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LUCAS AND ENVIRONMENTAL LAND USE CONTROLS IN RURAL AREAS: WHOSE LAND IS IT ANYWAY?

JAMES B. WADLEY† AND PAMELA FALK‡

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I. INTRODUCTION

*Lucas v. South Carolina Coastal Council*¹ has received a considerable amount of attention from the agricultural sector. Many have touted the *Lucas* decision as favoring private property rights² and signaling to local governments the need to retreat from environmental regulation.³ While a segment of the agricultural sector regards the decision as favorable, it is, unfortunately, more accurate to say that "the Court launch[ed] a missile to kill a mouse."⁴ In all likelihood, *Lucas* will have little impact on both environmental regulation and the pressure such regulation imposes upon agricultural land use.⁵

Using the *Lucas* decision as a backdrop, this Article will explore issues regarding control over the use of land in rural areas from the perspective of farm and ranch landowners.⁶ Further, this Article will analyze the *Lucas* decision's impact

1. 112 S. Ct. 2886 (1992).

2. *Lucas* held that, where regulation denies the landowner all economic benefit or productive use of the land, the landowner is entitled to compensation under the Fifth Amendment. *Id.* at 2895.

3. The *Lucas* Court noted that the government may not simply take property without compensation when a public interest is advanced. *Id.* at 2901. Rather, the state must "identify background principles of nuisance and property law that prohibit the use . . . intend[ed] in the circumstances in which the property is presently found." *Id.* at 2901-02.

4. *Id.* at 2904 (Blackmun, J., dissenting). Justice Blackmun feared that the majority's "new policies would spread beyond the narrow confines of the present case." *Id.* Thus, Justice Blackmun rationalized his lengthy dissent "not because I can intercept the Court's missile, or save the targeted mouse, but because I hope perhaps to limit the collateral damage." *Id.*

5. One significant exception may be restrictions imposed on land use pursuant to the provisions of the Endangered Species Act of 1973. These restrictions could potentially terminate any use of endangered habitat land with respect to listed species. See 16 U.S.C. §§ 1531-44 (1988).

6. The term farm and ranch landowner is not synonymous with rural landowner. In 1980, only one out of ten rural residents lived on a farm or ranch. ROBERT G. HEALY & JAMES L. SHORT, *THE MARKET FOR RURAL LAND: TRENDS, ISSUES, POLICIES* 4 (1981).

upon fundamental concerns of many of those landowners.⁷ The rural landowner's ability to meaningfully control the use of land is inextricably related to the landowner's social and psychological mindset, a mindset that, in many ways, differs markedly from its urban counterpart. As a result of the legal system's failure to recognize and to be sensitive to the farmers' and ranchers' viewpoint, many landowners feel threatened by policies and regulations adopted in recent years that address environmental concerns.

The goal of this Article is to articulate the farm and ranch landowners' ignored viewpoint on environmental land use regulation. This Article suggests that the farm and ranch landowner's resistance to environmental and land use regulations stems—not from opposition to deeper environmental concerns—but rather from opposition to the consequences upon social and psychological well-being. Indeed, many landowners view these regulations as impinging directly upon their ability to achieve the "American Dream."

II. A BRIEF HISTORY OF LAND USE DECISION MAKING

Traditional land use planning law focuses on "the power of governmental entities through the exercise of the police power and specific statutes and constitutional provisions to plan for and regulate the use of land."⁸ In this context, land use planning seeks to implement three specific jurisdictional land use goals and aspirations: the establishment of optimum paths for the development or redevelopment of a geographic area; acceptable overall land use patterns for the jurisdiction; and wise and efficient use of public resources in meeting expanding public needs.⁹

Historically, the nation has had a stable land base to draw upon in order to meet its perceived public needs. Because land must be available for certain purposes, including food production, defense, residential and commercial use, recreational use and plant and animal habitat, particular land uses

7. It is perhaps pompous to pretend to speak on behalf of all farm and ranch landowners. The opinions expressed herein are the result of conversations with many landowners over a period of years and a review of comments made by landowners in trade-oriented publications.

8. DONALD G. HAGMAN & JULIAN CONRAD JUERGENSMEYER, *URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW* 4 (2d ed. 1985).

9. *Id.* at 11.

will evolve over time to meet shifting and changing needs. To achieve these goals, the legal system prefers to influence general patterns of use rather than to control the individual's land use choices. This preference stems from the importance of private landownership and the individual's ability to control the use of the land.

Reconciling the public need for desirable land use patterns with the legal system's inclination toward unrestricted individual land use has presented many problems. Where the landowner's right to determine land use ends and where the public's begins is an intriguing legal question that consumes much time and energy.

Harmful land use jeopardizes the policy of pattern promotion and the propensity toward individual control over land use decisions. Nuisance law dictates that an owner may use his land in any way so long as the use does not unreasonably interfere with another's use of land.¹⁰ Similarly, the law recognizes that public intervention into private land use decision making may be proper where significant public interest is threatened.¹¹ Public intervention is necessary to maintain order as well as to protect and maximize individual property rights. In most instances, the determination of whether a particular use is undesirable and subject to public oversight focuses on a "balancing of the equities."¹² Balancing the equities includes determining whether the benefits of the plaintiff outweigh the costs to the defendant.¹³ The balancing of the equities approach assumes that the public interest and control over land use presump-

10. DANIEL R. MANDELKER, *LAND USE LAW* § 4.02, at 94 (2d ed. 1988). This type of nuisance is considered a private nuisance. The reasonableness of land use, in a private nuisance, is tested by evaluating how compatible the land use is with respect to the land uses in the surrounding area. If the owner's land use has a negative physical impact on another's land, courts have often found a nuisance. However, physical impact is not required. Some courts have enjoined aesthetic nuisances when harm is found. *Id.* at 95.

11. W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 90, at 645 (5th ed. 1984). This type of nuisance is generally referred to as a public nuisance. *Id.*

12. MANDELKER, *supra* note 10, § 4.12 at 103. The court balances the equities of each party to determine whether a remedy should be granted. Courts primarily use this test in examining whether an injunction should be issued to stop an undesirable use of land. *Id.*

13. *Id.* Courts use several factors in balancing the equities. These factors include the availability of a legal remedy, the economic impact on the defendant, and the economic impact of the defendant's use. Also, courts may consider the nature of the area where the nuisance is occurring. *Id.*

tively outranks the private interest. National land use needs and the public interest work together to place limitations upon the nature, extent and content of the individual property rights.¹⁴ Thus, the historical approach to conforming individual choices to national needs has been to restrict regulatory efforts to the extent necessary to achieve a desirable pattern. Where necessary, limitations are only used as a last resort to achieve the desirable use pattern.

Case law has demonstrated that an individual's authority to use land may be adjusted to reflect or accommodate the public interest. Indeed, under the guise of the public interest, our system frequently asserts an interest in and control over land use activities that have adverse environmental consequences on lands beyond the property itself.¹⁵ In recent years, the government has tended to intervene early where an individual's land use activity conflicts with a larger public purpose.¹⁶ Most frequently, government intervention occurs when the existing or proposed land use inflicts a perceived threat to the long term utility of the land,¹⁷ or when the activity is deemed to have undesirable environmental consequences.

III. POSING THE PROBLEM: CONTROL OVER LAND USE DECISION MAKING

A notable development in our nation's history is the transformation from a predominantly rural society into a highly urbanized society.¹⁸ This shift has caused farmers and ranchers

14. Examples of instances regulated include interferences with the public health, safety, morals, public peace and general public discomfort. Overall, the public nuisance must affect an interest common to the general public. KEETON, *supra* note 11, § 90 at 643-45.

15. See, e.g., *Just v. Marinette County*, 201 N.W.2d 761 (Wis. 1972). In *Just*, an ordinance prohibited the landowner from changing the natural character of the land within 1000 feet of a navigable lake and 300 feet of a navigable river. When the plaintiff dumped 1040 yards of sand to create a beach on his property, he was found to have violated the ordinance. The court upheld the ordinance and the violation, observing that improvement of the public condition is a valid goal of land use regulation. The court noted that the ordinance preserves nature, the environment, and natural resources. The ordinance served to protect these interests of the public for the future. *Id.* at 771.

16. See *id.*

17. See *id.*

18. See GORDON MEEKS, JR., NAT'L CONF. OF STATE LEGISLATURES, *THE STATE OF AGRICULTURE: SOME OBSERVATIONS* 2-4 (1986). Meeks observes a continuation of the "dramatic shift from a rural to an urban culture." *Id.* at 2. In 1960, nearly four million farms existed in the United States, as opposed to only 2.2 million farms in

to become a political and cultural minority,¹⁹ even though farmers and ranchers own and use most of the nation's private land.²⁰ Given our system's approach to political representation, the farmers' and ranchers' only meaningful opportunity to influence policy decision making tends to be confined to lobbying rather than through direct, effective representation.²¹ Few would question that, in our republican form of government, the wishes of the majority and the concerns of society as a whole should dominate. Nor would one question the need of the majority to be sensitive to the needs of the minority and not act in an oppressive fashion. Unfortunately, there is a growing concern among farm and ranch landowners that their relationship with the urban majority is becoming custodial rather than cooperative. In one sense, the majority interest appears to be pursuing an urban-oriented agenda, an agenda designed to shape rural land use activity to fit an urban vision of the countryside.²²

The concern that the relationship is custodial has persuaded many farm and ranch owners to believe that our legal system has assumed a discernible urban orientation that is insensitive

1982. *Id.* The Office of Technology Assessment predicts that this number will decrease to 1.2 million farms in the year 2000. *Id.*

19. See WORLD PERSPECTIVES, U.S. AGRICULTURAL POLICY GUIDE xi (1991). Farmers have lost much of their political base due to the declining farm size and numbers. *Id.* As a result, farmers "often have to ally with urban and consumer interests to obtain favorable farm legislation." *Id.*

20. According to one estimate, there are approximately ten acres of rural land for each American. HEALY & SHORT, *supra* note 6, at 1. This estimate includes federal, state, and local government holdings. Absent these holdings, there still remains approximately six acres of rural land per person. *Id.*

21. See WORLD PERSPECTIVES, *supra* note 19, at xi. The Guide notes that agricultural policy making is increasingly influenced by people outside the traditional farm community. *Id.* at xii. This is due, in part, to "pressing fiscal concerns and [a] growing emphasis on environment and food safety issues." *Id.* Yet, "what farmers now lack in quantity they make up in quality." *Id.* at 21. This "quality" is the strong agricultural lobby that represents farmers' interests. See *id.*

22. There is ample reason for farm and ranch landowners to mistrust the urban mindset. For example, this past spring a Topeka television station broadcast a report on how city grade school children had enjoyed a farm animal exposition held locally and staged just for them. One student, approximately 12 years old, was asked during the broadcast what meat pigs produced. He answered "chicken." This comports with my own experience in bringing baby lambs into my children's classes at school for "show and tell" and seeing that the kids actually knew very little about animals. For instance, one child, after touching the wool of a lamb, told his classmate to touch the lamb because "it was covered with carpet." Even seventh graders expressed genuine terror at the prospect of being near a two-week old lamb. Seemingly, the lamb was the largest live animal the students had ever seen.

to their interests and needs.²³ In the areas of land use and environmental law, this orientation seems to result in a significant shift of control over individual land use decisions and practices away from the farm and ranch landowner toward urban-dominated or public-controlled decision-making bodies. The consequences of such a shift is that the landowners are being deprived of some of the most meaningful attributes of property ownership. In order to appreciate the viewpoint of most farmers and ranchers on the issue of control over land use decision making, it is necessary to explore basic differences between urban and rural views regarding land itself and to understand the context in which the farm and ranch landowners feel most threatened.

A. *Urban Views of Rural Land and Rural Attitudes*

It is difficult to determine which of two competing attitudes better describes the typical urban view of what is *rural*—nostalgia or condescension. Each undoubtedly has shaped the urban view.

The nostalgic view of what is rural rejects technical accuracy and, instead, conjures up images straight out of a Norman

23. See, e.g., Gene Johnston, *Business*, SUCCESSFUL FARMING, Oct. 1992, at 13. In addressing this concern, Johnston stated:

One interesting finding from a *Successful Farming* survey last year concerned your views of the government. 'Does the federal government care if you make a profit?' was the question. Over 90% of you said 'No!'

I think we have more reason to feel that way in this election year. Am I just missing it, or is it not true that in the political debates dominating our country now, there's precious little discussion of farm issues?

Maybe it's understandable in the presidential race. Farmers do make up only two or three percent of the population. But where I live in the heart of the Corn Belt, there's a Senate race going on, along with several House contests, and they're not talking about farm issues, either. More and more, politicians seem to live by the creed that what you don't say can't hurt you.

.....
Which leads to another point: Government numbers can be deceiving. The National Farmers Union was having trouble understanding how net farm income reported by USDA could be setting new records. In 1988, for example, net farm income was said to be \$42 billion.

With a little checking, it was discovered that IRS numbers for that year reflected total taxable farm income at \$527 million. The enormity of that discrepancy is illustrated by calculating the average income of all 2 million farms in the U.S. According to the USDA number, the average farm had net income of about \$21,000; the IRS number said the average farm had taxable income of \$263.

Now that would give the public quite a different view of the state of things on the farm.

Id.

Rockwell or Andrew Wyeth painting. In this sense, rural is a place²⁴ and is comprised of

unpaved dusty lanes and cane-bottom rocking chairs, of purple-flowering wisteria and white magnolias, clear-water swimming holes and Sunday chicken dinners around a large kitchen table, long puffed rows of summer cotton, roasting ears and cane-pole catfishing in pine-shadowed ponds, lightning bug nights and barefoot days.²⁵

This depiction of rural, however, is a myth and is only a memory or a faded recollection of something once seen. While such places do exist, urban refugees are the only politically significant group that, for the most part, live there. The typical urban dweller no longer understands the rural way of life, and reality is replaced by the imagination.

To others, nostalgic ruralism is the operative concept. In an increasingly urban society, rural is at times considered the antithesis of large scale "development," and, as such, encompasses the large expanse of "undeveloped" America. How does this rural appear? Indeed, it is a place to which one escapes. Escapism dictates the following images: the woods; the rolling expanse of farmland, and the clustered enclaves of human habitation known as small towns; open space where nature is unsullied by human activity and where humankind can commune with one's innermost aspirations and escape the stress and turmoil of urban living; and space on a grandiose scale that is ripe, unspoiled and laden with potential. This image of rural is the dream of what the entire country should look like—if it can be kept unspoiled. It is a place where life progresses at a slower pace and there is less stress. For most people, it is a mythical place but a place that is only attractive if one wants to be a tourist.

The condescension view reflects rural as an attitude. Rural people are considered to be less adept at dealing with the intricacies of modern life.²⁶ Rural people are simple, uncultured,

24. For statistical and governmental reporting purposes, rural is technically described as an area of a particular size outside a metropolitan area. Thus, rural generalizes the countryside and all the small towns, isolated villages, scattered houses, and farmsteads that dot our land in terms of land-use density.

25. Jerry Flemmons, *Our South in Words and Pictures*, *SOUTHERN LIVING*, Jan. 1990, at 31, 124.

26. One story teller recently addressed the condescending view of rural.

America has a great secret.

It's called rural America. In popular American culture, this vast, forgot-

redneck, but certainly not urbane, or sophisticated.²⁷ Rural people are also viewed as low key, laid back, and unmotivated. The rural community, in this sense, is a place from which one escapes.

B. *Rural Views of Rural Land and Rural Attitudes*

The rural view of rural is an attitude markedly different from the typical urban view.²⁸ This attitude is comprised of confidence, independence and interdependence, self-sufficiency, and making do with less than what recent technology might offer.²⁹ In rural America, the image is one of effective socialization, cooperation, and oneness.³⁰ Life on the contemporary

ten expanse is the home of hayseeds, hicks, and rednecks—a place to be from, not a place to live.

“Some people are embarrassed by overalls and the town band playing in a small park,” says [Roger] Welsch. “Rural life has been the butt of jokes. If in a movie you wanted to say this person is a dumb bumpkin, you said he was from Iowa, Kansas, Nebraska, or South Dakota.” Or Mississippi, or Alabama, or Georgia.

Rural America is not some great cultural desert. . . . The technology associated with modern farming is quantum leaps past the understanding a factory worker must have about his craft.

The quilts and the cooking are real. The humor is sharp and often telling. The art is living, not artificial pieces hung on a museum wall.

Dan Miller, *Profile, Roger Welsch—A Story Teller Gives Rural Folks a Place to Live*, PROGRESSIVE FARMER, Nov. 1992, at 16.

27. This attitude is illustrated by the current wave of “cowboy” jokes. For example: Q. Why are the edges of cowboy hats curled up? A. So that four can sit across the front seat of a pickup; Q. If three identically attired people are sitting in the front seat of a pickup, how do you tell which one is the cowboy? A. The one in the middle is the cowboy. That’s so he doesn’t have to drive, he can control the radio, and he doesn’t have to get out to open the gate.

28. It is rather impossible for a person to describe accurately the rural lifestyle to someone who has not lived there for a protracted length of time. Even people who have moved to rural areas to escape from the problems and stress of the urban lifestyle will find it hard to replace their urban expectations. As a result, such people will have a distorted view of ruralism. See Bob Trebilock, *Rural Hot Spots . . . Cold Spots*, COUNTRY J., June 1987, at 32, 35-36. See also *America’s Small Town Boom*, NEWSWEEK, July 6, 1981, at 26 (discussing migrants who moved to rural America seeking “traditional values” but expecting the same services offered in larger cities).

29. Although this view may be seen as the embodiment of the “American Dream,” most people wish to ignore this view of rural and opt for a derogatory view because it is the social antithesis to the complexity of modern economic, cultural and political life.

30. Teresa Jordan, author of the award-winning video production, *Cowgirls: Women of the American West*, wrote the following about the effective socialization which occurs among children on farms and ranches:

Ranch children as young as eight or nine often do their jobs alone. Although they start out with instructions, the nature of the work means that

western ranch has been described by a prominent writer as a democratizing process. So much in American life has had a corrupting influence on our requirements for social order. Traditionally, ranch life . . . [has] stood for the achievements of man and nature, man and animal, not the machine. . . .

[What is] instructive to us? Though we all feel a sadness that no uncharted land is left, no true wilderness, we've learned from the good and bad experiences . . . the meaning of freedom, heroism, wildness, and something about the processes of civilization. It's not the myths that are wrong, but our versions of reality. From the open space still surrounding us, we learn spiritual equivalents: that personal liberation is a kind of psychic space that represents clear-headedness and an ability to act without fraudulence. From

they frequently need to revise their plans. On a roundup, for instance, riders fan out over a pasture to gather the herd. A child may be asked to ride the far east ridge and push whatever cattle she finds toward to corral. With luck, everyone riding the pasture will arrive with their cattle at the corral at the same time. But she rides the east ridge and doesn't see anything. She wonders if she should leave the ridge and try and help someone else, or should she stick with the original plan. Or she finds a hole in the fence and sees fifty pair in the neighbor's pasture. If she rides after them, she will get to the corral later than everyone else. If she doesn't, someone will have to come back for them later. Many young ranch kids I know talk about these moments of uncertainty with dread. But they make some sort of decision, and they act on it. If they live in a supportive family where the fact that they made a decision is applauded even when the outcome isn't perfect, they grow into decisive and confident adults.

Children who grow up in agriculture have a chance, from an early age, to learn skills and gain recognition for them[selves]. Ranch work requires such aptitudes as horse training, sheep shearing, roping, and harness repair, not to mention knowledge of veterinary medicine, auto mechanics, plumbing, electricity, irrigation, carpentry, and bookkeeping. As a child gravitates toward those areas that interest him and masters them, he earns that most coveted of designations—he makes a good hand. Organizations like High School Rodeo, 4-H, and Future Farmers of America add further reward for these skills, which are not only personally satisfying but intimately involved with the family's welfare.

All this sounds like a lot of responsibility from a young age, and it is. But with that responsibility comes an independence, a freedom and mobility.

... ..

If the cattle industry offers no greater guarantee of golden childhood than city life, it at least has the potential to provide fundamentally different familial relationships. A ranch provides an almost preindustrial structure to family. Home and the workplace are one and the same. Not all rural families work together: some wives work in town; some husbands work for wages at a nearby coal mine or neighboring ranch while their wives take care of the home place; some kids, for a variety of reasons, don't participate at all. But when a ranch is a shared endeavor, real partnership is possible.

Teresa Jordan, *Ranch Family*, in KATHLEEN J. RYAN, *RANCHING TRADITIONS* 99, 103-06 (1989).

the cowboy myths we learn that heroism isn't power play, but an act of submission—a communion of the human and the natural. . . . [It] reminds us to behave, to be disciplined, to be good neighbors; it teaches us the basics of compassion. From the inclemencies of weather we learn humor and humility, how to be coresidents, not conquerors, in the world.³¹

This disparity between the rural and urban viewpoint is most evident in the concept of landownership and in the role land plays in rural areas. In the rural community, an inseparable relationship exists between owning land and a way of life that landownership makes possible.³² The ability to control land use underlies the attitude of self-sufficiency and independence. As a contemporary writer observed, the enjoyment and occupation of land is vital to the quality of life, and effective use of land insures the continuation of a way of life.

Yes, there are state-of-the-art computers, compact discs, VCRs—technological toys and marvels—but I can live without them. I cannot live, however, without the land.

Give me masses of live oaks, and the wind in their leaves like a messenger from the gods—the branches lifting and bending like old men nodding at the timeless receipt of timeless news.

Give me stretches of ranchland grass; give me fence line weeds and small yellow flowers. Give me cattle that stand and chew during midday heat and then, as shadows lengthen, head out to graze.

Give me sky—the whole uninterrupted sweep and glare of it—and beneath it, on a rise of ground, a windmill. Let me stand beside it and drink a cup of well water at sundown. Let the bullbats begin to swoop down toward the water troughs; let me sit for awhile after dark; let me sleep with moonlight in the doorway and katydids pulsing in the trees; and then let me begin another state-of-the-art day in the Texas Hill Country.³³

31. Gretel Ehrlich, *The West of the True Myth*, in KATHLEEN J. RYAN, *RANCHING TRADITIONS* 45, 50-59 (1989).

32. Regardless of the debate about whether farming or ranching constitutes a "way of life" or a business for public policy purposes, it is indisputable that the business of farming or ranching requires a lifestyle that differs markedly from the lifestyles of the urban counterpart. See generally James B. Wadley, *Small Farms: The USDA, Rural Communities and Urban Pressures*, 21 *WASHBURN L.J.* 478 (1982).

33. Elroy Bode, *Our South in Words and Pictures*, *SOUTHERN LIVING*, Jan. 1990, at 31, 74.

The space land occupies is perceived as serving a wholly different function in rural areas than in urban areas. In urban areas, space separates, whereas in rural areas, space unites.³⁴ Rural simply cannot be defined without some feeling or reference to the interrelation between mankind and space. Indeed, the need for space and the ability to enjoy that spatial component, or ruralness, is inextricably linked to mental well-being.³⁵

Additionally, the land, with all its abilities and disabilities, often becomes the primary variable governing the success of rural enterprise. At minimum, the land is where farm and ranch activities occur. At best, the land is a supporting, but selfish, partner in the venture. Despite popular opinion to the contrary, the rural mindset leaves little room for romance in describing the significance of land to the farmer or rancher. Indeed, the activities which occur on the land do not merit particular exaltation.³⁶ Animal operations generate flies and odors, farming generates dust and noise, crops and animals die, and seasons come and go. Nature itself can be very harsh, yet the land remains as perhaps the only constant in a fragile enterprise. Nevertheless, it is a fact of rural life that the land, with all its vagaries, is something that must be accepted before farm or ranch life can go on.

Finally, the strong correlation between property ownership and social behavior is more prevalent in rural areas than in urban areas. This is perhaps attributable to traditional views regarding property, as well as stronger feelings of independence

34. "In the West, it is our solitude that unites us. The farther apart we are in miles, the closer we feel." Ehrlich, *supra* note 31, at 50.

35. See *infra* notes 100-130 and accompanying text.

36. Guy Logsdon, western musicologist, wrote the essay "Music and Dance" to dispel the notion of romance associated with traditional, but highly romanticized, cowboy music. The essay provides in part:

Cowboy work is not romantic. Being kicked in the groin by a yearling, breathing dust all day, or freezing in rain and snow, being chased by a crazy-mad mother cow, or hooked by a horn, having a horse fall on you, breaking bones and popping-off fingers, doing dirty work, inhaling the odor of burning hair and flesh, and castrating bull calves do not inspire working cowboys to sing while they work. More likely, such things inspire them to create new curse words and other descriptive sayings that defy non-cowboy imagination. Only Hollywood and Nashville portray the always clean, ever-fearless singing cowboy. The romantic image comes from the observer, not the participant.

Guy Logsdon, *Music and Dance*, in KATHLEEN J. RYAN, *RANCHING TRADITIONS* 191, 193 (1989).

and self-sufficiency that exist in rural areas.³⁷ Therefore, this correlation suggests the significance of the ability to control particular facets of land use.

C. *Rural Land as The Battleground for Urban Land Use and Environmental Concerns*

1. *Land Use Regulation*

Unlike the traditional focus of land use planning,³⁸ the rural community views land use planning essentially as an urban oriented institution, designed to accommodate the cities' growth, development, and expansion needs. Urbanization involves intensive use of land. As cities grow, the use of land will tend to move outward from the center of the cities.³⁹ Further, since cities have demonstrated an historical propensity for low density settlement, much of the extension outward from the cities into the surrounding countryside will encroach upon enormous amounts of land.⁴⁰ Intrusion into the countryside is often excused on such diverse grounds as the people's need for a place to live or the need to keep heavy industrial development *away* from where people live. In this context, the rural mindset believes that land use planners assume rural—and especially agricultural—lands are “undeveloped” lands and are

37. Loren Kruse, editor of *Successful Farming*, reported on the “strong relationship between emotional depression and stressed financial conditions among farmers” and a “growing perception of a two-tiered society.” Loren Kruse, *Across the Editor's Desk*, *SUCCESSFUL FARMING*, Sept. 1990, at 1. Kruse also reported that the “farm crisis is not past tense at all for many families in rural America” and, indeed, economically, there are actually now “two rural Americas.” *Id.* Kruse suggested that “[o]ne rural America includes those who are financially secure and believe things are generally in good shape. The other rural America includes those who range from financially struggling to absolute poverty (25% of all rural children live in economic poverty).” *Id.* Kruse also noted that

[t]here is a weight of guilt on many farmers who came through the 1980's largely unscathed by financial scars. It is one reason financially successful farmers may have great difficulty visiting a farmer in financial stress. The successful farmers often believe their own secure financial condition is a reminder of hurt to those in trouble.

Thus, many troubled farmers and farm families are still “isolated” by their neighbors, just as they were during the worst of the farm crisis.

Id.

38. For a discussion of historical land use planning, see *supra* notes 8-17 and accompanying text.

39. See HAGMAN & JUERGENSMEYER, *supra* note 8, at 480.

40. See *id.*

therefore available for intensive land development.⁴¹

2. *Environmental Regulation*

Recently, considerable interest has focused on the impact of land use activity on environmentally sensitive lands. Rural lands are a logical target for environmental concerns for a variety of reasons. First, urban conversion pressures are likely to change the land from a "natural" to a more intensive and environmentally degrading use. Second, environmentalists view normal rural practices, such as the application of pesticides, herbicides, and the plowing of the land for crop production, as causing irreparable damage to resources such as water or wetlands. Finally, many view rural lands as being closer to their natural state and, thus, less damaged due to environmentally threatening activity. As such, rural lands are the most susceptible to protection and the most likely to be "saved" from future harm if properly regulated. These factors persuade many farm and ranch landowners that their lands are the primary target of environmental regulations.

IV. THE REAL PROBLEM AND THE RELEVANCE OF *LUCAS*

From the perspective of the farm and ranch landowner, the real problem of land use regulation has three distinct facets: 1) the values used in the decision making tend to be urban; 2) the effect of the decision making is to transfer control away from the farm and ranch landowner; and 3) the dominant impact of land use regulations falls disproportionately upon rural landowners.

A. *Urban Values are Used in Decision Making*

Farm and ranch landowners perceive environmental or land use regulations as assuming it is socially and culturally acceptable for urban interests to shape rural areas, regardless of the rural communities desires. While farm and ranch landowners generally agree with the objectives of the restrictions, they are concerned with the particular values that underlie the policies. Land use regulation and environmental controls tend to be areas of the law that are very value laden. While it is possible to

41. See RICHARD L. BARROWS, NATIONAL PLANNING ASSOCIATION, *THE ROLE OF FEDERAL, STATE AND LOCAL GOVERNMENTS IN LAND-USE PLANNING* 13 (1982).

point to a number of specific health or safety threats associated with land use practices, the ultimate objectives of a regulatory approach may be nothing more than a concern with aesthetics. Indeed, important decisions may be grounded upon nothing more than social convenience. Thus, it is not surprising that farm and ranch landowners, like any other minority, fear that the values underlying regulations will be the values of the majority, rather than their own.

B. Control is Taken Away from Farm and Ranch Landowners

Farm and ranch landowners believe they are losing control over land use decisions. Many landowners see land use decisions as being subtly shifted to, and exercised by and on behalf of, urban-oriented interests.⁴² Specifically, the rural landowners reject the rationale that land regulation rescues the rural land from the consequences of harmful rural-oriented uses. Rather, landowners believe the regulations are an attempt to keep rural areas pure and unspoiled for urban purposes. As a result, the farm and ranch landowner questions whether non-rural interests should play a large part in determining what kinds of harm should be proscribed on rural lands.

C. The Dominant Impact Falls upon Rural Landowners

Farm and ranch landowners have expressed concern that because their lands can be regulated with the least amount of hassle from other urban concerns, the focus of most environmental and land use programs will be on rural lands. In some respects, this has a ring of truth to it.⁴³ For instance, arguably

42. It is easy to suggest that the situation may be one of ineffective communication, in which the urban sector has not clearly articulated the reasons for the controls. Arguably, the urban sector may not have asked the rural community for advice and the rural sector has done a poor job in making its position known. If this were true, the problems may be remedied. On the other hand, the rural farm and ranch landowners' attitude apparently believes that the land is theirs and the non-rural sector has no business dictating how it is used. Better communication will not change this attitude. It is easy to imagine the rural response to the joinder that "the farm or ranch landowner is merely a steward of the land for society." See HAGMAN & JURGENSMEYER, *supra* note 8, at 478 (noting the urban community viewed farmland a temporary or holding land category). Likewise, the assertion that the regulations do not actually constitute "telling anyone what can or can't be done with their own land" most assuredly will fall on deaf ears because experience has told the rural landowners otherwise.

43. An analogy can be drawn between the restrictions on the application of chemicals on farmland to the use of a private automobile in the suburbs. The ability

rural lands are not yet “developed” in the urban sense and thus, are more amenable to sound directed management. Similarly, because rural lands tend to be “unspoiled,” rural lands can be shielded from the harmful consequences of developmental activity if properly managed.⁴⁴

D. *The Interest in Lucas*

Lucas v. South Carolina Coastal Council,⁴⁵ focused directly on the conflict existing between the private right to use property in any manner and the state’s ability to completely control land use to further environmental objectives. In determining the state’s ability to control individual land use decision making, the Supreme Court had to consider the extent to which an individual landowner may be compelled to dedicate a parcel of land to a particular use in order to create a desired pattern of use.⁴⁶

The *Lucas* decision generated high expectations among farmers and ranchers with regard to their concerns. Specifically, farm and ranch landowners hoped that the Court would

to choose how one farms is probably as important to the farmer as mobility is to the suburbanite. Each activity undoubtedly has comparable adverse impacts on the environment. Nevertheless, the suburbanite might quickly assent to restrictions on the farmer to keep the environment clean while strongly opposing restrictions on the use of the automobile. In all likelihood, the suburbanite would not be bothered by decisions that limit the use of farm chemicals. On the other hand, the suburbanite would consider it an extremely unnecessary intrusion on the individual’s use of property if the suburbanite were restricted to driving only an electric car, at a minimum speed of 35 miles an hour, and only then on even numbered weekend days. The suburbanite will respond that, unlike automobiles, farm chemicals result in life threatening harm and, therefore, must be stopped.

Experience, however, suggests that lawmakers will more readily issue restrictions against farmers than against suburbanites. Undoubtedly, this result has much to do with whether one is in the majority and whether one perceives that one is being harmed by another’s conduct. However, exclusive focus on “harm” belies the adverse impact the shifting of control over land use decisions has upon the psychology of land owners. This, perhaps, results because the suburbanite actually “controls” so little of what he or she actually “owns” and is no longer concerned with that dimension of ownership.

44. Existing programs reinforce this view. For example, the current controversy over wetlands reveals that the concern is almost exclusively focused on rural areas. The Wetland Reserve Program is directed toward “farmed wetlands.” See 16 U.S.C. § 3837 (1988). Over a ten-year period, the United States Department of Agriculture will acquire conservation easements over one million acres of prior converted wetlands to attempt to restore them back to their natural state. See *id.*

45. 112 S. Ct. 2886 (1992).

46. See *id.* at 2892-2902.

reject the environmental protection argument set forth by the Coastal Council. The farm and ranch landowners believed this would send a signal to land use decision makers that private property ownership still dominates over public interest land use. Unfortunately, the Court emphasized that the landowner was deprived of “all economically beneficial uses”⁴⁷ of the land, at the expense of the environmental considerations.

V. *LUCAS v. SOUTH CAROLINA COASTAL COUNCIL*

A. *Facts*

In 1986, Lucas purchased two residential lots on a barrier island for \$975,000.⁴⁸ Lucas intended to build single-family homes.⁴⁹ Two years later, however, the state enacted the Beachfront Management Act prohibiting the erection of any permanent habitable structures on the land.⁵⁰ The Act recognized the importance of the beach and dune system as a storm barrier, a plant and wildlife habitat, a tourist attraction, and a “natural health environment” which aided the physical and mental well-being of South Carolina citizens.⁵¹ The prohibitive effect of the Act, however, rendered Lucas’ property valueless.⁵² In response, Lucas sued the Coastal Council claiming that, although the Act may be a valid exercise of police power, it deprived him of the use of his property and thus effected a taking without just compensation.⁵³

The Coastal Council argued that the state had the authority to prevent harmful uses of land without having to compensate the landowner for the restriction.⁵⁴ The Council’s argument

47. *Id.* at 2985.

48. *Id.* at 2889.

49. *Id.*

50. *Id.* at 2889-90. In 1977, South Carolina enacted the Coastal Zone Management Act in response to the federal Coastal Zone Management Act of 1972. The state law prohibited landowners from “committing the land to a ‘use other than the use the critical area was devoted to’ ” unless the landowner acquired a permit. *Id.* (quoting S.C. CODE ANN. § 48-39-130(A) (Law. Co-op. 1987)). At the time of Lucas’ purchase, the government had not declared the lots as “critical” and Lucas was not required to obtain a permit. *Id.*

51. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2896 n.10 (1992).

52. *Id.* at 2890.

53. *Id.* at 2890. The trial court determined that Lucas had suffered a taking. *Id.* The South Carolina Supreme Court reversed, finding that the state owes no compensation when the regulation is designed “to prevent a serious public harm.” *Lucas v. South Carolina Coastal Council*, 404 S.E.2d 895, 899 (S.C. 1991).

54. *Lucas*, 112 S. Ct. at 2896-97. The Coastal Council also argued that the tak-

was based on a long line of cases sustaining the state's right to use its "police powers to enjoin a property owner from activities akin to public nuisances."⁵⁵ In response, Lucas argued that notwithstanding a lack of a nuisance exception to the Takings Clause,⁵⁶ the exception would not apply where a regulation completely deprived the landowner of the value of the property.⁵⁷

B. Holding

Initially, the Court recognized two takings situations where a property owner must be compensated regardless of the state's interest.⁵⁸ These situations include a physical invasion of the property by the government⁵⁹ and a regulatory action that completely deprived the landowner of all economically beneficial or productive use of the land.⁶⁰

The Court then proceeded to issue the narrow holding⁶¹ that the Takings Clause does not contain a nuisance exception.⁶² The Court rejected the suggestion that the government

ings claim was not ripe. *Id.* at 2890-91. Since South Carolina amended the Act to authorize "special permits" in areas where development was otherwise prohibited, the Court chose to decide the case as if the statute were being applied as originally enacted. *Id.* at 2891. The Court determined that, had the state supreme court held Lucas' claim unripe, the Court would have as well. *Id.* However, since the state court disposed of Lucas' takings claim on the merits, so too would the Court. *Id.* Further, Lucas' complaint was ripe during the period preceding the amendment. *Id.*

55. *Id.* at 2896-97. See, e.g., *Mugler v. Kansas*, 123 U.S. 623, 669-70 (1887) (holding that no taking occurred as a result of a law prohibiting the manufacture of alcoholic beverages which rendered a brewery nearly worthless); *Goldblatt v. Hempstead*, 369 U.S. 590, 596 (1962) (upholding restrictions on excavations on excavations of gravel below the water line to prevent harm to the water supply); *Miller v. Schoene*, 276 U.S. 272, 279-80 (1928) (upholding the destruction of cedar trees to protect apple trees from disease).

56. The Fifth Amendment provides "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

57. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2896-97 (1992).

58. *Id.* at 2893.

59. *Id.* The Court noted that this "discrete category" of compensable takings is consistent with a long line of Supreme Court decisions. *Id.* See, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979).

60. *Lucas*, 112 S.Ct. at 2893-94. The Court also considered this to be an historically recognized "discrete category." *Id.* at 2893. See, e.g., *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987); *Agins v. Tiburon*, 447 U.S. 255 (1980).

61. The holding was not narrow enough for Justice Blackmun, who in the dissent questioned "the Court's wisdom in issuing sweeping new rules to decide such a narrow case." *Id.* at 2904 (Blackmun, J., dissenting).

62. *Id.* at 2896-99. Specifically, "noxious-use logic cannot serve as a touchstone

may proscribe “harmful or noxious uses” of property without compensation.⁶³ Rather, the “harmful or noxious use” principle was “the progenitor of [the Court’s] more contemporary statements that ‘land-use regulation does not effect a taking if it substantially advances legitimate state interests.’ ”⁶⁴ In *Lucas*, the state’s interest in the regulation was irrelevant since the trial court determined that Lucas was deprived of any economically viable alternative use of his land.⁶⁵

The Court undoubtedly recognized the difficulties the automatic compensation rule would present to local jurisdictions attempting to prevent serious harms.⁶⁶ The Court, therefore, created an exception to the rule: where the proscribed use or interest is not presently a part of the owner’s estate, even if by virtue of the state’s law of property or nuisance, government can restrict and no compensation is required.⁶⁷ For example, “an owner of a lake bed . . . would not be entitled to compensation when he is denied a requisite permit to engage in a landfilling operation that would have the effect of flooding others’ land.”⁶⁸ In applying this exception, the burden shifts to the state to justify the restriction as being supported by background principles of property or nuisance law that prohibit the uses the landowner intends to make of the property.⁶⁹ If this burden is successfully carried, the regulation will stand

to distinguish regulatory ‘takings’—which require compensation—from regulatory deprivations that do not require compensation.” *Id.* at 2899. Thus, the government is not automatically entitled to regulate land use without being held liable for compensation. *Id.* There are “limits to the noncompensable exercise of the police power.” *Id.*

63. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2897 (1992). The South Carolina Supreme Court held the taking was not compensable since it fell under the “harmful or noxious use” doctrine. The Court believed the doctrine was not applicable to the present case. *Id.*

64. *Id.* at 2897 (citing *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 834 (1987)). Reconsideration of the “harmful or noxious use” principle was necessary because of the inability to distinguish between “harm preventing” and “benefit-conferring” regulations. *Id.*

65. *Id.* at 2899. The Court failed to explain when the regulation “goes too far” or when it stops short of depriving the landowner of all beneficial use of the property. *Id.* at 2919 (Stevens, J., dissenting).

66. *See id.* at 2900-02.

67. *Id.* at 2899.

68. *Id.* at 2900.

69. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2900 (1992). Normally, the law presumes the constitutionality of the enactment, and the challenger must demonstrate that it deprives him or her of a protected property interest. *Id.*

and the state will not be required to pay compensation.⁷⁰

VI. IMPACT OF *LUCAS* ON THE RURAL VIEW OF LAND AND LAND USE

A. *General Effects of Lucas on Rural and Agricultural Land Use*

Unfortunately, *Lucas* will have little impact on the concerns of farm and ranch landowners. The focus on the economic viability of land overshadows any position the Court might have concerning environmental regulation. While the Court does not suggest that environmental concerns are less significant than private landownership,⁷¹ environmental regulations will not invoke automatic compensation unless these regulations deprive the property owner of all beneficial use. The Court fails to provide what constitutes an "economically viable use" and even suggests that this will be a difficult burden for the landowner to carry.⁷² Therefore, governments will maintain considerable latitude and authority to regulate land use without compensation, and agricultural interests will still have to deal with the pressures of environmental regulation in the property law context.

Lucas also retains the established policy of resolving each alleged taking situation on an "ad hoc, factual" basis.⁷³ Thus, *Lucas* should not be understood as a broad, or categorical policy statement on the issue of regulatory takings. While the Court's holding may be of marginal assistance to those with agricultural interests, it appears that the impact of environmental regulation falls primarily on land use practices affecting parcels in their entirety.

Regardless of the Court's narrow holding, *Lucas* is significant

70. *Id.* at 2902.

71. On the contrary, there is loose language in the case that suggests the Court may not consider the promotion of environmental objectives to be "legitimate state interests" or "not reasonably related to state policies." *See id.* at 2879-2900.

72. The Court observed that, in some cases, the deprivation of even 95% of the value may not result in compensation, noting that "takings law is full of these 'all-or-nothing' situations." *Id.* at 2895 n.8. The landowner must establish that the interest taken is "an interest in land" that is "accorded legal recognition and protection" by the property law of the state. *Id.* at 2894 n.7.

73. *Id.* at 2893. The Court states that, in all prior regulatory takings litigation, courts have rejected any set formula for determining when the government has gone too far. *Id.* The Court intimates that when the test is applied, it should be applied to particular interests or rights of the land and not to the property in its entirety. *See id.* at 2897-99.

to farm and ranch owners because of the Court's concern with the private dimensions of landownership and the need to restrict land use activities.⁷⁴ This concern is illustrated by the dissent's criticism that the majority was rushing into the case because of the "intense interest in Lucas' plight."⁷⁵ Justice Blackmun's concern affirms the sanctity of private ownership in light of the collective interest that inheres in each parcel.

The Court is perhaps interested in keeping property concepts in line with traditional and popular understandings. In this context, the Court discusses how the landowner's "reasonable expectations" are shaped by the state's property law.⁷⁶ Thus, the Court suggests that the need for stability in property law concepts is disserved if the concepts change too rapidly.⁷⁷ Future courts, however, may retreat from this direction if it has the effect of freezing the common law of property and nuisance. Thus, courts may reject a prior court's decision which unduly restricts a local government's ability to address new, unusual or unforeseen needs.

The *Lucas* Court failed to address some concerns of farm and ranch landowners. While some of these considerations are outside the scope of *Lucas*, these concerns must be addressed in order to understand land use decision making as it relates to the rural community.

B. Unaddressed Concerns

1. The Noneconomic Significance of Property

Lucas entirely ignores the noneconomic significance of property ownership. This is perhaps because the law assumes that economic objectives are generally the reason people own land. However, in rural areas, land serves significant noneconomic social purposes. Accordingly, noneconomic interests should be entitled to equal merit and legal protections as economic considerations. In fact, noneconomic objectives are often the substance of environmental objectives that aim to promote social well-being and aesthetics.

74. *See id.*

75. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2909 n.7 (1992) (Blackmun, J., dissenting).

76. *Id.* at 2894-95 nn.7-8.

77. *See id.* at 2894-95 nn.7-8.

2. *The Public Function of Land Ownership*

The fragile nature of the environment compels rural landowners to practice sound land management. Successful rural land ownership, however, often entails a wrestling of the land from the clenched grip of Mother Nature. This antagonistic relationship generates a strongly-held belief that "what one has results from one's own efforts." Thus, property will not be relinquished without a fight. The term "own" takes on different connotations in the rural community than in the urban community. While an urban landowner may willingly accept the social obligation not to use land in harmful ways, the farm and ranch owner believes that the social function of property includes the ability to make landownership itself meaningful to the individual.⁷⁸

In this context, *Lucas* offers little hope to the farm or ranch landowner. While the Court concedes that every landowner must have the right to make *some* economically viable use of property,⁷⁹ the landowner who is left with a mere five percent usefulness may be without a remedy. As justification, the Court noted that "takings law is full of these 'all-or-nothing' situations."⁸⁰

In *Lucas*, the Supreme Court reinforced its early decision in *Penn Central Transportation v. New York City*.⁸¹ In *Penn Central*, the Court held that, in certain circumstances government may take private land without compensation.⁸² *Lucas* also reinforces the concept that the essential social utility of landownership is economic.⁸³ This approach gives little attention to the extent which other concerns, such as the psychological or even

78. Lest one suspect that the author is an unreconstructed conservative on the issue of the public interest over land use, See James B. Wadley, *The Emerging "Social Function" Context for Land Use Planning in the United States: A Comparative Introduction to Recurring Issues*, 28 WASHBURN L.J. 22 (1988).

79. *Lucas*, 112 S. Ct. at 2895.

80. *Id.* at 2895 n.8.

81. 438 U.S. 104 (1977).

82. *Id.* at 124. The Court noted that the government's obligation to pay for a taking depends upon the particular circumstances of the case. Specifically, payment may not be necessary when the taking "arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Id.*

83. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2893-94 (1992). See also *Penn Central*, 438 U.S. at 124 (holding that "economic impact of the regulation on the claimant" is a factor of particular significance in determining whether a taking requires compensation).

political significance of ownership, may merit legal protection. Any consideration of noneconomic concerns greatly complicates an already difficult question. However, it would be tragic if the Court's continued reliance upon the economic paradigm obscures protection of the very facets of property ownership that explain why rural socialization institutions are more effective than their urban counterparts.⁸⁴

Given the trend toward polarization of urban and rural interests in the use and enjoyment of land and natural resources, a balancing test must be established. The test should articulate the extent to which private ownership is outweighed by public functions and obligations and the extent to which noneconomic values impact the protection accorded private property rights.

3. *The Instability of Property Concepts and Definitions*

The law of property is deeply rooted in Anglo-Saxon history.⁸⁵ Our founding fathers⁸⁶ saw these Anglo-Saxon roots as permitting excessive governmental intrusion into the use and

84. The following was reported as a result of the classic Arvin and Dinuba study: Whether we focus on economic, social, or political factors, the traditional virtues of our society are better served in the family farm community than in the agribusiness town. Incomes were on the average higher though more people were supported; business enterprises were both more numerous and more profitable; there were more social amenities such as parks, paved streets, and sewers; there were more schools, clubs, and churches; there were more local newspapers and formal institutions for local political decision-making.

Family Farm Antitrust Act of 1979, Hearings on S. 334 Before the Subcomm. on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary, 96th Cong., 1st Sess. 68, 72 (1979) (statement by Walter Goldschmidt, Anthropologist, UCLA).

85. HAGMAN & JUERGENSMEYER, *supra* note 8, at 1. Land use regulation was initiated long before the Anglo-Saxons gained power. Building site restrictions have been traced back to the fourth century B.C., in the Roman Twelve Tables. MANDELKER, *supra* note 10, at 1.

86. An understanding of why our founding fathers felt as they did may be helpful to understand why farm and ranch landowners typically feel so strongly about their right to use and enjoy their property inviolate. Early Romans, like Seneca, argued that the law resulted because private property destroyed the original virtuosity of men and led to avarice. See M. JUDD HARMON, *POLITICAL THOUGHT: FROM PLATO TO THE PRESENT* 88 (1964). Others, especially early Christians, argued that the institution of private property led to the "sinful" state of man and necessitated the creation of government. See *id.*

There have been efforts in our political history to equate the right to own property with natural law. *Id.* John Locke, a natural law theorist, argued that men possessed certain rights according to the laws of nature. *Id.* at 253. The fact that these rights were inadequately defined and protected in the state of nature impelled men to

enjoyment of property.⁸⁷ As our nation took shape, the founding fathers restructured this heritage by retreating from intervention and favoring individual freedom.⁸⁸ As a result, much

form civil society and to establish government. *Id.* at 255. Private property, although a natural right, was not an unlimited one. *Id.*

In contrast, Thomas Hobbes argued that there was no natural right to property. *Id.* at 232. Rather, the protection of property comes from the establishment of sovereign power, and, consequently, property ownership comes from that power. *Id.*

Our founding fathers drew their ideas from many early theorists who were comfortable with the notion that the state should have some control over property to insure that property was used in the public interest. *Id.* at 286. Charles Louis de Secondat and Baron de La Brede et de Montesquieu argued against the need to protect the public interest in favor of a greater recognition of private control. *Id.* He suggested that "a 'natural community of goods' . . . was abandoned by men when they entered civilized society. Civil laws are designed, in part, to protect property. It is wrong for people to support a law that limits the property rights of an individual on the ground that the limitation is in the interest of the community. The community interest . . . is never served by curbing the individual's property rights." *Id.*

Jean-Jacques Rousseau disagreed with both the origin and the ability of government to regulate.

The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine,' and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: 'Beware of listening to this imposter; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.'

JEAN-JACQUES ROUSSEAU, *A Discourse on the Origin of Inequality*, in *THE SOCIAL CONTRACT AND DISCOURSES* 76 (G.D.H. Cole trans., 1973). This view, however, seems to have greatly influenced many of our founding fathers who sought to define specific limitations on the government to limit the exercise of private property rights. James Harrington was another theorist who argued that "the stability of the political community is dependent upon the proper correlation between the governmental form and the ownership of property." HARMON, *supra*, at 240-41.

87. For example, the oldest roots embodied the notion of a strong public purpose to be served by private ownership. During the Saxon period, a landowner could be prohibited from transferring ownership to land to even one's heirs unless such a transfer was approved by the village or community. John R. Rood, *History of Real Property Law*, 5 *AMERICAN LAW AND PROCEDURE* 1, 3-4 (James P. Hall ed., 1931).

88. More recent theory shifts the rationale for society away from political theory. One approach that is gaining acceptance is the sociobiological approach. Sociobiology attempts to explain human behavior in terms of the "biology" of society. This approach has become increasingly popular with many of the social sciences, including psychology, anthropology, economics and history. The theory developed primarily as a result of the lack of theoretical explanation for many of the social behaviors that are observed in nature and the difficulty of simply ordaining that a particular social behavior results from the enactment of a new law or rule. Grounding the explanation for behavior on biological rather than metaphysical bases, the approach differs from political theorists' view.

One common theme of sociobiology is that evolution applies to behavioral as well as natural biological selection. Although highly controversial, this viewpoint does provide a useful basis to explain many of the societies' individual and cultural

of what we tout as the fundamental and inherent freedoms and virtues of our common law heritage, including the right to own property and the constitutional restrictions that are imposed upon the government's power of eminent domain⁸⁹ are a reaction to, rather than an unfettered embracement of, our historic legal heritage. Without dispute, our constitutional government was adopted, in part, to protect the right to own and use property.⁹⁰ The protection of property use and ownership is one of the hallmark features of our government.

practices. For example, social anthropologists have developed a theory to explain the relationship between genes and culture. The theory holds that both genes and culture evolve, that genes help the cultural components to proliferate, and that the development of specific cultural items help their bearers to survive. Consequently, inherited mental traits are primarily preferences for one item over another leading to a similarity of cultural forms. The co-evolution leads to a commonality of semantic understandings so that words and concepts have similar meaning to users of a particular language. This theory explains the commonality of law, regardless of form, throughout different cultures of accepted norms and practices, such as common approaches to issues of property ownership.

This approach suggests that culture consists of learned and shared systems of beliefs, values, and knowledge forming a blueprint for society. Within most cultures, there appears to be a conscious effort to strive for intermediate goals. Examples of these goals are obtaining food and shelter, gaining prestige, and a good reputation. Through examination and understanding of these goals, two predictions may be made relevant to culture. First, individuals will behave in ways that best suit their reproductive needs. Second, people will try to influence the social rules and other aspects of their culture to promote their reproductive interests.

By performing cross-cultural studies, anthropologists have found that striving for culturally defined goals is a means for enhancing reproduction. In addition, the studies have found that people are nepotistic and many social institutions are instruments for enhancing inclusive fitness. These findings, which have shown that similar needs exist in various cultures, explain the appearance of a strong cultural need for the regime of private property ownership. A strong notion also exists that there must be popular acceptance of routine or orderliness by a majority of individuals to ensure a stable society. See William Irons, *Anthropology*, in *THE SOCIOBIOLOGICAL IMAGINATION* 71 (Mary Maxwell ed., 1991).

89. Eminent domain is "[t]he power to take private property for public use by the state. . . . The Constitution limits the power . . . without just compensation to the owners of the property which is taken." *BLACK'S LAW DICTIONARY* 523 (6th ed. 1990).

90. This is reinforced by James Madison in his words to settle factions existing at the time of the adoption of the Constitution. He states:

The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

THE FEDERALIST No. 10 (James Madison).

One major consequence of our founding fathers reaction to the Anglo-Saxon property law was the establishment of the purpose and focus of property laws: to exalt private property interest over the public interest. Our current system, however, has evolved away from the position espousing the sanctity of private interests in land.⁹¹ The idea of inviolate property rights is now replaced by the idea that there are inherent public functions served or obligations owed by private ownership.⁹² Such functions or obligations may be legitimately asserted or demanded by the state to effectuate particular land use decisions or outcomes.⁹³ Although, conceptually this represents a return to a position analogous to feudal obligations, this concept logically embraces the modern need to moderate the use of private property to reflect the demands of social interaction.⁹⁴ Despite the pervasiveness of the evolution, the "unreconstructed" views espoused by our founding fathers continue to enjoy considerable popular strength among farm and ranch landowners.

Given the evolution of property definitions, identification of the factors that determine whether public rights outweigh private rights would be helpful. Unfortunately, this is not an easy task.⁹⁵ The Supreme Court has identified specific factors that bear upon the extent public authority dominates over private land use and property rights.⁹⁶ These factors include the eco-

91. See generally FRED BOSSELMAN & DAVID CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971)(containing several examples of state statutes attempting to regulate the individual's use of private land).

92. Wadley, *supra* note 78, at 26.

93. *Id.* at 26 n.8.

94. Whether one agrees or disagrees with the evolution away from the sanctity of private property, our present legal system dictates that "property exists only as a creature of law, which presumes an organized state." JOHN E. CRIBBETT, *PRINCIPLES OF THE LAW OF PROPERTY* 21 (1962). Property rights are therefore essentially nothing more nor less than what the law will protect as property. See, e.g., *United States v. Willow River Power Co.*, 324 U.S. 499 (1945)(noting only those property rights recognized by the law will be protected by the Court). In such a system, it is possible for the notion of ownership to undergo definition or redefinition from time to time to reflect the needs of society at large. The changes in the meaning of property may also affect the uses of property and influence who may ultimately make such determinations.

95. See *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1977)(indicating its inability to "develop any 'set formula'" to define whether public needs will outweigh private needs).

96. See, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982)(implying that the benchmark for state authority is the "health, safety, morals, or social welfare" promoted by the state's actions).

conomic impact of the regulation, the interference with investment-backed expectations, and the degree of physical invasion versus the adjustment of benefits and burdens of economic life.⁹⁷ The intensity or significance of the factors either enhances or diminishes the likelihood of permissive public regulatory authority.⁹⁸ Other considerations include whether the taking causes economic injury, promotes historical, traditional or other legitimate public interests,⁹⁹ or whether the private right holder bears a disproportionate burden in supplying a public benefit.¹⁰⁰

The *Lucas* case seemingly adds another factor—the substantive content of state property law.¹⁰¹ While the Court held that a total deprivation of all economic use constituted a taking, it noted that the state “may resist compensation only if the logically antecedent inquiry into the nature of the owner’s estate shows that the proscribed use interests were not part of his title to begin with.”¹⁰² This is consistent with individual understandings regarding the “bundle of rights” that are acquired in conjunction with title to property.¹⁰³ The Court further noted that a “property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers.”¹⁰⁴

The farm and ranch landowner’s “understanding” of ownership is quite conservative and tends to reflect a sense of inviolability from governmental interference. In many respects, this understanding mirrors the views of our founding fathers.¹⁰⁵ Therefore, the changes in the substantive content of property rights frightens many farm or ranch landowners. These landowners view the changes as empowering urban interests to alter the granted “bundle of rights” to conform to the urban

97. *Id.*

98. *Id.*

99. Examples of these considerations may be found in the historic districts’ uses of zoning. In these cases, the courts have generally upheld the validity of the regulations and concluded that there was no taking for constitutional purposes. MANDELKER, *supra* note 10, § 11.24, at 434-40.

100. See *Loretto*, 458 U.S. at 426; *Penn Central*, 438 U.S. at 123.

101. See *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2899 (1992).

102. *Id.* (footnotes omitted).

103. *Id.*

104. *Id.*

105. See *supra* note 86.

mentality. Specifically, rural landowners fear that the rights altered are those that, according to the urban majority, "rescue" rural America from the harmful practices of farmers and ranchers. These "harmful practices," however, are the fundamental property rights of farmers and ranchers which vitally equal the craft of farming.

The issue, of course, is not whether government will protect the opportunity to *own* property. Rather, the issue is whether governmental restrictions on the use of property, in the name of the public, will make landownership meaningless. Arguably, the right to own and control the use of property is well settled in our system and is thus part of the rural American psyche. Farm and ranch landowners are not inherently opposed to sensible and necessary land use restrictions and environmental regulations. Rather, they resent their inability to influence the evolution of the definitional content of property rights. Much of this concern may be in anticipation of how the system, given its inclination to espouse the urban viewpoint, may deal with greater looming issues. These issues include whether scarce water resources will be shifted from agricultural use to the growing residential or industrial needs.

4. *The Relation Between Owning Land and Controlling Land Use and Psychological Well-Being*

The Court in *Lucas* observed that the law "has traditionally been guided by the understandings of our citizens regarding the content of, and the state's power over, the 'bundle of rights' acquired by the landowner's title to property."¹⁰⁶ Farmers and ranchers, of course, may wonder to what extent the law considers individual understandings in determining the scope and extent of property rights. If rural attitudes and understandings of the use and enjoyment of property differ significantly from those of urban landowners, the legal system should be willing to accept less extensive control over rural land use. Of course, a relaxation of control over rural lands would frustrate environmentalists' and land use planners' attempts to rescue rural areas from the harms that rural residents inflict upon the lands. The view of determining the scope and extent of property rights raises interesting questions concerning the legal significance of the variables that may af-

106. *Id.*

fect an individual's "understanding"—such as the link between the understandings and well-being, and the connection between attitudes and behavior. In this context, an exploration of contemporary thought on the correlation between psychological well-being and the ability to consider oneself a "functional" owner¹⁰⁷ is useful.

a. *Hierarchical Needs Theories*

Modern theorists have suggested various reasons why psychological well-being may be jeopardized due to excessive governmental intrusion into property use and enjoyment. Perhaps the most prominent explanation is found in the theory developed by Abraham Maslow. Maslow believed all individuals are "basically good." This goodness occurs when the individual satisfies fundamental needs, such as the need for security and affection. When an individual's fundamental needs are not satisfied because of societal limitations or malfunctions, the individual will tend to resort to aggression rather than achieving self-actualization. Therefore, Maslow's theory holds that all individuals have various levels or hierarchies of needs and only when the lower level of needs is satisfied may the individual seek fulfillment of the next higher level.¹⁰⁸ This upward progression continues until the individual meets the final level: self-actualization.¹⁰⁹

In Maslow's hierarchy, needs are broken down into five different levels.¹¹⁰ The first level is concerned with the most basic physiological needs: hunger, thirst, sexual fulfillment, fatigue and illness.¹¹¹ The second level of needs recognizes that individuals require security, comfort, calmness and balance.¹¹² Maslow theorized that the second level could be met through structure, order, law, undisputed routine, and a pref-

107. A "functional" owner is an owner capable of making meaningful determinations regarding the use and enjoyment of property and their social well-being.

108. STEPHEN E. LEA ET AL., *THE INDIVIDUAL IN THE ECONOMY* 31 (1987).

109. Self-actualization occurs when "a person feels more unified and whole and, at the same time, more able to fuse with the world. The person's abilities and power seem fully realized. He can function effortlessly, ably, spontaneously, and creatively. He feels completely self-determined, and yet has lost all self-consciousness" PATRICIA N. MIDDLEBROOK, *SOCIAL PSYCHOLOGY AND MODERN LIFE* 70 (1974).

110. LEA, *supra* note 108, at 31.

111. *Id.*

112. *Id.*

erence for the known over the unknown.¹¹³ It is this second level that implicates landownership because the desire for safety and routine will be thwarted when the state or other individuals threaten one's ownership of land.

The third level of Maslow's hierarchy includes the need for love, which encompasses a sense of wholeness, warmth and strength.¹¹⁴ The fourth level includes the needs for mastery and self regard, and finally, at the fifth level, self-actualization.¹¹⁵ When individuals reach this final level, they are characterized as having "a healthy curiosity, to experience creativity and insight, and to work at something that is pleasurable and that embodies high values."¹¹⁶

Maslow believed that achievement of any level of fulfillment depended upon the societal context.¹¹⁷ For example, there may be a need for economic security in order to satisfy the levels of esteem and self-actualization. This underscores the interplay between the needs of the individual and the impact of external environment and society on the individual's psychological development and well-being. In Maslow's theory, when an individual fails to address the needs inherent in each level, the individual's development is in a state of dysfunction.¹¹⁸ This state will continue until the individual has satisfied, or addressed, the needs of that level and is capable of moving to the next level.¹¹⁹ Further, while the lower level needs are basically physiological and within the individual's capacity to control, the middle and higher needs are directly dependent upon soci-

113. *Id.*

114. *Id.*

115. LEA, *supra* note 108, at 31.

116. *Id.* See also MIDDLEBROOK, *supra* note 109, at 70. This theory is not without basic problems. While it is agreed that most people seek to reach their full potential, there is disagreement among most people what full potential actually consists of. What one person may consider to be full potential, another may not. Francis Heylighen, *A Cognitive-Systemic Reconstruction: Maslow's Theory of Self-Actualization*, 37 BEHAVIORAL SCIENCE 39, 45 (1992). Maslow's methodology in developing his theory of self-actualization has been criticized as difficult to reproduce, and the selection criteria for subjects as too vague. *Id.* at 45-46. Additionally, Maslow's conclusions are culturally influenced; his criteria for psychological health is based upon the American preference for the individualistic and autonomous person. *Id.* at 45. While American society may view this as an ideal goal for an individual, other societies may view such an individual as unhealthy or not well-adapted. *Id.*

117. LAWRENCE S. WRIGHTSMAN, ASSUMPTIONS ABOUT HUMAN NATURE: A SOCIAL-PSYCHOLOGICAL APPROACH 25 (1974).

118. LEA, *supra* note 108, at 31.

119. *Id.*

ety to achieve fulfillment.¹²⁰ This points out the society's importance in the adjustment or dysfunction of an individual. Arguably, dysfunction may result when individuals are prevented from asserting dominion and control over things that might be claimed as their own. Perhaps this is why for so long our law has exalted private property; interests are inextricably linked to a sense of individual well-being and self-sufficiency within our national culture.

Given the rather unique relation between the farm and ranch landowner and the land, psychological well-being may be more adversely affected by extensive governmental control where the control occurs in the rural community as compared to the city.¹²¹ One need only to listen to "farm talk" about changes in "property rights" to realize that rural community groups perceive the threat to economic and social welfare as very real.

b. Attitude Formation Theories

Other psychologists have explored the relationship between attitudes and behavior.¹²² One of the most widely accepted theories is the attitude formation theory, a theory that also

120. *Id.* Although Maslow's hierarchy of needs is widely accepted, he is certainly not the only psychologist to address needs as a source of motivation. William McDougall developed a list of innate propensities in humans that motivate actions. *Id.* at 49. Included in his list is the need to "feed, protect, and shelter the young," to "construct shelters and implements" and "to acquire, possess, and defend whatever is found useful or otherwise attractive." *Id.* Although McDougall has not been given the attention accorded Maslow, he should be recognized for developing a theory relating people's perceived needs to their behavior. *Id.*

121. During the serious "farm crisis" of the mid-1980's, one of the startling consequences was that as farmers went bankrupt, a disproportionate number committed suicide, marriages were destroyed in unprecedented numbers and widespread bitter resentment developed regarding "the system." See generally NEIL E. EARL, *THE FARM DEBT CRISIS OF THE 1980's* (1990). Much of this can only be explained as a type of social dysfunction that results when the unique relationship between an individual and a "way of life" is disrupted. This, of course, is probably beyond the comprehension of the urban mindset.

122. There are several explanations offered for why people behave as they do. For instance, the attribution theory is concerned with how the individual attributes causes in order to make sense of their social world. LEA, *supra* note 108, at 14. According to this theory, people need to see consistency and predictability in their world. *Id.* This theory has been applied not only to the manner in which an individual perceives others but also to how an individual perceives herself. *Id.* Under this theory, an individual may act because he has to act (an environmental cause) or simply because he wants to act (an internal cause). *Id.* The motivating cause can further be analyzed as to whether the behavior is based upon information from many observations or whether it is based upon a single observation. *Id.* This theory involves

suggests a hierarchical structure.¹²³ At the lower levels there are opinions on single issues that develop at higher levels¹²⁴ into opinions or attitudes toward specific topics.¹²⁵

One of the basic tenets of the attitude formation theory is that attitudes are learned, (usually according to simple and conventional learning paradigms), and that, once formed, these attitudes govern behavior until they are changed¹²⁶—usually through persuasion. Change is possible, albeit not without effort. The general belief is that attitudes are formed by learning paradigms, such as classical conditioning, instrumental conditioning and modeling.¹²⁷ With classical conditioning, attitudes are generally formed based upon the reaction toward a stimuli that is either pleasant or unpleasant.¹²⁸ With instrumental conditioning, attitudes are formed based upon a rewarding state of affairs after attitude expres-

people often attributing behavior based upon certain expectations of an individual in a certain role. *Id.*

The social comparison theory holds that there are two types of reality: physical and social. *Id.* at 17. While an individual can directly ascertain physical reality, determining social reality requires a comparison to others. *Id.* This social comparison allows individuals to accurately perceive the world and their surroundings. *Id.*

Similar to the social comparison theory is the equity theory. *Id.* at 17-18. Equity theory is concerned with how people judge what is fair, deserved, or equitable, and how such judgments influence behavior. *Id.* This theory suggests that most people prefer scarce resources to be distributed equitably based upon an individual's input, rather than equally. *Id.*

While none of these theories directly addresses the psychological implications of private ownership of property, these theories do provide insight as to the behavior that might result when property is taken from an individual without compensation. In addition, these theories are useful in explaining the importance of relatively unrestricted private property ownership as a behavior motivator within Maslow's hierarchy of needs and in forecasting the personal ramifications that might result when such a need is not met or satisfied.

123. J.K. Hewitt et al., *Structure of Social Attitudes After Twenty-Five Years: A Replication*, in *THE PSYCHOLOGICAL BASIS OF IDEOLOGY*, 57, 57 (H.J. Eysenck & G.D. Wilson eds., 1978).

124. *Id.* At the highest level, attitudes can be viewed as either belonging to one of two ideological categories: radicalism-conservatism or toughmindedness-tendermindedness. *Id.*

125. *Id.* An advantage of this theory, as compared to Maslow's theory, is that it is capable of measurement and replication, thereby making this area of psychology more conducive to study. *Id.* The problem with this theory is that there is not a universally accepted definition of "attitude." However, most definitions view attitude "as a persistent disposition to regard objects either favorably or unfavorably." LEA, *supra* note 108, at 5.

126. LEA, *supra* note 108, at 9.

127. *Id.*

128. *Id.*

sion.¹²⁹ Finally, modeling forms attitudes as a result of imitating behavior exhibited by others.¹³⁰

Most attitudes consist of three components: the cognitive (belief) component, the emotional (feeling) component, and the behavioral (action) component.¹³¹ The interrelationship between these components, and the different value or weight given to one component over another, often determines whether an individual will act in a manner consistent or not with his or her beliefs.¹³²

Another factor that determines whether individuals act in a manner consistent with their beliefs is whether the belief or attitude is general or specific.¹³³ The more general the belief, the less likely it is to be an accurate predictor of behavior.¹³⁴ However, when trying to determine the relationship between an individual's attitude and behavior, it should be remembered that other factors, such as personal and situational factors,

129. *Id.*

130. *Id.*

131. See MIDDLEBROOK, *supra* note 109, at 112-16. One way attitudes may be changed is increasing the amount of persuasion exerted by others. *Id.* Generally, most efforts to change attitude are exerted by an individual's peers. *Id.* Studies indicate that what one believes often depends upon what one's reference group believes. *Id.* Peer groups are influential for various reasons: the desire to acquire new information, the need to be socially acceptable within one's group and the desire to avoid criticism. *Id.* While a change in reference group can change an individual's attitude, oftentimes an individual will naturally seek out other peers who already hold the same attitudes. *Id.* at 131-34.

Persuasion by others is not the only form of attitude change. Self-persuasion may also be an effective manner of changing attitudes. While many theories explain self-persuasion, cognitive dissonance is one of the more widely used models. Developed by Leon Festinger, this theory holds that if what you say or do is inconsistent with your belief, then you try to eliminate this dissonance, often by changing your belief. *Id.* at 175. See also LEA, *supra* note 108, at 12. One exception is when there is a reward for the inconsistency. MIDDLEBROOK, *supra* note 109, at 182-83. In such instances, the variance between the individual's statement or action versus his belief does not create any dissonance because of the reward. Hence there is no attitude change. *Id.* Basically, where psychologically inconsistent ideals or beliefs cause dissonance, the individual will try to achieve consonance by changing her attitude or by adding other attitudes. This and other attitude theories often rely on attribution theory, which is also an important method to explain how the individual and society interact. For a discussion on attribution theory, See *supra* note 122.

The factor that makes change most difficult in rural areas is the perception that the pressure to adopt a different view is designed to promote an urban rather than a rural oriented outcome.

132. MIDDLEBROOK, *supra* note 109, at 116.

133. LEA, *supra* note 108, at 8.

134. *Id.* Similarly, the more specific the belief, the more likely it is to be an accurate predictor of behavior. *Id.*

often influence behavior.¹³⁵ Consequently, attitudes are difficult to change once formed.¹³⁶

In our system, attitudes toward property and ownership are not taught directly by the law but by the lay community through primary and secondary education. These attitudes are usually conveyed through the study of history—not law. Not surprisingly in many rural areas, individual attitudes toward the law will lag behind legal development, except where popular dissatisfaction with the law is the impetus for a change in the law. The law may change the determination of which property rights may still be or not be in the “bundle.” However, popular attitudes, particularly in rural areas where the attitudes may have been formed some time ago or under different circumstances than urban attitudes, may not have “caught up with,” and therefore will resist, the change. Thus, if the *Lucas* Court is serious as to the role of individual “understandings,”¹³⁷ the law should recognize that rural landowners may be somewhat unwilling to accede to more extensive governmental oversight of their land use decision making. Likewise, the legal system should expect rural landowners to resist or to resent any transfer of power to the urban majority, a majority perceived to understand less about the situation.

VII. CONCLUSION

Despite the landowner’s ostensible victory in *Lucas*, four reasons depict the decision as threatening rather than aiding farm and ranch landowners. First, the narrow holding implies that *Lucas* will not apply when environmentally-oriented agricultural regulations are at issue. In turn, this suggests that farm and ranch land use will continue to be the target of much environmental regulation. The Court’s suggestion that governments may maintain considerable regulatory power over land use activities¹³⁸ will increase future control over the use of agricultural lands.

Second, there will be an increasing interest at the state level to redefine basic property rights associated with title. This will result from the Court’s inference that states may only avoid

135. See MIDDLEBROOK, *supra* note 109, at 116-22.

136. See *id.* at 161-204.

137. *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2899-2901 (1992).

138. See *id.* at 2900-01.

liability for takings resulting in total use deprivation where state property law prohibits all land use.¹³⁹ In this context, the farm and ranch landowners' understandings of property rights will have little influence.

Third, the quality of life and social well-being in the rural community will erode if the urban decision makers exert increasing control over rural land use decision making. Rural landownership inheres values such as independence and self-sufficiency which are inextricably related to the farmers' and ranchers' survival. As a result, rural landownership is closely linked to social well-being. If the urban values replace rural values, the farm and ranch landowners will feel oppressed.

Finally, farm and ranch landowners may increasingly resist environmental programs if they perceive a greater inability to control their own land. The legal system must narrow the gap between what the law will accept in terms of public control over private farm and ranch land use and what rural landowners will tolerate. Until this gap is diminished, farm and ranch landowners will believe that the legal system is intending to destroy their property rights to achieve urban purposes.

139. *See id.* at 2901-02.

