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## Open Spaces in Tight Places: An Introduction to the Issue

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## OPEN SPACES IN TIGHT PLACES: AN INTRODUCTION TO THE ISSUE

PAUL STANTON KIBEL\* & KATHLEEN E. NITTA\*\*

In the 1960s and 1970s, urban planning efforts tended to reflect a sharp dichotomy between the conception of “nature” and the conception of “cities.” Cities were understood to be places where maximum built density was pursued, while nature was understood to be something that existed outside of cities. Within this framework, the establishment and protection of natural places properly took place outside of cities rather than within them.

There was another line of thinking in urban planning circles, however, that rejected this cities/nature dichotomy. As author Anne Whiston Sprin noted in her 1984 book *The Granite Garden: Urban Nature and Human Design*: “The belief that the city is an entity apart from nature and even antithetical to it has dominated the way in which the city is perceived and continues to affect how it is built. The city must be recognized as part of nature and designed accordingly.”<sup>1</sup> Anne Whiston Sprin continues: “The more a park resembles a natural ecosystem, the more easily it can be managed as a relatively closed system. Parts of large parks, leftover land on steep slopes or along floodplains, and even weedy vacant lots, can all be designed as self-maintaining, self-regenerating systems. . . . If connected by corridors of sufficient size and plant cover, the city’s open space system will support a greater diversity of life, with a greater proportion of “desirable”

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\*\* Symposium Edition Editor for *The City as Habitat: A Place for Urban Wildlands* edition of the *Golden Gate University School of Law Environmental Law Journal*; J.D., Golden Gate University School of Law, 2012.

<sup>1</sup> Anne Whiston Spring, *The Granite Garden: Urban Nature and Human Design* (1984), p.5.

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wildlife species.”<sup>2</sup> *The Granite Garden* emphasized the important habitat roles that urban woodlands and urban waterways play in regional ecosystems, and countered that the existence of naturalist landscapes within cities helps dissuade people from relocating from more urbanized neighborhoods to the suburban fringes (and thereby reducing many of the adverse environmental impacts associated with such metropolitan sprawl).<sup>3</sup>

The approach outlined by Anne Whiston Spring was later reflected in the Hannover Principles - Design in Sustainability, adopted in 2000 in conjunction with the World’s Fair held in Hannover, Germany.<sup>4</sup> These principles were intended to provide guidance for the planning and construction of the facilities, buildings and grounds proposed for this event. The Hannover Principles call for open space/habitat designation and planning that “respects natural borders” more than the jurisdictional borders of particular agencies or landowners.<sup>5</sup> The Hannover Principles also caution against “over-planning” urban greenspace in such a way that ecosystems and habitat are not provided with sufficient latitude to balance themselves out over time. In section entitled “Humility in Design,” the Hannover Principles advocate that urban planners “leave space for the design to evolve<sup>6</sup> on its own.”<sup>7</sup>

In this Symposium Edition of the Golden Gate Environmental Law Journal, on *The City as Habitat: A Place for Urban Wildlands*, we pursue the trajectory of urban thinking reflected in *The Granite Garden* and the Hannover Principles, with a focus on how the law and regulatory frameworks are shaping efforts to expand and improve greenspace in our cities.

Our edition begins with an article by Deborah Bardwick, assistant field solicitor for the Department of the Interior’s San Francisco Field Office titled, *From Post to Pond: How the Public Created the Presidio’s Crissy Field Marsh*. Bardwick examines San Francisco’s Crissy Field and its long and unique history. Bardwick describes how Crissy Field went from a polluted military site to one of San Francisco’s premier parks. She explains how an incredible amount of community involvement and the National Environmental Policy Act came together to restore a once-productive tidal marshland to an important ecological

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<sup>2</sup> *Id.*

<sup>3</sup> Anne Whiston Spring, *The Granite Garden: Urban Nature and Human Design* (1984).

<sup>4</sup> William McDonough & Partners, *The Hannover Principles - Design for Sustainability* (Prepared for EXPO 2000, The World’s Fair, Hannover, Germany).

<sup>5</sup> *Id.* at 24.

<sup>6</sup> *Id.* at 43-44.

<sup>7</sup> *Id.*

and public access point in the San Francisco Bay.

Next, Carlyle W. Hall, Jr., senior counsel at Akin Gump Strauss Hauer & Feld LLP in Los Angeles, discusses the complicated process leading to the restoration of the Ballona Wetlands in southern California in *Protecting the Ballona Wetlands in West Los Angeles: A Look Back at Three Decades of Urban Habitat Advocacy*. Hall represented local groups such as the Friends of Ballona Wetlands during three decades of litigation to preserve the Ballona Wetlands and to prevent them from being developed. Hall describes the arduous process of litigation and settlement that led to the Wetlands restoration. In doing so, Hall highlights both the potential and the limitations of public interest litigation in preventing development insensitive to habitats.

In our third article, John Buse, legal director for the Center for Biological Diversity, analyzes the Endangered Species Act's Habitat Conservation Plans (HCPs) and the practicalities of implementing them in his article, *Can a Multi-Species Habitat Conservation Plan Save San Diego's Vulnerable Vernal Pool Species?* Buse examines the advantages and disadvantages of HCPs and discusses the notable legal battles that several have faced. Buse focuses on San Diego's Multi-Species Habitat Conservation Plan and how San Diego used it to plan development in the entire City, highlighting the good and bad aspects of the MSHCP, and discusses the litigation that soon encompassed it. Buse explains why the MSHCP ultimately failed in court and how it could be re-written to be a success.

Finally, the relationship between urban greenspace and the siting of urban residential development is explored. The location of urban housing can result in the loss of valuable urban open space, or, conversely, such housing can be oriented to take advantage of the amenities of living in close proximity to such urban open space. Robert H. Cutting, Lawrence B. Cahoon, and Jack C. Hall of the University of North Carolina, turn to environmental considerations in real estate in "*Location, Location, Location*" Should be "*Environment, Environment, Environment*": *A Market-Based Tool to Simplify Environmental Considerations in Residential Real Estate*. Specifically, the authors address problems regarding disseminating environmental information in the real estate market. They reveal how there are no adequate safeguards and tools to inform buyers about environmental issues when purchasing residential real estate. The authors propose a check-list for real estate professionals that will not only educate brokers and buyers, but will also ensure that environmental considerations are rightly at the forefront of real estate transactions.

This edition of the *Golden Gate University Environmental Law Journal* also includes three law student comments. Although not all of

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the student contributions focus directly on questions of urban open space and wildlife habitat, they all touch on environmental issues with a particular urban dimension.

In the first of our student comments, *Looking for A Home: How Micro-Housing Can Help California*, Dawn Withers proposes a change in the way we think about housing. Withers introduces us to micro-housing, that is, residential units of less than 300 square feet. Withers explains why micro-housing is an important answer to housing needs because it is both affordable and ecological. Micro-housing can fill in existing urban areas to minimize new land development while also allowing people to reside in urban centers, thus reducing carbon-emitting transportation needs and their associated pollution. Withers discusses the challenges micro-housing faces with current zoning regimes and building codes and how, with a few adjustments, these smaller dwellings could be an important part of our adaptation to climate change.

Next, in *Legitimate Protection or Tactful Abandonment: Can Recent California Legislation Sustain the San Francisco Bay Area's Public Lands?*, Cody Nesper addresses the state park closures in California and Assembly Bill 42's attempt to rescue them. AB 42 allows eligible non-profits to take over management of state parks that are set to close. Nesper acknowledges the positive effect of AB 42, keeping state parks from closing, but also warns against possible dangers. He cautions that AB 42 could reap inequitable results where parks near affluent communities receive superior management to those near low-income neighborhoods. Nesper focuses specifically on state parks in the San Francisco Bay Area to address possible methods for their preservation and also the potential environmental justice implications of non-profits utilizing AB 42.

In our final student comment, *Distributed Generation: How Localized Energy Production Reduces Vulnerability to Outages and Environmental Damage in the Wake Of Climate Change*, Allyson Umberger discusses the inadequacies of the current energy distribution model in the United States. She illustrates how climate change has and will continue to exacerbate deficiencies in our energy infrastructure, which has become outdated and unable to maximize the potential of renewable energy. Umberger explains how de-centralizing the energy infrastructure with distributed generation can ensure more reliable energy while simultaneously reducing reliance on energy sources that directly contribute to climate change. Distributed generation holds the potential to provide urban areas with much-needed renewable energy while also creating a safer and more sustainable model for the future.

Within urban planning circles, there is a progressively popular notion that there should be a prominent place for greenspace and wildlife

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habitat amongst the granite of our cities. This Symposium is intended to help bring this notion into the mainstream of environmental, land use, natural resource and real estate law.