The presidency of Ronald Reagan saw the collapse of an entire financial services industry—the savings and loan (S&L) institutions. There are many reasons for this, but the key one is that S&Ls financed more commercial development than the market could absorb. Overpermitting itself was stimulated in large part by federal tax policies producing after-tax profits on real estate investments that otherwise lost money. Lending more money to development than the market could absorb was also induced by “moral hazard,” where lenders and other decision-makers in the financial industry knew it would be American taxpayers who would bail them out in the end. The Reagan era S&L collapse cost the American economy more than $1 trillion (in 2015 dollars) and helped trigger the 1990–1991 recession.

Yet, losses varied by state: those states where local governments were required to manage development permitting to minimize overpermitting relative to market demand lost far less money. They did so through market demand–based planning and permitting (MDBPP), where future development is estimated, plans are made to accommodate that demand, and permitting is allowed only where it is in accordance with a plan. Unfortunately, in most states there is little if any requirement to identify future development needs or planning to accommodate them, and there is little connection between permitting...
and plans—in effect, permitting occurs regardless of the plan. In a perverse outcome, taxpayers in MDBPP states subsidized losses in states without MDBPP.

Two decades later, under the presidency of George W. Bush, America entered into the largest economic downturn since the Great Depression. The Great Recession of 2007–2009 was fueled in large part by lax federal oversight of financial institutions, many of which lent more funds for home mortgages than borrowers could afford to repay. It was also fueled by local governments permitting millions more new homes than the market could absorb. The reason is that those communities did not engage in MDBPP.

Whereas the financial collapse of the 1980s was caused largely by the overpermitting of commercial development, two decades later the financial collapse of the 2000s was caused largely by the overpermitting of residential development. It was as if we did not learn the lessons of the 1980s. Since residential development is a far larger share of the economy than commercial development, the collapse of the residential mortgage market harmed Americans even more than the collapse of the S&Ls. Millions of workers lost their jobs; homeowners lost trillions of dollars in equity, including, in millions of cases, all their down payments and more; millions of homes were foreclosed or otherwise disposed through short-sales; and financial institutions received more than $1 trillion in bailouts because many were “too big to fail” or otherwise were exercising the same “moral hazard” behavior that collapsed the S&Ls two decades before. The economy lost at least $6 trillion and as much as $15 to $30 trillion (see Epilogue).

If history is a guide to the future, a future recession will also be attributable to overpermitting real estate development. Moral hazard will continue to induce financial institutions into underwriting excessive development—especially those too big to fail. Americans will once again be called upon to spend hundreds of billions or trillions of their dollars to bail out overpermitted development and the financial institutions underwriting it. Millions of Americans will lose their jobs and even their homes.

There is a better way. The federal government, including all its financial resources, should not have to bail out financial institutions. Instead, local governments must permit only that development for which there is a market demand, and in accordance with a plan. But local governments cannot act in isolation. Local-regional collaborations are needed to craft plans that anticipate market demand–based development needs and implement those plans through development
permitting that is in accordance with them. Juergensmeyer and Nicholas put it best:

Prior to the Great Recession, the prevailing thought had been that land use planning and implementation should be confined to matters of environmental impact and infrastructure availability; that matters of market were private and only the developers or builders were at risk. The recession of 2007–09 demonstrated that this thought is simply wrong. The public sector, at all levels, was left to pick up the pieces and pay the costs of the “excessive exuberance.” Following the old adage, “he who pays the piper calls the tune,” should not the public, which suffers the pains and pays the costs, have something to say about the pace at which new development occurs? We call for a different kind of land use planning system driven by market demand driven planning and permitting.

The theme of our book is that new real estate development should be approved only when based on a demonstrated market demand for it and in accordance with a plan. We subscribe to the position of the eminent land economist Marion Clawson, who wrote that local land-use plans should include just enough land to meet projected needs and no more. We also subscribe to the position of Charles Haar that development permitting must be “in accordance with a comprehensive plan.” Written in the middle of the last century, these are not new principles. Nor were they new then, as they are imbedded in the planning and permitting approaches advanced in the 1920s by then commerce secretary Herbert Hoover.

Market Demand–Based Planning and Permitting is divided into two parts:

Part 1: The Need for Market Demand–Based Planning and Permitting In Chapter 1, we review the big picture arguing the need for MDBPP. Chapter 2 explores the rich history of planning as a way in which to anticipate and meet market demand

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2 Marion Clawson, Urban Sprawl and Speculation in Suburban Land, Land Econ. 38, 99-111 (1962) at 109.
for development while ensuring that permitted development is in accordance with a plan. In Chapter 3, we illustrate what can happen when permitted development exceeds market based demand, using the Savings and Loan collapse in the late 1980s as our example. As if those lessons were not learned, we remind readers in Chapter 4 that, contrary to former Federal Reserve Board Chairman Alan Greenspan’s faith in financial institutions to protect the economy, the evidence suggests they seem incapable of actually doing so—after all, they underwrote the financing of more development than the market needed which led in large part to the Great Recession of the late 2000s. It seems that Adam Smith’s “invisible hand” is trumped by moral hazard whereby financial institutions know their losses will be covered by American taxpayers. Chapter 5 concludes this part of our book noting that while there will always be economic cycles, MDBPP can often reduce the downward slope of the cycle if not perhaps remove the role of excessive permitting as a cause for future recessions altogether.

Part 2: The Role of Institutions in Advancing Market Demand–Based Planning and Permitting, and its Legal Context While Part 1 lays out the argument for MDBPP, Part 2 addresses various planning and legal approaches to implement it. Chapter 6 summarizes how modern technologies can be used to create the maps and databases that are crucial for informing the market of the demand for certain kinds of development as well as the supply, and that merely having this information widely available can by itself reduce the risk of permitting more development than the market can absorb. Chapter 7 outlines the existing opportunities to create local-regional collaborations to craft market demand–based plans and implement them through market demand–based permitting that is in accordance with those plans. In Chapter 8 we argue that MDBPP can advance smarter planning leading to such benefits as more economic development and more resilient economics, more stable local fiscal structures, and improved social equity among others. Are the concepts underlying MDBPP new? In Chapter 9 we show that the concept of using market demand–based analysis to permit many kinds of development already exists, such as for energy facility siting, health care facility certificates of need, farm commodity quotas, and federal environmentally related acts. The
key objective of these and other existing policies is to prevent excess development and thereby protect taxpayers from covering losses. Furthermore, Chapter 10 shows that many of the legal conditions needed to implement MDBPP already exist and its overall effectiveness may be advanced through modest changes in existing laws, rules, and procedures.

Lest one thinks our only concern is about permitting more development than is needed, we also worry about permitting less development than is needed to meet market demand. Part and parcel of any MDBPP system is to identify all development needs and accommodate them through planning. But since over permitting led substantially to the last two of three recessions, and cost the nation’s economy dearly, our book focuses on preventing over development in the future.

If we can “right-size” development permitting, America’s economy will flourish. In our epilogue, we assess what could have been had our MDBPP approach been in place since at least the early 1980s. We use data to estimate the economic benefits America could have reaped from market demand–based planning and permitting. Trillions of dollars would have been saved by not overpermitting, tens of millions of households would not have lost their homes or their savings, and America’s economy would have been much more robust now despite the inevitable economic cycles. Looking ahead, we find that only through MDBPP may America’s great economy be sustainable.

Finally, throughout the book, we use MDBPP as the acronym for market demand–based planning and permitting. However, in several contexts, we address only the planning or permitting elements, so in those cases we spell out the term.