

TABLE OF CONTENTS

PREFACE TO THE EIGHTH EDITION.....	V
TABLE OF CASES.....	XXI
Chapter 1. Setting the Stage	1
A. Introduction and Historical Overview	1
B. Common Law of Nuisance	4
1. Elements of Nuisance.....	4
Bove v. Donner-Hanna Coke Corporation	4
Notes.....	8
2. Remedies	10
Boomer v. Atlantic Cement Company, Inc.....	10
Notes.....	12
3. Public Nuisance	14
City of Monterey v. Carrnshimba.....	14
Notes.....	16
4. Aesthetic, Emotional, and Psychological Injuries	19
Rankin v. FPL Energy, LLC	19
Notes.....	23
5. Modern Significance of Nuisance Law	24
C. Private Land Use Controls: Covenants, Conditions, and Restrictions (CC&Rs)	25
1. Racially Restrictive Covenants.....	26
Mason v. Adams County Recorder	26
Notes.....	29
2. Common Interest Communities	30
Nahrstedt v. Lakeside Village Condominium Assoc., Inc.	31
Notes.....	35
D. Legislative Land Use Controls	37
1. Local Authority and the Standard State Zoning Enabling Act (SZE)	37
A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations	38
Notes.....	41
2. The Classic Cases	43
Village of Euclid, Ohio v. Ambler Realty Co.	43
Notes.....	50
Nectow v. City of Cambridge	54
Notes.....	57
3. Intergovernmental Conflicts.....	58
(a) Localism and Regionalism	59
(b) Conflicts Between Overlapping Units of Government	62
(c) Interaction with Federal Law	65

E.	The Comprehensive Plan	65
1.	Unitary View (Majority Rule)	67
	Briar Meadows Development, Inc. v. South Centre Township Board of Supervisors	67
	Notes.....	68
2.	Planning as a Factor Rule.....	69
	Udell v. Haas	69
	Notes.....	76
3.	Planning Mandate Rule	76
	Denham, LLC v. City of Richmond	76
	Notes.....	81
F.	Modern Planning and Zoning	84
1.	Modernizing the Enabling Acts	85
2.	New Urbanism	88
3.	Form-Based Codes	89
	From Sprawl to Smart Growth, Chapter 6, New Urbanism, Form Based Codes and LEED for New Development	89
	Chapter 2. Zoning: Classic to Contemporary	93
A.	Traditional Zoning: Uses and Design	93
1.	Compatibility of Uses	94
	Pierro v. Baxendale	94
	Notes.....	100
	Hernandez v. City of Hanford.....	101
	Notes.....	109
	Comment: The Dormant Commerce Clause	109
2.	Accessory Uses and Home Occupations	110
	DaPurificacao v. Zoning Bd. of Adjustment of Tp. of Union.....	110
	Notes.....	113
	Richard M. Rudolph and Margaret E. Rudolph, Appellants v. The Zoning Hearing Board of Cambria Township, Township of Cambria, and Matt R. Niebauer	115
	Notes.....	118
3.	Height and Bulk Controls	119
	Rumson Estates, Inc. v. Mayor & Council of the Borough of Fair Haven	120
	Notes.....	125
4.	Aesthetic Controls	128
	Reid v. Architectural Board of Review of City of Cleveland Heights	128
	Notes.....	132
5.	Performance Zoning	135
B.	Zoning Changes	136
1.	Conditional Uses.....	138
	People's Counsel for Baltimore County v. Loyola College in Maryland	139
	Notes.....	148

2.	Variances.....	150
	Surfrider Foundation v. Zoning Bd. of Appeals.....	150
	Notes.....	158
3.	Amendments.....	161
	(a) Spot Zoning and Uniformity.....	162
	Plains Grains Limited Partnership v. Board of County	
	Commissioners of Cascade County.....	162
	Notes.....	168
	(b) Contract and Conditional Zoning.....	170
	Durand v. IDC Bellingham, LLC.....	171
	Notes.....	177
	(c) Bonus or Incentive Zoning.....	178
	Comment: Community Benefit Agreements.....	181
C.	Overlay Zones, Floating Zones and Planned Unit Developments.....	182
	1. Overlay Zones.....	182
	(a) Historic Preservation Districts.....	184
	A-S-P Associates v. City of Raleigh.....	184
	Notes.....	192
	(b) Transferable Development Rights.....	194
	Transferable Development Rights and Alternatives After	
	Suitum.....	194
	2. Floating Zones.....	196
	3. Planned Unit Development.....	197
	Planned Unit Development: A Challenge to Established Theory	
	and Practice of Land Use Control.....	198
	Note.....	200
	Evans v. Teton County.....	201
	Notes.....	205
D.	Process of Change: Legislative, Quasi-Judicial, Initiative or	
	Referendum.....	206
	1. Legislative or Quasi-Judicial.....	207
	Fasano v. Board of County Commissioners of Washington	
	County.....	207
	Board of County Commissioners of Brevard County v. Snyder ...	214
	Notes.....	219
	2. Initiative and Referendum.....	220
	City of Eastlake v. Forest City Enterprises, Inc.	221
	City of Cuyahoga Falls v. Buckeye Community Hope	
	Foundation.....	227
	Notes.....	232
	Comment: Neighborhood Consent Ordinances.....	235
E.	Nonconformities.....	236
	City of Los Angeles v. Gage.....	237
	Notes.....	242
F.	Vested Rights.....	244
	Gallup Westside Development, LLC v. City of Gallup, a Municipal	
	Corporation.....	245

Notes	250
G. Development Agreements	256
Santa Margarita Area Residents Together v. County of San Luis	
Obispo.....	260
Notes	267
Chapter 3. Constitutional and Jurisprudential Limits on Land	
Use Controls	269
A. Introduction	269
B. Fifth Amendment Taking	271
1. Introduction	271
2. Public Use	271
Kelo v. City of New London	272
Notes.....	282
3. Taken.....	284
Pennsylvania Coal Co. v. Mahon	285
Notes.....	289
(a) Physical Invasions	290
Loretto v. Teleprompter Manhattan CATV Corp.	290
Notes.....	296
(b) Denial of All Economically Beneficial Use	298
Lucas v. South Carolina Coastal Council.....	298
Notes.....	309
(c) Partial Deprivations of Economic Use	311
Penn Central Transportation Company v. City of New	
York	312
Notes.....	322
(d) Taking or Substantive Due Process Violation?.....	323
Lingle v. Chevron U.S.A. Inc.	323
Notes.....	330
(e) Judicial Takings?	331
4. Private Property	334
Murr v. Wisconsin	336
Notes.....	346
5. Just Compensation	347
(a) The Compensation Remedy	347
(b) Invalidity or Temporary Taking?	349
(c) Delay as a Temporary Taking?	351
(d) Measuring Temporary Taking Compensation	352
(e) State Statutory Takings.....	354
C. Due Process: Substantive and Procedural.....	357
Skiles v. City of Reading.....	359
Notes: Substantive Due Process.....	362
Notes: Procedural Due Process.....	365
D. Equal Protection.....	368
Village of Willowbrook v. Olech.....	369
Notes	370

E.	The First Amendment.....	371
1.	Regulating Sexually Oriented Businesses	372
	City of Los Angeles v. Alameda Books, Inc.	373
	Notes.....	383
2.	Controls on the Dissemination of Information	385
	Reed v. Town of Gilbert.....	388
	Notes.....	395
3.	Religious Freedom	396
	World Outreach Conference Center v. City of Chicago.....	400
	Notes.....	405
	Comment: The Statutory Framework and Elements of RLUIPA	408
F.	Jurisprudential Limits and Land Use Litigation.....	412
1.	Ripeness	412
	Knick v. Township of Scott	413
	Notes.....	423
2.	Standing	426
	Kenner v. Zoning Board of Appeals of Chatham	427
	Notes.....	430
3.	Statutes of Limitations	432
	(a) Accrual, the Discovery Rule, and Ultra Vires Acts	433
	(b) Statute of Limitations for Cases Brought Under 42 U.S.C. § 1983.....	434
	(c) Facial and as Applied Claims	435
4.	Land Use Claims Under Section 1983 of the Civil Rights Act	436
	Kaahumanu v. County of Maui	438
	Notes.....	443
5.	Jurisdiction	445
6.	Forms of Action.....	448
 Chapter 4. Subdivision Regulation, Official Map, Infrastructure		
Financing, and Consumer Protection		453
A.	The History of Subdivision Regulation	453
1.	Subdivision and Site Plan Review.....	453
2.	The Five Phases of Subdivision Regulation.....	454
	21st Century Land Development Code	454
3.	Local Authority to Exercise Subdivision Controls	457
	The Standard City Planning Enabling Act (SPEA)	457
	Notes.....	458
4.	Definition of Subdivision.....	460
	(a) Exemptions.....	461
	(b) Site Plan Review.....	462
	(c) Major and Minor Subdivisions.....	462
	(d) Condominiums and Multi-Family Rentals	463
B.	Antiquated Subdivisions.....	464
	Gardner v. County of Sonoma	464
	Notes	468

C.	Zoning and Subdivision Regulation	470
	State of Wisconsin ex rel. Anderson v. Town of Newbold.....	470
	Notes	472
D.	Cluster-Conservation Subdivision and Planned Residential Development	473
	In re Pierce Subdivision Application.....	474
	Notes	479
E.	Subdivision Approval Process	480
	1. Sketch Plat.....	480
	2. Preliminary or Tentative Plat or Map	481
	3. Final Plat	482
	City of Goleta v. Superior Court.....	482
	Notes.....	488
F.	Requirements for On-Site Subdivision Improvements	491
	Friends of Pine Bush v. Planning Bd. of City of Albany.....	492
	Notes	494
G.	Official Map	496
	Palm Beach County v. Wright.....	498
	Notes	503
H.	Financing Capital Facilities and New Development	504
	1. Introduction: Infrastructure Deficiencies	504
	2. Exactions: Physical and Monetary	506
	(a) Essential Nexus	507
	Nollan v. California Coastal Commission	507
	(b) Rough Proportionality	515
	Dolan v. City of Tigard	516
	Notes.....	523
	(c) Monetary Exactions.....	529
	Koontz v. St. Johns River Water Management District.....	529
	Notes.....	538
	Notes: Monetary Exactions, Impact Fees and Taxes	539
I.	Consumer Remedies: Interstate Land Sales and Blue Skies Consumer Protection.....	543
	1. Interstate Land Sales Full Disclosure Act (ILSA)	543
	Bacolitas v. 86th & 3rd Owner, LLC.....	543
	Notes.....	546
	2. State Protection: Blue Sky Laws	548
	Chapter 5. Zoning and Housing	551
A.	Exclusionary Zoning.....	551
	1. The State of Housing.....	551
	2. Exclusionary Zoning and the States	553
B.	Inclusionary Zoning	560
	1. Fair Share Obligations.....	560
	Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel	560
	Notes: Inclusionary Zoning and Fair Share.....	571

2.	Inclusionary Set-Asides	574
	California Building Industry Association v. City of San Jose	575
	Notes: Set-Asides, Linkage and Relocation Fees.....	585
C.	Federal Exclusionary Zoning Issues: Constitutional Aspects and Legislative Intervention.....	587
1.	The Equal Protection Clause	588
	Village of Arlington Heights v. Metropolitan Housing Development Corporation	588
	Notes.....	593
2.	The Federal Fair Housing Act	595
	Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.....	597
	Notes.....	606
3.	Federal Housing Programs	607
	(a) HOPE VI	608
	(b) Section 8 Housing Assistance	610
	(c) Low-Income Housing Tax Credits	611
	(d) The Community Reinvestment Act (CRA)	612
	(e) Rural Very Low-Income Housing Repair	612
	(f) Community Block Grants.....	613
	(g) Opportunity Zones	613
4.	Homeless Housing	614
	(a) Federal Programs	617
	Elias Morales v. Related Management Company, LP d/b/a/ Armory Plaza Senior Housing.....	618
	(b) Legal Status of Homeless Persons Under State and Local Law	619
	(c) Local Programs	619
	(d) Property Tax Exemption	621
	Association for Neighborhood Rehabilitation v. Board of Assessors of the City of Ogdensburg	621
	Notes.....	623
5.	Environmental Justice	624
D.	Regulating Nontraditional Living Arrangements.....	628
1.	Constitutional Considerations.....	629
	Village of Belle Terre v. Boraas	629
	Notes.....	631
2.	Discrimination Against the Disabled Under the Federal Fair Housing Act.....	634
	City of Edmonds v. Oxford House, Inc.	634
	Notes.....	638
	Chapter 6. Revitalizing the Urban Core	643
A.	Introduction	643
B.	Redevelopment Through Eminent Domain	645
1.	Redevelopment as a Public Use.....	645
	Kaur v. New York State Urban Development Corporation	647

	Notes.....	654
2.	Public Necessity.....	657
	City of Lafayette v. Town of Erie Urban Renewal Authority	657
	Notes.....	659
3.	Just Compensation	662
	(a) Fair Market Value	662
	(b) Business Loss	662
	(c) Prospect of Rezoning	663
	(d) Severance Damages.....	664
	(e) Relocation Benefits	665
4.	Condemnation Blight	668
5.	Excess Condemnation	671
	Department of Transportation v. Fortune Federal Savings and Loan Association	671
	Notes.....	675
C.	Tax Techniques of Redevelopment.....	677
1.	Tax Abatement	678
	Riggins v. City of Kansas City	678
	Notes.....	681
2.	Tax Increment Financing.....	682
	(a) The “Blight” and “But For” Requirements	683
	Board of Education, Pleasantdale School District No. 107 v. Village of Burr Ridge	684
	Notes.....	688
	Competing for the Next Hundred Million Americans: The Uses and Abuses of Tax Increment Financing	689
	(b) Diversion of Property Tax Revenue.....	694
	City of Cerritos v. State of California	695
	Notes.....	698
D.	New Urbanism.....	699
1.	Traditional Neighborhood Development and Mixed-Use Centers	699
2.	Transit Oriented Development.....	704
E.	Business Improvement Districts	707
	Kessler v. Grand Cent. Dist. Management Ass’n, Inc.	708
	Notes	712
F.	Joint Public-Private Partnerships.....	714
	Turken v. Gordon, Mayor of the City of Phoenix	716
	Notes	721
G.	Deteriorating and Abandoned Areas of Industrial Cities.....	722
1.	Abandonment.....	723
	Moore v. City of Detroit.....	723
	Notes.....	726
2.	Land Banking	727
3.	Housing Codes	729
	(a) Flexible Housing Codes	729

(b)	Mandatory Inspection Requirements	731
	Mann v. Calumet City	731
	Notes	735
4.	Demolition and Repair	735
	Elsmere Park Club, L.P. v. Town of Elsmere	735
	Notes	740
5.	Brownfields	744
H.	Gentrification	746
	Cole v. District of Columbia Zoning Commission	746
	Notes	751
	Chapter 7. From Sprawl to Sustainability	753
A.	Introduction	753
	From Sprawl to Sustainability: Growth Management, Smart Growth, New Urbanism, Green Development and Renewable Energy	753
B.	Interim Development Controls and Moratoria	756
1.	Takings and Interim Development Controls	757
	Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency	757
	Notes	763
2.	Vested Rights and Interim Development Controls	767
	Deer Creek Developers, LLC v. Spokane County	767
	Notes	771
3.	Environmental and Public Health Moratoria	772
	Alabama Association of Realtors v. United States Department of Health and Human Services	773
C.	Timing Controls and Adequate Public Facilities	778
	Golden v. Planning Board of Town of Ramapo	778
	Notes	786
	<i>Golden</i> and Its Emanations: The Surprising Origins of Smart Growth	790
D.	Techniques to Limit or Stop Growth	794
1.	Permit and Quota Systems	794
	Construction Industry Association of Sonoma County v. City of Petaluma	794
	Notes	801
2.	Constitutional Challenges	804
	Burnham v. Monroe County	804
	Notes	805
E.	State Smart Growth Solutions	807
1.	California	807
2.	Hawai'i	809
3.	Oregon	810
4.	Washington	812
5.	Florida	814
F.	Agricultural Preservation	815
1.	The Federal Role in Agricultural Preservation	815

2.	State Right-to-Farm Laws	817
	Wetherell v. Douglas County	818
	Notes.....	823
3.	Local Zoning Techniques to Preserve Agricultural Land	825
	(a) Large-Lot Ordinances.....	825
	(b) Area-Based Allocation Ordinances.....	826
	(c) Special Agricultural Districts	826
4.	Compensatory Techniques to Preserve Agricultural Land.....	827
	(a) Land Banking	827
	(b) Transferable Development Rights.....	827
 Chapter 8. Controlling Environmental Impacts of Land Use		
	Regulation	829
A.	Introduction	829
B.	Common Law of Nuisance	829
	1. Federal Common Law	830
	American Electric Power Company, Inc. v. Connecticut	831
	Notes.....	838
	2. State Common Law Nuisance.....	839
	(a) Solar Power Nuisance Litigation.....	842
	Notes.....	843
	(b) Wind Power Nuisance Litigation.....	845
	Notes.....	846
C.	Environmental Policy Acts and Climate Change.....	848
	1. The National Environmental Policy Act	848
	2. State Environmental Policy Acts and Climate Change	849
D.	Green Development.....	850
	1. Federal and State Role.....	851
	2. Green Development Codes and Standards	852
	(a) The United States Green Building Council and LEED	852
	The Latest Leadership in Energy and Environmental Design Program: LEED for Neighborhood Developments (LEED-ND).....	853
	(b) Local Government Green Building and Energy Codes: Maintaining Efficiency	853
	The Urban Environmental Renaissance	854
	3. Local Zoning Controls and Incentives for Green Building	856
	(a) Overlay Zoning.....	856
	(b) Performance Zoning.....	856
	(c) Cluster and Conservation Zoning.....	857
	(d) Incentive Zoning	857
	(e) Development Impact Fees and Taxes.....	857
	(f) Development Agreements	858
	4. Financing Green Development.....	858
	(a) Funding Green Building Retrofits: Property Assessed Clean Energy (PACE) Bonds	858
	Wooley v. Ygrene Energy Fund, Inc.	860

(b)	Monetization of Renewable Energy & Rainwater Capture Through Public Improvement District and Public Utility Special Assessments	864
	From Sprawl to Sustainability: Smart Growth, New Urbanism, Green Development and Renewable Energy	864
E.	Controlling the Use of Ecologically Sensitive Lands	865
1.	The Endangered Species Act	866
	People for Ethical Treatment of Property Owners v. United States Fish and Wildlife Service.....	867
	Notes.....	870
2.	Clean Water Act	876
(a)	Regulation of Point Sources	876
	County of Maui v. Hawai'i Wildlife Fund	876
	Notes.....	883
(b)	Wetlands and Section 404 Permits.....	884
	National Association of Manufacturers v. Department of Defense	885
	Notes.....	891
3.	Coastal Zone Management	892
	Coastal Zone Management Act of 1972, 16 U.S.C.A. § 1451, et seq.	893
	Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council.....	894
	Notes.....	903
4.	Flood Plain Regulation.....	906
(a)	Flood Protection	908
	National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency and National Association of Homebuilders	910
	Notes.....	918
5.	Hillside Protection.....	921
	Terrazas v. Blaine County	922
	Notes.....	928
6.	Public Lands	931
	Kleppe v. New Mexico	932
	Notes.....	936
INDEX.....		943