in this country.\(^2\)

Significantly though, sprawl is not simply a problem of bad design or planning.\(^3\) These are, in fact, merely symptoms of a much more prolific cause. Indeed, the true driving force behind sprawl has been a series of federal laws and regulations that, over the last century, have facilitated development patterns in the United States that are neither fiscally sound nor physically sustainable.\(^4\)

This article examines three specific areas of federal regulation that have exacerbated sprawl: federal tax policy, federal transportation policy, and federal housing policy.\(^5\) It


\(^2\) There are a large number of definitions for sprawl, though most all share in common the idea that sprawl is defined by unsustainable land development practices on a community’s fringe. Testifying before Congress on this issue, Richard Moe with the National Trust for Historic Preservation offered one particularly concise definition when he defined sprawl as “the poorly planned, low-density, auto-oriented development that spreads out from the edges of communities.” Testimony of Richard Moe, President Nat’l Trust for Historic Preservation before the S. Comm. on Env’t and Pub. Works, Hearing on Cmty. Growth and Envtl. Quality (Mar. 17, 1999) available at [http://epw.senate.gov/107th/moe_3-17.htm](http://epw.senate.gov/107th/moe_3-17.htm). Sometimes, sprawl exists within the fringes of a community. However, in reality, this sprawl is simply an earlier vintage that, when created, was located on the existing fringes of the time.

\(^3\) See Angela Glover Blackwell, *It Takes a Region*, 31 *Fordham Urb. L.J.* 1303, 1305 (Spring 2004): Sprawl and regional inequity are not natural results of a free market economy. Rather, they are direct results of public policies that have provided incentives for suburban growth at the expense of central cities and older suburbs and their low-income residents. *Id.*

\(^4\) Laws and regulations are the only cause of sprawl but, rather, the leading one. See Richard K. Green, *Nine Causes of Sprawl*, *Ill. Real Estate Letter* 1 (Fall 1999) (discussing other non-regulatory causes of sprawl).

analyzes these laws and regulations within a historical context to determine why and how they came to be.

To accomplish this, the article surveys specific examples of federal laws within each of these categories that have served to promote the near unfettered growth of American sprawl. By doing so, the article identifies those areas of federal regulation that, if modified or repealed, can facilitate a move away from sprawl growth and toward a more sustainable land development strategy.

Ultimately, this article exposes the federal laws that have driven sprawl in this country—and, by doing so, have exacerbated the numerous negative impacts of sprawl on our society.6

II. What is Sprawl?

Before analyzing the laws that made sprawl, one point warrants clarification: not all suburban growth constitutes sprawl. Indeed, “[b]eing anti-sprawl is not being anti-

While this article primarily focuses on federal tax, transportation, and housing policies that have promoted sprawl (because these are the worst offenders among federal regulations), these areas are not the only ways that the federal government encourages sprawl. Indeed, other examples include the Department of Housing and Urban Development’s grant program for community’s to expand sewer and water infrastructure into the undeveloped periphery of the city:

Once the water, sewage, and utility lines are established outside the city, housing and other developments follow. The HUD grants act as a subsidy for the construction of new housing developments that in turn contribute to sprawl.

See Chad Lamer, Why Government Policies Encourage Urban Sprawl and the Alternatives Offered by New Urbanism, 13 Kan. J.L & Pub. Pol’y 391, 398 (2004). Other federal regulations that have promoted sprawl include Superfund legislation, the Clean Air Act, the Clean Water Act and national agricultural policies. See Knaap, Supra note 5.
growth. The question is not whether our communities should grow, but rather how they will grow. The reality is that suburban land development in the United States dates back to the country’s origins.

A. The Origins of Suburban Growth

Historically, land development outside of the city center is hardly a new phenomenon. Indeed, dating back to early Babylon, the wealthy built countryside retreats. This trend continued with famous examples including early Roman city-states, London in the 1500s, and Paris in the 1600s. In terms of the United States, as far back as the late 18th century, prominent individuals sought housing in places that were outside of, yet still accessible to, cities such as Boston and Philadelphia. Specific examples included Chestnut Hill near Philadelphia, Tuxedo Park near Manhattan, and Lake Forest near Chicago—each an exclusive enclave where only the wealthy could afford the time and expense of commuting back to the urban center.

Significantly though, life outside the city was often neither ideal nor idyllic. Indeed, historically, many of those who lived on the city’s periphery did so because they could not afford to live near the city center. This dates as far back as ancient communities where the poor often dwelled outside the protection of the city walls. However, even in these instances, living on the periphery did not mean an isolated existence as those outside the walls lived within reasonable proximity to the city.

In the United States, Delores Hayden—a leading researcher on historical development patterns—coined the terms “borderlands” and “picturesque enclaves” for two early models of suburban living. With borderland developments beginning in the 1820s and picturesque enclaves in the 1850s, both of these early types demonstrated extra-urban growth well before the advent of the personal automobile. And, while both developed outside of the traditional city limits, according to Hayden, the primary difference between the two was that borderlands were generally more isolated individual residences while

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7 Moe, supra note 2.
8 HOWARD FRUMKIN, LAWRENCE FRANK & RICHARD JACKSON, URBAN SPRAWL AND PUBLIC HEALTH 27 (Island Press 2004).
9 Id.
10 Id.
11 WITOLD RYBCZYNISKI, LAST HARVEST 87 (Simon & Schuster Adult Publishing Group 2007).
13 Indeed, none other than the well-known sprawl proponent Robert Bruegmann noted this in his book Sprawl: A Compact History when he discussed an area outside of ancient city walls that “housed marginal social or political groups and families too poor to afford dwellings inside the walls.” Robert Bruegmann, SPRAWL: A COMPACT HISTORY 21 (U. of Chi. Press 2005).
14 Id.
16 Id. at 4. In addition to these two types, Hayden identifies five additional suburban eras: the 1870s streetcar buildouts; 1900s mail-order and self-built suburbs; 1940s sitcom suburbs; 1960 edge nodes; and, 1980s rural fringe suburbs.
“the designers of enclaves added a sense of community to the borderland goals of the house and land, becoming the first to express [this] triple dream.”

These early suburban models resulted from a desire of the wealthy class to retreat from the crowded, and often dirty streets, of the city. Yet, during those times, what constituted a suburb was much different than the suburbs of today. Indeed, unlike modern times, most cities of that vintage were small and compact—with the distance from the center of the city to the edge generally no more than a mile or two apart. This was primarily due to the fact that transportation modes were limited to walking, sailboats, and horse-drawn carriages—none of which made distant exurban growth a viable option for commuting on a daily basis.

The advent of the steamboat altered this equation and allowed regular commutes to the city from greater distances. One of the most distinct examples of this pattern occurred in Brooklyn Heights, an early suburb that developed across New York harbor from lower Manhattan. Here is where historian Kenneth Jackson opines that the nation’s first commuter suburb was born, one that differed from other early suburbs because of “the number of commuters, the easy access to a large city, and the bucolic atmosphere” that defined the early Brooklyn Heights development.

Yet, while Brooklyn Heights is evidence that suburban development has existed since the early days of this country, suburbia’s rise to prominence as the nation’s dominant growth pattern did not occur until the 1970 census—a census that, for the first time ever, “declared America a suburban nation.” Indeed, by this time, suburban growth had become the most prolific type of commercial and residential development.

Unfortunately, this trend continues today as more residents locate in the suburbs rather than in the cities. This is unfortunate because today’s suburban growth differs significantly from historical extra-urban growth in two important respects. First, early suburban development in the United States was the exception rather than the norm—often limited to the few who could afford it. Indeed, one researcher, when considering America’s early suburbs, noted that “middle-income city dwellers could not afford this [suburban] living pattern because of the extra time and travel costs that it demanded.”

17 Id. at 45.
18 Id. at 21.
20 Interestingly though, while their works contain many similar conclusions, Hayden appears to disagree with Brooklyn Heights serving as the first commuter suburb: “[a]lthough some historians have called Brooklyn Heights the first suburb, neither Brooklyn Heights nor the Boston projects provided models for the picturesque enclave. They are better understood as extensions of urban housing models from the affluent neighborhoods of Manhattan and Beacon Hill.” Hayden, supra note 15, at 46.
21 Jackson, supra note 19.
22 Schwartz, supra note 12, at 1.
23 As of 2000, more Americans lived in suburbs than lived in downtowns or rural areas combined. See Hayden, supra note 15, at 10.
24 Peter O. Muller, Transportation and Urban Form: Stages in the Spatial Evolution of the American Metropolis, in THE GEOGRAPHY OF URBAN TRANSPORTATION 60 (Susan Hanson ed., 2d ed. 1995).
25 Id.
However, in the post-World War II era, relatively inexpensive suburban development became the dominant growth pattern—one where people of all socio-economic profiles have ended up residing.\footnote{David Callies & Glenn Sonoda, Providing Infrastructure For Smart Growth: Land Development Conditions, 43 Idaho L. Rev. 351, 352 (2007).}

Second, early suburban growth, though located on the periphery, was developed in a much more sustainable method. This sustainability was founded on several factors. First, the earliest suburban growth was fairly limited in scope and generally was not treated as the place from which workers would make a daily commute to the city center.\footnote{Rybczynski, supra note 11, at 87} Rather, these early suburbs were often filled with second homes for the wealthy.\footnote{Id.}

Then, as the 19th century closed, suburban growth developed primarily along transit corridors for trolleys and trains.\footnote{Muller, supra note 24, at 61.} A classic example of this pattern was the Frederick Law Olmstead-planned Village of Riverside\footnote{Rybczynski, supra note 11, at 111.}—an early 1860s suburb of Chicago located at the final stop of Burlington-Northern Railroad commuter train.\footnote{For a history of Riverside, Illinois, see the Riverside Community Website at http://www.riverside-illinois.com/History.htm.} Identified by Hayden as one of the earliest picturesque enclaves, Riverside actually represented a historical version of today’s increasingly popular Transit-Oriented Development, including a small commercial district centered on the rail station.\footnote{For information on Transit-Oriented Development, see generally http://www.transitorienteddevelopment.org/tod.html and http://www.newurbanism.org/centerfortod.html.} And, while not as ideal as urban redevelopment, the project still provided a more sustainable growth pattern by centering itself along a mass transit option and fostering development around the transit stop.

Another well-known example of a streetcar suburb was Chevy Chase, Maryland. Developed in the 1890s by Nevada’s two United States Senator, Chevy Chase was accessible via a new electric streetcar line.\footnote{Hayden, supra note 15, at 73.} In this instance, the developers wisely paid for the streetcar line themselves, an adroit recognition that proximity to mass transit would create value for their project.\footnote{Id. That is not to say that problems did not exist with streetcar suburbs—with a major one being the extensive network of poles and wires required to power the streetcars. Id. at 76.} Indeed, this type of development became so popular that, by 1915, Los Angeles contained roughly 1,200 miles of streetcar tracks.\footnote{Id. at 98.}

However, this organized approach toward land development would change as laws were passed—on both the federal and state level—that cemented massive, auto-centric suburban development as the driving force in American land growth patterns.\footnote{Muller, supra note 24, at 61.} While
these laws were not always intended to promote unsustainable suburban growth, that was often still their effect.37

In fact, today’s sprawling low density and auto-centric growth pattern continues to become more and more endemic. So much so that one commentator has identified a new phenomenon called “The New Suburban Poverty”. 38 This problem—where middle class residents can no longer afford their suburban, auto-dominated lifestyle—results from a “historic milestone” where more poor Americans live in suburbia than in all of the nation’s cities combined.39 Indeed, if an individual looks past the unsupported rhetoric that single-use, low density suburbs are simply a market-driven choice for many, one confronts a stark reality:

Stories of downward mobility in America's suburbs have not exactly cluttered the headlines over the past decade...But venture beyond the city limits of any major metropolitan area today, and you will encounter these things, in forms less concentrated--and therefore less visible--than in the more blighted pockets of our cities perhaps, but with growing frequency all the same.40

And, worse still, there is no indication that this teetering house of cards called suburban sprawl is likely to become more stable. Rather, this crisis—a term that in truth is probably too weak, rather than too strong—may very well evolve into what one commentator has termed “The Long Emergency” which, even if only partly accurate, will still result in a dramatic re-ordering of the country’s built environment.41

For this reason, a careful consideration of the laws and policies fostering this problem is an important step in addressing the situation.

B. Two Types of Sprawl

While sprawl is a complex problem, it can generally be reduced into two broad, historical categories: unsustainable residential growth and unsustainable commercial growth. The reason that these two divisions work quite well is that they are the natural result of the single, separated use-zoning scheme that resulted from the Village of Euclid v. Ambler Realty Co opinion.42 In this famous 1926 decision, the United State Supreme Court essentially held that zoning systems which require the separation of land uses—even if

37 Commentators have also analyzed how racial and socio-economic factors contributed to federal policies and regulations that promoted sprawl. For one such analysis, see Angela Glover Blackwell, It Takes a Region, 31 FORDHAM URB. L.J. 1303, 1306 (2004) (proposing that racially-based federal housing regulations promoted sprawl development for whites while concentrating minorities in the increasingly decayed city centers).


39 Id. Indeed, as the author notes: “The result is a historic milestone that has gone strangely ignored: For the first time ever, more poor Americans live in the suburbs than in all our cities combined.” Id.

40 Id.


those land uses would otherwise be entirely compatible—do not constitute a regulatory
taking or violate substantive due process and, therefore, can be implemented by
municipalities with near impunity. This short-sighted approach was best evidenced by
the Court’s own language:

... and it may thereby happen that not only offensive or dangerous
industries will be excluded, but those which are neither offensive nor
dangerous will share the same fate.

The impact of this decision, together with the United States Department of Commerce’s
1920s era creation of model zoning enabling legislation that also favored the separation
of uses in the development of land, was swift and decisive. Indeed, within a decade of
these two seminal events, most states had adopted zoning enabling legislation—and many
cities had, in turn, passed zoning ordinances that facilitated, if not absolutely required, the
separation of most all land uses. These types of policy decisions encouraged what one
commentator has described as “the nation’s mid-to-late twentieth century urban
Diaspora.”

1. Commercial Sprawl

This trend started with the retail sector. Soon, communities began to see the growth of
commercial uses separated from both residential uses and fixed transit routes. One
example of this trend is the so-called Miracle Miles, which are large groupings of
retailers located along a major paved road. These Miracle Miles grew in response to the
proliferation of motor vehicles in the Euclid era and, by definition, were long, narrow
strips of commercial development that provided very little, if any, access for pedestrians
or mass transit.

Prior to this, commercial growth had primarily occurred in the form of “business
nodes”—compact commercial areas located near transit stops that generally grew out in a
circular pattern usually no more than ½ of a mile wide. Under this scenario, most
commercial development was located within a walkable area—a much different

43 Id. at 388.
44 Id. Of course, the Euclid court’s vision of what constituted compatible land uses was amazingly myopic
as evidenced by its conclusion that, rather than complimenting detached residential units, “the apartment
house is a mere parasite.” Id. at 394. Clearly, if multi-family units were parasitic, then the idea of mixing
residential uses with office or commercial ones must have been near apocalyptic for the Euclid majority.
45 Lee R. Epstein, Where Yards are Wide: Have Land Use Planning and Law Gone Astray? 21 WM. &
46 Thomas W. Hanchett, U.S. Tax Policy and the Shopping-Center Boom of the 1950s and 1960’s, AM.
47 One commentator has concisely defined this new breed of auto-oriented shopping centers as:
a group of commercial establishments under a single ownership, planned, developed, and
managed as a single unit, with off-street parking provided, and related to the area it
serves in the size and type of its stores.
Meredith L. Clausen, Northgate Regional Shopping Center—Paradigm From the Provinces,
JSAH XLIII 144, 146 (May, 1984).
48 Hanchett, supra note 46, at 1088.
development model than the sprawling Miracle Mile shopping centers that almost exclusively catered to motor vehicles. And, because Miracle Miles were auto-centric, they could sell much more in volume since the purchaser could transport their wares home inside their spacious vehicle—as opposed to having to carry them on the streetcar.

However, while they encompassed larger tracts of suburban land than ever before, the Miracle Miles still did not beat downtown retail cores in terms of scope and variety. 49 That would soon change though with the advent of Regional Center Malls—massive commercial developments that could compete directly with downtowns in terms of both the number and the variety of retail options. 50 As one commentator has noted:

...[B]y combining the small local shopping center with at least one large branch department store, the regional center competed favorably with the downtown area, offering a full range of merchandise and services (everything for “one-stop shopping”), but with the added convenience of traffic-free access and ample free parking. 51

Built in 1922, commentators generally point to J.C. Nichols’ Country Club Plaza as the first shopping center in the United States. 52 However, unlike most Regional Center Malls, the Plaza incorporated both residential and retail units into its overall master plan. 53 This would prove to be the exception rather than the norm. 54

Indeed, when the Minneapolis-based Southdale Mall opened in 1956, it was not only the country’s first indoor mall, but also did not include any type of residential units. 55 Nor did other 1950s-era Regional Center Malls such as Northgate Mall in Seattle 56 or the Detroit area Northland Shopping Center. 57

Of course, that is not to say that a roofed shopping center automatically evidences commercial sprawl. In fact, covered or enclosed commercial gatherings have existed for hundreds of years in places such as Middle Eastern bazaars in Isfahan, Iran 58 and Istanbul, Turkey, 59 as well as the Oxford Covered Market in England. The distinction is that these examples were generally integrated into areas that included other land uses

49 Clausen, supra note 47, at 147
50 Id.
51 Id.
52 Hanchett, supra note 46, at 1089.
53 Id.
55 Id.
56 For a thorough analysis of Northgate’s origins, see Clausen, supra note 47, at 144-161.
59 For a detailed history of the covered Istanbul bazaar known as Kapaliçarsi, see http://archnet.org/library/sites/one-site.tcl?site_id=7441
such as residential units—eliminating the requirement that almost all vendors and purchasers travel long distances to reach these establishments.

Originally though, Regional Center Malls in the United States were slow to develop—even as motor vehicle ownership increased—for three primary reasons. First, constructing the infrastructure and buildings for these retail centers cost significantly more than developing the same land for residential use.60 Second, the increased upfront cost resulted in a slower return on investment than which a developer would normally realize in a residential development (where less capital was required on the front end).61 And, third, because of this slower return on investment, retail centers generally required the developer to treat the centers as a longer-term investment than a typical residential project.62

The result was that large retail centers did not immediately thrive as individual motor vehicle ownership increased.63 Instead, it was not until Congress made a key change to U.S. tax law that Regional Center Malls became the sprawl form of choice for many developers.

2. Residential Sprawl

In addition to inducing commercial sprawl, federal tax, transportation, and housing regulations have also induced residential sprawl.

Even though they did not mark its absolute beginning, the 1929 stock market crash and the following economic depression fostered an environment ripe for breeding sprawl.64 In particular, the federal government’s decision to pass laws and regulations designed to combat the depression by putting Americans to work actually facilitated a sprawl-conducive environment;65 a situation where “public policy and public spending...played an important part in creating incentives for suburbanization and sprawl.”66

These Depression era laws represented a significant change as it led the federal government into areas of land use and housing regulation that had traditionally been left to local and state governments. Specific examples of this reversed course included the Herbert Hoover-led Department of Commerce’s drafting of a national model building code in 1922, a national model zoning code in 1924, and a national model planning code in 1928. According to Hayden, through these efforts, “the federal government began to engage directly with housing as an important area of national policy.”67

60 Hanchett, supra note 46, at 1091.
61 Id.
62 Id.
63 Hanchett, supra note 46, at 1091.; “At the midpoint of the 1950s, fewer than two dozen regional shopping centers existed in all of the United States.” Id.
65 Id. at 355.
66 Id.
67 Hayden, supra note 15, at 121.
A significant example of this was the Federal Housing Administration’s attempts to address the housing crisis by adopting policies designed to spur residential development. As discussed later in greater detail, the FHA promulgated a series of regulations—and lobbied for a series of laws—that, when combined with the national model zoning act and its separation of land uses, facilitated an unprecedented wave of new residential construction that was separated from other non-residential land uses.

Unfortunately, little effort was made to determine whether the separated uses were compatible or not. Meaning that perfectly compatible uses (such as an architect living above her office or an accountant living behind his office) were generally prohibited in the same way that incompatible uses (such as workers living adjacent to noxious, heavy industry) were. Because of the collision of these sprawl-friendly federal policies, it soon would become financially impractical to promote the renovation of existing residential areas or even the mixture of residential uses with compatible non-residential ones.

The result, if not exactly anticipated then, would quickly become obvious: a systematic separation of land uses unlike previous development patterns in the United States or, for that matter, much of the rest of the world. As a result of this sprawling form of growth, “government[s] at every level struggled to provide adequate infrastructure—roads, water, sewer, schools, and parks—to accommodate the seemingly voracious demands of such rapid Greenfield development.”

Quite clearly, the perfect environment for sprawl had been set. The next section examines how federal tax policy became a key contributor to this problem.

III. The Federal Tax Laws that Facilitated Sprawl

In terms of inducing sprawl, two federal tax policies have played a prominent role in facilitating this type of unsustainable growth: the federal mortgage interest deduction and the federal accelerated depreciation deduction. The first served to exacerbate residential sprawl while the second increased commercial sprawl.

And, though neither policy expressly advocated a suburban sprawl, their effects directed such a pattern. Indeed, as one commentator has noted:

The federal tax code, in all its complexity, is heavily tilted toward new development and the consumption of open space. The tax code has historically subsidized upper middle class homeownership in the suburbs. It needs to put at least as much emphasis on promoting opportunities for

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68 See Frelich, supra note 1, at 186. 
69 Jackson, supra note 19, at 6-10. 
70 Callies, supra note 26, at 352. 
71 These two areas of tax policy strongly encouraged sprawl but were not the only federal tax regulations to do so. For a listing of other examples, see Hanchett, supra note 46, at 1093. and Epstein, supra note 45, at 355.
revitalization and stabilization of older communities. Federal tax policy needs to provide incentives—which are currently lacking--for middle-class and moderate-income households to become urban homeowners. 72

The following section examines how Congress facilitated sprawl through these two key tax deductions.

A. The History of the Accelerated Depreciation Deduction

Congress’ initial decision to permit businesses to deduct depreciation values from machinery and buildings—followed by its later decision to allow businesses to accelerate the rate at which they utilized this deduction—served as one of the major drivers of commercial sprawl. Interestingly, over the last 75 plus years, Congress has regularly expanded and restricted the scope of the accelerated depreciation deduction. Yet, through it all, commercial sprawl has thrived in a tax environment that incentivized the construction of new buildings designed for short shelf lives.

1. The 1913 & 1916 Tax Laws

When Congress passed the federal income tax in 1913, the original legislation included a provision that allowed businesses a tax deduction for the depreciation of certain equipment and buildings.73 The rationale was that such a deduction would encourage businesses to set aside money saved by the deduction for maintaining and later replacing the machinery or factories as they wore out.74 Essentially, the deduction sought to advance a policy of long-term infrastructure planning by companies.

By 1916, Congress first coined this deduction as one for “depreciation” when it provided a deduction for a “reasonable allowance of depreciation.”75 However, rather than defining even loose parameters of what constituted “reasonable”, Congress allowed businesses to define that term.76 Predictably, companies adopted very broad definitions of what constituted a “reasonable allowance” as the broader the term, the more that could be deducted.

The result was that by 1931 the total amount of depreciation deductions combined to exceed more than the total amount taxable income for all U.S. corporations.77 And, worse still, while the depreciation deduction was premised on the idea of allowing companies to save the deducted monies for future machinery and building maintenance, it did not actually require companies to do so.78 Meaning that, the money that companies saved from the depreciation deduction could be used for any virtually any reason.

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72 Moe, supra note 2.
73 Revenue Act of 1913, ch. 16, 38 Stat. 116, (1913)
74 Hanchett, supra note 46, at 1092.
76 Hanchett, supra note 46, at 1093.
77 Hanchett, supra note 46, at 1092.
78 Hanchett, supra note 46, at 1093; “No law required that the money deducted actually be held for eventual building replacement.” Id.
Clearly, the depreciation deduction had expanded well beyond its reasonably anticipated scope.

2. The 1934 Tax Regulations

In response to the expansive definitions used by corporations as to what constituted a “reasonable allowance”, the United States Treasury Department promulgated regulations that set a specific uniform method for calculating depreciation expenses. Known as the “straight line method”, one of the key changes was that the regulation set the useful life of most buildings at 40 years.

This meant that each year a building owner could deduct $1/40^{th}$ of the original cost of the building for depreciation. The immediate effect of this change was to significantly reduce some of the expansive amounts that corporations had been deducting from their taxes for depreciation.

3. The 1954 Tax Law

Unfortunately, by the early 1950s, the country had begun to experience a mild recession following the post-World War II boom. This downturn increased pressure on Congress to pass new laws that would encourage business growth. One such law was the 1954 tax act.

The 1954 act served to reinvigorate the depreciation tax deduction by adopting two new methods for calculating depreciation: the Double Declining Balance Depreciation and the Sum of the Years Depreciation. Both new methods essentially allowed building owners to increase their depreciation deductions by reducing the 40-year useful life of the structure. In other words, the new methods allowed businesses to accelerate the amount that they deducted each year by increasing the percentage of the original cost that was deducted.

Thus, the concept of Accelerated Depreciation was born. As discussed in the next section, this would quickly lead to a massive growth in commercial sprawl.

4. The Tax Act of 1969

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79 Hanchett, supra note 46, at 1092.
80 Id.
81 Id. at 1092-93.
82 Id. at 1093.
83 Id.
86 Hanchett, supra note 46, at 1095.
The introduction of Accelerated Depreciation quickly led to businesses increasing their use of the deduction. And, once again, Congress and the Treasury Department found themselves in search of a way to balance the pro-business growth features of the deduction with its growing effect on overall U.S. federal income tax receipts. In 1969, Congress made a measured move to reign in Accelerated Depreciation by reducing the 200% declining balance figure to 150% for new construction while requiring all purchasers of used buildings to revert back to the straight line method. A policy decision that provided new construction with a tax advantage greater than renovated construction.

5. The 1981 Tax Law

While the 1969 change did provide some control over accelerated depreciation, it was not long until the country faced another recession—and with it renewed efforts to pass legislation that spurred business growth. One such change was Congress’ decision to replace all existing methods for calculating depreciation with a new formula known as the Accelerated Cost Recovery System (ACRS). A major component of this new system was the reduction of a building’s useful life from 40 years to 15 years—a change that ended up compacting—and thus further accelerating—the depreciation time frame. Indeed, the actual result of ACRS was that a building owner could deduct over 30% of a building’s original cost within its first three years.

Ultimately, this became one of the largest-ever federal drivers of commercial sprawl. An ominous trend leading toward a culture of sprawl.

B. How the Accelerated Depreciation Deduction Has Induced Sprawl

Following its adoption in 1954, real estate developers quickly recognized the business benefits offered by the accelerated depreciation deduction. Indeed, within 5 years, 97.9% of all real estate partnerships had switched to this method of calculating depreciation.

The immediate result was that the accelerated depreciation deduction provoked a large wave of new suburban shopping centers. For example, the total amount of new Regional Center Mall square footage opened in second half of 1956 exceeded the total amount of square footage for all Regional Center Malls opened prior to 1956. Moreover, prior to Congress’ 1954 adoption of accelerated depreciation, the average annual shopping center

87 Id.
88 Id. at 1105.
89 Brazell, supra note 85, at 20.
91 Id. at 8.
92 Hanchett, supra note 46, at 1106.
93 Id. at 1095.
94 Id. at 1097.
construction equaled six million square feet—a number that leaped to 30 million per year by beginning of 1956.95

Interestingly, there is some evidence that indicates that Congress intended accelerated depreciation to only apply to machinery and factories rather than built structures.96 However, as drafted, the legislation ended up applying to most commercial buildings—with a key caveat being that it only applied to new commercial construction.97

The effect of this limitation was to incentivize the construction of new commercial buildings as opposed to the renovation of existing ones:

Investors seeking the best return on their dollars now looked away from established downtowns, where vacant land was scarce and new construction difficult. Instead, they rushed to put their money into projects at the suburban fringe—especially into shopping centers.98

Not surprisingly, the rapidly increasing use of the accelerated depreciation deduction continued into the 1960s. Indeed, by 1967, overall accelerated depreciation deductions for buildings reached $750 million.99 Even more amazing was that by 1970, the amount deducted by taxpayers under the accelerated depreciation deduction equaled one-quarter of the entire annual federal budget deficit.100

All of this led to a dramatic shift in where new shopping centers were located. As one commentator noted, “[t]hrough the mid-1950s, developers had sought locations within growing suburban areas. Now [post 1950s] shopping centers began appearing in the cornfields beyond the edge of existing development.”101

In other words, federal tax regulations had fundamentally altered the location and scope of commercial development in the United States—away from the mixture of uses in existing city centers and main streets and toward single use sprawling structures on the undeveloped fringe

C. The History of the Home Mortgage Interest Deduction

When it passed the original 1913 federal income tax, Congress provided a tax deduction for interest paid by consumers.102 This included interest paid on home mortgages.103

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95 Id. at 1098.
96 Hanchett, supra note 46, at 1094-1095.
97 Id. at 1097.
98 Id. at 1097.
99 Id. at 1103.
100 Id. at 1103.
101 Hanchett, supra note 46, at 1098 (emphasis included in the original).
Significantly though, it appears that Congress did not specifically intend for the deduction to serve as an inducement to encourage home ownership. Indeed, according to one commentator, “[Congress] certainly wasn’t thinking of the interest deduction as a stepping-stone to middle-class homeownership because the tax excluded the first $3,000 of income”—a key point as only one percent of the population of the time earned more than that. And even more persuasive is the fact that most homeowners of the era (except for farmers) did not have mortgages on their homes. Yet, even if Congress’ intent was not to encourage people to purchase homes, the effect was still a homeownership subsidy—an important point as demonstrated later in this section.

Indeed, rather than subsidizing homeownership, Congress’ goal in allowing the interest deduction was designed to aid business interests. In particular, Congress sought to facilitate business growth by allowing the deduction of interest payments from taxable income. However, over time, Congress became concerned that the interest payment deduction “provided an incentive to invest in consumer durables rather than assets which produce taxable income and, therefore, an incentive to consume rather than save.” Therefore, in passing the Tax Reform Act of 1986, Congress eliminated nearly all personal interest deductions with one major exception being the mortgage deduction.

Obviously, by allowing homeowners to continue to deduct most mortgage-related interest payments, but not allowing renters to deduct a proportional amount of rent payments, Congress continued to implicitly favor homeownership over renting. Politically, this should have hardly been unexpected though. Indeed, in debating the Tax Reform Act of 1986, Senator Phil Gramm succinctly summarized the reality of the mortgage interest deduction:

There is no basic principle in tax law that is more supported by the American people than the principle that you ought to be able to deduct interest on your home from your taxes. We have taken a position that home ownership is something that we want to promote, that that is an

103 26 U.S.C.A. § 163(h) (2000); Congress passed the first income tax package in 1894, but the Supreme Court held it unconstitutional. See Roger Lowenstein, Who Needs the Mortgage Interest Deduction? N.Y. TIMES, March 5, 2006.
104 Mann, supra note 102, at 1352.
105 Id.
106 Id.
107 Id. (explaining that even if not specifically intended, the “likely effect of the interest deduction…was to encourage home ownership at least for those taxpayers who benefit from the deduction.”).
108 Lowenstein, supra note 103.
109 Id.
112 John Y. Taggart, Denial of the Personal Interest Deduction, 41 TAX LAWYER 195 (1988).
objective of our tax policy that is strongly supported, and it is reflected in this bill.\textsuperscript{114}

In light of this, it was hardly be surprising that, when eliminating most other interest payment deductions, Congress excluded the home mortgage deduction. Interestingly though, they preserved the deduction despite lobbying by the Treasury Department to the contrary.\textsuperscript{115} Indeed, Congress would ultimately make only minor changes to the mortgage interest deduction, such as limiting how many homes that a taxpayer could include in the deduction.\textsuperscript{116} The end result is that Congress continued to adhere to the policy of promoting new homeownership through the mortgage interest deduction. After all, as one commentator rhetorically asked, is an “elected official really going to risk fooling with the mortgage deduction?”\textsuperscript{117}

As the next section demonstrates, the answer is certainly no.

**D. How the Mortgage Interest Deduction Has Induced Sprawl**

The financial impact of the mortgage interest deduction can be measured in the billions.\textsuperscript{118} And, while the deduction has been justified on grounds that it promotes homeownership, the reality is this deduction is not widely available to most potential homeowners.\textsuperscript{119}

Research demonstrates that the majority of homeowners who benefit from this deduction have incomes of at least $100,000—yet only eight percent of homeowners fall within this income bracket.\textsuperscript{120} Meaning that significantly more wealthy than unwealthy taxpayers are able to take advantage of this deduction.\textsuperscript{121} This is important because these are the very homeowners who are most likely to be able to afford large, new homes on the suburban fringes of the city.

In particular, by allowing homeowners to deduct interest and property taxes, the federal tax code lowers the tax liability for homeowners.\textsuperscript{122} Indeed, one commentator has noted that federal tax subsidies in favor of homeowners exceed $40 billion dollars per year which works out to roughly $2,800 annually for each homeowner with a mortgage.\textsuperscript{123} These tax subsidies prioritize homeownership over renting as the same deductions are not available to renters.\textsuperscript{124}
And, for a taxpayer to fully realize the benefits of the mortgage interest deduction, the taxpayer is, at least implicitly, incentivized to purchase new construction:

To take full advantage of the deduction, higher incomes require higher home mortgages (and higher housing costs). This deduction encourages sprawl by providing the means to protect more income by buying more home.125

The problem with this scenario is that most new home construction ends up occurring on the suburban and exurban fringes of a city where land is cheapest—and where infrastructure must often be extended in order to service the development.126 The result is a situation where the individual homeowner realizes an increased tax benefit (because the more expensive home generates more interest to deduct), but the municipality actually incurs greater costs because of the new schools, fire stations, roads, and the like that must be built in order to service this growth.

One important step toward halting the proliferation of sprawl would be for Congress to rework or even eliminate the mortgage interest deduction. In fact, historical data indicates that doing so would not negatively affect homeownership.127 This means that eliminating this deduction would help deter sprawl without harming the national housing market. Or as one commentator aptly summarized the issue: “eliminating the home mortgage interest deduction would reduce urban sprawl by reducing incentives to develop rural land.”128

IV. The Federal Transportation Laws that Made Sprawl

Similar to the tax laws that induced sprawl, federal transportation policy has also instigated unsustainable growth patterns.129 Indeed, federal transportation laws have been one of the largest regulatory drivers of sprawl, with two specific areas—the actual road building legislation and federal gas tax regulations—generating much of this problem.130 This section analyzes how the federal government has cemented a system of sprawl through road building laws and the federal gas tax.

125 Frelich, supra note 1, at 187.
126 Knaap, Supra note 5.
127 Mann, supra note 102, at 1391.
128 Id. at 1391-92.
129 See Oliver A. Pollard, Smart Growth and Sustainable Transportation: Can We Get There from Here?, 29 FORDHAM URB. L.J. 1529, 1531 (2002) (“[f]ederal, state, and local transportation policies have fueled auto-dependence and sprawl.”)
130 For an overview of several of the leading harms caused by unsustainable transportation policies, see Id. at 1538 (discussing, in particular, environmental and economic harms resulting from sprawl-conducive regulations).
A. How Federal Road Building Laws Have Induced Sprawl

Unlike fixed rail transportation, non-fixed rail transportation (primarily motor vehicles) provides a traveler with much more flexibility.\textsuperscript{131} For example, when traveling by train, the traveler is generally subject to the train’s schedule, whereas with a motor vehicle, the traveler can basically elect to travel whenever they decide to get in their car and leave.

Similarly, with fixed rail transportation, a traveler’s destination is limited to where the tracks go, whereas with a motor vehicle, the traveler has significantly more choices since more roads exist than fixed rail tracks.\textsuperscript{132} Therefore, because non-fixed rail represents a more flexible option for the traveler than fixed rail, it certainly should not have been a surprise that, as motor vehicles became more widely available in the early 20\textsuperscript{th} century, the federal government began to enact laws and regulations that—sometimes directly and sometimes indirectly—promoted (and in some cases even subsidized) a massive expansion of non-fixed rail infrastructure in the United States.

One of the biggest pieces of the non-fixed rail infrastructure is the federal road system that is composed of both the federal interstate system and other federal highways.\textsuperscript{133} Each year, the federal government spends billions of dollars in road construction on this system.\textsuperscript{134} However, road building has not always been a federal function. In fact, during the 1800s, local governments were primarily responsible for the construction of

\textsuperscript{131} For a general discussion of the advantages to automobile travel (as well as the disadvantages), \textit{See James Kushner, The Post-Automobile City}, 31-66 (Carolina Academic Press 2004).

\textsuperscript{132} The United States government estimates that there are 3.9 million miles of public roads in the country and 120,000 miles of “major railroads”. \textit{See} http://nationalatlas.gov/transportation.html. For a comparison of road mileage and rail mileage in select urban areas of the United States, \textit{see} http://www.publicpurpose.com/tfb-usuroadrail.htm

\textsuperscript{133} \textit{See} http://www.fhwa.dot.gov/whoweare/whoweare.htm.

\textsuperscript{134} To see the allocated federal highway money for Fiscal Year 2007, \textit{see} http://www.fhwa.dot.gov/safetealu/fundtables.htm
vehicular thoroughfares.\textsuperscript{135} Indeed, in 1916, when considering adoption of the nation’s first highway bill, Congress noted that, “[p]rimarily roads are local concerns and jurisdiction over them belongs to the States and local authorities. This jurisdiction should never be disturbed by the General Government.”\textsuperscript{136}

In fact, the debate regarding whether the federal government should expend monies for road-building dates back to the country’s earliest days and involved some of the nation’s most famous leaders like Thomas Jefferson and James Madison.\textsuperscript{137} For example, as his final presidential act, Madison vetoed a bill that would have essentially empowered federal road-building:

\begin{quote}
I am not unaware of the great importance of roads…and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it can not be deduced from any part of it without an inadmissible latitude of construction and reliance on insufficient precedents…I have no option but to withhold my signature from it…\textsuperscript{138}
\end{quote}

However, during the ensuing century, the prevailing view became that Congress did indeed maintain the power to fund road-building.\textsuperscript{139} Ultimately, as manufacturers began to mass produce motor vehicles in the early 1900s, a gradual shift away from fixed-rail as the primary form of transportation toward a greater emphasis on motor vehicles resulted.\textsuperscript{140} And, with this shift came the need for a more extensive thoroughfare network to handle the increased non-fixed rail traffic. This soon led to the federal government subsidizing an auto-dominant national transportation policy:

\begin{quote}
[t]hese subsidies make it cheaper for people to live further from where they work, shop, and engage in other activities, which spurs development on the fringes of existing communities and necessitates increased driving distances and frequency.\textsuperscript{141}
\end{quote}

Indeed, one commentator has noted the staggering extent of these subsidies: an annual total of $257 billion in vehicular tax subsidies that works out to each taxpayer receiving a subsidy of roughly $2,000 per year.\textsuperscript{142} In other words, federal regulations are fostering a major investment in transportation policies that promote sprawl. To see how we got to this point, the following sections analyze several concrete examples of how federal transportation laws have contributed to the proliferation of American sprawl.

\begin{footnotes}
\textsuperscript{135} See John Lambert, Control, Supervision & Management Issues, 12541 NBI-CLE 97, 99-101.
\textsuperscript{136} House Report for H.R. 7617, 64th Cong. at 4 (1st Sess. 1916).
\textsuperscript{137} See Lambert, supra note 135, at 99-101.
\textsuperscript{138} Id. at 102.
\textsuperscript{139} Id. at 102-105.
\textsuperscript{141} Pollard, supra note 129, at 1533.
\textsuperscript{142} Kushner, supra note 123, at 861.
\end{footnotes}
1. How the Federal-Aid Road Act of 1916 Induced Sprawl

As arguably the first federal transportation law to adopt an anti-city slant, the 1916 Federal-Aid Road Act played an important role in the facilitation of sprawl growth patterns in this country. Resulting from a series of policy resolutions that originated with the first American Road Congress, the 1916 Act incorporated several provisions that laid the groundwork for unsustainable growth patterns.

For example, the act utilized a decidedly anti-urban funding formula. This included limiting federal aid to $10,000 per mile. While that provision might not appear particularly anti-urban on its face, the effect of the provision was to enable much more rural road expenditures since land was cheaper in rural areas than urban ones. Similarly, the act only permitted federal road aid grants in towns with a population of greater than 2,500 residents when the average distance between houses was more than 200 feet. This essentially prohibited road monies from being spent in densely populated urban areas.

Furthermore, the 1916 Act used a funding formula that calculated an area’s total number of roads in deciding how much money should be allocated to a specific area. The theory of the formula was that areas with more roads would need more money for maintenance. However, inexplicably, urban streets were excluded when making this calculation. This resulted in urban areas receiving significantly less funding despite the fact that they had significantly more roads used by significantly more citizens.

Each of these provisions from the 1916 Act would set the tone for decades of federal spending on rural highways that facilitated massive suburban and exurban growth while, at the same time, providing only the most minimal funding to urban street networks and alternative forms of transit.

2. How the Federal-Aid Highway Act of 1921 Induced Sprawl

In 1921, Congress revisited the issue of federal highway funding when it passed the Federal-Aid Highway Act of 1921. This act classified roads as either “primary” interstate routes or “secondary” intercounty routes—with the act apportioning 60% of overall funding to primary routes and 40% to secondary routes. Significantly, the act failed to allocate any of the funding to intra-urban, or “city”, streets.

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145 Id. at 22
146 Id.
147 Id.
148 Id.
149 Gutfreund, supra note 144, at 22.
151 Gutfreund, supra note 144, at 25.
152 Id. at 26.
One commentator characterized the urban inequity of this approach as “a system of transfer payments, from urbanized regions to rural regions, and from all taxpayers to those who drove automobiles.” 153 In other words, most benefits from the large amounts of federal road funds were realized by a small segment of the overall population. This was evidenced by the fact that, as of 1921, the 9 million motor vehicles owners in the United States paid only 12% of overall highway costs. 154

Thus, coupled with the 1916 act, the 1921 act further entrenched a federal road policy that prioritized rural roads over urban ones—often to the point of excluding urban streets from any federal funding at all. As one commentator plainly noted “[t]he original 1916 and 1921 highway legislation had been explicit in rendering all roads in urban areas ineligible for federal aid.” 155

3. How the Federal-Aid Highway Acts of 1934 and 1944 Induced Sprawl

The anti-urban approach toward federal road funding continued into the 1930s and 1940s, albeit in a somewhat different way. Whereas the 1916 and 1921 acts almost completely barred urban road funding, the 1934 Highway Act and the 1944 Highway Act 156 did not include such an express prohibition. Instead, the federal government assigned the primary responsibility for allocating federal road funds to state highway departments. 157

The 1934 act did represent an incremental improvement as Congress allowed, but did not require states to allocate federal road funds toward urban projects. 158 And, while the 1944 act did establish a minimum threshold for urban road funding, the percentage was much less than that for non-urban areas. Indeed, from a pool of $1.5 billion in total federal road funds, the 1944 act allocated only 25 percent to urban areas. 159

Yet, this figure was deceiving as the urban money was allocated to highways that cut through urban areas, instead of enhancing the city street network itself. Worse still, the 1944 act’s definition of “urban” included any city over 5,000 residents. 160 This overly broad definition served to further dilute the total urban allocation that already was significantly lower than non-urban allocations. It did so by forcing major metropolitan areas to share funds with very small towns of less than 10,000 residents.

Thus, while the highway acts of the 1930s and 1940s did permit states to use federal road funds in urban areas, the acts nevertheless still fostered sprawl by utilizing broad

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153 Id. at 27.
154 Id.
157 Gary Schwartz, supra note 155, at 176.
158 Id.
159 Gutfreund, supra note 144, at 47.
160 Gutfreund, supra note 144, at 48. This amounted to a “misappropriation of the ‘urban’ moniker.” Id.
definitions of what constituted an urban area and by apportioning a significantly smaller amount of the overall federal funds to those areas.


Of all the federal transportation laws that have facilitated sprawl, researchers have cited the Federal Highway Act of 1956 as the most prolific in doing so. Indeed, by initiating plans to create a 41,000 mile national interstate network, the Act birthed a system where single vehicle usage was prioritized over mass transit—both in terms of scope and funding. As one commentator has noted, “[m]ore than any other single measure, the 1956 act created the decentralized, automobile-dependent metropolis we know today.”

How did the 1956 Highway Act do such a thing?

Primarily, through the Highway Trust Fund—a mechanism created by sister legislation to the 1956 act. The fund, formally established as part of the Hale Boggs’ Highway Revenue Act of 1956, served as the depository for revenues resulting from a series of taxes designed to fund the massive interstate highway system. The proposal called for the receipts from these taxes to be deposited into the fund and then be re-distributed as federal road funding. Yet, even though the entity was funded by a variety of different federal user fees, it prohibited those funds from being used on non-highway construction projects—like mass transit.

By passing the 1956 act, the federal government consummated its “explicit objective...to make highway transportation as close to free as possible.” This, despite the fact that automobile use as a whole costs “every man, woman and child in America over four thousand dollars per year.”

5. How Subsequent Highway Acts Have Failed to Effectively Confront Sprawl

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163 Pollard, supra note 129, at 1533 (“During this time of unprecedented road-building, public transit received comparatively meager federal funding. This further skewed transportation decision making in favor of highway construction.”) Id.
165 See Lambert, supra note 135, at 112.
167 See Lambert, supra note 135, at 112.
168 Gutfreund, supra note 144, at 55.
170 Liam A. McCann, Paving Over Efforts to Stem Urban Sprawl and Reduce America’s Dependence on the Automobile, 23 WM. & MARY ENVTL. & POL’Y REV. 857, 880 (1999).
Fortunately though, Congress has recognized the unsustainable effects resulting from federal transportation regulations and begun to take some preliminary steps toward addressing the problem. For example, in 1991 Congress passed the Intermodal Surface Transportation Efficiency Act ("ISTEA") which provided:

It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy-efficient manner.

One way that the 1991 Act—as well as the Transportation Equity Act for the 21st Century which reauthorized the ISTEA in 1998—did this was to allow some federal transportation funds that had previously been restricted to highway construction to now also be used for alternative transportation options. Indeed, the 1998 Act actually required that certain levels of federal transportation monies be allocated to non-automobile transit projects. And, while these acts certainly did not level the playing field, they did represent an initial shift in transportation policy away from more than 75 years of sprawl-conducive regulations by allowing for federal monies to be spent on the construction of mass transit projects such as light rail and bus rapid transit.

Still though, when considered as a whole, federal transportation funding remains a key driver in the spread of unsustainable land development patterns in this country. In fact, the idea that 1991 ISTEA and 1998 TEA-21 legislation effectively confront sprawl is quite inaccurate.

Take for instance, Kansas City, Missouri. This metropolitan area already maintains the most miles of highway per capita in the country. Yet, TEA-21 authorized more than $600 million in highway funds than transit funds for the area. In fact, in overall dollars, the legislation favored highway funding over transit funding by a five to one

171 Pollard, supra note 129, at 1540-41.
173 Id.
175 Pollard, supra note 129, at 1541.
176 Id. at 1541-42.
177 Significantly though, at least one commentator has noted that even this change toward funding commuter rail projects could facilitate unsustainable growth patterns “by allowing the marketing and development of sprawling subdivisions beyond the edge cities.” Kushner, supra note 123, at 862.
178 It is clear that Congress has moved toward a more sustainable national transportation policy in recent federal highway acts. See 49 U.S.C.A §§ 5501-5506 (2000). However, the primary goal of this article is an examination of the historical laws and regulations that provoked sprawl in the first place. Therefore, the article has not extensively analyzed recent trends other than to note that, while better, certainly continue to prioritize an auto-centric strategy.
179 McCann, supra note 170, at 875.
180 Id.
The efforts of these acts to promote a transit alternative are, in the big picture, little more than lip service when it comes to funding.

Indeed, when coupled with the federal gas tax policies discussed in the next section, it is easy to see that—notwithstanding some of the aforementioned changes—the overall effect of federal transportation laws remains extremely sprawl-oriented.

### B. How Federal Gas Tax Laws Have Induced Sprawl

While a significant source of sprawl, road building regulations are certainly not the only federal transportation laws that have driven sprawl. Indeed, federal gas tax laws have also played a significant role in facilitating unsustainable growth. This section examines how Congress has fueled sprawl through federal gas tax policy.

#### 1. A Brief History of Gas Taxes

During the early years of the 20th century, motor vehicle ownership within the United States grew at an astounding rate. In 1905 there were approximately 78,000 motor vehicle registrations in the United States. By 1921, this number had soared to more than 1.5 million vehicle registrations—a number that increased to over 23 million registrations by the end of the decade.

These huge increases in car ownership necessitated a corresponding growth in roads on which to drive these vehicles. Yet, while consumers paid for the cars, it was generally left to the government to pay for public roads.

In 1891, New Jersey became the first state to fund a program that contributed government money to road building. Within the next several decades, Congress followed suit and began to spend federal money on road-building under a system where it would match state expenditures on a dollar for dollar basis—an approach that resulted in Congress authorizing roughly 75 million dollars over a five-year period beginning in 1916. Not surprisingly, in order to capitalize on the newly available federal road funds, by 1917 every state in the country had created a governmental body charged with road-building.

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181 Id. at 881-882.
183 Id.
185 Rose, supra note 182, at 8. In the case of New Jersey, the state initially agreed to pay one-third of the costs for county road building. Id.
186 Id.
187 Id.
To meet the increased fiscal demand that these new roads required, the government looked to a new type of user tax—the gas tax. Prior to 1920, most states paid for road-building from existing revenue sources such as property taxes. Yet, as growth in vehicle ownership exploded around this time, the large number of new roads required to handle this growth could not be paid for by property taxes without increasing those taxes a great deal. So, rather than dramatically raise property taxes, states turned to a nascent tax on gasoline purchases to finance many of these new roads.

Several of the early states to do so (such as Oregon, New Mexico, and Colorado) passed laws creating a penny per gallon gas tax as early as 1919. By the end of the 1920s, every state in the country had adopted a gas tax of some amount. Then, in 1932, the federal government introduced a national gas tax.

One striking result from these new gas taxes was the fact that, during the 1920s—the same decade during which these taxes came into vogue—costs related to road building and maintenance were the second highest government expenditure of any kind; an expenditure which, between 1921 and 1940, had exceeded a total of 34 billion dollars by all levels of government. With these types of dollars at play, it was hardly surprising then that, in 1939, the United States Department of Agriculture’s Bureau of Public Roads introduced one of the first ever initiatives to create a nationwide road network—one that would cover roughly 30,000 miles.

Originally, the federal government intended that the national gas tax would be a temporary measure used to meet immediate transportation needs and balance the budget. However, rather than allowing the gas tax to lapse, Congress kept it intact. In addition, originally the receipts from the tax were deposited into the general budget fund with Congress generally having the discretion to appropriate the receipts for non-road building purposes.

Yet, over time, interest groups strongly opposed any efforts to allocate gas tax revenues to non-highway construction projects. These efforts prompted legislation such as the Hayden-Cartwright Act of 1934 that expressly reduced federal road money to states that utilized gas tax revenue for non-highway construction projects. Then, in 1956, the

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188 Id. at 4.
189 Id.
190 Rose, supra note 182, at 4. In 1932, the federal government also created a penny per gallon gas tax; however, unlike most of the states, revenue from this tax was not used to pay for new roads but, rather, directed toward the general receipts. Id.
191 Robert Puentes & Ryan Prince, Fueling Transportation Finance: A Primer on the Gas Tax, BROOKINGS INST. CENTER ON URB. METRO. POL’Y 3 (Mar. 2003).
192 Id.
193 Id.
194 Puentes & Prince, supra note 191, at 3.
195 Id.
196 Id.
197 Gutfreund, supra note 144, at 32.
198 Id.
Federal-Aid Highway Act and Highway Revenue Act required that gas tax receipts almost always be earmarked for roadway building and maintenance expenses.\textsuperscript{199} Notably though, this earmark requirement did not provide that gas tax receipts could be used for transportation methods—such as mass transit—that fell outside the road building and maintenance category. The result of this omission would end up being a major facilitating factor in the spread of sprawl.

2. \textbf{How the Federal Gas Tax Facilitates Sprawl}

Unlike several of the other federal laws that have driven sprawl, the unsustainable effect of the federal gas tax does not relate to the actual existence of the tax. Indeed, a gas tax can be a useful tool in combating unsustainable growth patterns. This occurs when a gas tax is high enough that it makes long commutes from sprawling suburbs and exurbs financially unfeasible for the average citizen.\textsuperscript{200} Thus, increasing the federal gas tax would likely deter sprawl by making lengthy highway commutes—which are the lifeblood of unsustainable growth—a fiscally impossible option for many Americans.

Yet, the sprawl inducing effect of the federal gas tax is not merely that it is so artificially low so as to not reflect the true cost of the suburban sprawl it facilitates. Rather, the true way in which the gas tax drives sprawl is in how the federal government appropriates the tax receipts. In other words, the sprawl driver in this instance is not so much the actual levying of gas taxes but how the government earmarks the receipts.

As noted above, federal law earmarks gas tax almost exclusively to new road construction. Doing so essentially constitutes a massive federal subsidy toward highway building—a subsidy which allows highway building to proceed under a fiscal model where it does not come close to paying for itself. Ironically, this is exactly the situation for which many criticize mass rail transit—that is, it requires a federal subsidy to stay in business.\textsuperscript{201}

For instance, one commentator argues that:

\begin{quote}
Since 1972 Amtrak has received more than $13 billion of federal subsidies. Twenty-five years later, Amtrak appears no closer to financial independence than the day taxpayer assistance began. Worse, Amtrak has no apparent plan to become self-sufficient. In fact, it is now pressing for a half-cent of the federal gasoline tax in order to have a permanent umbilical cord to the federal treasury.\textsuperscript{202}
\end{quote}

\textsuperscript{199} Puentes & Prince, \textit{supra} note 191, at 3.  
\textsuperscript{200} \textit{See generally} ANDRES DUANY, ELIZABETH PLATER-ZYBERK, & JEFF SPECK, \textit{Suburban Nation}, (N. Point Press 2000)  
\textsuperscript{201} Stephen Moore, \textit{Amtrak Subsidies: This is no Way to Run a Railroad}, CATO INST. (May 22, 1997), \textit{available at} http://www.cato.org/dailys/5-22-97.html.  
\textsuperscript{202} \textit{Id.}
What the commentator omits is that exactly the same thing can be said about federal highways. Indeed, the Amtrak subsidy critique fails to acknowledge that the federal highway system—the roadway system most often connecting a city center to its suburban and exurban sprawl—receives annual funding in excess $250 million dollars per year.203

This essentially amounts to a massive subsidy as not all car owners utilize the federal highway system to the same degree—with some not using it at all. In fact, those who live in suburban outreaches often use the system significantly more than others that do not. Yet, all Americans pay the same federal gas tax regardless of whether they use the federal highway system. Meaning that, those who drive locally pay the same gas tax rate as those who use the massive interstate system of spurs, bypasses, and highways.

In addition, the highway-only earmark for the federal gas tax results in a complete under funding of mass transit, making it almost financially impossible for mass transit to serve as a viable option to highway building, despite the fact that mass transit can operate more efficiently in some situations (for example, one commentator has noted that one track of fixed rail can transport as many people as fifteen highway lanes204).

The federal government approach of earmarking gas tax receipts for road building and maintenance makes it impossible for transit to invest in the infrastructure necessary to present a viable alternative to car travel. After all, while the federal government invested upwards of $182 billion dollars to create the national interstate system, no such comparable investment ever occurred for passenger transit infrastructure.

This is why one report has proposed that the federal government address unsustainable growth patterns by allowing “gas tax revenues to be spent on a balanced variety of transportation modes and projects.”205 A very important step as, “[r]estricting the available resources to roads only inhibits a balanced network by greatly limiting the ability of transit agencies and others to pursue sufficient funding.”206

Another anti-urban aspect of the federal gas tax involves how it inequitably allocates the distribution of tax receipts. In particular, statistics demonstrate that urban areas contribute much more toward the gas tax than the amount that they receive from its allocation.207 Indeed, according to one report:

Taxpayers in an estimated 158 metropolitan areas received 90 cents or less for each dollar they paid in gas taxes. Some 104 metro areas, including Dallas, Orlando, Tucson and New Orleans, received 75 cents or less; sixty-nine metro areas got back less than two thirds of what their drivers paid in gas taxes.

203 Kushner, supra note 131, at 12.
205 Puentes & Prince, supra note 191, at 14.
206 Id.
The result of this funding shortfall is increased traffic congestion, fewer transit options, and more sprawl in outlying areas that is paid for by the suburban drivers who are increasingly stuck in traffic in and around our nation’s cities.  

Finally, while Congress’ 1982 passage of the Surface Transportation Act did require that some federal gas tax receipts be placed into a Mass Transit Account, the amount—only 2.86 cents of the overall 18.4 cent tax—remains significantly less than the 15.44 cents apportioned to the highway fund. As a result, the federal gas tax continues to instigate sprawl by earmarking over 80% of the tax receipts toward the federal highways that facilitate unsustainable suburban and exurban growth patterns.

A dead-end solution when it comes to addressing sprawl.

V. The Federal Housing Laws that Made Sprawl

So far, we have examined how the United States government has facilitated sprawl through federal tax and transportation policy. However, a survey of the laws that made sprawl would not be complete without considering how federal housing laws and regulations have historically contributed to unsustainable growth patterns.

In 1949, the average new home was roughly 950 square feet. By 1999, that number had grown to over 2,000 square feet, despite the fact that the average household size during that time decreased from 3.37 people to 2.62 people. In other words, our homes have grown while our families have shrunk.

One of the main factors in this incongruous result has been a series of federal housing laws and programs that prioritized newly construction residential development ahead of renovating existing housing stock. The leading force behind this effort has been the Federal Housing Administration whose loan programs have promoted new construction while providing very little for efforts to renovate and repair existing houses. In addition, FHA regulations made it much less expensive to borrow money for new, detached housing than for multi-family, attached units or units that mixed residential uses with other compatible business or office uses. As a result, “families opted to leave their older homes within the central city and move to new homes in the suburbs.”

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208 Id.
209 Puentes & Prince, supra note 191, at 4.
211 Id.
212 Id.
214 Id.
215 Id.
The following section examines several of the federal policies that instigated this residential exodus to the suburban fringes.

A. Early Federal Regulations that Induced Sprawl

In September 1931, President Herbert Hoover announced the President's Conference on Home Building and Home Ownership.\(^{216}\) Charged with “developing the facts and a better understanding of the questions involved and inspiring better organization and the removal of influences which seriously limit the spread of homeownership, both town and country,” the conference would convene a group of over 1000 participants to consider a national strategy for housing.\(^{217}\)

Unfortunately, the result of this initial federal foray into housing policy resulted in a conference report that foreshadowed governmental favoritism toward new homes on the suburban (if not even rural) fringes.\(^{218}\) It did so through conclusions such as the claim that “[m]ore industries should move to the country, where workers may have better home surroundings” and that “[r]ural homes can be made as beautiful and convenient as city homes.”\(^{219}\)

\(^{216}\) For the text of the actual announcement, see http://www.presidency.ucsb.edu/ws/print.php?pid=22804.
\(^{218}\) \textit{Id.} In particular, the conference concluded that “[t]he next great lift in elevating the living conditions of the American family must come from a concerted and nationwide movement to provide new and better homes” \textit{Id.}
\(^{219}\) \textit{Id.} To be fair though, while the committee’s conclusions leaned decidedly toward new suburban single use construction, it did provide some recognition of the value of the existing built environment: “Old homes should be modernized for the sake of health and convenience.” \textit{Id.}
On the heels of the 1931 Conference, Congress passed the 1934 National Housing Act.\textsuperscript{220} The Act was, at least in part, a response to the large number of defaults in home mortgages as a result of the Great Depression.\textsuperscript{221} To guard against a reoccurrence of this situation, the Act mandated certain minimum size and building quality standards for homes.\textsuperscript{222} The strategy was that, by creating these minimum standards, even if another economic downturn struck, the homes in default could be more likely resold because potential buyers would be assured of this mandated level of quality.\textsuperscript{223}

Moreover, the Act also promoted a system for longer term mortgage financing in order to promote home ownership.\textsuperscript{224} Unfortunately, the effect of these legislative efforts—while likely not intended as such—facilitated the building of sprawl:

The policies encouraged home ownership by introducing a low-interest, long-term, fully amortized loan with uniform payments over the life of the debt. These policies did not apply evenly to all housing types but favored the development of new single family detached housing at a distance away from the urban core. On the other hand, more urban housing types such as multi-family homes or improvements on existing homes were left unfunded, and there was a disinvestment in inner city neighborhoods as potential home owners moved to the suburbs to take advantage of the available assistance.\textsuperscript{225}

In addition to the 1934 Act, the Federal Housing Administration also enabled unsustainable growth patterns through its own administrative regulations. For example, the 1935 FHA Building Codes facilitated sprawl by introducing regulations that would ultimately “make it more profitable for builders to invest in new construction, rather than improve existing structures.”\textsuperscript{226}

Similarly, the 1938 FHA Underwriting Manual enabled sprawl growth by giving assurances to lending institutions that the FHA would back loans if the banks required builders to comply with FHA new construction standards. This essentially made loans for renovated construction a completely impractical business decision for banks as those loans could not obtain the same federal backing as new construction.\textsuperscript{227}

Each of these 1930s era policies would serve as the foundation for a sprawl-friendly housing policy that Congress would formally embrace in 1949.

\begin{footnotesize}
\begin{enumerate}
\item National Housing Act of 1934, Ch. 847, 48 Stat. 1246 (1934).
\item Id.
\item Id.
\item WHERE DO WE GO FROM HERE?, \textit{SUPRA} NOTE 124.
\item \textit{Transportation Planning and Energy 2}, available at www.dot.ca.gov/hq/tpp/offices/opar/Transportation\%20Energy\%20Study\%20Report/KIPOP\%20Ch8\%20Task\%203.4.doc.
\item WHERE DO WE GO FROM HERE?, \textit{SUPRA} NOTE 124.
\item Id.
\end{enumerate}
\end{footnotesize}
B. How the Housing Act of 1949 Induced Sprawl

In 1999, the Fannie Mae Foundation commissioned an article to identify the “Top Ten Influences on the American Metropolis of the Past 50 Years.”\(^{228}\) Only one federal regulation made itself onto the list twice. That regulation, the Housing Act of 1949, served as the cornerstone for housing sprawl in the United States. Indeed, coming in at Number Two on the list were the Federal Housing Administration’s mortgage financing and subdivision regulations.\(^{229}\) The primary reason for their inclusion was “the unprecedented suburban growth facilitated by its practices.”\(^{230}\)

These regulations fostered massive suburban growth by developing lending standards that incentivized new home construction as well as construction and land subdivision policies that did the same.

Indeed, as one researcher concluded:

> FHA-insured mortgages in the two decades following World War II were limited to race-restricted housing on the suburban fringe; the FHA refused to insure mortgages on older houses in typical urban neighborhoods. Thus a [homeowner] who wished to stay in his old neighborhood had to seek old-style conventional mortgages with high rates and short terms. The same purchaser who opted for a new suburban house could get an FHA-insured mortgage with lower interest rates, longer terms, a lower down payment, and a lower monthly payment.\(^{231}\)

While the housing laws that made sprawl have not been as high-profile as the tax and transportation laws that did the same, the cumulative effect was the same: a national housing policy geared toward low-density, single use, new suburban construction. The policy was premised on the consumption of cheaper, peripherally located land in order to fully realize the extensive federal benefits directed toward new construction.

Ultimately, the triumvirate of federal tax, transportation, and housing laws during the 1900s would stamp the imprint of sprawl throughout nearly every corner of this country. Yet, while extensive damage to American urbanism has been done, this does not mean that there is no other option but to continue down this destructive path. Indeed, the next section offers several possible changes that could begin the slow, but crucial, path toward deconstructing sprawl.

\(^{229}\) Id.
\(^{230}\) Lang & Sohmer, *supra* note 210, at 292.
VI. Remedies to Sprawl-Oriented Federal Laws and Regulations

With extensive evidence demonstrating how federal laws and regulations have historically facilitated sprawl, the next obvious question is how can these harms be remedied? While a comprehensive set of solutions is beyond the scope of this effort, creative responses to this complex problem can serve as the blueprint for mitigating the federal laws that have made sprawl. The following ideas serve as one basis for beginning that conversation.

A. Solutions to the Federal Tax Laws That Made Sprawl

1. Commercial Sprawl

As discussed earlier, when it comes to commercial sprawl development patterns, the federal regulation that has most facilitated this unsustainable approach has been the depreciation tax deduction—with the deduction’s accelerated feature being the most culpable. Therefore, in order to avert continued commercial sprawl growth, Congress should consider regulatory changes that mitigate this harm. These could include:

- To reduce the sprawling-inducing effects of accelerated depreciation, Congress could amend Section 168 of the IRS Code and mandate longer useful life periods for newly constructed buildings than for existing buildings. The result would be that businesses would still be able to use the deduction for new construction but at a less accelerated pace than if it reused existing structures. From a purely logical perspective, this makes sense as—at least in theory—since newly constructed buildings should be able to last longer than existing buildings as the quality of materials and construction techniques improve over time. At the same time, this policy would incentivize the renovation of existing buildings for those companies that wanted to realize the accelerated depreciation deduction to its fullest extent.

- Congress could also offer extensive tax credits for developers who build Transit Oriented Development projects and residents or businesses that occupy those developments. Not only would this provide an economic incentive for mixed-use redevelopment around existing urban transit stations, but it would also facilitate the redevelopment of suburban stations into more compact and walkable developments. Indeed, several of the suburban stations along the Washington Metro lines are realizing this very result. Congress should do all it can to facilitate the expansion of this strategy along existing rail lines.

233 For a presentation describing the concept of Transit Oriented Development, see http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_102.pdf.
234 For a case study on how Transit Oriented Development projects have facilitated a more sustainable development pattern for even the suburban stops of the Washington Metro, see http://www.pecpa.org/_final_pec/html/TOD_case_study_WMATA.htm.
2. Residential Sprawl

The key federal tax driver behind residential sprawl, the mortgage interest deduction, can be quickly modified in ways that would reduce its negative effects. These could include:

- If Congress wanted to act as extensively as possible, it could limit the use of the mortgage interest deduction to homes currently in existence or homes built as replacement housing on existing home sites. This would essentially bar homes constructed on previously undeveloped land from utilizing this deduction—resulting in a strong incentive to renovate existing homes or, at the very least, build new homes within an infill setting.

- As discussed earlier, the mortgage interest deduction is most often used by taxpayers whose home value well exceeds the national average. Meaning that the deduction serves as a subsidy for generally larger homes that are disproportionately located on the suburban and exurban fringes. In response to this reality, Congress could limit the use of the deduction to homes at or less than the regional or state median, similar to how Congress caps other deductions and tax credits based on Adjusted Gross Income. While this would not eliminate exurban sprawl growth, it could help stall residential sprawl by, at the very least, eliminating its de facto favorable tax treatment.

Either independently or in combination with state and local tax reform proposals, these ideas—while certainly requiring continued research and development—can serve as starting points toward resolving the federal tax laws and regulations that have facilitated sprawl growth.

B. Solutions to the Federal Transportation Laws That Made Sprawl

The federal system for funding transportation is on the cusp of a crisis, one where spending outstrips incoming revenue by an increasing amount each year. Indeed, according to one research group:

It now appears that the tipping point expected to hit in FY 2010 may occur sooner. Based on the information provided in the President's budget for FY 2008, the highway program faces a funding crisis beginning in fiscal year 2009 and accelerating dramatically in fiscal year 2010. ... In 2010, the deficit dramatically increases to $5.7 billion and would require an obligation limit reduction of $18.2 billion from the 2009 obligation level, a 42 percent reduction.

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235 Using the national median would likely not work well because of the disparity between housing costs in different parts of the country. See http://www.realtor.org/press_room/news_releases/2006/2ndqtrmetros06.html.
The reality of this scenario is that either additional funding will need to be generated or dramatic cuts made to federal transportation spending. Yet, the silver lining in this situation is that it provides a unique historical opportunity to re-evaluate how the federal government generates—and allocates—transportation revenues. This means that the federal government can seize upon this opportunity to more equitably allocate transportation funds between urban and rural places while also placing the fiscal burden of unsustainable transportation patterns squarely upon those who insist upon its continued existence. The following recommendations offer several “outside the box” opportunities to do so.

1. Federal Transportation Funding

As discussed earlier, the most recent federal updates to transportation funding laws allocate some spending toward non-road building expenditures. Unfortunately, in the overall scheme of things, this is a very small amount. To help offset this token treatment, Congress could do the following:

- Allow individuals to claim a tax deduction or tax credit for mass transit fares. This would financially incentivize the use of mass transit and could be applied to either all riders or be phased out at certain income levels.

- Finally, Congress could level the playing field between rail and road transportation by removing some of the implicit subsidies that road transportation realizes. Indeed, as one researcher has noted:

  USA railroads have pointed to property taxes as the reason that they have not electrified (no taxes on their diesel, property taxes on electrification infrastructure). Exempting any rail line that electifies from property taxes under the Interstate Commerce clause would promote the rapid electrification of many rail lines. Expanding capacity would then be more economically attractive without the burden of property taxes...Trucks pay no property taxes, directly or indirectly, on their right-of-way. Trains do. Local.\textsuperscript{238}

- For an even more innovative approach, Congress could require the collection of tolls for suburban and exurban commuters. These tolls could be graduated based on distance traveled in order to most heavily charge travel between exurban and urban locations within a region while charging less for travel from region to region and charging the least for intra-urban travel. This tiered system would place the highest revenue burden on the least sustainable transportation uses—namely, those who commute from the suburban and exurban fringes into the city center and back each day. The technology for such a system is fairly

\textsuperscript{238} ALAN DRAKE, 2007 HOUSTON WORLD OIL CONFERENCE, A 10% REDUCTION IN AMERICA'S OIL USE IN TEN TO TWELVE YEARS (July 09, 2007) http://www.aspo-usa.com/index.php?option=com_content&task=view&id=168&Itemid=91.
straightforward. Moreover, the government could either lease the toll road (so that its operation is privately-funded and managed) or it could fund the system in a similar manner as existing toll roads.

Ultimately, it is critical to remove this funding inequity so that the playing field between vehicular and mass transit travel can be leveled. Doing so would allow much more precise comparisons between the costs and usefulness of these approaches.

2. Federal Gas Tax

While the federal gas tax represents the clichéd 500 pound gorilla in the area of transportation funding, Congress can still take several steps to more equitably use the massive amounts of revenue generated from these tax receipts. These could include:

- Require that federal gas tax receipts from urbanized areas be allocated more evenly between road construction and transit construction since mass transit is a much more viable transportation option in more compact urban areas. This would provide cities the opportunity to fund more sustainable transit options rather than essentially forcing them to spend most of their monies on road-building.

- Congress could also incentivize both the development and consumption of more sustainable transportation patterns by increasing the tax on non-renewable fuels such as gasoline while decreasing consumption taxes on renewable sources whether it is renewable fuel sources or renewable non-fuel energy sources such as solar technology.

C. Solutions to the Federal Housing Laws That Made Sprawl

While the federal government has taken steps to remedy national housing laws that have historically induced sprawl, additional steps should still be taken to further address the issue. These could include:

- The Taxpayer Relief Act of 1997239 provides that most single homeowners can avoid paying capital gains tax on up to $250,000 in profit from the sale of a home while married homeowners can avoid capital gains tax on profits up to $500,000.240 One of the few requirements is that the house must have served as the primary residence for the homeowner for two of the last five years. If that small hurdle is cleared, then the buying and selling of houses make for an excellent investment option—one that implicitly encourages homeowners to regularly buy and sell houses in order to realize a massive capital gains tax break. And, in most instances, these newly purchased homes will also be newly

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constructed ones. Meaning that this tax break ultimately drives the construction of new homes, a clear indicator of sprawl.

When a homeowner sells their existing home, Congress should incentivize the purchase or rental of existing homes by allowing this tax break only if the homeowner replaces the home with the purchase or rental of an existing residential property. This would still allow homeowners to shield the appreciation in value of their home from capital gains tax but only if the homeowner reinvested in the existing housing stock.

- Congress could also limit sprawl by eliminating the ability of individuals to deduct mortgage interest and property taxes on second homes. Indeed, it almost begs the question why, if someone can afford two houses, they need this type of deduction. Moreover, second homes are especially prone to requiring long car trips to reach. According to the National Association of Realtors, “[t]he typical vacation-home owner...purchased a property that is 220 miles from their primary residence.” Ultimately, there is no rational reason for the federal government to help subsidize second homes—many of which are newly-constructed—through laws such as this one.

- Congress could also incentivize infill development by providing tax credits for buyers who renovate all buildings, not just historic ones, within existing neighborhoods. And, it could further sweeten the pot by providing additional tax credits for developer and home buyers who renovate existing buildings in accordance with environmentally-sound Green Building practices. This could be patterned after the existing program where Congress has provided purchasers of environmentally-friendly hybrid vehicles with tax credits.

- The Department of Commerce could address the sprawl-friendly Standard State Zoning Enabling Act and the Standard State Planning Enabling Act that the department promulgated as model laws in the 1920s by developing a 21st Standard State Zoning and Planning Enabling Act. This tool could be used by states as a model for replacing their current use-based enabling acts with ones that prioritize

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241 Id.
242 Indeed, according to the National Association of Realtors:

  The median size of a vacation home is 1,480 square feet, 29 percent were new when purchased, and owners estimated the current value to be a median of $300,000 - 68 percent said the value of that property was lower than their primary residence. Sixty-five percent of owners said their vacation property was a better investment than stocks.

243 For information related to “green” building practices, see the United States Green Building Council’s website at http://www.usgbc.org/.
244 For information related to the federal government’s hybrid vehicle tax credit program, see http://www.fueleconomy.gov/fe/hybrid.shtml.
245 See generally Chad Emerson, Making Main Street Legal Again: The SmartCode Solution to Sprawl, 71 U. Mo. L. Rev. 652-654 (Summer 2006).
form-based coding and planning. A scenario that would represent an explicit federal renunciation of single, separated use zoning and planning as the predominant type of land use regulation.

VII. Conclusion

With the harmful costs of sprawl being well-documented, it is imperative to understand the root causes of this unsustainable phenomenon. While a variety of non-legal factors have facilitated sprawl, the largest drivers of unsustainable land development patterns have been laws and regulations that promoted—if not mandated—these results.

And, though state and local policies have played a major role in the proliferation of sprawl, it has been a triumvirate of federal regulatory areas that have systematically fostered this trend. This article has focused on analyzing how federal tax, transportation, and housing regulations have entrenched sprawl as the dominant land development pattern in the United States.

Hopefully, by understanding these root causes, we can both avoid their repetition and counter their continued negative effects on this country’s built environment.

246 Id. at 641.