

# **Study Group Report on Approaches to Land Use Administration**

The Japan Association of City Mayors and the Japan Municipal Research Center set up the Study Group on Approaches to Land Use Administration (chaired by Naoharu Shiga, then-Mayor of Togane City) from FY 2016 to FY2017. Based on the discussions of the Study Group, this report clarifies the background and significance of comprehensive and integrated land use administration (Ch.1) and the current status of land use administration and systems and their issues (Ch.2), and proposes the establishment of a comprehensive and integrated land use system (Ch.3).

## Chapter 1 — Background and Significance of Comprehensive and Integrated Land Use Administration

### Introduction

As Japan transitions into a super-aged society with a declining population, local communities are facing multiple land use challenges. In built-up areas, declining densities and urban diminution<sup>1</sup> are materializing in the form of more vacant lots and unoccupied houses. This is inflating the labor and costs to maintain public facilities and allocate facilities properly. Furthermore, agricultural land and green tracts, which are places for relaxation and recreation in urban areas, are gaining attention for their important roles as their disaster-protection functions. Nevertheless, urban green tracts and agricultural land within Urbanization Promotion Areas, which play a large part in fulfilling these roles, are being attended to by an ever-shrinking workforce. Rural areas also face problems, such as an insufficient agriculture workforce and an increase in abandoned agricultural land as well as a shortage of forestry workers and more deteriorating forests.

Unregulated development is appearing outside some City Planning Areas and in some Non-Zoned Areas that is not aligned with planned development in adjacent City Planning Areas. Furthermore, constructing or upgrading urban infrastructure has become problematic in areas where unregulated development is spreading. Expansion of unregulated built-up areas has its limits, in view of financial positions and the pressing need for infrastructure renewal.

Municipalities need the ability to flexibly change the use of Agricultural Promotion Areas from agricultural to industrial use, so as to promote land use such as direct-to-consumer sales of agricultural products, farmer-run restaurants, and industrial sites. However, burdensome conditions have been attached to permission of rezoning Agricultural Promotion Areas and conversion of agricultural land. And because agricultural land grading is subject to the surrounding conditions, development in Unzoned Agricultural Promotion Areas is eroding the advantageous position once held by adjacent Agricultural Land Zones, forcing such land to be degraded to Unzoned Agricultural Promotion Areas. Furthermore, because permission to convert agricultural land is not aligned with permission for development under the City Planning Act, cases are seen where after permission to convert agricultural land is granted, the land is left vacant or is turned into a material storage site instead of being used appropriately.<sup>2</sup>

<sup>1</sup> According to Shin Aiba, *Toshi wo Tatamu: Jinkou Genshou Jidai wo Dezain suru Toshi Keikaku [Scaling down Cities: City Plans Designed for an Age of Population Declines]*, Kadensha, 2015, diminution is the progression of a hollowing out of urban areas, in which unused land and low-use land appear at random within a built-up area without any real change in the size of the built-up area, rather than a gradual shrinking of a built-up area from its outer edges.

<sup>2</sup> Japan Association of City Mayors, *Daiikkai Tochi Riyou Gyousei no Arikata ni Kan suru Kenkyuukai no Keika ni Tsuite (Houkoku) [Particulars of the First Meeting of the Study Group on Approaches to Land Use Administration (Report)]*, September 28, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/280928tochiriyou\\_keikahoukoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/280928tochiriyou_keikahoukoku.pdf)) [statement by Deputy Chairman Norihiro Nakai] (retrieved on March 14, 2017)

Regulations under the existing laws do not adequately handle the recent rapid build-out of solar power generation facilities and other contingencies. These activities are continuing in many locations, despite the attendant disaster-prevention issues and scenery issues. As a result, municipalities are today enacting ordinances to cope with these structures.

Land use laws and planning schemes should play a role in regulation and adjustment to solve these issues. However, laws and schemes are structured and operated in such a way that has produced a siloed and multi-layered administration that is split between urban land use and agricultural land use. Moreover, situations have occurred where the time needed to adjust with the prefecture has thwarted necessary land use or land use regulations.

**Sidebar: Past recommendations from the Japan Association of City Mayors and other organizations**

◆ **Japan Association of City Mayors, *Korekara no Toshidzukuri to Toshi Keikaku Seido no Teigen [Recommendation for Future Community Improvement and City Planning System]*, 2004**

The Japan Association of City Mayors issued a recommendation concerning community improvement and the city planning system in 2004, based on the Study Group on Approaches to the City Planning System and Future Community Improvement<sup>[1]</sup> (chaired by Takashi Ohnishi, then-Graduate School Professor at the University of Tokyo).

Specific proposals included promoting collaborative community improvement and inner-municipal decentralization and utilizing proposal mechanisms to encourage resident-led community improvement. The recommendation also called for the transfer of authorities under the City Planning Act — such as the authority to designate City Planning Areas, the authority to decide Area Classification, and the zoning authority — as reforms to ensure the autonomy of municipalities. And as an approach to the involvement of prefectures, the recommendation called for abolishing the requirement of the prefecture's agreement. The paper also recommended integrating legal systems related to land use and the establishment of land use plans covering entire municipalities through the Local Autonomy Act, as an approach of comprehensive land use planning and regulation.

◆ **Japan Municipal Research Center, *Toshi Jichitai ni Okeru Tochi Riyo Gyousei no Genjyo to Kadai [Current Status of Land Use Administration at Municipalities and Its Issues]*, 2008**

The Japan Municipal Research Center focused on the environmental changes caused by the 2008 nationwide municipal mergers and researched land use administration after the mergers, based on the Land Use Study Group<sup>[2]</sup> (chaired by Toshiyuki Kanai, Graduate School Professor at the University of Tokyo). The report looked at various issues surrounding the reorganization of City Planning Areas and Area Classification that had surfaced with the municipal mergers. It also explored land use administration approaches through ordinances and other independent means.

◆ **Japan Association of City Mayors, *Tasedai Kouryuu / Kyousei no Machidzukuri ni Kan suru Tokubetsu Teigen [Special Recommendation on Community Improvement for Multi-Generational Interaction and Coexistence]*, 2016**

The Japan Association of City Mayors adopted the *Tasedai Kouryuu / Kyousei no Machidzukuri ni Kan suru Tokubetsu Teigen [Special Recommendation on Community Improvement for Multi-Generational Interaction and Coexistence]* at a June 2016 meeting. The recommendation noted the necessity of considering legislation to let municipalities carry out comprehensive land use. Such authority would promote interaction and establish consistency between urban areas and rural areas for the realization of a society of multi-generational interaction and coexistence.

Specifically, the population decline, the recommendation called for taking a holistic view of urban and rural areas when moving toward more compact built-up areas and energizing rural areas. To facilitate this, the recommendation stated that land use in urban and rural areas should be based on comprehensive and integrated legal systems and sought the revision of legal systems so that municipalities, as unified entities, can advance land use in a comprehensive and planned fashion.

◆ **Other recommendations by the Japan Association of City Mayors on land use and community improvement**

The Japan Association of City Mayors makes recommendations on land use and community improvement at its annual meeting. In 2016, the Association studied the consolidation of laws on land use, beginning with the City Planning Act and the Agricultural Land Act (priority recommendation on establishing local autonomy and self-government through the realization of a genuinely decentralized society); the transfer of authorities for the establishment of effective City Plans

(recommendation on community improvement and other subjects); and agricultural land system reforms to enable municipalities to take the lead in sustainable development of agriculture and rural areas and implementing land use consistent with local circumstances (recommendation on the promotion of agriculture).

◆ **Opinion papers from the Japan Federation of Bar Associations (2007 and 2010)**

The Japan Federation of Bar Associations has put out two opinion papers: *Resolution Requesting Drastic Reform of Legal Systems on Cities Aiming for Sustainable Cities* in 2007, and *Opinion Paper Seeking Radical Amendments to the City Planning Act and the Building Standards Act (Zoning Code) to Realize Sustainable Cities* in 2010 at the time the City Planning Act was amended. The Federation proposed the concept of *sustainable cities* in 2007 and, in 2010, proposed the establishment of the *no plan, no development principle* and the *principle of architectural harmony*, along with the importance of local autonomy of municipalities and the necessity of motivating resident participation and communities. The 2010 proposals were centered on a radical overhaul of the Building Standards Act (zoning code) and integration with the City Planning Act.

◆ **Research Institute for Urban & Environmental Development, *Tochi Riyou Keikaku Seido no Saikouchiku ni Mukete [Toward Reconstruction of Land Use Planning Schemes]*, 2014**

The Research Institute for Urban & Environmental Development issued this paper to push for the reconstruction of land use planning schemes. The Institute advocated enshrining a benchmark municipal land use plan in the National Land Use Planning Act as a framework for establishing such planning schemes, as well as regulating and promoting land development founded on a basic principle of maintaining current land uses.

◆ **Advisory Council on Decentralization Reform, *Chihou Bunken Kaikaku Yuushikisha Kaigi, Nouchi / Nouson Bukai Houkokusho [Report by the Agricultural Land and Communities Subcommittee of the Advisory Council on Decentralization Reform]*, 2013**

In this report, the Advisory Council on Decentralization Reform's Agricultural Land and Communities Subcommittee organized the Subcommittee's discussions on the transfer of agricultural land conversion authority and affair. It also put together ideas on the response policy announced by the national government. The report contained the

Subcommittee's preferred approach to future land use administration from a mid-to-long-term perspective. "To ensure comprehensive and planned land use, we would like to see discussions on land use approaches throughout the country, including such topics as the consolidation of legal systems on land use in urban and rural areas and the revision of all aspects of land use systems over the mid-to-long term." On the issue of transferring land use regulation authorities, an expert gave the following opinion to the Subcommittee: "When it comes to the question of whether municipalities truly desire such transfer, the truth may be they want to avoid it as much as possible. However, I believe we should realize such transfer because it is necessary for municipalities to fulfill their proper responsibilities, even if this is contrary to the intentions of municipalities."<sup>[3]</sup>

[1] At the request of the Japan Association of City Mayors, the Japan Municipal Research Center set up this study group to research approaches for the city planning system and future community improvement over two years from FY 2002 to FY 2003. The research project's final report was published as Japan Municipal Research Center (editor), *Korekara no Toshidzukuri to Toshi Keikaku Seido: Toshi Keikaku Seido to Kongo no Toshidzukuri no Arikata nado ni Kan suru Chousa Kenkyuu Saishuu Houkokusho* [Future Community Improvement and City Planning System: Final Report on Research on Approaches to the City Planning System and Future Community Improvement], Japan Municipal Research Center, 2004.

[2] The Japan Municipal Research Center set up this study group in FY 2007 to research comprehensive land use adjustment by municipalities. The research project's final report was published as Japan Municipal Research Center (editor), *Toshi Jichitai ni Okeru Tochi Riyou Gyousei no Genjyo to Kadai: Gappeishi wo Sozai to Shite* [Current Status of Land Use Administration at Municipalities and Its Issues: Examining Merger Municipalities], Japan Municipal Research Center, 2008.

[3] Decentralization Close Up (a section of the Cabinet Office website), *Yuushikisha he no Intabyuu* [Interviews with Experts], first interview with Masaru Nishio, 2013.

## 1. Background to the need for comprehensive and integrated land use administration

### (1) Enlargement of daily activity spheres and expansion of administrative jurisdictions

#### i. Uneven distribution of population in future forecasts

Population forecasts for Japan predict population declines in all prefectures from 2020 to 2023 and that by 2040, populations in all prefectures will be below 2010 levels.<sup>3</sup> This population decline is expected to accelerate uneven distribution of local population. Future forecasts of population distributions<sup>4</sup> divide the country's land into one-kilometer-

<sup>3</sup> National Institute of Population and Social Security Research, *Nihon no Chiiki Betsu Shourai Suikei Jinko (Heisei 25 Nen 3 Gatsu Suikei)* [Population Projection for Japan by Region (March 2013 projection)], December 25, 2013

<sup>4</sup> National Spatial Planning and Regional Policy Bureau, Ministry of Land, Infrastructure, Transport and Tourism, *Messhu Betsu Shourai Jinko Suikei wo Katsuyou shita Bunseki no Tenkai: Chiiki ni Okeru Seikatsu Kanren Saabisu no Riyou Kanousei no Bunseki* [Analysis Using Future Population Estimates per Block: Analysis of the Useability of Lifeline Services in Local Areas], June 2016

square blocks. Forecasts estimate that about two percent of these blocks will see population growth between 2010 and 2050. Conversely, the population will drop by more than half in about 60 percent of these blocks, and about 20 percent of all blocks in the country will be unoccupied. Looking at these projections by the population scale of municipalities finds that the smaller a municipality's population, the deeper its population decline. Municipalities with less than 10,000 people at present are expected to see their populations halve.

## **ii. Enlargement of people's daily activity spheres**

The daily activities of residents, involving education (commuting to school), commerce (shopping), medical care (going to hospitals, etc.), employment (commuting to work), cross jurisdictions and are not confined within the jurisdiction of a single municipality.

The 2010 Population Census on the Tabulation of Place of Work or Schooling<sup>5</sup> showed a decline from 2000 levels in the number of people who commute to work or school within their own municipality and an increase in those who commute for work or school to another municipality (either within the same prefecture or to another prefecture). Examining commuter numbers by industry found a higher percentage of people traveled to other municipalities for work in the IT industry, in the finance and insurance industry, and in academic research / specialized technical services. In 37 prefectures, more than 50 percent of people said an automobile, not public transportation, was their main means of travel for work.

We looked at the locations of large-scale commercial complexes across the country. One study<sup>6</sup> found that more shopping centers (SCs) were located on the outskirts of built-up areas — 85 percent of all — than located in built-up areas (core urban areas) of cities with populations over 150,000. By size, more than 80 percent of SCs with retail spaces over 1,000 m<sup>2</sup> were located on the outskirts.

Since an automobile is the primary means of transport in provincial areas, people travel farther for their daily activities and they can travel to desired destinations even if substantially far away. Stores are moving to the suburbs because commercial complexes require large plots of land for retail space and parking lots, which address the automobile needs of customers. This suburban flight of stores, in turn, further expands people's daily activity

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<sup>5</sup> Statistics Bureau, Ministry of Internal Affairs and Communications, *Heisei 22 Nen Kokusei Chousa Jyuugyouchi / Tsuugakuchi ni Yoru Jinko / Sangyou nado Shuukei Kekka [2000 Population Census: Tabulation of Place of Work or Schooling]*, June 26, 2012

<sup>6</sup> Japan Council of Shopping Centers, *Zenkoku no SC Suu / Gaikyou (2015 Nenmatsu Genzai) [Number and Overview of Shopping Centers in Japan (as of year-end 2015)]*, ([http://www.jcsc.or.jp/sc\\_data/data/overview](http://www.jcsc.or.jp/sc_data/data/overview)) (retrieved on March 14, 2017)

spheres.

In the medical care and social welfare fields as well, secondary medical care regions<sup>7</sup> are being reorganized primarily because of population changes. Observers have indicated that, in secondary medical care regions with less than 200,000 people in particular, medical facilities have trouble attracting sufficient number of patients. This difficulty stems from lower population densities in the regions, due to population declines, and from the fact that a growing proportion of patients are being hospitalized in hospitals outside the region they live in. Consequently, secondary medical care regions are being reorganized, and it is expected many will be either merged with other regions or expanded in size. In the provinces with a large population of older people, this will increase the travel distance to medical facilities.

### **iii. Expansion of municipal jurisdictions through mergers**

Municipal mergers have expanded the jurisdictions of individual municipalities. The average size of merger municipalities more than tripled from 100.3 km<sup>2</sup> in 1999 to 354.9 km<sup>2</sup> in 2008. And for many municipalities, their jurisdictions have grown through mergers with peripheral towns and villages. As a result, the proportion of land occupied by cities and Special Wards to the country's total land shot up from 28.3 percent in 1999 to 56.5 percent in 2008. Municipalities now encompass vast agricultural lands and mountain forests, in addition to their previous City Planning Areas and Agricultural Promotion Areas.

Municipalities are, therefore, responsible for managing a diverse range of land spaces as entities overseeing large areas. This also means greater potential for integrated use of land spaces with different characteristics. When implementing land use administration, it is necessary to take into consideration the type of mergers — either a consolidation-type merger or incorporation-type merger — and the adjustment on land use administration between the previous municipality at the core of the new municipality and its peripheral municipalities.<sup>8</sup>

In fact, multiple municipalities have formed one region. Hereafter, municipalities, including merger municipalities, will need to carry out cross-

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<sup>7</sup> Under the Medical Care Act §30-4(2(xii)), prefectures are required to provide a plan to ensure the medical care system within the prefecture, and the plan must stipulate "areas separated into local units primarily for the adjustment of hospital bed numbers". Under the Regulation for Enforcement of the Medical Care Act §30-29(i), prefectures are required to set the areas as units that are deemed appropriate for the assurance of the medical care system pertaining to hospitalization at hospitals or other medical institutions in consideration of natural conditions — such as physical conditions — and social conditions — such as sufficiency of demand in normal life and transportation circumstances.

<sup>8</sup> Japan Municipal Research Center, "*Toshi Jichitai ni Okeru Tochi Riyō Gyōsei no Genjō* [Current Status of Land Use Administration at Municipalities]", *Toshi Jichitai ni Okeru Tochi Riyō Gyōsei no Genjō to Kadai: Gappeishi wo Sozai to Shite* [Current Status of Land Use Administration at Municipalities and Its Issues: Examining Merger Municipalities], Japan Municipal Research Center, 2008, pp. 6-7



jurisdictional land use administration together with their peripheral municipalities as well as land use administration within their own jurisdictions from a wide perspective. Because of the expanded authorities given to municipalities through decentralization, the larger daily activity spheres of residents, the emergence of facilities that impact multiple municipalities, and other factors, regional adjustment inside and outside municipal jurisdictions has become a big issue.

The outskirts of municipalities have long been a pastiche of agricultural lands, forests, *satoyama*, and villages. Moreover, in many areas, a falling population has created more unoccupied houses, vacant lots, and abandoned agricultural land. This has brought more exposure to the problem of how to manage land use in expanding urban outskirts. Several merger municipalities have incorporated Urbanization Promotion Areas into Urbanization Control Areas and introduced zoning in Non-Zoned Areas. These moves attempt to retreat from areas where development is improbable and constrain development in the suburban and rural areas (Q15).<sup>9</sup>

Because siloed land use laws cannot adequately address these problems, mechanisms beyond just the transfer of authorities are necessary for the effective and integrated usage of broad land resources that possess many different characteristics.

## **(2) Advent of the super-aged society with a declining population**

Japan's population has been in decline since 2005 — the first year of the population decline — due to a low birth rate. And while some municipalities, especially the three major metropolitan regions, would see population increases for a while, population forecasts<sup>10</sup> predict that all prefectures will experience population declines from 2020 onward.

Falling population, which is driven by extreme population aging and fewer young people, is causing dramatic social-structure shifts as well as having a massive impact on land use.

City Plans have been based on population models premised on population growth. The purpose of city planning, until recently, has been to curb unregulated development of urban areas and to form planned built-up areas. Agricultural land, too, has been presumed to be cultivated land with sustained production by a sufficiently large workforce. The country's declining and super-aging population, however, is negating the premises on which municipalities carry out community improvement and land use administration, as well as precipitating numerous

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<sup>9</sup> According to responses to Q15 on the *Survey on Land Use Administration*, conducted by this Study Group between September 23 and October 14, 2016 (the same applies hereafter).

<sup>10</sup> National Institute of Population and Social Security Research, *ibid*.

issues.

While development pressure causing suburbanization is easing, the numbers of vacant lots and unoccupied houses are growing, even in the ~~middle of~~ expanding built-up areas. The country sees desolate vacant lands increasing. According to the 2013 Housing and Land Survey,<sup>11</sup> the total number of dwellings rose by 10 million compared to five years earlier, an increase of 5.3 percent. On the other hand, there were 630,000 more vacant dwellings (up 8.3 percent) than five years ago. The percentage of vacant dwellings to all dwellings set a record high of 13.5 percent in 2013. Prefectures that exceeded the national average vacant dwellings rate (13.5 percent) were Yamanashi (22.0 percent), Nagano (19.8 percent), Wakayama (18.1 percent), along with Tokushima, Kagawa, Ehime, Kochi, and Kagoshima (all over 17 percent).

Population aging and depopulation is more advanced in rural areas than in urban areas, and more areas are having a hard time forming and preserving rural communities. In tandem with this, the agricultural workforce is shrinking, due to the aging farmer population and people leaving farming, which is making it harder for agricultural land to function as a foundation for agricultural production. According to a survey by the Ministry of Agriculture, Forestry and Fisheries,<sup>12</sup> abandoned agricultural land<sup>13</sup> is on the increase, with the total area of abandoned agricultural land jumping 73.4 percent over 20 years, from 244,000 hectares in FY 1995 to 423,000 hectares in FY 2015. Furthermore, the total area of the country's barren agricultural land<sup>14</sup> is expanding, even as the area of arable land is shrinking.

Given this context, on our Study Group's survey, more than 50 percent of municipalities said city planning laws are not effective systems for coping with population declines and urban diminution. Some municipalities indicated new legislation is necessary, because the current City Planning Act is heavily weighted toward urban development and improvement, and fails to address adequately the preservation and contraction of built-up areas in a society with a declining population (Q16).

### **(3) Rising interest in safety and security, the environment, landscapes, and nature**

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<sup>11</sup> According to Statistics Bureau, Ministry of Internal Affairs and Communications, *Heisei 25 Nen Jyutaku / Tochi Toukei Chousa (Kakuhou Shuukei) [2013 Housing and Land Survey]*, February 26, 2015, vacant dwellings increased by 630,000 (8.3 percent) from five years earlier to 8.2 million, accounting for 13.5 percent of all dwellings.

<sup>12</sup> Ministry of Agriculture, Forestry and Fisheries, *Kouhai Nouchi no Genjyou to Taisaku ni Tsuite [Current Status of Barren Agricultural Land and Response Measures]*, ([http://www.maff.go.jp/j/nousin/tikei/houkiti/pdf/2804\\_genjo.pdf](http://www.maff.go.jp/j/nousin/tikei/houkiti/pdf/2804_genjo.pdf)), April 2016 (retrieved on March 14, 2017)

<sup>13</sup> "Previously farmed land in which no crops have been planted for over one year and in which there is no intention by the owner to plant again for the next several years (based on personal statements from farmers)." (Ministry of Agriculture, Forestry and Fisheries, *ibid.*)

<sup>14</sup> "Agricultural land not presently equipped for farming that has become barren because of abandonment and where normal farming can no longer objectively bring the land back into production." (Ministry of Agriculture, Forestry and Fisheries, *ibid.*)

The falling population is reducing land use demand and easing development pressures. As a result, qualitative improvements are wanted from such conventional land uses as the spread and expansion of built-up areas into suburbs and the conversion of agricultural and forested land for other purposes. Such improvements include maintaining safe and secure living environment, environmental conservation, maintaining and improving scenic landscapes, and preserving natural environment. Resident opinions on community improvement have also evolved in favor of greater emphasis on disaster prevention, mitigation, and responses.

#### **i. Introduce of green infrastructure**

Japan's population distribution is becoming even more uneven with the falling population. Even as the total population grew in the 1990s, populations in mountainous areas were already in decline, and observers have pointed out that further depopulation in these areas will lead to *marginal villages*, where more than half of the residents are over 65. More unoccupied houses and abandoned agricultural land are also predicted. And if these conditions lead to further land deterioration, due to insufficient management or abandonment, agricultural land and mountain forests may fall into ruin in upstream areas. This will diminish their natural ability to retain water and, ultimately, cause landslides in downstream areas. Land deterioration is also expected to impact climate change.

Maintaining and preserving the natural environment is a key factor in ensuring national land safety. The deterioration of national land couldn't be halted by the natural environment that will emerge in the future due to diminution and lack of management in urban and rural areas. In consideration of residents' lives and the security of property, and from the viewpoint of preserving national land, it is imperative to maintain and manage these natural environment and not abandon them or leave them to their own course.

The National Spatial Strategy (National Plan) states: "In regard to the utilization of the natural environment, we will move ahead with green infrastructure and other initiatives that make use of the diverse functions of the natural environment (such as the provision of habitats for living things, the formation of attractive landscapes, and the control of temperature increases) in the development of social infrastructure and land use, so as to further attractive and sustainable national land planning and community improvement."

To manage land space within municipalities in an integrated fashion, master plans are needed for the entire municipal area from the perspective of

green infrastructure, rather than establishing separate master plans, one focused on development from the perspective of urban areas and one focused on preservation from the perspective of rural areas.<sup>15</sup>

## **ii. Safe and secure land use and management**

Natural disasters have been occurring more frequently in recent years due to the impact of climate change and other factors. Suitable management of vacant land, limiting the occurrence of barren land, and maintaining and preserving the natural environment, such as mountain forests, are all important for future land use, in consideration of the safety and security of residents' lives and property.

In a survey on land issues,<sup>16</sup> the top answers for land issues close at hand were "unease about clusters of deteriorated buildings in case of disaster," "increase in unmaintained agricultural land, mountain forests, and other areas," and "loss of nearby nature."

Sorting these answers by municipal size finds that most respondents who said "unease about clusters of deteriorated buildings in case of disaster" were from cities with more than 100,000 people, most respondents who said "increase in unmaintained agricultural land, mountain forests, and other areas" were from provincial cities with around 100,000 people, and most respondents who said "loss of nearby nature" were from cities with more than 200,000 people, particularly the Tokyo Metro region.

Next, regarding land management entities, around 25 percent of respondents wanted local governments to "manage unused land in the future." Most of these respondents were from cities with more than 100,000 people. When asked "how unused land should be used in the future?" respondents' top answers were "use as parks, green tracts, and disaster-prevention sites," "use as community centers and other places for local recreation and relaxation," and "consolidate and redevelop the land." Most respondents who said "use as parks, green tracts, and disaster-prevention sites" were from cities with more than 100,000 people, particularly the Tokyo Metro region, and including Designated Large Cities. Conversely, most respondents who said "use as community centers and other places" and "consolidate and redevelop the land" were from cities with more than 100,000 people. Furthermore, many respondents from provincial core cities

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<sup>15</sup> Japan Association of City Mayors, *Daisankai Tochi Riyou Gyousei no Arikata ni Kan suru Kenkyuukai [Third Meeting of the Study Group on Approaches to Land Use Administration]*, December 28, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/281228tochiriyou3rd\\_keikahoukoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/281228tochiriyou3rd_keikahoukoku.pdf)) [Address by Akinobu Murakami, a member of the Study Group] (retrieved on March 16, 2017)

<sup>16</sup> Land Economy and Construction Industries Bureau, Ministry of Land, Infrastructure, Transport and Tourism, *Heisei 27 Nendo Tochi Mondai ni Kan suru Kokumin no Ishiki Chousa no Gaiyou ni Tsuite [Overview of the 2015 Citizen Opinion Poll on Land Use Issues]*, (<http://tochi.mlit.go.jp/wp-content/uploads/2013/06/d15b4d6e248477d037f4f6289383e92b.pdf>) June 2016 (retrieved on March 14, 2017)

said “unused land should be used as agricultural land.”

### **iii. Desire for urban landscapes and countryside environment**

#### **(a) Creation and preservation of urban landscapes**

Municipalities take the initiative in dealing with the creation and preservation of scenic landscapes in their areas. Kanazawa City, which adopted the Kanazawa City Traditional Environment Preservation Ordinance in 1968, was apparently the first. Many other municipalities followed, establishing landscape ordinances and making scenic landscapes an important component of community improvement.

The Landscape Act was enacted in 2004 to encourage municipalities to embark on leading scenic landscape initiatives. The Act ensured the effectiveness of municipal landscape measures.

These initiatives furthered the understanding of landscapes and their importance. By re-conceptualizing scenic landscapes as local assets, scenery-promotion movements arose that fostered residents’ love and pride in their hometowns and helped boost non-resident populations.

In an opinion survey on landscapes,<sup>17</sup> the top answers for what constitutes an outstanding scenic landscape were “green tracts, forests, and other green landscapes,” “historical landscapes,” and “landscapes of quiet residential districts and tranquil villages.” Awareness of landscapes has risen, as 75 percent of respondents answered “I am more conscious of landscapes now than 10 years ago.” Furthermore, over 90 percent said they were inclined to participate in future activities directed at forming attractive landscapes.

Respondents highly valued landscape projects by the national and local governments that “preserve green tracts and promote afforestation,” “bury power lines underground,” and “create and preserve waterfront and seaside spaces.” Respondents indicated that governments were the entity with the largest influence on creating and preserving attractive landscapes, and around 40 percent picked municipalities as the most applicable level of government. Respondents also said the most effective means of advancing landscapes were “regulations and inducements” and “subsidies and other forms of assistance.”

#### **(b) Creation and maintenance of natural environment using**

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<sup>17</sup> Ministry of Land, Infrastructure, Transport and Tourism, *Kokudo Koutsuu Gyousei Intaanetto Monitaa Ankeeto Chousa (Heisei 23 Nen 9 Gatsu Jisshi) Keikan ni Kan suru Ishiki Chousa [Survey by Internet Monitors on Land, Infrastructure, Transport, and Tourism Administration (September 2011): Opinion Poll on Scenic Landscape]*, (<https://www.mlit.go.jp/monitor/H23-kadai/5.pdf>) (retrieved on March 14, 2017)

### **countryside spaces (such as *satoyama*)**

Many Japanese communities emerged amidst the coexistence and close proximity of the nature and humans, and the borderline between the two is not hard and fast. This is way countryside spaces, filled with arable land, orchards, paddies, irrigation reservoirs, waterways, and villages, around provincial urban areas. In the opinion survey on landscapes, “green tracts, forests, and other green landscapes” was one of the top responses for what constitutes an outstanding scenic landscape. The Ministry of Agriculture, Forestry and Fisheries decided to implement the agricultural and rural development projects starting in 2002. These projects were based on master plans for environmental improvement in the countryside — basic plans for environmental preservation of rural areas established by municipalities through local consensus-building. The Ministry encouraged municipalities to establish these master plans.<sup>18</sup> In addition, City Planning Act amendments added Countryside Residential Areas to Districts and Zones.

The national government, in “Becoming a Leading Environmental Nation Strategy in the 21<sup>st</sup> Century: Japan’s Strategy for a Sustainable Society”,<sup>19</sup> stated: “The situation in Japan now is also critical, with problems including the degradation of the habitats of wildlife, possible extinction of various species, degradation of ecosystems due to insufficient care of *satochi-satoyama* (community-based semi-natural landscapes managed through traditional and sustainable use of natural resources), and disruption of local ecosystems by alien species.”

The *satochi-satoyama* referred to above are rare, globally speaking, spatial resources where nature and culture merge that are in close proximity to many municipalities. While there is no precise definition for *satoyama*, the Ministry of the Environment has described *satoyama* as “a general concept of areas located between remote mountains and urban areas composed of villages and their surrounding second-growth forests, mixed in with agricultural land, irrigation reservoirs, grasslands, and other natural features” and that “the natural environment is formed through human agricultural and forestry activities.” It follows then that *satoyama* are man-made natural spaces that have been maintained through human management. At the same time, *satoyama* play a vital role in preserving ecosystems. They are the habitats for a diverse range of living things, and *satoyama* account for more

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<sup>18</sup> The Ministry of Agriculture, Forestry and Fisheries, in response to changes in the natural environment of local areas and to changes in social environment after municipal mergers, created and released *Denen Kankyou Seibi Masutaa Puran Sakusei Gaido* [Guide to Preparing Master Plans for Environmental Improvement in the Countryside], Ministry of Agriculture, Forestry and Fisheries, April 2015, to promote the efficient creation and enhancement of master plans for environmental improvement in the countryside.

<sup>19</sup> Cabinet decision, 21 *Seiki Kankyou Rikkoku Senryaku* [Becoming a Leading Environmental Nation Strategy in the 21<sup>st</sup> Century: Japan’s Strategy for a Sustainable Society], June 2007

than 50 percent of the country's area where rare species are concentrated. They also play a role in disaster prevention and watershed protection.

The economic value of *satoyama*, however, has tumbled since Japan's period of rapid economic growth, due to changes in energy policies and other factors. *Satoyama* have long been maintained and managed by local farmers and villages, but this is becoming increasingly difficult with the aging and decline of these populations. As a result, more and more *satoyama* are being destroyed.

As places for environmental studies and nearby sites to come in contact with nature, *satoyama* are valuable spatial resources that have been bestowed to local areas. Their preservation requires area-specific measures, in addition to the social and historical requirements for each site. The workforce for these preservation measures is not expected to come entirely from municipalities, but also from many different entities including NPOs, private companies, schools, and volunteers.

#### **Sidebar: Interaction utilizing local assets**

As the population falls across the country due to declining birth rates, local governments are taking initiatives to promote natural population increases through enriched child-raising measures, initiatives to boost net migration through promotion of residential relocation, and measures to increase the non-resident population through tourism and other means. Although urban areas and rural areas are different, they both have inherent local assets — such as customs, functions, industries, culture, history, nature, and scenic landscapes — that have emerged from or been developed on their land spaces.

When population growth is not expected at all, it is important for local communities to generate qualitative value, above and beyond just stimulating people and the economy. This is done by sharing each community's attractions and by vitalizing interaction of people, goods, economies, and information. Municipalities that have gone through mergers, in particular, can create a sense of unity within their jurisdictions by embracing the diversity of nature and scenic landscapes within their areas and presenting this diversity as value to residents.

There are various ways to generate value from local assets and attract people. These include sightseeing tours where guests can encounter the beautiful scenery of various areas, trips that provide experiences with local traditions, culture, and crafts, longer vacations where guests pursue

interests or hobbies in rural areas, secondary residences in rural areas, and interaction as educational activities. Such attempts lead to circulate people and economies by local communities complementing and co-existing with each other, instead of focusing just on the unique value that each community has. Moreover, the recent upswing in overseas tourists has been remarkable. The second most common expectation overseas tourists have for their Japan visit is “viewing nature and picturesque scenery,” after “eating Japanese cuisine.”<sup>[1]</sup> And while nature tours and visiting rural areas were well down the list of expectations prior to their trips, satisfaction with these experiences was higher than even “eating Japanese cuisine.” This underscores the point that urban landscapes and natural environment described above are recognized as local attractions and assets. Therefore, it is imperative that we proactively maintain and preserve these assets into the future.

[1] Japan Tourism Agency, *Hounichi Gaikokujin no Shouhi Doukou Heisei 28 Nen 10-12 Gatsu Ki Houkokusho [Report on Consumption Trends by Overseas Tourists (October-December 2016)]*, January 2017

#### **(4) Slowing demand for urban infrastructure and reorganizing and maintaining urban infrastructure**

Unoccupied houses, vacant land, abandoned agricultural land, and deteriorating forests are all tangible signs of diminution and declining populations in urban and rural areas. The impact of depopulation on land spaces is manifested in the moth-eaten appearance of built-up areas in the suburbs, the hollowed-out cores of provincial municipalities, and the ghost villages in mountainous areas.

The population decline, low birth rate, and aging society create demand for an ever-greater variety of administrative services. Municipalities are having to handle these demands effectively, despite financial hardships.

In view of community improvement, population declines are having a huge impact on how best to arrange facilities that provide various administrative services in the future, as well as the public infrastructure and facilities that support the livelihood of residents. Suggestions have already been made for public real estate (PRE) management techniques as well as the use of facility management techniques to consolidate facilities and to address deteriorating facilities.

All of this requires a switch in land use priorities from the quantitative to the qualitative. To ensure the quality of life (QoL) of residents in their jurisdiction, municipalities must make effective use of land spaces as assets. Municipalities must also consolidate and maintain urban functions needed for daily life and



jointly establish and use these functions across jurisdictions. In this process, officials must take into account the history and origins of each community (land space), along with their traditions, culture, customs, identities, and other factors, in addition to the mere metrics of administrative efficiency, efficient use of land spaces, and lowering public financial burdens. It is also necessary to think about land use throughout the municipality as a unit; for example, including agricultural land, mountain forests, and other green infrastructure as urban infrastructure.

## **(5) Toward reforming land use administration approaches**

### **i. From an era of expansion to an era of diminution**

Our current land use systems, beginning with the City Planning Act, were established in an era of high growth. During this era, rapid population expansion, primarily in urban areas, drove urbanization into the suburbs. The City Planning Act was expected to construct urban infrastructure in vulnerable built-up areas and to deal with the bloat of unregulated urbanization and indiscriminate development. These were the typical issues in the era of expansion and growth, when social demand equated to infrastructure construction, in both urban and non-urban areas. By all appearances, these land use systems have largely carried out this role.

Also relevant was the fact that this era, predicated on expansion and growth, was an era of considerable economic and financial latitude. Therefore, even if land use regulation through the City Planning Act was insufficient, it was possible to a certain extent to construct urban infrastructure by chasing after private-sector-led development.

On the other hand, expansion of built-up areas was taken for granted, particularly in Japan's city planning laws. It has been pointed out<sup>20</sup> that the systems were designed on the premise that land readjustment and redevelopment brought "development benefits" (i.e., profits that come with urban development).

Nevertheless, the build-out of urban infrastructure and agricultural foundations have progressed to a sufficient degree in most areas, although a few areas still require ongoing infrastructure construction. Predictions<sup>21</sup> indicate that, in general, the country will move from expansion to contraction and lower densities (diminution) in the coming era of population decline, and lower development demand is inevitable. And a declining population means there will be fewer residents to use and maintain the land. Increases in land that is inadequately used or maintained are expected, as well as greater

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<sup>20</sup> Junichi Watanabe & Tomokazu Arita, *Toshi Keikaku no Seido Kaikaku to 'Toshi Hougaku' he no Kitai [City Planning System Reforms and Expectations for "City Jurisprudence"]*, Journal of Social Science, 61 (3/4), Institute of Social Science, University of Tokyo, 2010, p. 183

<sup>21</sup> Aiba, *ibid.*, and others

danger of landslides and other disasters.

In addition, as municipalities face worsening financial hardships, maintaining, upgrading, and, in some cases, decommissioning urban infrastructure and facilities has become a big problem.<sup>22</sup> In this era of diminution, when making built-up areas more compact and consolidating administrative services is needed, further unregulated development, and building out urban infrastructure to service such areas, is fiscally untenable. Issues with agricultural land are also growing more serious, such as the maintenance, upgrading, and decommissioning of previously constructed agricultural foundations, as well as securing enough agricultural workers.

As for the management of unoccupied houses and vacant lots, if this were an era with considerable economic and financial leeway, it might be possible to find new owners for these properties if left to market mechanisms. But the problem of unoccupied houses and vacant lots in this era of diminution will not be solved by market forces alone. These problems should be tackled by communities as a whole based on the cooperation of the local government, residents, owners, businesses, and other stakeholders. For example, by cooperating with residents and other stakeholders to avoid the emergence of vacant lots, unoccupied houses, and rundown section of urban areas. If new residential land is developed, where multiple generations can live together and engage in social interaction, rather than providing dwellings only for a specific age group

The systems governing urban and non-urban land use remain essentially structured on the premise of expansion and growth, despite being partially revised from time to time. They are not systems that can address this era with a declining and hyper-aging population — i.e., this era of diminution. More plans will likely need to be revised to keep step with the progress of diminution. What is happening, unfortunately, is governments taking approaches to revision that are not appropriate for this era. For example, when a road decided by a City Plan is canceled, officials seek to set up an alternative route. Similar things are happening with agricultural land. For example, constructing infrastructure and having agricultural land not just for agricultural production but also for extensive environmental management is sound in concept.<sup>23</sup> In practice, however, this leads to more randomly abandoned agricultural land, which is not appropriate in terms of farm management — i.e. aggregating agricultural land — or in terms of scenic

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<sup>22</sup> For example, Yuji Nemoto, *Kuchiru Infura: Shinobiyoru Mou Hitotsu no Kiki* [Decaying Infrastructure: Another Crisis in the Making], Nikkei Publishing, 2011, and others

<sup>23</sup> Ando Mitsuyoshi, *Nouchi no Sonzai Igi no Saiko: Toshi Nouchi no Saihyouka to Sono Sonzoku ni Mukete* [Revisiting the Importance of Agricultural Land: Reappraising Urban Agricultural Land and Facing Its Continuation], Toshi to Gabanance [Community Governance], (23), Japan Municipal Research Center, 2015, p. 68

landscapes.

As long as the present land use systems remain in place, which are premised on expansion, growth, or development, it will become increasingly difficult to handle the demands of the next era.

On the other hand, when we look at the land use systems in other developed countries with population stagnation and decline trends more advanced than ours, we find two differences from Japan: plans cover nearly all the territory of the country, and land use systems are not premised on expansion, growth, or development.

Consequently, there are strong calls<sup>24</sup> for Japan, whose population is both declining and rapidly aging, to truly transform its land use systems. This transformation must move from systems focused on the expansion of built-up areas, on the assumption of economic growth, to land use systems that, from a comprehensive perspective, suit an era of low growth and a declining population. These new land use systems should be founded on the problems of diminution and declining densities in urban areas and the challenges faced by rural areas. The country is at a stage where this transformation requires serious consideration, including a shift<sup>25</sup> from the past emphasis on development (such as new development of land to meet new demand) to an emphasis on preservation and reuse (in keeping with, for example, the decline in new demand and quantitative sufficiency, preservation of non-urban land uses, reuse and redevelopment of urban land, and maintenance, management, and upgrades of facilities). Likewise, we want to see a comprehensive land use administration that embraces and integrates the current separately implemented urban land use administration and non-urban land use administration.

If we institute halfway measures that do not address inconsistencies between the structure of land use systems and the true conditions in local areas, then these discrepancies will only widen. It is urgent and vital for the nation to take advantage<sup>26</sup> of the shift in urban areas from expansion to preserving the current status and downsizing, and to examine revamping land use systems, including legal systems.

## **ii. Achieving effective land use by overcoming siloed land use systems**

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<sup>24</sup> Watanabe & Arita, *id.*, p. 177

<sup>25</sup> Takashi Ohnishi, "Sasuthinaburu na Machidzukuri: Oubei no Shichou [Sustainable Community Improvement: Current Thought in the West]", Shigeru Ito et al. (editor), *Oubei no Machidzukuri / Toshi Keikaku Seido: Sasuthinaburu Shithi he no Michi [Western Community Improvement and City Planning System: The Path to Sustainable Cities]*, Gyousei, 2004, pp. 353-354

<sup>26</sup> Haruhiko Gotou, "Fukugouteki na Kadai wo Tasedai to Tashutai ga Kyoudou shite Toku [Solving Compound Issues through Multi-Generational and Multi-Entity Cooperation]", Japan Municipal Research Center (editor), *Jinko Genshou Shakai ni Okeru Tasedai Kouryuu / Kyousei no Machidzukuri [Community Improvement for Multi-Generational Interaction and Coexistence in a Depopulating Society]*, Japan Municipal Research Center, 2016, pp. 32-33

## and plans

As will be described later, the current land use plans and systems are siloed and multi-layered. Land use plans and systems are formed on field-specific laws, such as the City Planning Act, the Agricultural Land Act, the Act on Establishment of Agricultural Promotion Areas (Agricultural Promotion Areas Act), the Forest Act, the Natural Parks Act, and the Nature Conservation Act. Furthermore, the plans and regulatory procedures, with differing purposes and methodologies, are operated by the specified authority or department for each law. This situation has formed areas where multiple land use regulations and plans overlap while, paradoxically, creating undesigned (unplanned) areas that lie outside of all of these laws. Gaps in the legal systems lead to these undesigned areas, where regulations are lax, leaving scope for unregulated land use to go unchecked.<sup>27</sup>

Moreover, these independent, siloed acts are self-contained legal systems. Therefore, as observers have pointed out,<sup>28</sup> it is impossible to expect partial revisions to these laws to realize a comprehensive planning scheme. As described earlier, the recent City Planning Act amendment (2017) added Countryside Residential Areas to Use Districts, which had the effect of placing agricultural land in City Plans. The amendment did not, however, lead to a comprehensive planning scheme, which is needed for integrated control and management of both urban and non-urban land use.

The National Land Use Planning Act, which was established after the other laws, is supposed to adjust various plans based on these independent acts. The Act does, indeed, stipulate land use master plans (§9). These plans do have significance as fixed guidelines on land use. On the other hand, the ways and means of implementing the plans still depend on the same independent acts. Observers have indicated<sup>29</sup> that because of this structure, the plans only serve in a rubber-stamp capacity and their position as higher order plans has become a mere formality.

As will be discussed in the next chapter, land use regulations lack consistency because of how they are formed through the independent acts. This presents roadblocks to municipalities attempting to integrally manage

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<sup>27</sup> Tadasu Watari, *Sougouteki Tochi Riyō Keikaku Seido no Rippouka Kousou [Law-Making Concepts for Comprehensive Land Use Planning Schemes]*, Chiiki Kaihatsu [Regional Development], (477), Japan Center for Area Development Research, 2004, p. 23; Mari Uchiumi, "Machizukuri Jyōrei ni Yoru Kōgō no Sougouteki Tochi Riyō Yuudō [Comprehensive Land Use Promotion in the Suburbs by Community Improvement Ordinances]", Japan Society of Urban and Regional Planners (editor), *Toshi / Nōson no Atarashii Tochi Riyō Senryaku: Henbō shita Senbiki Seido no Kanousei wo Saguru [New Land Use Strategies for Urban and Rural Areas: Looking for Potential in Transformed Area Classification Mechanism]*, Gakugei Shuppan Sha, 2003, p. 152

<sup>28</sup> Watari, *id.*, p. 26

<sup>29</sup> Takefumi Ogawa, *Kokudo Riyō no Mondaiten to Tochi Riyō Keikaku Seido no Kadai ni Tsuite: Chibaken ni Okeru Kendo Riyō no Mondaiten wo Keisu Sutadhi to Shite [Problems with National Land Use and Issues with Land Use Planning Schemes: A Case Study of Prefectural Land Use Problems in Chiba Prefecture]*, Reports of the City Planning Institute of Japan, (8), City Planning Institute of Japan, 2009, p. 104

land use within their jurisdictions. There are strong calls to eradicate the status quo, where, despite the presence of multilayered and complex legal systems, land use regulations lack unity and integrity. And this means the land use management and controls that local governments need are inadequate. What is wanted in its place is the establishment of systems that truly facilitate integrated land use management.

## **2. Significance of municipalities undertaking integrated and comprehensive land use administration**

Our Study Group has examined the best approaches to integrated and comprehensive land use administration. The situation around our country's land use administration is at a major turning point. In this context, the following sections provide an outline of the significance of having municipalities undertaking integrated and comprehensive land use administration in a way that respects their autonomy.

### **(1) Planning attractive local areas**

People demand a great variety of “attractions” from their urban areas, such as convenient living, beautiful scenic landscapes, ease in conducting economic activities, abundant natural environment, and recreation and amenity functions. Furthermore, many people choose, amid a diverse range of options, to live in ways that are attractive to them. Most municipalities, therefore, undertake initiatives aimed at making local areas more attractive, as an attempt to increase the resident population or boost the non-resident population, including overseas tourists.

Municipalities, as the level of government closest to local communities, are best suited to regulate and promote land use with the aim of making their local areas more attractive.<sup>30</sup>

### **(2) Community improvement by local residents**

The basis of the right way to do administration in a decentralized society is incorporating local circumstances and the intentions of residents. Municipalities, as the level of government closest to local residents, have a huge role to play in this, and the field of community improvement and land use is no exception. It is important that municipalities direct land use administration to ensure land use accurately reflects the needs of the local communities and residents. Our Study Group has focused on municipalities independently planning land use and promoting comprehensive community improvement that meets their respective circumstances. Our focus dovetails, in the land use administration field, with

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<sup>30</sup> Watanabe & Arita, *id.*, p. 196

municipalities taking over “the role of implementing local administration in an independent and comprehensive manner” (Local Autonomy Act §1-2). Municipalities, in fact, are enthusiastically engaged in community improvement initiatives driven by local creativity and ingenuity and the participation of local residents, such as establishing detailed district plans based on resident suggestions. In view of this situation, we can conclude that decentralized land use administration that respects the autonomy of municipalities is perfectly consistent with demands of the present day.

Decentralized land use administration is also appropriate in the sense that municipalities, being responsible for overall land use in their local areas, can incorporate local circumstances familiar to local residents. Local spaces are the shared scenes of residents’ daily lives and economic activities. Therefore, municipalities, who local residents are familiar with, should hold the authority and responsibility for local spaces whenever possible.<sup>31</sup> Consequently, as the best approach to land use administration and systems, decentralized system frameworks need to be established so municipalities can exercise their autonomy and independence.

In developed countries like Germany, France, and the United Kingdom, basic municipalities are in charge of land use administration. In Germany, for instance, municipalities have the authority to regulate all local affairs on their own responsibility.<sup>32</sup> Above all, authorities on land use are given a high position in the planning authority hierarchy.<sup>33</sup> In France, as well, the intentions of the local communities inform comprehensive plans at the local level. These plans are enshrined in law in recognition that this is the will of the French people. France is also moving ahead with comprehensive land use plans as law.<sup>34</sup>

### **(3) Improvement of legal requirements**

#### **i. Local discipline**

Changes in the form of local communities will likely influence approaches to community improvement and land use. Some municipalities are trying to encourage independent and self-directed community improvement by local residents. They are doing this, for example, with inner-municipal

<sup>31</sup> Advisory Council on Decentralization Reform, *Kosei wo Ikashi Jiritsu shita Chihou wo Tsukuru: Chihou Bunken Kaikaku no Soukatsu to Tenbou [Creating Self-Reliant Regions Using Their Individual Characteristics: Recap of Decentralization Reforms and Their Prospects]*, June 24, 2014, p. 15

<sup>32</sup> Basic Law for the Federal Republic of Germany (the Constitution of Germany), §28(2): “Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws.”

<sup>33</sup> Deutscher Städtetag [Association of German Cities], *Für eine starke kommunale Selbstverwaltung!: Eine Informationsschrift für die Städte in der DDR [For strong local self-government! An information bulletin for cities in the GDR]*, 1990, p. 10

<sup>34</sup> Japan Association of City Mayors, *Dainikai Tochi Riyō Gyōsei no Arikata ni Kan suru Kenkyūkai no Keika ni Tsuite (Houkoku) [Particulars of the Second Meeting of the Study Group on Approaches to Land Use Administration (Report)]*, December 8, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/281208tochiriyō2rd\\_keikahoukoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/281208tochiriyō2rd_keikahoukoku.pdf)) (retrieved on March 13, 2017). Study Group member Uchiumi gave a presentation at the Second Study Group meeting on an interview with the French Conseil d’État (an advisory body of the French national government that is also the supreme court for administrative justice).

decentralization, such as assigning some community improvement authorities to council-type organizations or guaranteeing ways of participating in community improvement. All kinds of consensus-building initiatives are underway based on long-term initiatives by local residents. Examples include forming a community improvement council and carrying out community improvement on an incremental basis;<sup>35</sup> setting up and holding meetings by resident councils or informal district meetings for setting land use plans and handling other issues;<sup>36</sup> and setting up councils with local residents as members to study in detail the construction of community roads.<sup>37</sup>

It holds then that fulfilling democratic procedures, such as incorporating the opinions of residents and forming consensus, in the process of establishing plans is instrumental in ensuring that plans have a certain degree of social rationality,<sup>38</sup> as well as procedural rationality,<sup>39</sup> consistent with local circumstances.

Better community improvement outcomes can be expected by incorporating the opinions of local residents. This can be accomplished by having residents or community associations participate in the process of establishing local plans. Better outcomes can also be expected because residents and community associations are the ones that maintain and manage facilities and run activities in the local community.<sup>40</sup>

## ii. Relaxation of laws' detailedness

The many different situations municipalities are placed in must also be

<sup>35</sup> For example, Mari Uchiumi "Jyumin Soshiki no Goui Keisei to Machidzukuri Kyougikai no Igi: Mano Chiku no Rekishiteki Tenkai ni Chakumoku shite [Consensus Building at Resident Organizations and the Significance of Community Improvement Councils: Focus on the Historical Development of the Mano District]", Japan Municipal Research Center (editor), *Toshi Jichitai ni Okeru Shimin Sanka to Goui Keisei: Douro Koutsuu / Machidzukuri / Komyunithi [Resident Participation and Consensus Building at Municipalities: Road Traffic / Community Improvement / Communities]*, Japan Municipal Research Center, 2017, pp. 141-176, and others

<sup>36</sup> For example, the City of Sasayama City, *Satodzukuri Keikaku ni Tsuite [Countryside Development Plans]* (<http://www.city.sasayama.hyogo.jp/pc/group/keikan/city-planning/post-14.html>) (retrieved on March 13, 2017); Takayoshi Kamasaki, "Azumino-shi Tochi Riyo no Touitsu Ruurudzukuri no Torikumi [Initiatives to Create Uniform Land Use Rules in Azumino City]", Japan Municipal Research Center (editor), *Toshi Jichitai ni Okeru Tochi Riyo Gyousei no Genjyo to Kadai: Gappeishi wo Sozai to shite [Current Status of Land Use Administration at Municipalities and Its Issues: Examining Merger Municipalities]*, Japan Municipal Research Center, 2008, pp. 93-103, and others

<sup>37</sup> For example, Yasuichi Sakuma, "Seikatsu Douro Seibi no Keikaku Sakutei ni Tai suru Kumin no Sanka Jirei: Bunkyo-ku no Torikumi [Resident Participation in Establishing Plans for Community Roads: Bunkyo Ward's Initiatives]", Japan Municipal Research Center (editor), *Toshi Jichitai ni Okeru Shimin Sanka to Goui Keisei: Douro Koutsuu / Machidzukuri / Komyunithi [Resident Participation and Consensus Building at Municipalities: Road Traffic / Community Improvement / Communities]*, Japan Municipal Research Center, 2017, pp. 245-257

<sup>38</sup> Norihiro Nakai, "Toshi Keikaku no Rinen to Seikaku [The Character and Ideas of City Planning]", *Jitsumusha no Tame no Shin / Toshi Keikaku Manyaru I 1 Sougouhen: Toshi Keikaku no Igi to Yakuwari / Masutaa Puran [New City Planning Manual for Planning Officials Volume One: Significance and Role of City Plans / Master Plans]*, Maruzen, 2002, p. 15

<sup>39</sup> On the rationality of procedures (decision processes), Shin Aiba, Fumitake Meno, Rikutarō Manabe & Hitoshi Kuwata, *Toshi Keikaku no Gourisei wo Saikouchiku suru tame ni [On Reconstructing Rationality of City Plans]*, Machidzukuri [community improvement], (26), Gakugei Shuppan Sha, 2010, pp. 18-21

<sup>40</sup> Mai Kemmochi, Yusuke Kato & Mari Uchiumi, *Jichitai ni Okeru Toshi Nai Bunken no Jittai to Toshi Keikaku Sakutei he no Kanyo ni Kan suru Kenkyuu: Kyougikai-gata Jyumin Jichi Soshiki wo Chuushin ni [Research on the State of inner-municipal decentralization at Municipalities and Participation in City Plan Establishment]*, Reports of the City Planning Institute of Japan, 51(3), City Planning Institute of Japan, 2016, pp. 253-260

accounted for. As described above, Japan is expected to enter a period of rapid population decline. Nevertheless, local situations vary, from municipalities where the population is predicted to be stable or grow in the future to municipalities where depopulation is already a serious issue. Moreover, there are situations requiring effective use of limited land, such as in areas where vibrant development demand is anticipated, just as there are situations where agricultural land needs to be maintained or consolidated. Situations also exist where managing and maintaining outstanding natural and cultural landscapes is a prime issue in local land use.

Unfortunately, present laws on land use are not necessarily compatible with such diverse local circumstances. This is evidenced in our survey: Many respondents said “it is difficult to maintain and promote diverse land uses adequately under a nationally uniform policy of implementing laws” (Q12). They also said “[systems pertaining to City Plans] do not reflect the circumstances of provincial municipalities because they are premised on urban municipalities” (Q16).

In examining the best approaches to land use administration and related systems, two things are desirable: advancing the *decentralization of systems*,<sup>41</sup> which further eases laws’ detailedness, and creating flexible and adaptable mechanisms. These moves will allow for flexible and precise land use control and management consistent with the diverse requirements of local areas.

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<sup>41</sup> Watanabe & Arita, *id*, p. 190



## Chapter 2 — Current Status of Land Use Administration and Systems and Their Issues

### 1. Current status of land use administration and systems

#### (1) Land use legal systems and their issues

##### i. Independent land use acts: Examples from the City Planning Act and the Agricultural Promotion Areas Act

Five independent acts specify Japan's major land use regulations: the City Planning Act, the Agricultural Promotion Areas Act, the Forest Act, the Natural Parks Act, and the Nature Conservation Act.

The City Planning Act, for example, states that its purpose is “to promote the sound development and orderly improvement of cities ... thereby contributing to well-balanced national development and the promotion of public welfare” (§1). The Act focuses primarily on City Planning Areas — i.e., existing built-up areas or areas with potential for future urbanization. Development permission and other land use regulations as well as city planning projects which include construction of roads and other infrastructure are implemented in accordance with city planning master plans and City Plans. The building certification-system based on the Building Standards Act enforces building restrictions set out in City Plans.

The Agricultural Promotion Areas Act, on the other hand, states that its purpose is “to promote the sound development of agriculture ... thereby contributing to rational use of national resources” (§1). The Act applies to Agricultural Promotion Areas, which are defined as “areas, as a unit, deemed suitable for the promotion of agriculture” (§6). Similar to the City Planning Act, development permission and other land use regulations, as well as agricultural production foundations and other infrastructure, are established in accordance with basic agricultural promotion area establishment policies and agricultural promotion area establishment plans. Furthermore, agricultural land, which is the foundation of agricultural production, is protected with regulatory systems and other measures pertaining to the transfer of agricultural land rights and the conversion of agricultural land, based on the Agricultural Land Act.

#### **Sidebar: Rapid economic growth and the City Planning Act and the Agricultural Promotion Areas Act**

The first law considered a city planning law was the Tokyo City Planning Ordinance of 1888. The City Planning Act of 1919, the precursor to the current Act, was created in the modernization surge after the Meiji

Restoration and during the rush to build roads and other urban infrastructure. The Act, naturally enough, was centered on city planning projects. Japan's period of rapid economic growth, which began in the mid-to-late 1950s, transformed industrial structures and prompted a huge and swift inflow of people to urban areas. This, in turn, exacerbated urban problems, most notably pollution, and engendered chaotic urban expansion. The current Act was established in this context in 1968 and consisted mostly of land use regulatory systems. These regulations included the zoning of Urbanization Promotion Areas and Urbanization Control Areas, as a measure to combat urban sprawl, and the development permission mechanism to ensure the effectiveness of the zoning.

As with the City Planning Act, one factor that led to the Agricultural Promotion Areas Act in 1969 was rapid economic growth, the predominant social issue of the time. The labor productivity gap between agriculture and other industries was widening, and more and more of the agricultural labor force was migrating to other industries. This movement heightened awareness of the need for a stable food supply and for nurturing more productive farm management. The Agricultural Promotion Areas Act focused on establishing agricultural production foundations, especially prime agricultural land, and on stimulating the agriculture industry. Rapid economic growth fueled unregulated urbanization. Furthermore, the City Planning Act's limits on development in urban areas stoked fears of helter-skelter development in rural areas. To address these concerns, the Agricultural Promotion Areas Act also set out regulatory systems on land use.

## **ii. Siloed administration stemming from five independent acts and the National Land Use Planning Act's ineffectiveness**

### **(a) Inadequate coordination among the five independent acts**

Different ministries and government offices, with different objectives, have jurisdiction over the five independent acts pertaining to land use. These competing interests are the root of the poor coordination among different regulatory systems. Various problems have emerged since legal land use regulations either do not apply, or are insufficiently stringent, in certain areas. This is because the areas are not covered by any laws (so-called undesignated areas) or are covered by only lax regulations.<sup>42</sup> Conversely, when multiple, overlapping and confusing laws apply to an area, issues arise

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<sup>42</sup> Possible examples of undesignated areas are Non-Zoned Areas (City Planning Areas that are not designated as either an Urbanization Promotion Area, an Urbanization Control Area or an Use District) and Unzoned Agricultural Promotion Areas (Agricultural Promotion Areas not designated as an Agricultural Land Zone).

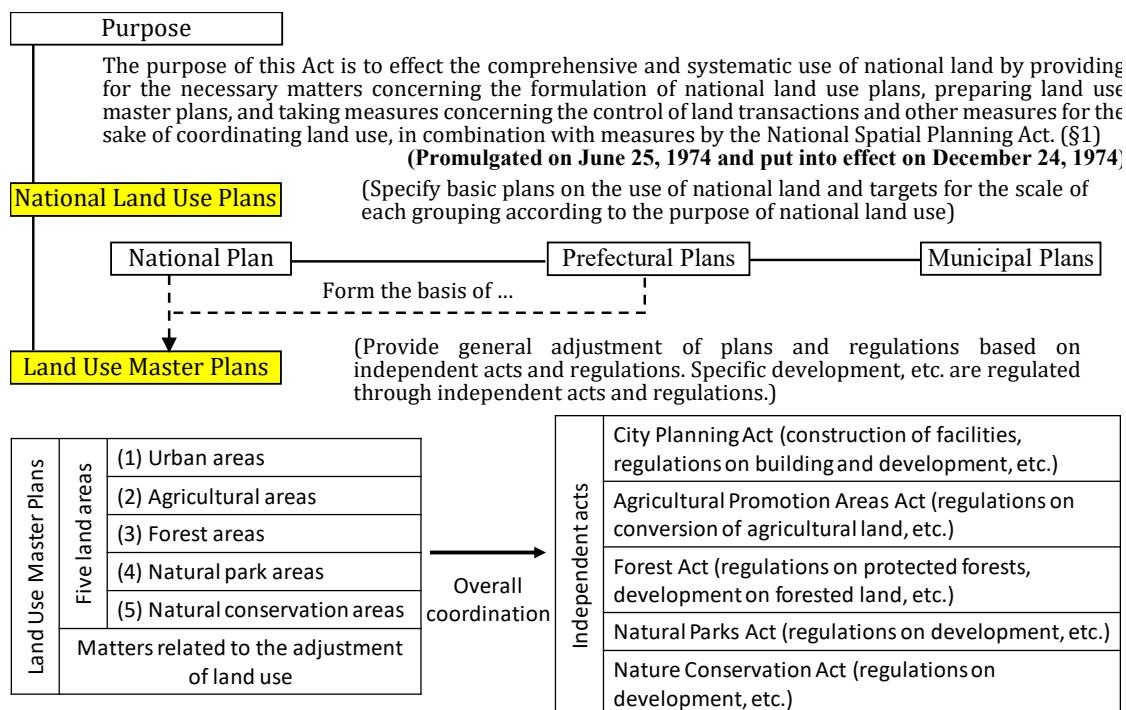
in terms of the amount of procedural time and effort needed to actually implement land use.

### (b) Ineffectiveness of the National Land Use Planning Act

The National Land Use Planning Act provides for land use master plans, as higher-order plans to adjust all plans and measures founded on the five independent acts (see Figure 2-1). Master plans demarcate five areas: urban areas, agricultural areas, forest areas, natural park areas, and natural conservation areas. Measures are then taken to regulate land use in accordance with these demarcations (§10). In short, land use master plans act as indirect regulatory standards on individual land use activities,<sup>43</sup> whereas their execution is reliant on the independent acts.

The problem is that, in practice, the five areas, and their details, specified in land use master plans merely ratify existing independent plans. And although municipalities have the discretion to establish municipal plans that define basic policies on the use of national land within their jurisdictions (§8), according to our Study Group's survey, only about 30 percent of municipalities have done so (Q6). This underscores the essential ineffectiveness of the National Land Use Planning Act's expected role to

Figure 2-1 — The National Land Use Planning Act and independent acts



Source: Taken partially from Ministry of Land, Infrastructure, Transport and Tourism, *Tochi Riyou Kihon Keikaku Seido ni Tsuite [Land Use Master Plan Schemes]*, (<http://www.mlit.go.jp/common/001118983.pdf>), 2016, p. 6

<sup>43</sup> *Enforcement of the National Land Use Planning Act*, Administrative Vice-Minister for National Land Agency Notification No. 60 of December 24, 1974

coordinate all the many plans and measures based on the independent acts.<sup>44</sup> Moreover, land use administration is as siloed as ever.

### **Sidebar: Background to the National Land Use Planning Act's enactment**

The National Land Use Planning Act was initially conceived after observers<sup>[1]</sup> began pointing out the growing social problems of pollution and environmental destruction, even as development was racing forward under the previous Comprehensive National Land Development Act. For this reason, the National Land Use Planning Act was designed to clarify the fundamental principle that national land was to be used while promoting the preservation of natural environment. Its further aim was the formation of mechanisms for land use regulations based on national land use plans.

On the other hand, the entire archipelago was experiencing a reconstruction boom at the time. Speculative land deals were rampant in every part of the country, causing land prices to skyrocket. Restricting land transactions to cool soaring land prices had become an urgent issue. Therefore, the National Land Use Planning Act included the prior notification mechanism for large land transactions and the permission mechanism for certain land deals in regulated areas. Even more stringent land transaction regulations (such as the adoption of a supervised area mechanism) were brought in later during the economic bubble around 1990. In short, the National Land Use Planning Act was initially enacted to harmonize land development and environmental preservation by establishing comprehensive and integrated land use plans and by implementing land use regulations that adhered to the plans. In practice, though, the Act ended up being mainly the land deal regulatory systems to combat spiraling land prices during Japan's reconstruction boom and bubble economy.

[1] For the story of how the National Land Use Planning Act was enacted, see Takafusa Shioya, *Kokudo Riyou Keikaku-Ho Koto Hajime [The Beginnings of the National Land Use Planning Act]*, Journal of the Land Institute of Japan, 23(1), 2015, p. 3

### **iii. Multiple entities implement land use administrative affairs**

Figure 2-2 lists the entities that implement various administrative affairs specified in the City Planning Act, the Agricultural Promotion Areas Act, and

<sup>44</sup> It must be mentioned that there are voices from the prefectural side lauding the land use master plans for their utility as overarching plans on the overall land use of the entire prefecture and the cross-discipline coordination and cross-organization coordination within land use administration that occurs while establishing land use master plans (Study Group on the Land Use Master Plan Systems, Ministry of Land, Infrastructure, Transport and Tourism, *Tochi Riyou Kihon Keikaku Seido no Arikata ni Tsuite — Chuukan Torimatome [Approaches to Land Use Master Plan Systems: Interim Report]*, October 2016, pp. 8-11).

the Agricultural Land Act — the acts that separately govern land use in urban areas and in agricultural areas.

Under present laws, prefectures and municipalities share in the establishment of land use plans, area designation that are prerequisites for regulations, and permission affairs for individual land use activities. The Agricultural Promotion Areas Act, for instance, specifies that prefectural governments establish basic agricultural promotion area establishment policies and designate Agricultural Promotion Areas and that municipalities, as a general rule, establish agricultural promotion area establishment plans and designate Agricultural Land Zones — i.e., the land use administration that is closest to residents' daily lives. Authority over permission and recommendation relating to development in Agricultural Promotion Areas has been transferred to designated municipalities.<sup>45</sup> But prefectures are still

Figure 2-2 — Authorities of establishment of land use plans, area designation, and permission

Legal basis	Affairs	Authorities
City Planning Act	Establishment of City Planning Areas and determination of policies on their development and preservation (master plan for City Planning Areas)	Prefectures
	Determination of basic policies on City Plans for municipalities (municipal master plan)	Municipalities <sup>[1]</sup>
	Designation of City Planning Areas and quasi-City Planning Areas	Prefectures
	Area Classification	Prefectures
	Designation of Districts and Zones	Municipalities <sup>[1][2]</sup>
	Development Permission in City Planning Areas or quasi-City Planning Areas	Prefectures, Designated Large Cities, and Core Cities
Agricultural Promotion Areas Act	Establishment of basic agricultural promotion area establishment policies	Prefectures
	Establishment of agricultural promotion area establishment policies	Municipalities
	Designation of Agricultural Promotion Areas	Prefectures
	Designation of Agricultural Land Zones	Municipalities
	Development permission in Agricultural Land Zones	Prefectures and designated municipalities
	Recommendations, etc. concerning development in Unzoned Agricultural Promotion Areas	Prefectures and designated municipalities
Agricultural Land Act	Permission of agricultural land conversions	Prefectures and designated municipalities

[1] When the municipal area exists as a Special Ward, the prefecture is the authority with same administrative affair (§87-3).

[2] The prefecture, however, designates some Districts and Zones, such as Special Urban Renaissance Districts, Special Preservation Districts for Historical Landscapes, and Protected Green Tract Areas (see §15(1)(iv) and 1(v)).

Source: Prepared by the Japan Municipal Research Center

<sup>45</sup> Designated municipalities are defined as “municipalities designated by the Agriculture, Forestry and Fisheries Minister in view of the state of the implementation of measures related to the assurance of the effective and comprehensive agricultural use of agricultural land.” (§15-2) Seventeen cities and towns had been designated as of March 24, 2017.

in charge of development in Agricultural Promotion Areas in other municipalities.

As this demonstrates, multiple entities are in charge of different land use administrative affairs. When these entities have conflicting policies on land use administration, either area designation or individual land use permission fails to adhere sufficiently to established plans, or the time required to coordinate among the various land use measures obstructs proceeding with actual land uses. (See Section 2(2), Chapter 2 for examples where conflicting policies have hindered land use.)

#### **iv. Nationwide legal regulations**

Most of the authorities municipalities hold under the City Planning Act, the Agricultural Promotion Areas Act, and the Agricultural Land Act are categorized as self-government affairs, apart from permission of conversion of agricultural land over four hectares in area to non-agricultural-land uses. When municipalities actually designate areas or give permission however, their decisions must, as a rule, satisfy nationwide legal requirements and standards. Simply put, because of the high detailedness they are placed under by these laws, municipalities have only limited discretionary leeway despite the authorities they hold.

For example, applications for development in City Planning Areas or other designated areas “must be permitted,” as long as the development plan is in compliance with standards set out in the City Planning Act §33 and ordinances based on §33 and the application procedure is not in violation of legal regulations. What this means is even if a municipality passes ordinances to set standards and procedures on development, failing to meet such ordinances is not a sufficient reason to deny development permission.<sup>46</sup> Consequently, there is concern land uses will develop that are inconsistent with local circumstances and the intentions of residents.

#### **v. Building certification system that ensures compliance with zoning regulations on buildings**

In addition to the five independent acts, the Building Standards Act plays a large role in forming and preserving local environment. Before a building is constructed, the building’s plans must be checked in advance by a building official or a certified private inspection agency. These parties verify that the plans are in compliance with various standards set out in the Building

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<sup>46</sup> Minutes from the 147<sup>th</sup> Meeting of the House of Representatives’ Committee on Construction No. 10 (April 19, 2000) p. 5 (statement by expert government witness Masataka Yamamoto (Director-General of the City Bureau, Ministry of Construction)); City Planning Division, Ministry of Construction, “*Toshi Keikaku Seido no Bunkenka no Ugoki [Decentralization Movements in the City Planning System]*”, Shigenori Kobayashi (editor), *Bunken Shakai to Toshi Keikaku [Decentralized Society and City Planning]*, Gyousei, 1999, pp. 31-32

Standards Act and related ordinances (§6). The problem is such building certification is a ministerial act with no room for discretion or individual judgement.<sup>47</sup> The building certification mechanism was adopted during the postwar housing shortage. The mechanism was devised to accelerate building approval procedures because of the pressing need to ensure sufficient housing and improve housing quality.<sup>48</sup>

The Building Standards Act includes building code that protect the lives of building users, such as regulations on structures and building fixtures. It also includes zoning code on buildings that are intended to maintain favorable urban environment by regulating building use, height, and plot ratio. The building certification mechanism is designed to ensure the effectiveness of these building and zoning regulations. The zoning regulations, however, become problematic in situations where a building approval judgement should be based on individual circumstances; for example, the site conditions where the building will be constructed. Another drawback of the zoning regulations is the near-impossible task of determining all decision criteria in a quantitative form in advance.<sup>49</sup> As a result, these regulations are unlikely to prevent the construction of buildings that do not fit in, either visually or functionally, with adjoining buildings;<sup>50</sup> for example, locating a large, high-rise condominium or a new-use building in or around a low-rise residential district or in an industrial site.

#### **vi. Scope of the building certification and the development permission**

The building certification is limited to “Buildings” — “structures attached to the land that have a roof and pillars or walls...” (§2(1)) and “Structures” (§88) — such as poles or billboards over a certain height. Solar power generation facilities (solar panels), which have been erected in increasing numbers around the country, are neither “Buildings”, because they are structures without a roof, pillars, or walls, nor structures, as long as they do not have poles over a certain height. Therefore, they are not covered by the Building Standards Act’s regulations.

The City Planning Act specifies the development permission’s scope as

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<sup>47</sup> Hiroshi Shiono, *Gyouseihou I (Dairokuhan) [Administrative Law I (Sixth Edition)]*, Yuhikaku Publishing, 2015, p.131;

Decision by the Supreme Court of Japan, Third Petty Bench July 16, 1985, Minshu (39(5)), p. 989

<sup>48</sup> Minutes from the 7<sup>th</sup> House of Representatives meeting No. 45, May 1, 1950, pp. 22-23 (statement by Representative Saburo Asari); Norio Yasumoto, *Toshihou Gaisetsu (Dainihan) [Outline of City Laws (Second Edition)]*, Horitsu Bunka Sha, 2013, p. 124 footnote 60; Takashi Noda, “*Tochi Riyo Kouei no Kontorooru Shudan [Control Methods of Land Use Activities]*”, Tadasu Watari, Osato Ikuta, Shigeki Kubo (editors), *Tenkanki wo Mukaeta Tochihou Seido [The Land Law System at a Turning Point]*, Land Institute of Japan, 2015, p. 44

<sup>49</sup> Atsushi Yanagisawa, “*Sairyousei Kijun to Kijun Shousaika [Discretionary Standards and Refinement of Standards]*”, *Daisankai Kenchiku / Shakai Shisutemu ni Kan suru Shinpojiumu: Sairyousei wo Yuu suru Kenchiku Kisei no Kanousei [Third Symposium on Architecture and Social Systems: Potential for Building Regulations with Discretionary Leeway]*, Special Research Committee on Strategic Examinations of Social Systems Related to Cities and Architecture, Architectural Institute of Japan, 2010, ([http://www.aij.or.jp/jpn/databox/sympo\\_rec/2010/20100713.pdf](http://www.aij.or.jp/jpn/databox/sympo_rec/2010/20100713.pdf)) (retrieved on March 17, 2017)

<sup>50</sup> Yanagisawa, *ibid.*

“Development Activities” (§33). It defines “Development Activities” as “altering the lots, shape, or quality of land to make it available mainly for the construction of buildings or special structures” (§4(12)). Accordingly, material storage sites and piles of earth or sand are not covered by legal regulations and do not need development permission. This is because they alter the lots, shape, or quality of land to make it available for purposes other than constructing buildings.<sup>51</sup>

## **(2) Decentralization reforms and issues in the land use sector**

### **i. Land use sector decentralization reforms**

Japan’s first-ever city planning system was the 1888 Tokyo City Planning Ordinance, which coincided with the Meiji government’s drive to establish a modern nation.<sup>52</sup> City planning ordinances were soon rolled out in the five major cities, and community improvement, primarily in large cities, became the job of the government.

These ordinances were recast as the City Planning Act of 1919, and subsequent amendments followed. At the end of World War II in 1945, the government’s chief focus was the reconstruction of urban areas and it enacted legislation to this end. The City Planning Act was amended in 1969, which transferred most city planning and decision authorities from the relevant cabinet minister to prefectural governors. Governors, however, carried out city planning simply as bodies of the national government, under a system of agency-assigned administrative affairs. So city planning was still, effectively, the job of the national government. For this reason, prefectures needed the approval of the national government, and municipalities needed the approval of their prefecture. The system of agency-assigned administrative affairs was abolished in 1999 with the first decentralization reforms. At the system level, this gave local governments more authority to dictate city planning. Furthermore, national government approval of prefectural decisions was scaled down to discussion and agreement, and prefectural governor approval of municipal decisions was downgraded to discussion and agreement. However, local governments’ discretionary powers saw almost no expansion. For example, Use Districts designation had to follow nationwide standards set by the national government. Later, with the second decentralization reforms in 2012, from the perspective of municipalities, the requirement for discussions and agreements with the prefecture was abolished. Authority over deciding City Plans, such as Use Districts, was transferred from prefectures to municipalities.

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<sup>51</sup> See Section 3(3), Chapter 2 for activities covered by land use regulations in other countries.

<sup>52</sup> Official announcement by the Japanese Home Ministry



The Agricultural Land Act is fundamentally different in tone from the City Planning Act. Where the City Planning Act's premise is providing residences for people, the Agricultural Land Act's purpose is to regulate transfer and conversion of agricultural land, preserve agricultural land for agricultural use, and ensure a stable food supply.

Japan's present agricultural land system began with the establishment of the Agricultural Land Act in 1952. The Act enshrined in law the end of the tenant farming system that was struck down with the emancipation of farming land by the GHQ after World War II. The Act aimed to stabilize the status of farmers while specifying regulations on transfer of agricultural land rights and regulations on land rights transfer for the conversion of agricultural land, and placed these under government control. The authority to permit agricultural land conversion was later transferred, with area size restrictions, from the relevant cabinet minister to prefectural governors, under the system of agency-assigned administrative affairs. The system of agency-assigned administrative affairs was abolished in 2000 with a package of decentralization laws. Consequently, the permission affairs for agricultural land conversion fell to local governments, but discussions were still required with the relevant cabinet minister in some cases. With a 2015 amendment to the Agricultural Land Act, permission of agricultural land conversion over four hectares were transferred to designated municipalities, with the condition of discussions with the cabinet minister.

## **ii. Land use sector issues**

Decentralization's progress varies widely between urban areas, agricultural areas, and forests. Decentralization of city planning to municipalities has made significant gains. Many authorities have been transferred, and most land use administration powers within their borders have been put in the hands of municipalities.

Nevertheless, problems do remain, such as high laws' detailedness that greatly limit discretion and the mismatch between planning decision and permission. Furthermore, Designated Large Cities, Core Cities, and Special Cities at Enforcement hold authorities stemming from city planning laws and ordinances, but prefectures hold the permission authorities for other municipalities.

In the agricultural land sector, the authority to permit agricultural land conversion has been transferred to designated municipalities in the latest law amendments. But decentralization has made little progress in the agricultural land and forest sector and non-urban sectors. For example, prefectures manage forests and similar land features.

Another serious problem remains unresolved from the perspective of integrated land use administration. The transfer of land use authorities has taken place separately under laws related to city planning and laws related to agricultural land. Thus, it takes considerable time and money to adjust a given land use. For example, under the City Planning Act, land use decisions require discussions with the prefecture, but under the Agricultural Land Act, the permission authority over those same land use decisions rests with the national and prefectural governments.

### **iii. Post-decentralization relationship between prefectures and municipalities**

The city planning sector has a role-sharing mechanism. The prefecture is in charge of core planning, such as designating City Plans Areas and deciding Area Classification. The municipality is in charge of Use District designation, detailed district plan decision, and other parts where the livelihoods of residents and local circumstances can be incorporated in City Plans.

Within this, there remains a mechanism for the prefecture (governor) to participate in City Plans by municipalities from the prefecture's role as a cross-jurisdictional government.

The second decentralization reforms changed the obligation on municipalities from having to discuss and obtain agreement from the governor on City Plans to just discussing City Plans with the governor. This still presents an obstacle to city planning, because of the wasted time and effort required by municipalities to discuss their plans with the prefecture (governor). Many municipalities say these discussions amount to having to get the prefectural governor's approval.

On the reverse side, prefectures do have an important role in adjusting municipal plans from a cross-jurisdictional viewpoint, because land use requires consistency and a broad perspective.

### **iv. Need for human resources to benefit from decentralization**

Decentralization has led to the transfer of many authorities to municipalities. A big problem for municipalities moving forward will be securing personnel to carry out these affairs. Municipalities have been working to cut personnel and optimize affairs through successive administrative reforms. But now they are having trouble with fewer personnel overall to find enough people to engage in city planning as well as improving the skill levels of personnel. Municipalities that have assumed many land use authorities now face the pressing issue of securing and training human resources for effective and fluid land use administration.

Prefectures must provide personnel assistance and aid skill improvements to complement the administrative work of municipalities.

**v. Adjustment responsibilities with authority transfers**

The transfer of authorities through decentralization simultaneously creates the need for cross-jurisdictional functions and capabilities to adjust with adjacent municipalities. Authority transfer has given individual municipalities some flexibility to independently develop land use administration within their own borders. The new authorities also bring the need for cross-jurisdictional adjustment with the land use administrations of adjacent municipalities. The purpose of this adjustment is to effectively use and control land spaces that span administrative boundaries. Adjustment is also needed because people travel greater distances in their daily activities.

**vi. From decentralization of independent land use acts to integrated land use systems**

Municipalities have the responsibility to use land spaces within their jurisdictions appropriately and in accordance with local circumstances and resident consensus. In this light, the country's siloed legal systems can hinder the progress of local land use administration when municipalities integrate the use, maintenance, and preservation of land spaces within their jurisdictions with the inconsistent transfer of land use authorities.

For example, municipalities may want to permit greenhouses and other structures that make use of local company technologies, to help train and secure a diverse agriculture workforce. Greenhouses are classified as "Buildings" under the Building Standards Act, but they do not meet standards on structural calculations. Similarly, there are cases where storehouses and factories cannot be built because of zoning regulations.

The transfer of authorities of individual land use acts is obviously a task, from the perspective of allowing municipalities to implement comprehensive and integrated land use administration within their own borders. Revising all land use systems will also be another task moving forward. This includes the consolidation of legal systems governing land use in urban and rural areas.

**2. Land use administration issues at municipalities**

**(1) Issues with suburban land use**

Urbanization Control Areas, Non-Zoned (undesignated) Areas in City Planning Areas, and rural areas are susceptible to unregulated development from development pressures, because land use regulations are lax in these areas. For example, although housing development in Urbanization Control

Areas does satisfy housing demands and raises the population, if housing construction is spotty and unregulated, it can cause over-extensions of urban infrastructure and higher administrative costs per unit area.

A growing issue is how to manage land use in suburbs and other areas, as the population drops in many areas and as unoccupied houses, vacant lots, and abandoned agricultural land become more common.

Urbanization Control Areas, undesignated areas, Unzoned Agricultural Promotion Areas, and other areas with lax controls do seem reasonable when viewed from the objectives of each individual act. These areas, however, are blank zones in land use regulations. Most of these blank zones are favorable green tracts, hilly areas, *satoyama*, and similar areas kept as green belts. Development should be halted in many of these areas because of declining populations. Current laws, however, do not offer sufficient means of preserving these areas. As a result, prefectures and municipalities have resorted to preserving these areas with ordinances.

To illustrate another issue, consider the example of a plan to develop agricultural land for residential use. Separate permission is needed: permission to convert the agricultural land from the agricultural land side, and permission to develop the land from the urban side. Permission to convert agricultural land is a mechanism to protect prime agricultural land. So while regulations apply to land use prior to this permission, land use after permission for conversion is almost regulation-free. Likewise with development permission. After permission to develop, regulations and standards apply to land use, but the law does not apply to land use prior to development. If both permissions are obtained simultaneously, they do not pose a problem. But when there is a time lag between the two permissions, the land often winds up being used as a temporary material storage site after conversion permission. Regulations do not apply after permission to convert agricultural land and until development permission is obtained.<sup>53</sup> This grey area is what leads to the gradual and unregulated erosion of agricultural land, turning it into residential lots, material storage sites, or sites for large-scale solar power generation facilities — a particularly thorny issue in recent years.

Also relevant is the fact that development permission is a ministerial act. This means permission must be granted as long as the permission requirements are satisfied. The upshot of this is that municipalities have no

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<sup>53</sup> Japan Association of City Mayors, *Daiikkai Tochi Riyō Gyōsei no Arikata ni Kan suru Kenkyūkai no Keika ni Tsuite (Hōkoku)* [Particulars of the First Meeting of the Study Group on Approaches to Land Use Administration (Report)], September 28, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/280928tochiriyō\\_keikahōkoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/280928tochiriyō_keikahōkoku.pdf)) [statement by Deputy Chairman Norihiro Nakai] (retrieved on March 14, 2017)

recourse to control unintended buildings.

**(2) Obstacles from the mismatch of decision-makers of land use plans, designators of areas, and permitters of development**

Land use authorities and administrative affairs have been transferred to municipalities over time through a series of decentralization reforms. Prefectures are in the process of transferring administrative affairs to municipalities through special exemptions for administrative processing. But these authorities and administrative affairs have been transferred from within separate legal systems. Therefore, land use administration within a single municipal area is forced to follow different regulations under multiple land use legal systems with different objectives and methodologies.

Municipalities have been pointed out various problems that happen because the authority still rests with prefectures to determine City Planning Areas and Area Classification and to designate Agricultural Promotion Areas. Such problems include: the rise of mixed residential and agricultural areas and the progression of pointless land uses; municipalities have trouble implementing intended development because of land regulations on Urbanization Control Areas; development moves ahead in adjacent municipalities that do not have zoning; and the time required to negotiate changes in zoning (Q16).

**(3) Problems related to land use adjustment**

**i. Land use adjustment by prefectures**

Land does not stop at the borders of municipalities; it is contiguous with land in adjacent municipalities. This is why it is necessary to adjust land use with adjacent municipalities and with the prefecture's regional City Plans. Prefectures, naturally, communicate and coordinate with municipalities, as the supervising regional government that contains cities, towns, and villages under the Local Autonomy Act. City planning sector also has the mechanisms in which the prefecture (governor) and municipalities discuss land use.

Prefectures hold the authority over setting City Planning Areas and setting Area Classification. Therefore, it is hard for the intentions of municipalities, through changing situations and alterations to land use administration, to be reflected in the policies and planning of prefectures.

Many municipalities mention problems with discussions (adjustment) between them and their prefecture, such as too many restrictions on discussions with the prefecture; difficulty in setting up an independent administration; discussions that do not proceed unless municipalities abide by prefectural standards; excessive involvement by the prefecture; and

dissatisfaction with the prefecture's support and adjustment (Q16).

**ii. Cooperation and adjustment with adjacent municipalities**

Given that residents travel farther in their daily activities and given the emergence of large-scale facilities that impact more than one municipality, adjacent municipalities must engage in various adjustment efforts concerning the contiguous land spaces they share. Adjustment with adjacent municipalities is all the more necessary, since many authorities under land use laws have been passed to municipalities and because municipalities are independently developing their own land use administrations.

The prefecture is expected to assist this adjustment from a cross-jurisdictional perspective. However, problems have been identified between municipalities that lie across prefectural borders. For example, different zonings determined by the respective prefectures lead to residential development and large commercial complexes being located in the municipality with the weaker regulations. Because they draw people across the prefectural border, such development has a disruptive impact on populations and commercial trade.

In the coming years, single municipalities will probably find it difficult to deliver all the functions residents want, presuming population declines and urban diminution. Single municipalities will have to look at sharing functions between municipalities and complementing urban functions and lifeline functions through cross-jurisdictional cooperation and adjustment.

**iii. Adjustment of plans founded on separate land use acts**

Japan's land use legal systems are generally divided into the domain of the City Planning Act and the domain of the Agricultural Promotion Areas Act and the Agricultural Land Act. Unfortunately, land use regulations lack consistency between the two domains. Furthermore, no mechanism exists in plans for municipalities to move forward with integrated land use.

The City Planning Act's purpose is to handle unregulated development and expansion in urban areas, based on a population model that presumes population growth. This is why the nationwide City Planning Act, in practice, has the potential to obstruct suitable community improvement in provincial areas.

The main purpose of agricultural land laws, on the other hand, is to strictly regulate and preserve the use of agricultural land.

In the gaps between these legal systems — namely suburban areas and rural areas — land use regulations are very lax, making them prone to

unregulated development.

**(4) Issues specific to each land use administrative field**

**i. Land use laws**

National spatial plans and national land use plans form the country's highest order land use plans and act as a mechanism for effective use of national land. Working from these plans, prefectures and municipalities establish national land use plans for their territories. On our survey, however, less than 30 percent of municipalities said they had established national land use plans for their territory. One reason for this low rate is that establishing such plans is voluntary. Additionally, each prefecture establishes a land use master plan under the national land use plan with the aim of adjusting the different land use laws. But on the survey, close to half of municipalities said these land use master plans were a mere formality and did not function as higher order adjustment plans. For example, one municipality pointed out that a wall exists between city planning administration and rural community administration because so many Urbanization Promotion Areas and Agricultural Promotion Areas are adjacent, and the National Land Use Planning Act's land use policy does not function to adjust the two (Q11).

Plans fail to adjust these siloed land use legal systems. Because of this, land that is spatially continuous is segmented by laws. Furthermore, frontline municipalities are left to face many problems, because of their limited authorities in comprehensively controlling land in their local area.

Municipalities gave many opinions in response to our survey: the existence of undesignated areas and other areas not subject to regulations under specific laws; difficulty in regulating facility sites that impact the environment; coping with each law is nerve-wracking because policies and regulations are at odds, over such things as exemptions and land expropriations; the inability to regulate sites or make recommendation for land shape alterations because development permission is not needed to construct solar power generation facilities, material storage sites, parking lots, and other structures not considered "Buildings"; and the inability to respond to buildings and other structures not anticipated by laws that are causing trouble for residents (Q16).

**ii. City planning laws**

Zoning under the City Planning Act is designed to handle the expansion of unregulated urbanization and indiscriminate development, particularly in major metropolitan regions, on the premise that urban populations will increase. The majority of municipalities, however, are experiencing

population decreases, both in the provinces and major metropolitan regions. For their part, municipalities claim that the city planning system is not suitable for dealing with declining populations and urban diminution; that City Plans are premised on population models of densely inhabited districts (DIDs) but DIDs have disappeared in the provinces experiencing population declines; and that the city planning system does not reflect the circumstances of provincial municipalities.

It has also been pointed out that while the population is going down in most municipalities, there are a few municipalities whose populations are growing at the moment. These expanding municipalities complain that the City Plans' population models are constraining their land use administration.

Other opinions called out the lack of response to the situations in municipalities that are causing pointless land uses, such as the rise in mixed residential and agricultural areas. The culprits are the relationship between prefectural City Plans and municipal City Plans and the fact that prefectures have the authority to determine City Planning Areas and Area Classification, even though municipalities are in charge of community improvement (Q16). On the other hand, others pointed out that the abolishment of zoning has loosened land regulations in suburban areas, leading to disorderly development of unregulated homes or large-scale commercial complexes on low-priced land.

### **iii. Agricultural land laws**

The objective of the Agricultural Promotion Areas Act and the Agricultural Land Act is to expand agricultural production. Their overriding principle is to preserve land for agricultural use, and their primary objective is not to adjust land use in rural areas from the standpoint of living environment.

In this context, one agricultural land policy of municipalities is to preserve prime agricultural land for agricultural production and to stimulate industry, especially workforce measures. Municipalities say that the strict regulations and operations under the Agricultural Promotion Areas Act and other laws make it harder to attract new inhabitants to rural areas. They also say the current increases in abandoned and fallow agricultural land are due to a shortage of workers and tough agricultural land regulations.

Taking agricultural land as a spatial resource for residents, there is a desire to use agricultural land according to the needs of the local community. On our survey, municipalities indicated that: they cannot implement systematic community improvement despite having the consensus of residents and councils because of the dominating involvement of prefectures; land use



regulations do not match the policy objectives of municipalities or local circumstances because the regulations are the same across the country; and converting agricultural land to other purposes is complicated because of the strict conditions on obtaining exemptions for Agricultural Land Zones (Q19).

Authorities over permission of agricultural land conversion have been transferred to designated municipalities in the most recent law amendments. Nevertheless, many agricultural land authorities still reside with the national and prefectural governments. This puts municipalities in a bind because they cannot flexibly address community improvement policies, which include agriculture land, that they need. Municipalities pointed out on our survey that: systems do not address the decline in population and the decline in farmers; there is a lack of perspective on developing comprehensive community improvement; and no mechanism exists that reflects the intentions of residents (Q16). In response to the 2014 Regulatory Reform Implementation Plan (a Cabinet decision), the expectations and benefits of agricultural land conversion are now being studied from the perspective of promoting agricultural land mobility. In January 2017, *Approaches to Agricultural Land Conversion Regulations from the Perspective of Promoting Agricultural Land Mobility: Interim Report* was released.<sup>54</sup>

## **(5) Present state of administrative structures and their issues**

### **i. Problems with securing sufficient personnel**

Administrative affairs and authorities are being gradually transferred to municipalities through decentralization reforms. But many municipalities indicated it is hard to secure sufficient personnel needed to implement these administrative affairs and authorities. Some municipalities have not been able to secure personnel with relevant expertise. This shortage in specialists is due to the mass retirement of baby boomers, combined with municipalities having to compete for personnel with private companies due to increased demand for construction work nationwide in the last several years.

Personnel in public works, construction, and city planning departments add up to roughly 17 percent of personnel in general administrative departments in Designated Large Cities and about 13 percent in other

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<sup>54</sup> Study Group on Approaches to Agricultural Land Conversion Regulations from the Perspective of Promoting Agricultural Land Mobility, Ministry of Agriculture, Forestry and Fisheries (April 3, 2015 to present). The Interim Report stated the gist of the Study Group's findings as follows. "The mobility of agricultural land to agricultural producers is steadily progressing each year and the area used by agricultural producers is approximately half of all agricultural land. However, it is necessary to further accelerate the accumulation and aggregation of agricultural land to agricultural producers for the purposes of boosting agricultural productivity and strengthening competitiveness. To this end, the national government decided to promote the accumulation and aggregation of agricultural land to agricultural producers with intermediary institutions that manage agricultural land. On the other hand, it has long been pointed out that expectations for agricultural land conversion were obstructing the mobility of agricultural land. In short, there is the question of whether owners of agricultural land are avoiding leasing out agricultural land so that they can readily sell the land when the opportunity to convert the land presents itself, in expectation of profiting from the land conversion. In interviews with farmers at the March 2014 Regulatory Reform Meeting, farmers said that expectations for agricultural land conversion were a factor in not leasing out agricultural land."

municipalities.<sup>55</sup>

Our survey examined the number of personnel specialized in city planning administrative affairs in different sizes of municipalities. The most common response, around 40 percent of municipalities with less than 50,000 people was one or zero specialists. Around 40 percent of municipalities with populations between 50,000 and 100,000 said they had between one and three specialists. The most common answer among municipalities with 200,000 people or more was 21 or more specialists (Q13).

Also on the survey, close to 70 percent of municipalities named personnel shortages as an organizational issue. This reveals the importance of securing sufficient human resources to take charge of running city planning and other systems.

## **ii. Shortage of field-specific expertise and skills**

The work of municipalities spans a great range of domains, from HR, taxes, public finance, and other management departments to social welfare, waterworks, city planning, and other operational departments. Because of this, municipalities concentrate on hiring general workers and have few spaces for hiring workers with field-specific expertise. Staff reassignment systems make it difficult for individual employees to accumulate expertise and knowledge in a given field. Moreover, city planning projects are few in number. Observers have pointed out this makes it impossible to amass case histories and accumulate organizational knowledge.

On our survey, more municipalities, over 70 percent, said shortages of field-specific expertise and skills were a problem than said they had a shortage of personnel. When asked the reason for these shortages, around 70 percent of municipalities replied a lack of training and opportunities to improve personnel skills.

## **iii. Lack of coordination between internal siloed organizations**

Land use legal systems can be divided roughly between the City Planning Act under the jurisdiction of the Ministry of Land, Infrastructure, Transport and Tourism and the Agricultural Promotion Areas Act and the Agricultural Land Act under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries. Consequently, in many municipalities, the departments in charge are different because of the different legal systems, even though the land in question is a single entity within the municipal borders. And because different departments are in charge, completely different land use

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<sup>55</sup> According to Local Administration Bureau, Ministry of Internal Affairs and Communications, *Heisei 28 Nen Chihou Koukyou Dantai Teiin Kanri Chousa Kekka [2016 Survey Results on Personnel Management at Local Public Bodies]*, March 2017.

administrations develop. Another problem is the lack of consistency between the land use regulations found in the two legal systems. On our survey, around 40 percent of municipalities said their land use departments were siloed and lacked coordination. And nearly 50 percent said their land use departments were siloed from and lacked coordination with other non-land use departments (Q9).

Municipalities do devise ways to coordinate between land use departments in operational aspects as well as in the field. On our survey, among the many answers, more than half of municipalities said their land use departments discussed and asked each other's opinions "when deemed necessary" or "when determining land use policies relevant to both parties". Close to 10 percent said they have "a permanent venue for regular discussions and coordinating opinions" and "their land use departments discuss and ask each other's opinions when deciding any land use policy" (Q10).

The survey also asked what coordination basis is used among land use departments. Many municipalities said they had no documented basis for coordination. The second most common answer was that coordination followed agreements or guidelines between the land use departments.

#### **(6) Necessity of resident participation and consensus building**

The intentions of the people who use the land must be given due respect, as land spaces are highly public by nature. Resident participation and opinions are essential parts to moving forward with land policies.

The City Planning Act specifies that when deemed necessary while creating city plan proposals, governments must take measures, such as holding public meetings, to reflect the opinions of residents in the city plan proposals (City Planning Act §16). The same article specifies that governments must seek the opinions of owners and other stakeholders of land that will be affected by proposals for detailed district plans or other matters.

Laws and ordinances place local activities in the hands of council-type community associations, and some municipalities have adopted mechanisms to back these activities. As part of inner-municipal decentralization, local people (including companies, NPOs, and others) are put in charge of local matters as means of local consensus-building and decision-making. These functions are expected to be successful in the community improvement sector too.

Converting the general concept of consensus building into consensus

building that can resolve specific problems in each community has some issues. Examples include the size of the community, the scope of members, the method of establishing plan proposals, the method of consensus, the mechanism of incorporating consensus into municipality plans, and consistency throughout the municipal area and with adjacent area.

Different communities face different issues, but the overriding issue is how the municipality reacts to proposals for plans from each community.

Our survey asked what priority issues municipalities are promoting in their comprehensive policy positions. “Coordinating residents and administration” was the third most common answer, after “industry and economic stimulus” and “child-raising support” (Q1).

Around 40 percent of municipalities said they “promote resident participation” in the formulation of plans in the land use sector. And over 70 percent said they emphasize “building consensus among residents on the details of plans and policies” to ensure the effectiveness of land use plans and other matters (Q2).

The City Planning Act does provide for mechanisms to seek the opinions of residents when establishing City Plans. But when asked about problems with city planning laws from their position, 20 percent of municipalities said “a lack of a perspective on promoting resident participation” was an issue (Q16). And over 50 percent of municipalities said agricultural land laws “lacked mechanisms to reflect the opinions of residents” (Q19).

## **(7) Rise in owner unknown land**

Against the backdrop of a declining population, low birth rate, and an aging population, the movement of people from provincial areas to urban regions and the increase in unwanted real estate are driving land demand down. This in turn is producing more unoccupied houses and unused land as well as more real estate properties subject to inheritance.

Residents’ perceptions of the value land has have also changed. In a 1993 survey, around 62 percent of respondents believed “land is an advantageous asset”, but this rate fell by half to around 30 percent in a 2014 survey.<sup>56</sup>

This combination of factors has prompted the number of unoccupied houses to jump, particularly in provincial municipalities, and governments are scrambling for solutions, including legal measures. With respect to the land itself, there is a growing problem with land going unused. In tandem with this is the spate of owner unknown land, which is creating problems in

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<sup>56</sup> Land Economy and Construction Industries Bureau, Ministry of Land, Infrastructure, Transport and Tourism, *ibid*.

terms of tax revenue, land use, and scenic landscapes.

The national government is promoting investment through better liquidity in the real estate stock and promoting a succession register for land and other property to facilitate urban development and a cycle of growth for local economies.<sup>57</sup> Guidelines on finding owners have also been drawn up.<sup>58</sup>

Unknown owners are an obstacle to the comprehensive and effective use of land spaces. Therefore, municipalities need mechanisms so they can create land use rights without knowing the owner and establish facilities the municipalities need. Legislation to this effect is also required.

### **3. Comparison with land use in other countries**

#### **(1) Consciousness toward land**

Comparing Japan's land use systems with those in other countries is a valuable exercise. Examining the social conditions and consciousness behind these systems is also important.

One view is that in Japan there is a strong consciousness of land as "something that produces benefits" whereas in Western Europe land is considered "something public". Another view is that differences in history and social environment create the differences in land consciousness and systems that control land use.

The United Kingdom and the United States do not have the concept of absolute land ownership. France, Germany, and other continental law countries, on the other hand, still recognize absolute land ownership. In these countries, principles and systems have emerged that restrict land ownership as their populations switched from rapid growth to gradual growth.<sup>59</sup> This started about 150 years ago through to approximately World War II. Thus, municipalities in the United Kingdom, France, and Germany hold both the authority to establish land use plans and the authority to permit development and construction. This combination of powers makes land use plan more effective.

These ideas premised on maintaining and preserving land uses were difficult to accept in Japan during the previous era of expansion and growth. Given the changes in social conditions today, it is possible for us to consider mechanisms that prohibit new land uses without a plan by the local

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<sup>57</sup> Cabinet Decision, *Keizai Zaisei Unei to Kaikaku no Kihon Houshin 2016* [Basic Policy on Operations and Reforms to Economy and Public Finance 2016], June 2, 2016

<sup>58</sup> Ministry of Land, Infrastructure, Transport and Tourism, *Shoyuusha no Shozai no Haaku ga Muzukashii Tochi ni Kan suru Tansaku / Rikatsuyou no tame no Gaidorain (Dai ni Han)* [Guidelines for Investigating and Utilizing Land Whose Owners' Whereabouts are Hard to Ascertain], March 2017

<sup>59</sup> Teruaki Tayama, *Doitsu no Tochi Jyutaku Housei* [Land and Housing Laws in Germany], Seibundo Publishing, 1991, pp. 173-182

Figure 2-3 — Land ownership concepts and their relationship to planning

	U.K. and U.S. legal systems		Continental legal systems	
	U.K.	U.S.	France	Germany
Historical background	➤ All national land is presumed to belong to the monarch	➤ Inherited the principles of English common law	➤ Modern land ownership, established with the French Revolution, developed as absolute private ownership	
Land ownership and use concepts	<ul style="list-style-type: none"> <li>➤ Existence of holder rights — i.e., right to occupy and use land</li> <li>➤ Priority of land use rights has been established</li> </ul>	<ul style="list-style-type: none"> <li>➤ No concept of absolute land ownership</li> <li>➤ Holder rights — i.e., land use rights — are presumed</li> </ul>	<ul style="list-style-type: none"> <li>➤ Absolute land ownership remains in principle</li> <li>➤ However, there are principles and systems that constrain absolute land ownership (roughly equivalent to finiteness of land)</li> </ul>	
Relationship to planning	(No absolute land ownership)		<ul style="list-style-type: none"> <li>➤ Principles constraining land ownership are embodied in land use planning legislation — “<b>no plan, no development</b>”</li> <li>➤ <b>Two-tier regulatory structure:</b> master plans that set out the objectives and policies, and specific plans that implement (regulate) objectives and policies</li> </ul>	
			<ul style="list-style-type: none"> <li>➤ France sets Territorial Coherence Schemes (SCOT) that are overarching plans for establishing municipal territories</li> <li>➤ Municipalities decide detailed local city plans that have legal force (PLU)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Each municipality should establish a land use plan (F Plan) based on high order plans and sets out objectives</li> <li>➤ Municipalities may establish detailed plans (B Plans) for specific districts in the form of ordinances (regulate development and buildings)</li> </ul>

Sources: Prepared by the Japan Municipal Research Center based on Teruaki Tayama, *Doitsu no Tochi Jyutaku Housei* [Land and Housing Laws in Germany], Seibundo Publishing, 1991; and Mari Uchiumi, *Furansu no Toshi Keikaku-hou no Tokuchou to Keikaku Seido no Doutai* [Traits of French City Planning Laws and Movements in Planning Schemes], Journal of the Land Institute of Japan, 22(2), Land Institute of Japan, 2014

community and that allow independent land uses when a plan is formulated.

## (2) Land use systems and status in other countries

In the United Kingdom, France, and Germany, whose systems Japan uses as references, the municipality must first decide on a plan before land use can take place within the area. Laws stipulate that individual plans for specific areas (such as development) are formulated at the municipal level, whereas the assumption at the national and regional government level is to preserve land use (development are in principle prohibited).

In other words, if no plan is decided by the municipal government, then land use cannot take place — i.e., no plan, no development. This arrangement allows basic municipalities to independently plan their local area through urban and rural areas.

In Germany, for example, to convert agricultural land to residential land or to locate a commercial complex, first there is a procedure to modify the land use plan [*Flächennutzungsplan*]. After changing the lot in question to a commercial use district, for example, a B Plan [*Bebauungsplan*] is also established (these can be done in parallel). Land use plan modifications require state [*Bundesland*] approval. It is at the state level that development

and agricultural land preservation concerns are balanced. Furthermore, the decision applies only to the specific land use plan modification, so there are no fears of development proceeding unchecked and eroding agricultural land. If the land use plan modification is allowed, the agricultural land conversion is also approved without issue. Note that in many cases, the developer is required to secure alternative green tracts or take other measures as compensation for the development's encroachment on nature.

German states grade agricultural land in four levels according to its productivity. These are published as maps in the landscape plans [*Landschaftsplan*] of each municipality.

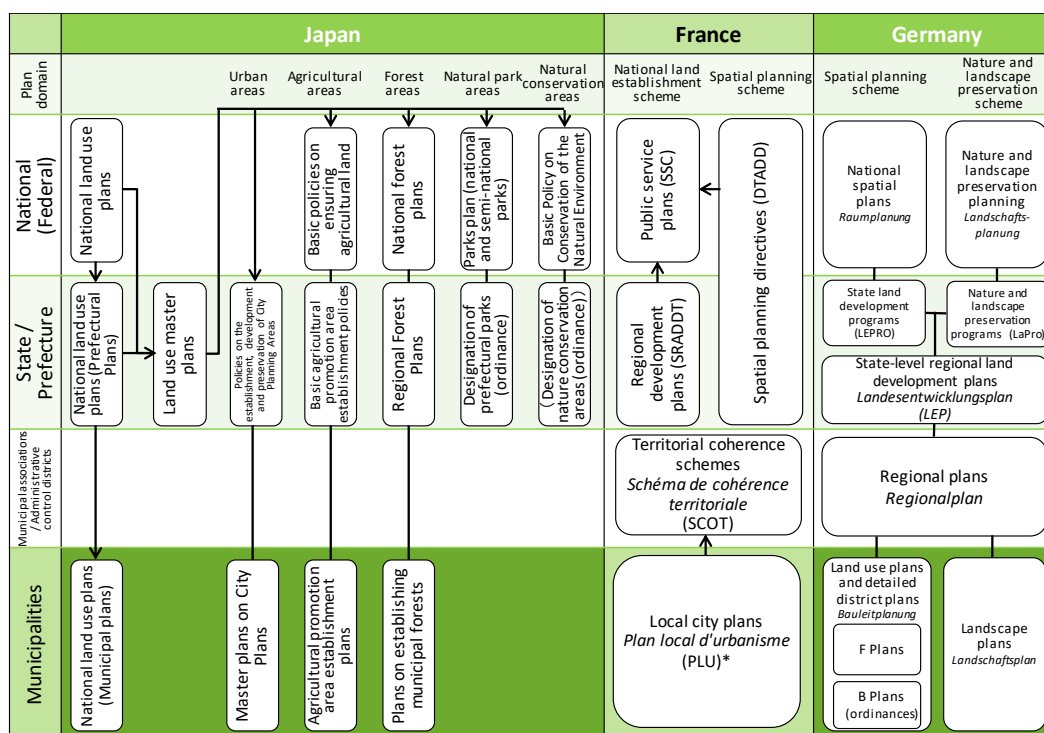
In Germany, all land uses are determined in F Plans (land use plans) established by each municipality. If a municipality has not established a B Plan (a detailed district plan) under the land use plan, then development cannot take place. At the federal and state levels, development based on the Federal Building Code [*Baugesetzbuch*] is coordinated at the state level with nature and landscape [*Landschaft*]<sup>60</sup> preservation based on the Federal Preservation of Nature and Landscapes Act [*Bundesnaturschutzgesetz*] and supplemental state legislation.

Land use plans established by municipalities cover the entire municipality. Thus, they include all districts subject to city planning and development as well as all nature and landscape preservation (including agricultural land and forests) (see Figure 2-6). As for nature and landscape preservation districts, areas that must be preserved and areas where adjustments are possible are made explicit.

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<sup>60</sup> "*Landschaft*" [landscape in English] is commonly translated as "*keikan*" [scenery landscape in English] in Japanese, and the term has been long known as *keikan* to botanists and in geography in Japan. *Landschaft*, however, is defined as a "geographical area with a certain characteristic of nature" in the Wahrig German Dictionary. And as a German legal term, the word is used with a local connotation more than a visual meaning. This is why it is sometimes translated as "*keiiki*" [scenic area in English]. *Landschaft* also includes the ecosystem concept of biotope, coastal areas and areas where farming, fishing, and forestry take place as well as areas for leisure experiences. In this sense, the word can be thought of as a synthesis of the countryside and *satoyama*. In addition, the term *Landschaftsbild* [visual landscape in English] (such as Federal Nature Conservation Act §29(1)(iii)) is used to mean the visual appearance of land. Furthermore, the word *keikan* as used in Japan's Landscape Act includes urban landscapes and may well be understood mainly as urban landscapes. Seeing that the previous translation of *Landschaft* as *keikan* might cause misunderstandings, we have decided to use a new translation, *denen kankyō* [landscape in English]. Note that in Germany, urban landscapes ordinances, known as *Gestaltungssatzung*, based on state-level building regulations, govern the preservation of urban landscapes with regulations on the façade design of buildings and regulations on outdoor advertising materials.

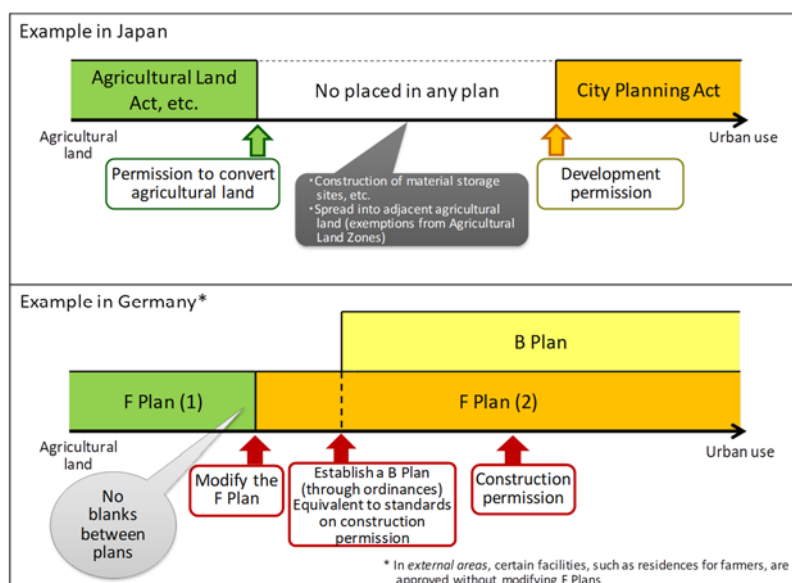
Figure 2-4 — Main levels of land use systems in different countries



Note: French local city plans (PLU) [*Plan local d'urbanisme*] can be established by Public Establishments for Intercommunal Cooperation (EPCI) [*établissements publics de coopération intercommunale*], which are equivalent to municipal associations / administrative control districts in this diagram, under the Grenelle II Act [*Loi n° 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement*] in 2010. The establishment of these PLU by EPCI has been strengthened in the 2015 ALUR Act [*Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové*].

Sources: Prepared by the Japan Municipal Research Center based on materials from the Advisory Council on Decentralization Reform, materials from the Ministry of Land, Infrastructure, Transport and Tourism, and the website of the North Rhine-Westphalia state

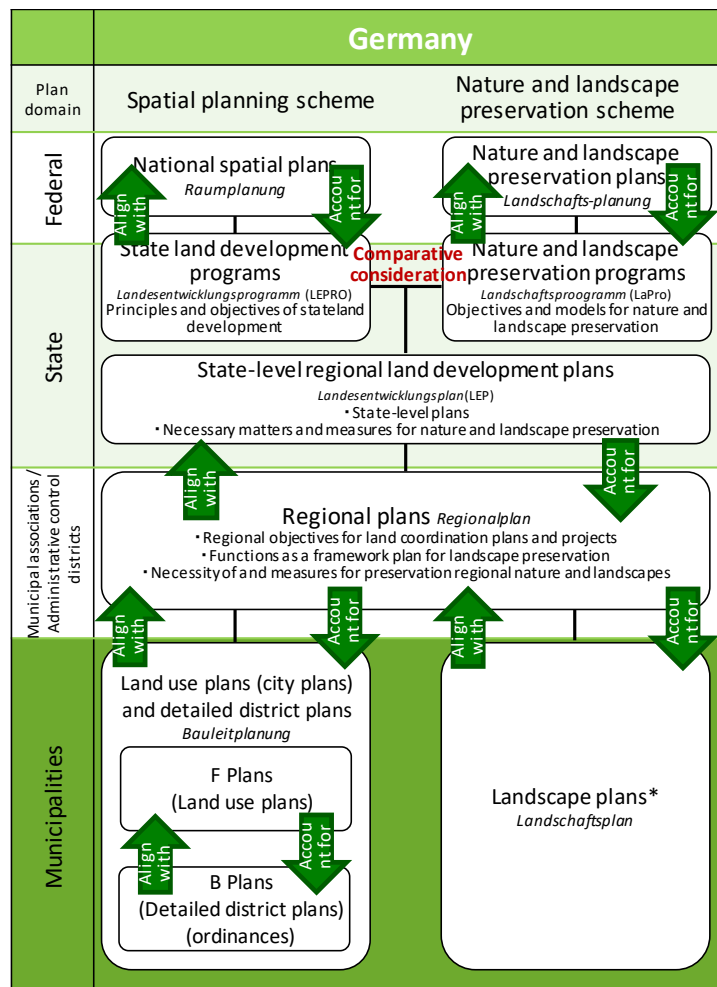
Figure 2-5 — Conversion of agricultural land in Japan and Germany



Sources: Prepared by the Japan Municipal Research Center in reference to lecture materials from the *Dainikai Tochi Riyō Gyousei no Arikata ni Kan suru Kenkyūkai* [Second Meeting of the Study Group on Approaches to Land Use Administration] and Juichi Takahashi, *Chiiki Shigen no Kanri to Toshi Hōsei* [Management of Local Resources and City Law Systems], Nippon Hyoron Sha, 2010



Figure 2-6 — Land use plans in Germany



\*Landscape plans (in the form of ordinances) are established by districts and independent cities (usually cities with a population over 100,000).

\*The Federal Preservation of Nature and Landscapes Act and the Federal Building Code have certain adjustment provisions between the two, with a basic tone of land use prohibition, control, adjustment, and substitution.

\*The states of BW, RP, BY, and others incorporate landscape plans within F Plans.

Sources: Prepared by the Japan Municipal Research Center based on materials from the Advisory Council on Decentralization Reform, materials from the Ministry of Land, Infrastructure, Transport and Tourism, and the website of the North Rhine-Westphalia state

### (3) Measures to make land use plans and City Plans more practical

#### i. Construction permission

The land use regulations in the United Kingdom follow a system in which individual development is reviewed and permitted separately, which is different from zoning-type specification regulations. In principle, all development must obtain permission from the local planning authority.

In Germany, districts [*Landkreise*] and independent cities [*Kreisfreie Städte*] are in charge of construction permission (Federal Building Code and state-level building regulations). Permission consists of verifying whether the development project conforms to the B Plan (ministerial and discretionary

action).<sup>61</sup>

In France, communes that establish local city plans (PLU) have, in principle, the authority to permit construction.

## **ii. Activities subject to permission**

In Japan's current laws, "Buildings" are defined as "structures that have a roof and pillars or walls", and the City Planning Act defines "Development Activities" as "altering the lots, shape, or quality of land to make it available mainly for the construction of buildings or special structures". In the United Kingdom, Germany, and France, however, the scope of permission is not limited to new construction of buildings or altering the lots, shape, or quality of land; the permission mechanisms cover a broad range of changes to the shape or quality of land and changes in land use. The scope of U.K., German, and French permission can be thought of as the "Development Activities" in the Agricultural Promotion Areas Act, which have a broader definition than "Development Activities" in the City Planning Act.

In Germany, not only are agricultural land and forests positioned within planning schemes, so too are sand and earth quarries, for example. Permission mechanisms also address solar power generation facilities and other structures that are not considered to be "Buildings" under Japanese law.

## **iii. Permission that backs zoning regulations on buildings**

Japan's building certification mechanism consists of building regulations to ensure the health and safety of individual buildings and zoning regulations intended to preserve the local environment in which buildings are situated. Having one administrative process to ensure both types of regulations is unique to Japan, when compared to the legal systems in other countries. Zoning regulations require decisions based on individual circumstances and allow for the possibility that the criteria for judging a building's suitability may change, depending on where the building will be situated. In the United Kingdom, Germany, and France, such zoning regulations are verified with the permission and permittees are given discretion in their decisions. Specifically, zoning regulations are guaranteed by *planning permission* in the United Kingdom (Town and Country Planning Act 1990 §57), *building permission*

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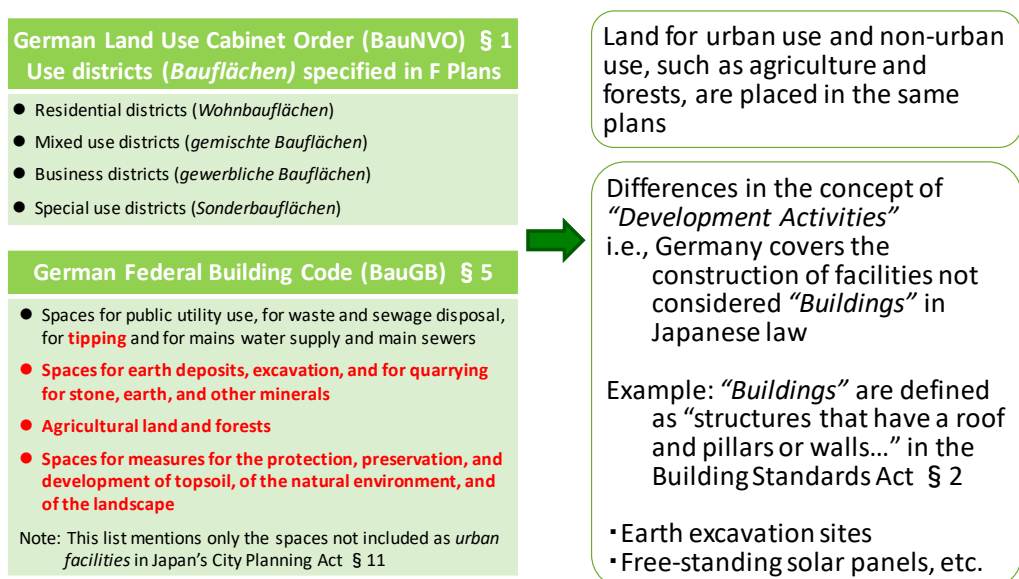
<sup>61</sup> Seven German states (BW, HE, NW, SH, SN, ST, TH) have integrated municipal affairs in self-government affairs. In these states, municipalities carry out the affairs of low-ranking state offices as self-government affairs (designated responsibilities). In other states, municipalities carry out these affairs by delegation from the state. In some states, however, there is a district head, as the state agency, in the natural conservation office, which is a low-ranking state office. Furthermore, independent cities (cities over 100,000 people in NW and many other states, and cities over 50,000 people in BY and some other states) and urban districts (cities over 25,000 people in NW, cities over 20,000 in BY, and municipalities belonging to a district or municipal administration associations that apply and meet certain conditions in BW) have their own construction permission offices. The guarantee of a construction engineer is a condition of having the offices. For small municipalities without a construction permission office, regulations are in place that require the consent of the construction permission by the municipality that drew up the B Plan.

Figure 2-7 — Types of activities subject to certification / permission in Japan, the United Kingdom, Germany, and France

Japan	Building certification	<ul style="list-style-type: none"> <li>Construction, improvement or relocation of “Buildings” (“structures that have a roof and pillars or walls”)</li> <li>Construction of certain structures such as poles over 15m and billboards over 4m</li> </ul>
	Development permission (City Planning Act)	“Development Activities” (“altering the lots, shape, or quality of land to make it available mainly for the construction of buildings or special structures”)
	Development permission (Agricultural Promotion Areas Act)	“Development Activities” (“subdivision; sand and earth quarries; other alternation of the lots, shape or quality of land; construction, reconstruction or extension of building and other structures”)
U.K.	Planning permission	Development (construction, improvement, reconstruction, or demolition of buildings; serious change of land and building use; underground work; mining)
Germany	Building permission	<ul style="list-style-type: none"> <li>Construction, improvement or use change of buildings [<i>Anlage</i>]</li> <li>Widespread earth deposits, cut or excavation</li> <li>Deposition, including storage space</li> </ul>
France	Building permission	Construction, use change, improvement or demolition of buildings [ <i>constructions</i> ]
	Planning permission	Work or installation altering use or appearance of land

Source: Prepared by the Japan Municipal Research Center

Figure 2-8 — Use Districts and urban facilities stipulated in City Plans



\*When setting up large solar power generation facilities in areas outside of the four use districts set in F Plans given above (*external areas*), the area must be changed to a *special use district*.

Source: Prepared by the Japan Municipal Research Center in reference to Joji Abe, *Oogataten to Doitsu no Machidzukuri* [Large Stores and Germany's Community Improvement], Gakugei Shuppan Sha, 2001

[*Baugenehmigung*] in Germany (Federal Building Code §36 and state-level building regulations), and *building permission* [*permis de construire*] and *planning permission* [*permis d'aménager*] in France (City Planning Code Article [*Code de l'urbanisme*] L.421-1, L421-2).

## Chapter 3 — Establishment of a Comprehensive and Integrated Land Use System

### 1. Establishment of systems for a comprehensive and integrated land use administration

#### (1) Mechanisms for systematic consideration of optimal land use in local areas with resident consent

##### i. Land use systems led by municipalities close to residents

The transition into the super-aged society with a declining population requires land use that, above all, reflects local circumstances and the intentions of residents. Land use is the most valuable means of getting residents to take care of and improve their own communities. Moreover, reflecting local circumstances and the intentions of residents in land use dovetails with the direction of decentralization reforms.

Municipalities, as the level of government closest to local residents, have a huge role to play in this. Local spaces are the shared scenes of residents' daily lives and economic activities. Therefore, the municipality, which is near local residents, should hold the authority and responsibility for local spaces whenever possible. In other words, it is important that the municipality is the main entity to ensure land use is both optimal and accurately reflects the needs of the local communities and residents. Consequently, in examining new land use systems, it is imperative to establish decentralized system frameworks so municipalities can exercise their autonomy and independence.

##### ii. Establishment of systems attuned to an era of population decline: the “no plan, no development” principle

There is a strong push for boosting the many forms of value land possesses and optimizing land use, in order to construct living spaces where residents can lead abundant lifestyles as the country's population begins to decline. To this end, it is vital that municipalities, the level of government closest to residents, are able to control and manage land use in their areas in a comprehensive and integrated fashion. Accordingly, we must aim for the establishment of systems that make this possible.

As described previous to this chapter, systems designed under current land use laws were premised on expanding urban land use driven by economic and population growth. But as the country faces rapid population decline, the premise that current land use laws expected no longer holds in just about all municipalities. This situation is at the root of the growing divergence between local circumstances and land use laws and why we

cannot expect to realize appropriate land use. In reality, there are numerous occasions where municipalities cannot fully control sprawl-like development in undesignated areas or the construction of undesirable facilities and structures, despite the downward population trend. Consideration, therefore, should be made about establishing systems that will give municipalities appropriate control and management over land development and preservation in their area.

Plans are the key for municipalities to independently control and manage land use within their borders. One definition of *plan* is “a basis for human activities that sets objectives and describes the steps to reach the objectives in an integrated manner.”<sup>62</sup> If we accept this definition, then plans determined by municipalities are important local autonomy tools for municipalities, in the sense that municipalities spell out their own objectives and steps. Land use plans have three functions: a tool that describes the target vision and processes related to local land use; a tool that adjusts various land spaces; and a tool that ensures appropriateness through democratic proceedings when formulating the plan.<sup>63</sup>

From this, we can conclude that a new “no plan, no development” concept is needed, so municipalities can realize integrated land use on their own.<sup>64</sup> The “no plan, no development” concept involves granting legal binding effect to plans set up by municipalities and disallowing new land uses that do not adhere to the plans while allowing the development of particular land uses when a plan is established. Such a concept also suits the demands of the times, as we saw in other countries in Section 3 of Chapter 2, where “no plan, no development” concepts were established at the same time as their populations switched from rapid growth to gradual growth.

### iii. Establishment of a new planning scheme

Figure 3-1 proposes a planning scheme with three levels of plans — *Comprehensive, District, and Development Project Plans*. This planning scheme

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<sup>62</sup> Tsuyoshi Nishitani, *Jittei Gyousei Keikakuhou: Puranningu to Hou [Positive Administrative Planning Laws: Planning and the Law]*, Yuhikaku Publishing, 2003, p. 5

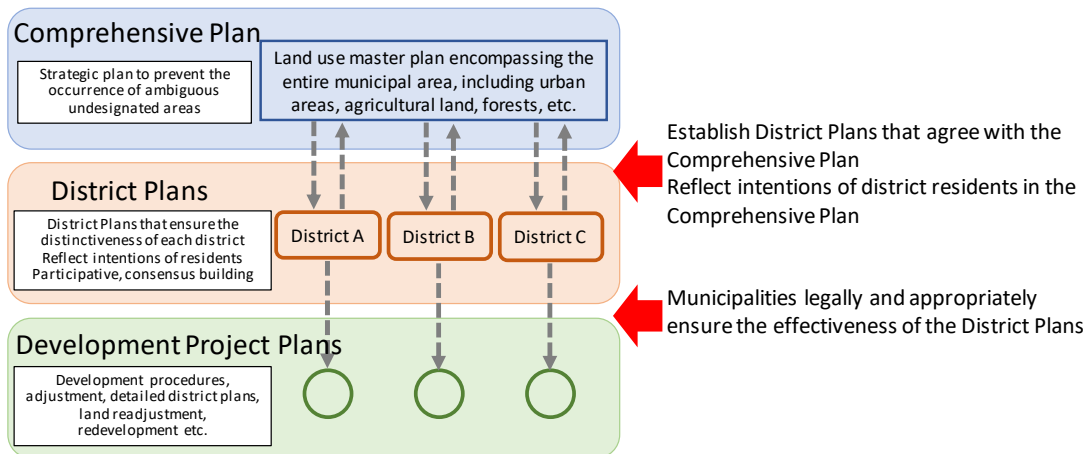
<sup>63</sup> According to a statement by Study Group member Mari Uchiumi at the Second Study Group meeting. These three functions are organized by the aspects of timeliness, completeness, and appropriateness. Japan Association of City Mayors, *Dainikai Tochi Riyō Gyousei no Arikata ni Kan suru Kenkyūukai no Keika ni Tsuite (Houkoku) [Particulars of the Second Meeting of the Study Group on Approaches to Land Use Administration (Report)]*, December 8, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/281208tochiriyōu2rd\\_keikahoukoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/281208tochiriyōu2rd_keikahoukoku.pdf)) (retrieved on March 15, 2017)

<sup>64</sup> This sentiment has been echoed in many circles. One organization, for instance, is the Japan Federation of Bar Associations, which stated that to implement the “no plan, no development” principle, “in regulating national land, it is necessary to grant legal binding effect to municipal master plans and to set the principle that development is not permitted in places that are not developed and to require the establishment of a detailed district plan when exceptions to this principle are recognized”. (*Opinion Paper Seeking Radical Amendments to the City Planning Act and the Building Standards Act (Zoning Code) to Realize Sustainable Cities* (August 19, 2010). Similarly, the Community Improvement Promotion Coordination Council, consisting of the Japan Chamber of Commerce and Industry and others, recommended “specifying the idea of ‘no development in places without plans’”. (*Sougouteki na Tochi Riyō Kisei no Kakuritsu no Tame no Housaku ni Kan suru Yōbō [Demands for Policies on Establishing Comprehensive Land Use Regulations]* (July 15, 1999).

stems from the “no plan, no development” concept.

The Comprehensive Plan is a master plan that covers the entire area of a municipality, encompassing urban areas, agricultural land, forests, and all other features. Because of this, no undesignated areas where the regulatory status is ambiguous will exist within the municipality jurisdictions. District Plans and Development Project Plans address the peculiarities of each district or area. With these plans, municipalities can control and manage individual land uses in a comprehensive and integrated manner. District Plans are reviewed to ensure they are consistent with the Comprehensive Plan, but they also reflect the intentions of residents that correspond to the peculiarities of the district or area. A functioning cyclical formulation and review process is important to ensure details in District Plans are fed back to the Comprehensive Plan.

Figure 3-1 — Overall image of the planning scheme



Source: Prepared by the Japan Municipal Research Center

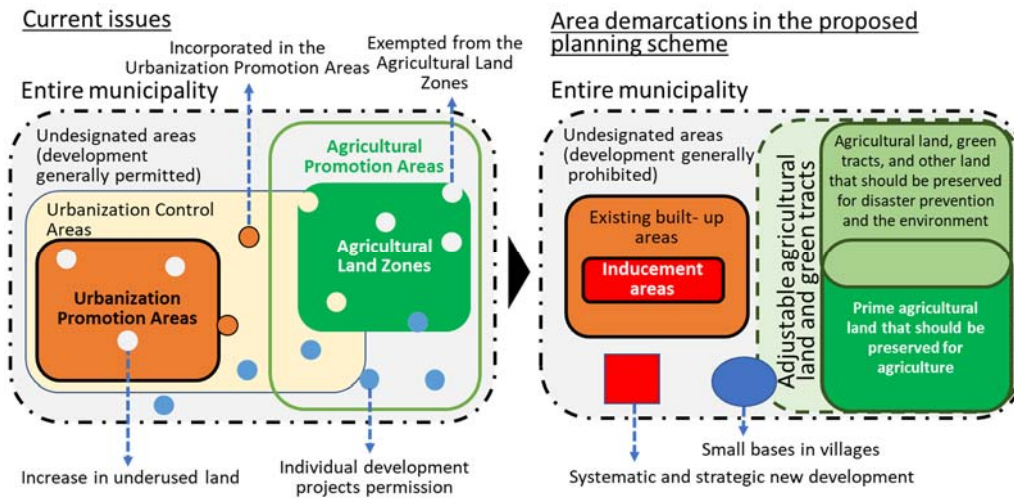
### Sidebar: Role and function of each plan in the new planning scheme

#### ◆ Reorganization of area demarcations in a Comprehensive Plan

As shown on the left side of Figure 3-2, current regulations under the City Planning Act, the Agricultural Promotion Areas Act, and other acts both miss some territories completely and overlap in other territories. Planned management of development is particularly difficult in the former territories — so-called undesignated areas. Even in places where regulations under these plans function, the process of agricultural land conversion / development permission is gradually eroding agricultural land and, conversely, underused land appears within built-up areas. Land use has become spotty and disjointed as a result.

Contrary to this, on the right side of Figure 3-2, is the newly

Figure 3-2 — Possible area demarcations in a Comprehensive Plan



Note: For simplification, the diagram shows the demarcations between urban and agricultural areas only.  
Source: Prepared by the Japan Municipal Research Center

proposed Comprehensive Plans that broadly demarcate areas based on the following four principles.

- (1) Development is not permitted anywhere in the municipality in accordance with the “no plan, no development” principle.
- (2) Land development and management in existing built-up areas adhere to rules in existing City Plans. When needed, inducement of urban functions or housing is possible within the framework of Location Optimization Plan.
- (3) Agricultural land, green tracts, and other non-urban areas are graded on the special characteristics of that land from multiple perspectives, such the natural environment and disaster prevention, and not just from the conventional perspective of food production. With these gradings, municipalities clarify the agricultural land and green tracts where development is strictly prohibited and the agricultural land and green tracts where development is possible if certain procedures and standards are followed (adjustable land).
- (4) New construction or development in a district where development is generally not permitted are possible by establishing or modifying a District Plan, described below, and obtaining a council decision that reflects the intentions of residents.

In short, Comprehensive Plans function as land use master plans that encompass entire municipalities, including built-up areas, rural areas, suburban residential areas, agricultural land, mountain forests, and other features. Under a Comprehensive Plan, all land within the municipal jurisdictions becomes subject to plans and regulations. Municipalities can

thus prevent undesignated areas where the regulatory status is ambiguous, and control and manage land use within their areas in an integrated manner.

### ◆ **Role of District Plans and Development Project Plans**

The Comprehensive Plan specifies common rules for an entire municipality and is used to manage land use and development from the strategic and systematic perspective of the municipality. But addressing a district's inherent characteristics and issues, as well as individual development trends, requires considerations that better reflect the intentions of the people living in the district. This is the primary role of District Plans.

As Figure 3-3 illustrates, a District Plan is usually established for a single district to achieve various objectives, such as the following:

- (1) to allow new construction activities and development projects in territories where development is generally not allowed;
- (2) to establish bases in village districts;
- (3) to attract urban functions and housing (location optimization); or
- (4) to ensure living environment, landscape preservation, or community improvement inherent to the district.

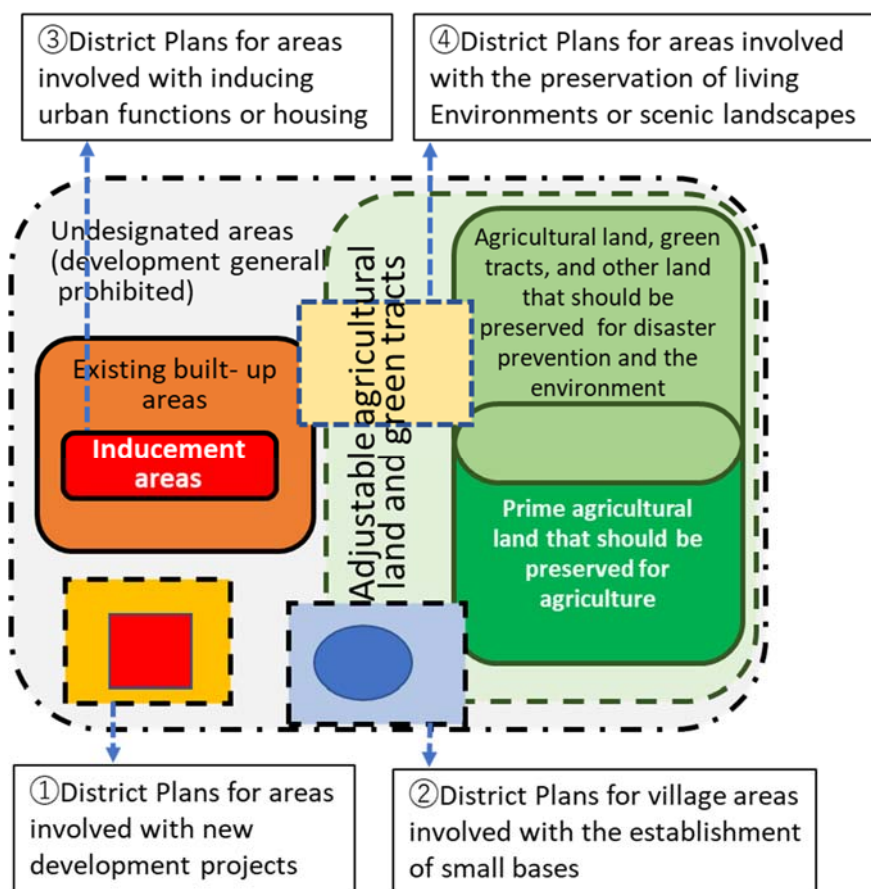
District Plans will come in many different forms (policies on land use, regulations and procedures on construction, etc.) depending on their specific objective. The physical size of a district in a District Plan can vary quite a bit too, the smallest being a single neighborhood, scaling up to a school district, a former pre-merger municipality, and even possibly an entire municipality, depending on its size. In order to respect the diverse characteristics of each municipality and their autonomy, each municipality should pass ordinances detailing matters related to the establishment of District Plans and detailing procedures and other matters pertaining to the establishment of Development Project Plans. The consent of residents, including councils, should be sought by procedures stipulated by the ordinance.

New construction activities and development projects in territories where development is generally not permitted are classified according to their size, use, and impact on their surroundings. This classification sorts them into projects that may be permitted through administrative procedures and projects that require the establishment of a Development Project Plan. The District Plan for the district where the construction activity is to take place will define construction activities eligible for the



permitting process, the criteria for permission, and other matters. Regarding the latter classification, such development projects require the establishment of a Development Project Plan for the site of the development project, the establishment (or modification) of the District Plan for the area (district) affected by the development project, and obtaining a decision from the council. The specific details in a Development Project Plan will adhere to the framework of detailed district plans, land readjustment projects, urban redevelopment projects, and others in the current City Planning Act. These details also reflect the intentions and consensus of land owners, who are stakeholders in the negotiations. District Plans, on the other hand, involve the participation of a broader range of residents in the district, not limited to just stakeholders in the negotiations, and reflect the intentions of all these residents. (In other words, the agreement of the land owners is not always required. Rather, the council makes the ultimate decision based on opinions from residents.)

Figure 3-3 — Possible District Plan forms by objective



Source: Prepared by the Japan Municipal Research Center

**◆ Adjustment with adjacent municipalities and the role of the national and prefectural governments in the new planning scheme**

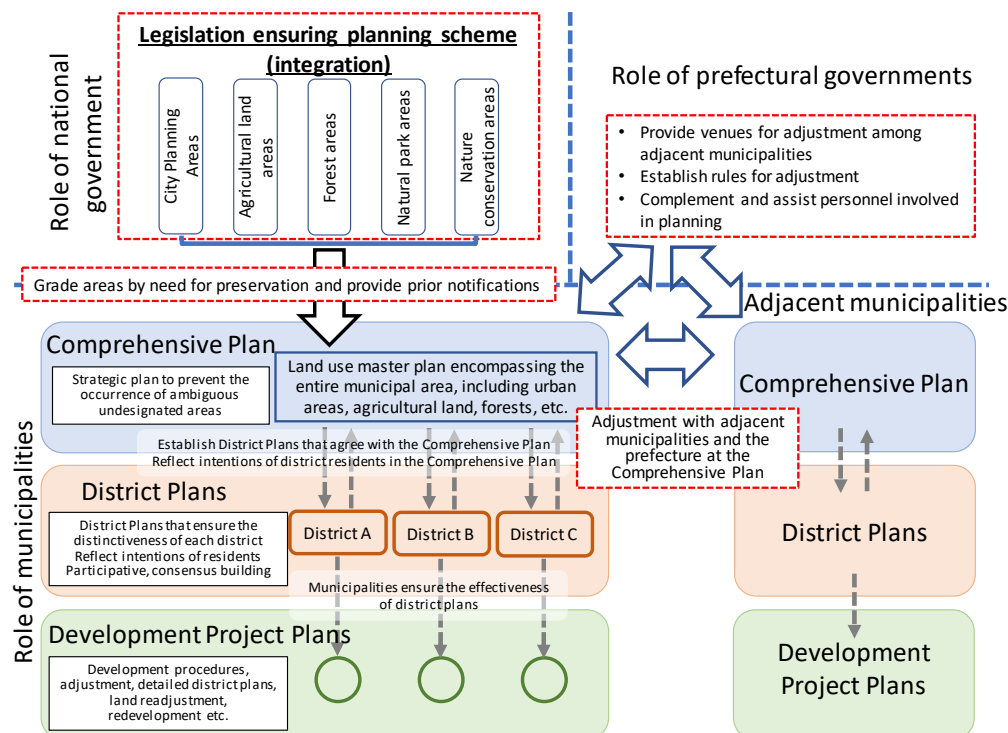
Figure 3-4 provides an image of the national and prefectural governments' roles in our proposed planning scheme. The figure also shows how adjustment with adjacent municipalities would function.

The national government's first role is to integrate legal systems encompassing the five existing district demarcations (urban areas, agricultural areas, forest areas, natural park areas, and natural conservation areas) to give legal backing to the planning scheme. The second role is to assist municipality land preservation initiatives for agricultural land, green tracts, and other features subject to strict preservation in Comprehensive Plans. Specifically, the national government will be responsible for grading and designating such agricultural land, green tracts, and other features from a macro perspective of all national land, especially from a scientific perspective on land that is valuable for environmental and disaster-prevention functions.

Prefectural governments have a three-fold role. The first is to support the adjustment of establishment, development, and preservation from the broader perspective of the entire prefecture, similar to the national government's role mentioned above. The second is to set rules for land use adjustment within a municipality and to provide a forum for such discussions. The third is to offer technical and personnel support to complement municipal personnel in charge of land use administration based on the proposed planning scheme.

Adjustment with other municipalities is required over the siting of large commercial complexes or company plants, new construction of housing complexes, and other new land uses with a large impact on not just one municipality but surrounding municipalities as well. When such land use is anticipated, a municipality should generally seek to adjust with affected municipalities at the Comprehensive Plan level. The prefecture should play a role in such adjustment activities, in terms of providing rules and a forum for discussions.

Figure 3-4 — Municipality planning scheme and relationship with the national government, the prefectural government, and adjacent municipalities



Source: Prepared by the Japan Municipal Research Center

### (a) Approaches to assuring municipal autonomy and resident participation

As for the specifics of the new planning scheme, it should have mechanisms giving municipalities a certain degree of freedom in selecting and determining plan frameworks and procedures for establishing plans. These mechanisms are created in the interest of respecting the autonomy and independence of municipalities and the diversity of local area. Freedom in the sense of plan frameworks means a municipality may decide to establish a District Plan for the entire municipal area or, depending on local needs, establish District Plans for former pre-merger municipalities or for each school district. And possible mechanisms<sup>65</sup> for plan establishment

<sup>65</sup> Under the mechanisms of participation in city planning in France, municipalities are free to select a mechanism and determine the form of participation (Mari Uchiyumi, *Furansu no Saikaihatsu ni Okeru Sanka Seido no Jittai ni Kan suru Kenkyuu: Pari / Rearu Chiku no Konserutashon ni Chakumoku shite [Research on the State of French Participative Redevelopment Systems: Focus on Concertation in the Reuilly District of Paris]*, Journal of the City Planning Institute of Japan, 48(3), City Planning Institute of Japan, 2013, p. 694. Furthermore, in establishing plans, the approval of stakeholders (land owners, etc.) is not a requirement for assent (Mari Uchiyumi, "Furansu PLU no Sakutei Purosesu ni Okeru Chiiki Jyumin no Ishi no Hanei: Konserutashon ni Okeru Jyuuiku Hyougikai no Yakuwari ni Chakumoku shite [Incorporation of Local Residents' Intentions in France's PLU Establishment Process: Focus on the Role of District Councils in Concertation]", Japan Municipal Research Center (editor), *Toshi Jichitai ni Okeru Shimin Sanka to Goui Keisei: Douro Koutsuu / Machidzukuri / Komyunithi [Resident Participation and Consensus Building at Municipalities: Road Traffic / Community Improvement / Communities]*, Japan Municipal Research Center, 2017, p. 196). In the case of mechanisms where strict land use regulations at the national or prefectural level are "eased" at the municipal level, approval of land owners is not always a necessary conditions.

procedures would allow municipalities to select and determine who is eligible when incorporating the intentions of residents and other people, the duration, the method for incorporating intentions into plans, and other matters. Particularly, municipalities should tailor how to incorporate the intentions of residents and other people into plans to the nature of the plans. When it comes to Comprehensive Plans, which present a land use vision for the entire municipality, possible approaches include ordinary public comment procedures or council decisions. District Plans and Development Project Plans, however, may require more conscientious consensus in the area in question.<sup>66</sup>

The incorporation of resident intentions in plans helps ensure the effectiveness of the plans. Plans are the local area's vision. Therefore, it is imperative that residents share in the local area's vision through the process of reflecting their intentions and building consensus.

#### **(b) Relationship with current master plans**

Several types of master plans exist in current planning schemes with functions similar to the Comprehensive Plan in the new proposed planning scheme, albeit with different legal grounds, objectives, and scopes. Examples include city planning master plans in the City Planning Act, countryside environment preservation master plans under the jurisdiction of the Ministry of Agriculture, Forestry and Fisheries, and sector-specific master plans established independently by municipalities. If land use laws were to be integrated and the new planning scheme established, what would be the role of these various master plans? The following interpretation is one possibility.

First, Comprehensive Plans would expand the scope of city planning master plans from conventional City Planning Areas to include the entire municipality. Furthermore, Comprehensive Plans would function as an integrated plan that consolidates various sector-specific master plans.

Second, each master plan would be absorbed into department-specific plans in the general integrated plan, which establishes the municipality's comprehensive administrative policies and other matters, established separately from the land use planning scheme. Municipalities would then attempt to coordinate these plans with other administrative systems.

The third interpretation is concerned especially with the planning policy functions pertaining to the establishment of urban facilities in city planning master plans. After the establishment of a Comprehensive Plan for land use policies and plans for the entire municipality, including agricultural land and

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<sup>66</sup> Kemmochi, Kato, Uchiumi, *ibid.*

mountain forests, District Plans would be established once again for urban districts (including existing built-up areas, their surroundings, and land where new development is expected). It is these District Plans that could assume the role of these planning policy functions pertaining to urban facility establishment.

Regardless of the interpretation, the functions of conventional master plans would not disappear. They would function as municipality master plans or urban and rural community master plans. One could even say that under the new planning scheme, these functions would be better defined and would allow municipalities more effective control and management over their entire areas. When it comes to the question of which level to place such functions in the new planning scheme, it is important to place them according to the local characteristics of the municipality, which require various functions for plans.

Municipalities are pressed to resolve multiple needs within City Plans, such as disaster prevention, social welfare, childcare, and healthcare and nursing. Nevertheless, municipalities indicated community improvement as a difficult issue (Q19). Among the demands<sup>67</sup> for cross-sectoral policy development connecting community improvement, social welfare, local economies, and transportation policies, the new proposed planning scheme is expected to perform a master plan-like role that helps link these far-ranging policies.

## **(2) Issues to be considered for the assurance of land use administration based on municipality plans**

The division of roles between municipalities and the national and prefectural governments must be considered when municipalities undertake comprehensive and integrated land use administration based on the schemes described above.

As will be discussed below, municipalities should take the lead in land use administration, starting from the general principle of “no plan, no development”, out of respect for local autonomy, independence, and diversity. At the same time, the national and prefectural governments have a necessary role in land use administration from a cross-jurisdictional viewpoint. This is the foundation of the division of roles in land use administration. But even as municipalities take the central role in land use administration, there are still many areas that require a broader perspective, especially matters like water resource management, disaster prevention, or the natural environment.

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<sup>67</sup> Yoshinori Hiroi, *Komyunithi to Shite no Toshi: Kazoku / Chiiki Komyunithi no Henyou to Korekara no Toshi Jichitai Seisaku no Arikata* [The City as a Community: Transformations in Families and Local Communities and Approaches to Future Municipality Administrations], *Toshi to Gabanansu* [Community Governance], (27), Japan Municipal Research Center, 2017, p. 11

Therefore, consideration is needed of how best to implement cross-jurisdictional preservation and management.

The present land use systems are relatively permissive of development and construction in suburban areas, especially, where regulations are lax. Municipalities are still given the ability to decide to strengthen regulations on development and construction in such areas. But because of these permissive systems, it is hard to make incentives work that are aligned with regulations and inducements added by municipalities.<sup>68</sup> Suffice to say, the present land use systems complicate appropriate control over land use, which is increasingly necessary in an era of diminution and shrinking population.

The systems found in other countries work exactly opposite to this. As a rule, development is prohibited. Only when regulations are eased based on municipal decisions (plans), development can go ahead. A similar mechanism has already been adopted in Japan through amendments to the three so-called community improvement acts.<sup>69</sup> It is important to continue considering these types of mechanisms.

Another issue needing consideration when adopting the “no plan, no development” concept is property rights. Placing restrictions on land use undeniably limits to some degree the free use of personal property.

§29(1) of the Constitution of Japan asserts the right to own or to hold property is inviolable, while §29(2) recognizes the placement of certain restrictions on property rights in the interest of public use. In practice, however, it is generally agreed that the exercise of property rights related to land — i.e., how land is used — is up to the discretion of the owner of the land.<sup>70</sup>

This era of diminution and declining population, however, demands control and management of inadequately maintained land, as well as the creation of more compact urban structures. There is the opinion<sup>71</sup> that should land use regulations be tightened to prevent environmental degradation in local area, this would have the effect of maintaining and improving the value of local area and actually protect property rights.

In any case, studies should be conducted on the best approach to regulations suitable for the new age, while taking into consideration previous

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<sup>68</sup> Advisory Council on Decentralization Reform, *Dai Roku Kai Chihou Bunken Kaikaku Yuushikisha Kaigi Gijiroku* [Minutes from the Sixth Meeting of the Advisory Council on Decentralization Reform], [statement by Norihiro Nakai] p. 9 (<http://www.cao.go.jp/bunken-suishin/doc/06gijiroku.pdf>) (retrieved on March 9, 2017)

<sup>69</sup> A 2006 amendment to the Building Standards Act instituted a mechanism that prohibits, as a rule, the construction of large commercial complexes designed to attract customers with a floor area over 10,000 m<sup>2</sup>, but allows the easing of construction regulations by decision of the designated administrative authority (§48(13)(Appended Table 2)).

<sup>70</sup> Tayama, *id.*, p. 175

<sup>71</sup> Watanabe and Arita, *id.*, p. 202

discussions about regulations on land ownership and property rights and the state of land use systems and operations.

### **(3) Mechanisms to implement individual land uses**

It is important that individual land uses reflect land use plans established by municipalities based on their local circumstances and the intentions of residents. Possible mechanisms to ensure this include adding, easing, or setting standards or procedures with ordinances, revising the zoning regulations in the building certification, or expanding the scope of the building certification (permission) and the development permission.

#### **i. Adding, easing, or setting standards or procedures with ordinances**

If the current nationwide standards and procedures for permission of individual land uses persist, there is concern that these standards and procedures will trump land use plans tailored by municipalities for their local area's characteristics. Specifically, land uses may be permitted despite being incompatible with the municipality's plan, or land uses may be denied despite being recommended within the plan. Laws currently specify nationwide standards and procedures for land use permission and similar matters. So even if a municipality establishes its own standards and procedures with an ordinance on matters that laws do not explicitly delegate to ordinances, the municipality cannot use non-compliance with its standards or procedures as a reason to deny permission specified in land use acts. If we agree that municipalities should move ahead with more independent and comprehensive land use administration, then land use acts should not excessively restrict the matters on which municipalities can add, ease, or set standards or procedures with ordinances.

There should be more areas where municipalities are able to pass ordinances to add, ease, or set standards or procedures on development to reflect the particular situations of each local area, apart from matters on which laws should set nationwide standards and procedures, such as building code.<sup>72</sup> Taking applications for development permission in the City Planning Act, for example, the Act (§32 and Enforcement Order §23(2)) specifies a development area of 20 hectares or larger as the scope of "Development Activities" that must obtain the consent of water suppliers in advance. A specific example of the former is placing a provision in the Act that enables

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<sup>72</sup> The former permits superseding a standard or procedure with ordinances. The latter is an easing of law's detailedness. Superseding a standard or procedure with ordinances is defined as an amendment (supplement, adjustment, or replacement) with ordinances in the Second Recommendation by the Advisory Council on Decentralization Reform (Advisory Council on Decentralization Reform, *Dai Ni Ji Kankoku: Chihou Seifu no Kakuritsu ni Muketa Chihou no Yakuwari to Jishusei no Kakudai* [Second Recommendation: Role of Local in Establishing Local Government and Expanding Autonomy], December 8, 2008, p. 5).

ordinances to be used to strengthen or ease the 20 hectares or larger area requirement. An example suggested of the latter is enabling ordinances to specify, as legally-binding procedures, measures to reflect the opinions of residents, such as holding public hearings.

## **ii. Revising the zoning regulations in the building certification**

The zoning regulations concern the use, shape, and related matters of buildings, and the building certification, the mechanism to ensure a building's compliance with the zoning regulations, is a ministerial act. Therefore, certification standards cannot leave room for discretion when making decisions about a building's compliance. The problem is the difficulty in establishing all such certification standards in advance in a quantitative form. Furthermore, municipalities should decide whether to permit individual building plans from both a technical perspective and a community improvement perspective that accounts for the circumstances of the local area where the building will be sited and the future vision for the area. The new planning and regulatory systems described above also share similar problems. When a concrete future vision for the district is shared among the local residents and standards on building use, shape, and other related matters can be specified in a quantitative and definitive form within District Plans and Development Project Plans, then the current building certification is sufficient to ensure the plans' effectiveness. However, when District Plans and Development Project Plans also contain standards with a certain degree of leeway, or qualitative standards, for existing built-up areas, precise land use controls are possible by making decisions on whether to permit building on a case-by-case basis.

Consideration, therefore, should be made of separating the building and zoning regulations that are currently backed by the single building certification. Consideration should look at ensuring the building regulations with the building certification as before, but move to a permission mechanism for the zoning regulations. Furthermore, under current law, the building certification is carried out by a building official, who is a municipal employee, or a certified private inspection agency. Municipalities, however, should make decisions about the zoning regulations, since municipalities are the most receptive to local circumstances and the intentions of residents.<sup>73</sup>

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<sup>73</sup> Practically speaking, this could mean consolidating the development permission-system and the permission-system for zoning regulations. (The necessity of consolidating the zoning regulations in the Building Standards Act and the City Planning Act has been discussed in Japan Society of Urban and Regional Planners, *Toshi Keikaku Seido Kakumei no Teigen: Tochi Riyō Kontōroo Seido no Arikata wo Chuushin ni [Recommendations on Reforms to the City Planning System: Focus on Approaches to Land Use Control Systems]*, April 2013, p. 9 and elsewhere.) Under the U.K. planning permission-system, basic municipalities are in charge of administrative matters concerning planning permit. But when a basic municipality cannot handle the administrative matters, it is possible to seek approval from the municipality that established the plan, as in Germany. (For more on the U.K. system, see Norihiro Nakai, *Keikaku Kyōka Seido no Kanousei to Kadai [Potential and Issues for Planning Permission Mechanisms]*, Special Research Committee on Strategic Examinations of Social Systems Related to Cities



For example, instead of deciding in advance details such as building uses or other matters, municipalities would be able to make precise judgements in reference to individual building plans and the sites, in order to both improve urban functions and preserve natural environment.

### **iii. Regulating activities not covered by existing laws**

Compared to similar systems in the United Kingdom, Germany, and France, Japan's building certification and development permission under the City Planning Act cover only limited land use activities. This is causing problems with unregulated land uses not subject to regulations under the Building Standards Act or the City Planning Act. These unregulated land uses include solar power generation facilities that have been popping up all over the country in recent years and material storage sites that don't need to build structures.

Consequently, consideration should be made of adding land use activities not covered by existing laws to the scope of the building certification (permission) and the development permission. This should be considered from the perspective of disaster prevention and preserving scenic landscapes as well as the perspective of preventing the future abandonment and decay of structures. It is worth noting that the 2016 amendment to the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities does address the installation phase of solar power generation facilities. The amendment added compliance with related laws, including ordinances, to the standards on business plan certifications needed to sell electricity from such facilities. It is still important, however, to set certification standards that account for the prevention of future abandonment and decay of solar power generation facilities as well as for disaster-prevention, scenic landscapes, and the environment.

## **2. Division of roles between municipalities and national and prefectural governments**

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and Architecture, Architectural Institute of Japan, *Daisankai Kenchiku / Shakai Shisutemu ni Kan suru Shinpojiumu: Sairyousei wo Yuu suru Kenchiku Kisei no Kanousei [Third Symposium on Architecture and Social Systems: Potential for Building Regulations with Discretionary Leeway]*, 2010. For more on the German system, see Footnote 62 in Section 3(3), Chapter 2.)

Furthermore, under the current mechanism, building officials or certified private inspection agencies provide one-stop compliance inspections for building regulations and zoning regulations. In consideration of this convenience, applications for the building certification (permit) should continue to be handled by building officials or certified private inspection agencies. When applications are made outside municipalities with building officials, a mechanism is possible in which decisions related to zoning regulations are entrusted to the municipality. A practical means of doing this is having the building official or certified inspection agency that receives the application for the building certification (permit) refer to the opinion of the municipality on whether the building plan conforms to the District Plan or Development Project Plan and then reflect this opinion in the building certification (permit). (Even under the present laws, Osaka Prefecture has municipalities (including municipalities without building officials) conduct inspections of necessary site conditions and other matters for the building certification. This is done under the special exemption for administrative processes (Osaka Prefecture Building Standards Act Enforcement Ordinance, §76) and through agreements signed with certified inspection agencies (see Japan Society of Urban and Regional Planners, *id.*, p. 22).)

## **(1) Approaches to dividing roles**

### **i. Principle: Respect the autonomy and independence of municipalities**

In a decentralized society, it is important to develop land use administration based on decisions by municipalities, which are the closest level of government to residents, in the interest of respecting local autonomy and independence. This will allow diverse local circumstances to be reflected in land use administration, significantly boost the value of local area, and lead to the implementation of optimal land uses.

The roles of municipalities, national and prefectural governments in land use administration must be divided based on this idea. Specifically, the main role of municipalities is taking responsibility for the realization of local plans. The main roles of the national and prefectural governments are establishing laws that give legal backing to the realization of local plans by municipalities, complementing municipalities, and dealing with cross-jurisdictional issues.

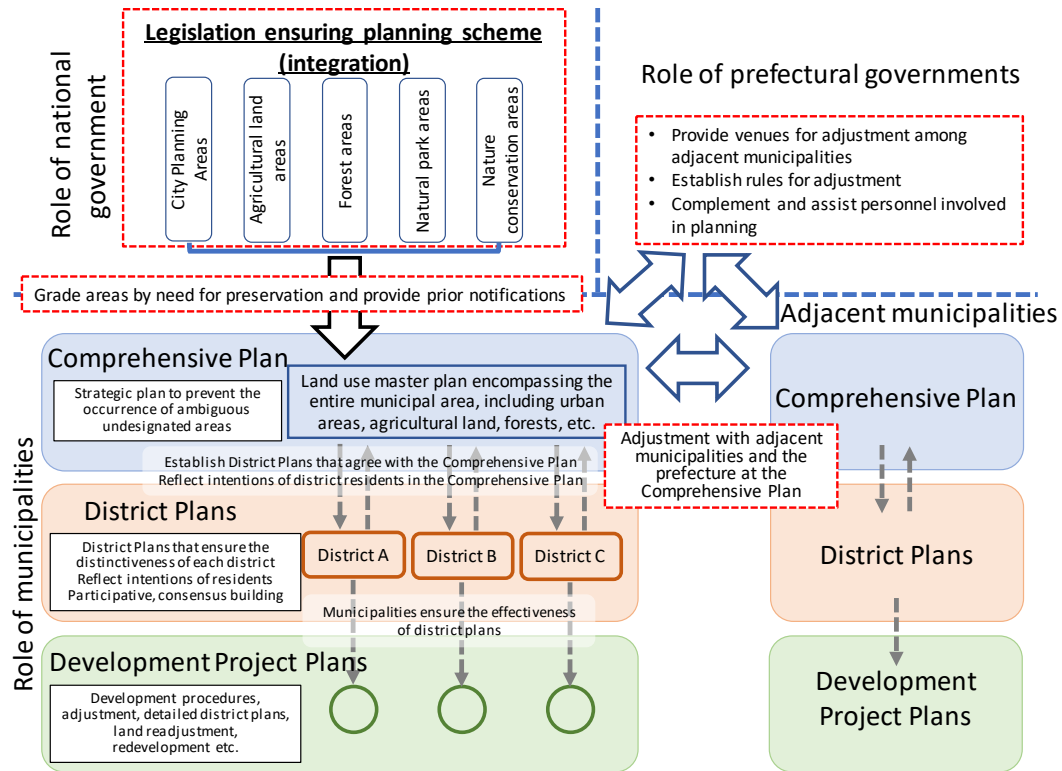
### **ii. National and prefectural government responses to cross-jurisdictional issues**

#### **(a) Establishment of preservation and management mechanisms**

Cross-jurisdictional issues include preservation and management approaches, in addition to the cross-jurisdictional adjustment that will be discussed below. Local areas where non-urban land use takes place are important in terms of natural environment, but they also have multiple functions such as headwater preservation, disaster prevention, natural landscapes, ecosystem preservation, and recreation. And local areas exist that should be preserved as aggregated agricultural land in the interest of agricultural production.

On the other hand, these connected non-urban areas are also areas that are easily for new development. So where development is necessary in the interests of revitalizing the local economy, there is also the need to adequately consider and coordinate a balance between preservation and management and development given this era of diminution and a shrinking population. The national government and prefectures are expected by many to preserve and manage region that extend beyond municipal borders, especially mountain forests, escarpments, and green tracts along rivers. The national government and prefectures are called upon because single municipalities have limited resources to maintain the many functions of these land areas. For example, mountain forests provide considerable benefits to downstream areas as a water source. However, without adequate forest conservation and water management, landslides and flooding damage could

Figure 3-4 — Municipality planning scheme and relationship with the national government, prefectures, and adjacent municipalities [Reprise]



Source: Prepared by the Japan Municipal Research Center

occur in both upstream and downstream areas. This is why another consideration is needed of approaches to preservation and management from a cross-jurisdictional perspective. In this regard as well, it is essential to adopt mechanisms that reflect the plans of municipalities.

### (b) Prior publication of regulatory status

In conjunction with mechanisms to preserve agricultural land, forests, and other natural areas, when municipalities deploy comprehensive, plan-based land use administration, it is necessary to clarify in advance the status of regulations in the area.<sup>74</sup> Currently, the agricultural land grades (such as prime agricultural land or Type 1 agricultural land) in regulations on agricultural land conversion are only determined once an actual application for conversion permission is filed. These grades are not shown in advance on maps or plans. In future mechanisms, it is expected that agricultural land will be graded according to the necessity of preserving the land. Nevertheless,

<sup>74</sup> Study Group on Approaches to Agricultural Land Conversion Regulations from the Perspective of Promoting Agricultural Land Mobility, Ministry of Agriculture, Forestry and Fisheries, *Nouchi Ryuudouka no Sokushin no Kanten kara no Tenyou Kisei no Arikata ni Tsuite: Chuukan Torimatome [Approaches to Agricultural Land Conversion Regulations from the Perspective of Promoting Agricultural Land Mobility: Interim Report]*, March 14, 2017. In response to indications that agricultural land conversion speculation is hindering the mobility of agricultural land, this report proposed three specific methods to induce agricultural land mobility: (1) taxation of profits from land conversion, (2) strengthen land conversion regulations, and (3) publicize the status of regulations on agricultural land.

when considering land development through the conversion of agricultural land subject to preservation regulations, it is necessary to clarify the status of those regulations in advance, which is equivalent to the preservation value assessments for the areas in question. Without this, it will be impossible to incorporate the value assessments into specific plans and proceed with land use. This is why the regulatory status must be defined and published in advance. Depending on how regulations are publicized, additional issues may surface, such as the necessity of financial burdens. These issues must also be examined fully when designing systems.

### **(c) Plan revisions**

Development demand speculating on future demand increases is expected to fall overall, due to population declines and diminution. Revisions to plans can sometimes boost the attractiveness of local area. For example, instead of upgrading historical streetscapes by widening roadways, try to form streets in which pedestrians and automobiles coexist.<sup>75</sup> It is imperative that plans (including various types of facilities) be formulated from a broad perspective and revised based on social conditions and local circumstances.

The unfortunate reality is adequate planning revisions are not taking place. For example, facilities not yet constructed that decided by the authority of the prefectural government have been planned despite changes in local demand; City Plans for the era of expansion decided by the national government are not revised; and when roads are revised (abolished), alternate routes are required. It is necessary to make use of new cross-jurisdictional adjustment mechanisms, which will be described below, and review and revise plans as needed while incorporating municipal plans and intentions, so as to ensure land use is appropriate for local circumstances and changes in social conditions, such as falling populations and diminution. At the same time, necessary revisions should be made to plans as soon as possible under the current systems as well.

## **(2) Approaches to land use authorities**

Approaches to land use authorities should be considered based on the division of roles described above.

### **i. Transfer of land use authorities and administrative affairs and the stepwise integration of powers at municipalities**

As described above, establishing land use plans, designating districts,

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<sup>75</sup> For example, Tomohiko Kawase, *Gifu no Machidzukuri to Toshi Keikaku Douro no Minaoshi [Community Improvement in Gifu and Revisions to City Planning Roads]*, Machidzukuri [community improvement], (11), Gakugei Shuppan Sha, 2006, pp. 76-80.

which is a prerequisite for regulations, and permission affairs for individual land use activities are divided between the prefectural government and municipalities. When multiple entities are in charge of affairs pertaining to land use administration and these entities have different policies on land use administration, they are likely to cause obstructions, such as district designation or permission of individual land use activities not following established plans or else prolonged adjustment among different policies. Therefore, a single entity, whenever possible, should have authorities and affairs for establishing plans, designating districts and granting permission to ensure the smooth and efficient deployment of land use administration. From the previous discussion of role divisions, it follows that these administrative affairs and authorities, by and large, should be transferred to municipalities, since they are closest to the land use frontlines in their local area.

Most city planning authorities have already been transferred to municipalities. The remaining city-plan zoning authority needs to also be transferred to other municipalities in addition to Designated Large Cities. Furthermore, the authority to permit agricultural land conversion has already been transferred to designated municipalities, but the remaining authority to rezone Agricultural Promotion Areas should also be transferred to municipalities.

The problem is the wide divergence in the financial positions of municipalities and their staff sizes. Some municipalities are expected to have difficulties handling the increased workload brought on by these transfer. For this reason, integration of administrative affairs and authorities should proceed in a stepwise fashion. For example, transferring authorities and affairs according to the municipal size, or introducing an opt-in method, where municipalities choose the authorities and affairs to be transferred to them, so as to respect their autonomy.<sup>76</sup>

Furthermore, as will be described below, the national and prefectural governments must assist securing and training personnel to implement the administrative affairs that come with these transfer. This assistance should be provided from the standpoint of complementing the administrative work of municipalities.

## **ii. Transfer the authority to designate Use Districts to Special Wards**

One of the most fundamental mechanisms to promote rational land use is Use Districts. This mechanism is very area-specific and configured to match the framework of local features and functions, based on local land use

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<sup>76</sup> The German state of Baden-Württemberg adopted an opt-in method when transferring building permit authorities to municipalities belonging to a district.

circumstances. The basic municipality should, properly, have the authority to designate Use Districts, as the authority is indispensable for integrated land use administration by municipalities.

Municipalities received the authority to designate Use Districts with the Second Decentralization Act (Act on the Revision of Related Acts to Promote Reform for Increasing Independence and Autonomy of Local Communities (Act No. 105 of 2011)). Despite repeated demands<sup>77</sup> from the Association of Special Ward Mayors, this authority has yet to be transferred to Special Wards. The reason given for not transferring this authority is that Metropolitan Tokyo currently designates Use Districts and other matters as a single integrated region. On our Study Group's survey, respondents said that Special Wards' lack of authority to designate Use Districts has cost them considerable time and effort to negotiate with the city (Q8).

The integrity of the Tokyo region, as a metropolis, is ensured by national spatial plans and such broad plans as policies on the establishment, development, and preservation of City Planning Areas. Therefore, transferring the authority to designate Use Districts to Special Wards will not harm the region's integrity. As for specific city planning decisions, discussions between the governor and related municipalities ensure alignment with cross-jurisdictional perspectives and plans established at the prefecture level. Furthermore, Landscape Administrative Bodies establish Landscape Plans, based on harmonization with national spatial plans and alignment with policies on the establishment, development, and preservation of City Planning Areas. Therefore, this transfer will not harm urban landscapes either.

The integrity of the region can be assured sufficiently with the establishment of cross-jurisdictional adjustment mechanisms that ensure mutual consistency between broad area plans and narrow area plans, as will be described below. Consequently, the authority to designate Use Districts should be transferred to Special Wards, as it has been to other municipalities.

### **(3) Adjustment measures**

#### **i. Necessity of an integrated planning scheme**

As described below, Japan's current land use legal systems have been siloed — a state in which each regulation and law holds their own ground. There is no adequate and comprehensive adjustment function between the separate plans that operate under each regulation and law. As a result,

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<sup>77</sup> For example, Association of Special Ward Mayors, *Toshi Keikaku Kettei Kengen no Ijyou Taishou kara Ichibu Tokubetsuku wo Jyogai suru An ni Tsuite no Kinkyuu Seimei [Urgent Statement on the Proposal to Exclude Some Special Wards from the Transfer Scope of City Planning Decision Authorities]*, June 22, 2010.

spatially integrated land is severed into segments by different laws, municipalities have only limited authority to control their land areas comprehensively, and frontline municipalities are left facing multiple land use problems. Prefectures used to play a major role in adjusting land use in the era of population growth. But our present society with a declining population requires very detailed adjustment to harmonize development with local communities, more than adjusting development itself. And this necessitates the establishment and adjustment of effective land use plans, and clear assurance of these plans through legislation, at the municipality level, because they are the central player in land use administration and on the frontlines of land use.

The Japan Association of City Mayors' *Special Recommendation on Community Improvement for Multi-Generational Interaction and Coexistence* recommends the establishment of an Urban and Agricultural Community Planning Act (provisional name).<sup>78</sup> This act would place urban and rural areas under a comprehensive and integrated legal system. On the other hand, as described earlier, in Germany, municipal land use plans integrate land use regulations under two legal systems: one for city planning and development and one for preserving nature and landscapes. Setting aside the question of whether to consolidate laws with the enactment of an Urban and Agricultural Community Planning Act, planning schemes and legal systems should be established to integrate land use administration at the municipality level.

## **ii. Necessity of cross-jurisdictional adjustment**

Authority transfer and land use mechanisms that respect local autonomy enable individual municipalities to advance their own land use administration. At the same time, inconsistencies are likely to arise among the independent plans and land use policies formulated by separate municipalities.

Urban regions, in reality, are continuous across multiple municipalities, and it is important to ensure the integrity of an urban region. Furthermore, increased mobility has lengthened the distances people travel on a daily basis and prompted the construction of facilities with major impacts across municipal lines, such as large commercial complexes and medical and social welfare facilities. Without adequate cross-jurisdictional adjustment then, large problems could arise, affecting the entire region. In addition, when a special preservation area is converted to another use, for example, one

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<sup>78</sup> In addition, the Agricultural Land and Rural Area Subcommittee, Advisory Council on Decentralization Reform, [*Report by the Agricultural Land and Rural Area Subcommittee of the Advisory Council on Decentralization Reform*], March 19, 2015, states "to effect systematic and comprehensive land use, approaches to the use of all national land should be discussed — such as integrating legal systems on land use in urban and rural areas — and all land use systems should be revised over the mid-to-long term".

possible mechanism to maintain the total area of preserved land would be to designate another location as a special preservation area to make up for the land lost to conversion. The problem is situations could happen where securing alternate land for preservation is impossible within the same municipality.

This demonstrates that cross-jurisdictional adjustment is necessary for effective land space use. But in the interest of respecting the autonomy of individual municipalities, the founding principle of cross-jurisdictional adjustment should be that the relevant municipalities carry out adjustment together or the prefectural government participates in the adjustment in a non-authoritative way. Also necessary are mechanisms appropriate for the era of diminution when revising plans from a cross-jurisdictional perspective, such as abolishing major and cross-jurisdictional roadways stipulated under City Plans. Thus, it is necessary, from the broad perspective of urban regions and entire prefectures, to establish cross-jurisdictional land use plans and to adjust land use plans, while taking into account the balance between development and preservation and giving due attention to the division of functions among municipalities.<sup>79</sup>

#### **(a) Establishment of cross-jurisdictional land use plans**

Examples of cross-jurisdictional land use plans under the current schemes include regional plans<sup>80</sup> in the National Spatial Planning Act and land use master plans (prefectural plans)<sup>81</sup> in the National Land Use Planning Act. Observers have pointed out, however, that these plans do not function adequately. It is important, then, to establish land use plans for each broad region fitting the particular realities of the urban region. Such plans should be established from a general perspective on urban, agricultural land, and forest issues while reflecting local circumstances.

If we decide to proceed with adjustment between related municipalities and the prefecture and establish cross-jurisdictional land use plans that cover

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<sup>79</sup> At the first meeting of the Study Group on Approaches to Land Use Administration, Deputy Chairman Norihiro Nakai made a presentation on Yamanashi Prefecture's cross-jurisdictional initiative in establishing city planning master plans and future regional land use plans. Japan Association of City Mayors, *Daiikkai Tochi Riyō Gyōsei no Arikata ni Kan suru Kenkyūkai no Keika ni Tsuite (Hōkoku)* [Particulars of the First Meeting of the Study Group on Approaches to Land Use Administration (Report)], September 28, 2016 ([https://www.mayors.or.jp/member/p\\_kaigi/documents/280928tochiriyō\\_keikahōkoku.pdf](https://www.mayors.or.jp/member/p_kaigi/documents/280928tochiriyō_keikahōkoku.pdf)) (retrieved on March 14, 2017).

<sup>80</sup> Norihiro Nakai, "Bunkenka ni Okeru Kouiki Keikaku: Zoku / Toshi Keikaku to Koukyōsei [Regional Planning under Decentralization: Ongoing City Planning and Publicness]", Kei Minohara (editor), *Toshi Keikaku: Kontei kara Minaoshi Aratana Chousen he* [City Planning: Fundamental Re-evaluations Toward New Challenges], Gakugei Shuppan Sha, 2011, pp. 140-141 points out that these plans are not realistic, and Takashi Ohnishi, *Kouiki Chihou Keikaku no Kadai to Tenbou* [Issues and Prospects for Regional Plans], Journal of the Japan Association for Real Estate Sciences, 22(1), Japan Association for Real Estate Sciences, 2008, pp. 68-74 points out that these plans do not function as local-led plans.

<sup>81</sup> Nakai (2011), *ibid.* points out that these plans give only practical coordination guidelines and do not give a future image of land use as expected from a "plan".



entire urban regions or the entire prefecture, based on land use plans that cover entire municipalities, then adjustment between municipalities and with the prefecture will take place at the plan establishment stage.<sup>82</sup> Legislations should be used to give a clear standing to such cross-jurisdictional adjustment mechanisms.

**(b) Vertical adjustment: Establishment of the circulation principle**

Establishing through legislation the principle of vertical adjustment is necessary to address various situations. These situations include cases where adjustment is needed between municipality plans and cross-jurisdictional land use plans that cover an entire urban region or prefecture, and cases where specific land use policies conflict. The current schemes do not give priority to municipal (prefectural) plans. The National Land Use Planning Act, for example, specifies that municipal plans are based on prefectural plans (§8(2)) and that prefectural plans are based on the national plan (§7(2)). The Act also specifies that the opinions of municipal mayors must be sought when formulating a prefectural plan (§7(3) and (4)); a similar relationship exists between the national plan and prefectural plans (§5(3) and (4)). And as described in the previous chapter, more than a few municipalities have expressed displeasure about the operational issues on adjustment with their prefecture.

Giving priority to municipal-level plans is a fundamental principle in the countries we looked at previously. In Germany, in particular, narrow area plans (lower plans) are adapted to fit broad area plans (higher plans) and, simultaneously, broad area plans reference narrow area plans. Local land use plans are formed through this reciprocal top-down / bottom-up approach, called the circulation principle. Vertical adjustment requires prioritizing plans with narrower scopes (giving them an advantage, in effect), while recognizing the inherent strengths and weaknesses of state authorities (the broad planning entity) and local municipality authorities (the narrow planning entity).<sup>83</sup>

To achieve in our country both respect for local community / municipality autonomy and effective land uses from a cross-jurisdictional perspective, we will need to establish this circulation principle. As an approach to vertical adjustment across jurisdictions, this principle ensures

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<sup>82</sup> Japan Municipal Research Center, *Korekara no Toshidzukuri to Toshi Keikaku Seido: Toshi Keikaku Seido to Kongo no Toshidzukuri no Arikata nado ni Kan suru Chousa Kenkyuu [Future Community Improvement and the City Planning System: Research and Study on Approaches to City Planning System and Future Community Improvement]*, Japan Municipal Research Center, 2004, pp. 35-36 puts forward a similar recommendation.

<sup>83</sup> Norihiro Nakai, "Toshi Keikaku to Koukyousei [City Planning and Publicness]", Kei Minohara (editor), *Toshi Keikaku no Chousen: Atarashii Koukyousei wo Motomete [City Planning Challenges: Seeking New Publicness]*, Gakugei Shuppan Sha, 2000, p. 175

consistency between plans while generally giving priority to municipality plans.

**(c) Horizontal adjustment: Setting up forums for discussions**

Horizontal adjustment refers to land use adjustment at the municipal level between multiple municipalities. As will be described below, a possible horizontal adjustment method is to set up a forum for discussions on consensus building and plan formulation for municipalities making up an urban region subject to a cross-jurisdictional land use plan mentioned above. Through discussions at the forum, the final cross-jurisdictional plan would reflect each municipality's plans and intentions. The forum could also assist adjustment at the establishment phase of cross-jurisdictional land use plans as well as adjustment on individual land uses.

These adjustment forums could be structured in several ways: using existing cross-jurisdictional cooperation frameworks, such as Cooperative Core Urban Regions or Settlement and Independence Regions; inviting the prefecture as a facilitator in addition to the related municipalities; or having a forum for municipalities spanning a prefectural border. In the interest of prioritizing municipal autonomy, municipalities should have the ability to choose the forum members and systems that suit the circumstances of their urban region. The mechanisms that give legal standing to municipal land use plans or cross-jurisdictional land use plans must also provide a legal framework for horizontal adjustment like that above. Setting up discussion forums is also discussed later on in Section 3 of this chapter.

Striving to foster an atmosphere conducive to adjustment is also important. This could involve personal exchanges between municipal officials, such as regular exchanges of opinions and information between land use departments at various municipalities.

**(4) Relaxation of laws' detailedness**

Two measures should be taken so municipalities can advance comprehensive and independent land use administration based on plans established with an awareness of local circumstances and resident consensus: transfer land use authorities to municipalities, and give municipalities more discretion in executing land use authorities. Legislation should not overregulate how municipalities can exercise their authorities in implementing their administrative affairs. Such overregulation also runs counter to the intention of decentralization reforms, which is to let municipalities, as the closest level of government to residents, be in charge of their region as much as possible.

For example, the population-model method is the basis of Urbanization Promotion Area designation. The population-model method is defined as: “a method in which population is taken to the most important rationale in calculating the scale of built-up areas. Therefore, population forecasts, along with future forecasts of household numbers and industrial activities, are used to make realistic allotments ... of the land size anticipated to be needed for future urbanization”.<sup>84</sup> The population-model method, however, is not necessarily applicable when municipalities attempt to set land use policies to facilitate orderly land use into the future, given the aging and declining population. Relaxing this law’s detailedness would ultimately enable municipalities to exercise their authorities in an autonomous and self-governing manner, even if laws do set out certain minimum guidelines and directions.

The authority to permit individual land uses is another area that would benefit from lower law’s detailedness. Lower law’s detailedness would empower municipalities to incorporate local circumstances and the intentions of residents when making permit decisions, while appropriately complying with laws. For example, one possible regulatory mechanism would allow municipalities to examine and make decisions on individual land use permission in reference to their own standards and procedures specified in ordinances, over and above minimum required nationwide standards and procedures specified in laws. Mechanisms for permitting development in City Planning Areas are another example. Laws could allow comprehensive regulations on permission criteria to be placed in ordinances. This would enable municipalities to judge whether to permit a development project on their own standards and procedures set out in ordinances.

Authorities should be transferred and legal laws’ detailedness be eased for agricultural land, forests, and other non-urban land uses too, because decentralization to municipalities has not progressed in these areas as far as in city planning and construction administration.

## **(5) Approaches to administrative structure**

Personnel with specialized expertise on land use and community improvement systems are essential for municipalities in implement the administrative affairs and authorities transferred to them through decentralization and in the smooth implementation of land use administration.

In the past, relatively large municipalities had many city planning and

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<sup>84</sup> Ministry of Land, Infrastructure, Transport and Tourism, *Toshi Keikaku Unyou Shishin — Daihachiban [Eighth City Planning Operation Guideline]*, partially revised on September 1, 2016, p. 55

agricultural land specialists on staff, and short-term personnel reshuffle was uncommon. Therefore, municipalities could easily carry out highly specialized land use administration.<sup>85</sup>

On the other hand, municipalities commonly split land use and community improvement affairs among multiple departments, mirroring the national government ministry and agency jurisdictions and individual regulations and laws. For example, the department overseeing city planning and construction will be different from the department in charge of agricultural land and forests (agriculture and forestry promotion). Related departments do collaborate in the process of establishing plans — such as general integrated plans, national land use plans (municipal plans), and city planning master plans — and in the process of implementing administrative affairs, but siloing often has harmful effects. Municipalities pointed this out on our survey (Q10).<sup>86</sup> Comprehensive community improvement requires knowledge from a wide range of policy fields, such as transportation policy, industrial policy, and disaster prevention, environmental, and social welfare policy, as well as city planning and agricultural land policy. For this reason, municipal personnel in charge of land use administration must have the ability to ascertain, analyze, and judge cross-discipline issues in a comprehensive manner.

Personnel involved in land use and community improvement are expected to act as coordinators and facilitators to build consensus with residents and other stakeholders, in addition to possessing knowledge and expertise. This is because of the rising importance of resident participation and cooperation in community improvement.

Personnel, therefore, need a very wide array of skills: technical expertise in city planning and agricultural land policy, in-depth knowledge and know-how about many different fields and systems, and proficiency in building relationships with residents and other stakeholders. Securing and training personnel with these skills is instrumental in advancing independent and comprehensive land use administration by municipalities.

The problem is the huge discrepancies in municipalities' financial positions and their feasible staff sizes. Our survey demonstrated that not all municipalities are able to secure and train such high-level personnel easily. For this reason, the national and prefectural governments should provide personnel assistance, training, and other forms of assistance to raise expertise levels, including the provision of means and opportunities to build personnel capacities. This assistance should complement the administrative

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<sup>85</sup> Japan Municipal Research Center (2008), *ibid.*

<sup>86</sup> Japan Municipal Research Center (2004), *id.*, p. 23

work of municipalities, so municipalities, which should be the core players in land use administration, effectively and fluidly carry out land use administration.

Consideration should also be made of adjacent municipalities collaborating and setting up forums for regular information exchanges among their land use departments, making use of Settlement and Independence Regions and Cooperative Core Urban Regions, and using mechanisms for collaborative processing of administrative affairs.

### **3. Immediate action to facilitate comprehensive and integrated land use administration**

Enabling municipalities to proceed with independent and comprehensive land use administration requires the reformation of the currently siloed land use legal systems into one consolidated system, the transfer of land use authorities, and easing of laws' detailedness. These sweeping legal amendments will likely take considerable time. The integrated and comprehensive land use legal systems in Europe came about through repeated implementations, discussions, and adjustments by municipalities and federal governments. Therefore, Japan, too, will need to experiment with various innovations to reach this future goal.

The ultimate goal is the future establishment of a comprehensive and integrated land use administration. The following sections look at land use promotion policies municipalities can take in the meantime, under current laws, that will form the cornerstone of this eventual land use administration.

#### **(1) Utilizing current systems and creative implementation**

It is possible to strive for comprehensive and integrated land use administration by making proactive use of the systems under current laws and implementing administrative affairs in a creative fashion.

##### **i. Unified implementation of land use administrative affairs**

The City Planning Act, the Agricultural Promotion Areas Act, and other independent acts specify how to establish plans, designate districts, and permit individual land uses, in line with their respective legal objectives and policies. Municipalities, which are in charge of these administrative affairs, can work to integrate land use administrative affairs by having the departments responsible for different administrative affairs communicate and collaborate with each other.

For example, a department could discuss and ask opinions with other departments responsible for other land uses when it is establishing a plan based on an independent act or when it is reviewing the permission of an

individual land use. On our survey, many municipalities said they have instituted opportunities for such communications and coordination. Some municipalities have standing communication and coordination committees that meet regularly, and others hold meetings for discussions and opinion sharing when determining any land use policy (Q10). The city of Nagaoka, for example, has permitted agricultural land conversion and development as a series of administrative affairs. By eliminating any time gap between the two permission procedures, the city maintains conditions so that land is always under the control of at least one law.

Municipalities are the entities that actually hold legal authority over administrative affairs. Therefore, they should proceed with comprehensive and integrated land use administration, even though land use legal systems are still siloed. They should do this by exercising their administrative authorities while ensuring adequate communications and coordination among related departments.<sup>87</sup> On the other hand, municipalities cannot exercise authorities in a way that violates provisions of laws which delegate the authorities. This limits how far municipalities can integrate land use administration affairs. Therefore, it is still necessary to either coordinate siloed legal systems or establish an integrated land use legal system.

## **ii. Strengthening regulations with detailed district plans / delegated ordinances or by revising City Plans**

Relaxing current regulations on land use activities has led to undesirable land uses. Municipalities can strengthen regulations to stop these land uses either by using detailed district plans or delegated ordinances or by revising City Plans that specify restrictions on building use, shape, and other matters.

In their own City Plans, municipalities can designate Use Districts that place restrictions on building use and other matters and can specify standards on building shape, such as floor area ratio or height.<sup>88</sup> Thus, if municipalities revise City Plans as needed, based on social and economic changes or resident intentions, and ensure their restrictions on building use and shape, we can expect these restrictions to prevent, to a certain degree, land uses that are not harmonious with their environment.

The City Planning Act specifies nationwide provisions on most matters

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<sup>87</sup> Another necessity for comprehensive and integrated land use administration is municipalities working proactively to influence prefectures when prefectures specify regulations and areas based on individual acts, such as City Planning Areas and Agricultural Promotion Areas. Municipalities must pressure the prefecture to ensure land within their municipal borders is specified as a planned area but not subject to too many overlapping regulations.

<sup>88</sup> Even with respect to Area Classification (zoning) in City Planning Areas that are under the jurisdiction of prefectures, 51 municipalities have incorporated Urbanization Promotion Areas into Urbanization Control Areas (reverse zoning), for such reasons as curbing development in suburbs and rural areas or preventing diminution occurring from areas where no development is expected (Q15 – SQ2). It is important for municipalities to actively petition prefectures about Area Classification, revising City Planning Areas, and other matters where municipalities do not hold authorities.

municipalities can specify in their City Plans. This includes provisions on the types of Use Districts and the details of regulations on each type of Use District. The Act, however, does allow for strengthening regulations by utilizing the detailed district plan (§12-5) or by enacting delegated ordinances (§33(3) for example). Use Districts are generally not specified in Urbanization Control Areas (§13(1)(vii)), but detailed district plans are considered practical, because they allow, for all intents and purposes, municipalities to designate any area within City Planning Areas.<sup>89</sup> The effectiveness of such detailed district plans and delegated ordinances are ensured, because compliance with standards set in detailed district plans and delegated ordinances is reviewed when permitting development or certifying buildings.

The building certification, however, ensures the effectiveness of restrictions on building use, shape, and other matters. The building certification itself is a ministerial act, which requires setting standards that allow no discretion when judging whether a building complies with building restrictions. Setting qualitative standards or standards with some leeway is not possible. Furthermore, laws identify in advance the particulars for which regulations can be strengthened by means of detailed district plans or delegated ordinances. Municipalities can set their own standards on particulars related to construction or development that are not delegated explicitly to municipalities in law. However, the development permission or the building certification cannot be used to enforce conformance with these standards.

Furthermore, actively applying conventional land use regulations has been difficult for the reasons of respecting private property rights or limiting the occurrence of existing noncompliant buildings. This has led to the current situation, in which Use District designation and regulations on building shape and other matters set out in existing City Plans have been relaxed, without greater use of detailed district plans that impose more rigid restrictions than laws. In particular, the City Planning Act stipulates that detailed district plans “shall be compiled upon seeking the opinions of the owners of the land within the districts pertaining to said [detailed district plan] proposal and other stakeholders stipulated by cabinet order” (§16(2)). Further to this, some municipalities have set agreement by a minimum number of land owners as a condition on establishing detailed district plans. However, a broad range of residents, not just land owners, should share in the future vision of their local area and in the measures to induce necessary land uses to achieve the vision. It is not thought appropriate for laws to specify mandatory nationwide

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<sup>89</sup> Yasumoto, *id.*, p. 65

measures on establishing detailed district plans. Rather, municipalities should be the entities that institute measures based on local characteristics, such as holding informational meetings, to form consensus among land owners and residents.

### **iii. Utilizing Location Optimization Plans**

The Act on Special Measures concerning Urban Reconstruction was amended in 2014, introducing the Location Optimization Plans system. The system's aim is to plan compact build-up areas. The means of doing this is promoting housing functions and urban functions and formulating plans (Location Optimization Plans) so municipalities can optimize sites of housing and medical / social welfare / commercial facilities in districts within City Planning Areas. As of April 11, 2017, 101 municipalities had established or announced Location Optimization Plans.<sup>90</sup>

Using Location Optimization Plans, municipalities can set districts where residents should be encouraged to live (Residential Inducement Districts) and districts where facilities that expand urban functions, including commercial complexes, should be encouraged to locate (Urban Function Inducement Districts) (§81(2(ii) and (iii))). Mechanisms are provided to boost the effectiveness of these district designation. For example, developers considering development that involve the construction of residences, or a purpose to that effect, in a district outside of Residential Inducement Districts are obliged to notify the mayor of the municipality in advance. The mayor has the authority to make necessary recommendations concerning the activity when the activity is “deemed to interfere with the inducement to locate residences in Residential Inducement Districts” (§88). Similarly, development that involve the construction of buildings that will extend urban functions, or a purpose to that effect, must be notified in advance to the mayor of the municipality, and the mayor can make recommendations as necessary (§108). The Location Optimization Plans system's merit is that it affords municipalities some degree of control over the siting of residences and commercial complexes, by independently specifying inducement districts and through prior notifications and recommendations.

The legal force of the notification and recommendation mechanism is weaker than the permission mechanism and administrative orders under the City Planning Act. Therefore, there are fears the particulars of Location Optimization Plans will not be fully realized. Moreover, additional consideration is necessary into how to coordinate the zoning and

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<sup>90</sup> See Ministry of Land, Infrastructure, Transport and Tourism, *Kaku Toshi ni Okeru Ricchi Tekiseika Keikaku Sakusei no Omo na Torikumi [Various Municipalities' Initiatives in Creating Location Optimization Plans]* (as of April 11, 2017) ([http://www.mlit.go.jp/toshi/city\\_plan/toshi\\_city\\_plan\\_fr\\_000051.html](http://www.mlit.go.jp/toshi/city_plan/toshi_city_plan_fr_000051.html)) (retrieved on April 13, 2017).



development permission mechanisms in the City Planning Act with the siting inducement mechanisms under the Location Optimization Plans system.

#### **iv. Utilizing the Landscape Act**

The Landscape Act is a legal system that municipalities might turn to as a legal system to control all land spaces within their jurisdictions, regardless of the five area categories in the National Land Use Planning Act.

Landscape Administrative Bodies<sup>91</sup> can set (a) restrictions on the shape, color, or other design features of a building or structure; (b) the maximum or minimum height limit of a building or structure; (c) restrictions on a wall location or the minimum site area of a building; and (d) any other restrictions for the creation and maintenance of a good landscape (§8(4)(ii)(a)–(d)). These restrictions are backed by a prior notification and recommendation system (§16). It is also possible to take more powerful enforcement measures, such as setting “specified actions subject to notification” for which modification orders can be made (§17), specifying restrictions in Landscape Plans as criteria for development permission under the City Planning Act (City Planning Act §33(5)), or setting out Landscape Districts within City Plans and thereby incorporate the same restrictions in inspection standards for the building certification (§61 and elsewhere).

Activities subject to notifications based on the Landscape Act include construction of buildings, construction of structures, and “Development Activities” prescribed in the City Planning Act. Landscape Administrative Bodies can add activities to this through ordinances — such as, altering the shape of land, planting or cutting down trees, or piling earth, stone, or other materials out of doors (§16(1)(i)–(iv) and Enforcement Order §4). In short, the Landscape Act is advantageous because it covers a wider range of land use activities than the building certification based on the Building Standards Act and the development permission based on the City Planning Act.

As the above argument demonstrates, the Landscape Act makes it possible to cope with the appearance of solar power generation facilities and material storage site that have become problems in recent years across the country. The Act is also expected to make it possible to induce land uses that harmonize with the surrounding areas through restrictions on shape and design. The Act’s weakness is that restrictions in Landscape Plans are backed, in principle, by a notification and recommendation, which lacks legal force.<sup>92</sup>

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<sup>91</sup> Landscape Administration Bodies are Designated Large Cities, Core Cities, or prefectures in other areas. Municipalities can also be Landscape Administration Bodies through discussions with the prefectural governor (§7(1) and §98(1)). As of March 31, 2016, 571 municipalities had become Landscape Administration Bodies, excluding Designated Large Cities and Core Cities (Ministry of Land, Infrastructure, Transport and Tourism, *Keikanhou no Shikou Jyoukyou [Execution Status of the Landscape Act]* (as of March 31, 2016), (<http://www.mlit.go.jp/common/001139943.pdf>) (retrieved on April 13, 2017).

<sup>92</sup> Ministry of Land, Infrastructure, Transport and Tourism, *Miryokuteki na Toshi Kuukan Soushutu ni Muketa Keikan Shisaku*

To raise the effectiveness of these restrictions, it is possible to make use of the development permission in the City Planning Act and the building certification, but both of these mechanisms have limited scope. Therefore, the only way to enforce the effectiveness of restrictions on construction activities outside of City Planning Areas, in particular, is still the notification and recommendation.

**v. Cross-jurisdictional land use administration utilizing the administrative cooperation system in the Local Autonomy Act**

The Local Autonomy Act, as a general law, provides systems for multiple local public bodies to jointly carry out administrative affairs. These systems can be utilized for land use administration, to carry out horizontal adjustment with adjacent municipalities and to develop cross-jurisdictional land use administration.

How the cities of Shimonoseki and Kitakyushu work together to protect landscape in and around the Kanmon Straits is an example of land use administration based on the Landscape Act, described above, that also utilizes the administrative cooperation system in the Local Autonomy Act. In 2001, the two cities established Kanmon Straits Ordinances with identical titles and statutes. After the Landscape Act was enacted, the cities jointly established a Landscape Plan based on the Act and amended their landscape ordinances. The Landscape Plan was established in accordance with the Basic Kanmon Landscape Plan (Kanmon Landscape Ordinance §7). The Kanmon Landscape Council, the organization which established the basic plan, was given standing as a council based on the Local Autonomy Act §252-2-2. The cities also jointly set up the Kanmon Landscape Commission, an advisory body that met when establishing, recommending, and announcing the Basic Kanmon Landscape Plan, according to provisions in the Local Autonomy Act §252-7.

Another example concerns the Ueda Regional Interjurisdictional Union, formed by two cities, two towns, and one village, including the cities of Ueda and Tomi. The Ueda Regional Interjurisdictional Union is an interjurisdictional union of special local governments (Local Autonomy Act §284(3)). Of the administrative affairs the Union processes are “affairs concerning adjustment of land use plans of related municipalities” (Ueda Regional Interjurisdictional Union Agreement §4(1)(iii)). The Ueda Regional Interjurisdictional Union mainly focuses on land use adjustment among the municipalities when one of them establishes or modifies a land use plan.<sup>93</sup>

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*no Arikata nado Kentou Chousa: Houkokusho [Study Report on Approaches to Landscape Policy toward Creating Attractive Local Spaces], March 2012*

<sup>93</sup> Ueda Regional Interjurisdictional Union, *Ueda Chiiki Kouiki Rengou Kouiki Keikaku [Cross-Jurisdictional Plan of the Ueda*

The interjurisdictional union system can also process administrative affairs on behalf of related municipalities and can assume authorities and other powers transferred directly from the national or prefectural government.

Options for administrative cooperation systems were expanded with a 2014 amendment to the Local Autonomy Act, which added a system for cooperative agreements (§252-2) and a system for executing administrative affairs by proxy (§252-16-2). Municipalities should pursue horizontal adjustment or vertical adjustment by selecting the system that matches their needs, in consideration of the intentions of neighboring local governments and the type of administrative affairs to be processed jointly. Adjustment using administrative cooperation systems, however, cannot happen unless the municipality and related local governments agree to this type of adjustment and respect the decisions reached through the adjustment process.

## **(2) Land use inducements through local ordinances or plans**

There will be situations where making inventive use of the systems under current laws is not sufficient to create compelling land use inducements. In these cases, municipalities could conceivably create their own planning schemes or regulatory mechanisms to strive for comprehensive and integrated land use administration.

### **i. Using ordinances to establish mechanisms for comprehensive and integrated land use administration**

Municipalities can establish their own comprehensive and integrated mechanisms to govern land use activities by passing ordinances. In other words, municipalities can establish comprehensive land use plans covering their entire municipal area, regardless of area designation in existing laws, such as City Planning Areas or Agricultural Promotion Areas. Based on their local plans, they can set out their own mechanisms to induce certain land uses.

One example is the Miyoshi Community Improvement Land Use Ordinance. The mayor of Miyoshi established a basic town development plan. In addition to policies on land use and natural environment preservation, the plan specified districts where land use inducement measures are put in place (Land Use Inducement Districts) and specified standards on land use in these districts (§7). The plan defined several land use inducement district types, including Living Environment Preservation Districts, Agriculture Preservation Districts, Nature Preservation Districts, and Village Residential

Districts (§7(4)(iii)). A mechanism was still needed to ensure that individual land use activities conform to the land use standards specified in the basic town development plan. To this end, the ordinance contains provisions that oblige developers to submit development plans and discuss them with the mayor. If the development plans are deemed not to conform to the basic town development plan, the mayor can issue recommendations or advice or make suspension or modification orders (§17 and §22). The ordinance also contains tough enforcement measures, imposing penalties on violators of suspension or modification orders of no more than six months imprisonment or fines of no more than 500,000 yen (§53).

The National Land Use Planning Act does not provide mechanisms to implement basic plans on national land use established in municipal plans. Municipalities, however, can establish their own mechanisms to do this. In fact, the city of Sasayama passed its own ordinance that stipulated its Sasayama Land Use Master Plan was to be treated as a municipal plan under the National Land Use Planning Act (Sasayama Basic Land Use Ordinance §5(2)). Prior discussions with the mayor and the city's own permission mechanism are used to ensure individual land use activities conform to the plan (Sasayama Community Improvement Ordinance §5 and §8).

## **ii. Additional and supplemental land use regulations with local ordinances**

Municipalities should consider setting their own regulations with ordinances when legal land use regulations are insufficient. Such local regulations take two forms: *additional regulations* that impose more stringent land use activity standards and procedures on activities already subject to legal regulations, and *supplemental regulations* that set land use activity standards and procedures on activities not subject to legal regulations.

An example of an ordinance that specifies additional regulations is the Okazaki Ordinance on Development Outside of City Planning Areas. The Okazaki ordinance sets obligations on development over a certain size that are planned to take place outside of City Planning Areas. These obligations include prior discussions with the mayor and obtaining consent of public facility managers (§4 and §8). Although no clear standards on development are specified, the prior discussions with the mayor do include discussing appropriate measures to preserve cultural assets and to secure and create favorable natural environment.<sup>94</sup>

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<sup>94</sup> City of Okazaki, *Okazaki-shi Toshi Keikaku Kuiki Gai ni Okeru Kaihatsu Koui ni Kan suru Jyourei Daigojyou no Kitei ni Motodzuku Kaihatsu Kyougi Jikou [Development Discussion Agenda based on Provisions in Article 5 of the Okazaki Ordinance on Development Outside of City Planning Areas]* ([http://www.city.okazaki.lg.jp/1550/1568/1642/p017195\\_d/fil/tokeigai\\_kyougijikou.pdf](http://www.city.okazaki.lg.jp/1550/1568/1642/p017195_d/fil/tokeigai_kyougijikou.pdf)) (retrieved on April 13, 2017)

An example of an ordinance that sets supplemental regulations is the Ordinance on the Harmonization of Solar Power Generation Facility Installation Projects and Living Environment within Kasama City. The supplemental regulations cover the installation of solar power generation facilities, which are not subject to the building certification under present laws or development permission under the City Planning Act. The mayor of Kasama, in the interest of protecting natural environment and ensuring disaster prevention functions, previously designated districts requiring cooperation to ensure solar power generation facility projects do not take place (Control Districts). Developers planning solar power generation facility installation projects must discuss their plans with the mayor in advance (§6 and §8). The city has not set up a permission mechanism. Instead, it attempts to control the sites of solar power generation facilities and their installation methods through prior discussions, guidance, and recommendations.

Municipalities can establish independent ordinances to establish mechanisms to govern comprehensive and integrated land use activities and to set additional and supplemental regulations with respect to current legal regulations. And based on each area's circumstances, they can plan systems that act as mechanisms to enforce the activity scope and effectiveness of these regulations. Independent ordinances do have limitations however. For example, municipalities cannot use non-compliance with regulations in an independent ordinance as a reason to deny permission under the City Planning Act or other acts.

### **iii. Establishing forums for discussions with the prefectural government and related municipalities**

Existing laws provide for opportunities for prior coordination between prefectures and municipalities when exercising administrative authorities. (For example, seeking out the opinions of municipalities when designating City Planning Areas (§5(3)) and municipalities discussing with prefectural governors when designating Districts and Zones (§19(3))). These legally mandated opinion hearings or discussions have a one-to-one relationship with exercising specific administrative authorities. Moreover, smoother land use administration operation is expected if municipalities set up a forum for discussions with the national and prefectural governments and with adjacent municipalities and use the forum to advance vertical and horizontal adjustment among multiple parties.

For example, the city of Izu set up the Izu New City Planning Investigation Committee in FY 2014 for discussions with national and Shizuoka prefecture officials and with city planning and agricultural land experts. The committee

held repeated deliberations on revisions to City Planning Areas and Area Classification. Ultimately, in March 2017 decisions were reached to split the Izu municipality from the Tagata Regional City Planning Area into its own City Planning Area and to abolish Area Classification in the Izu City Planning Area. Even after the City Planning Area was split up, the long-established Tagata Regional City Planning Area Liaison Council will continue to meet for communications and adjustment with Kannami Town and Izunokuni City.

Discussion forums with all related parties should be set up, and long-term discussions should take place to strive for vertical adjustment with national and prefectural governments on an equal footing and for horizontal adjustment with adjacent municipalities. Under current laws, however, when an independent discussion forum is set up, whether discussions take place, or whether the outcomes are implemented, is still up to the inclination of each organization, as described earlier. Therefore, if new land use legislation is given legal backing, legal backing must also be given to the establishment of discussion forums that aim for cross-jurisdictional adjustment that addresses the local living region, and to the establishment of mechanisms that ensure the outcomes of opinion hearings and discussions are properly incorporated in plans.