

COMMUNITY GROWTH MANAGEMENT

Influencing the Rate of Population Growth

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Future community growth and its effect on the quality of life is an issue of concern for many Oregon communities. Citizens are asking, "What does growth do for our community?" "What are the consequences of growth?" "Will community growth improve the quality of our lives?"

Growth can bring benefits to a community in the form of higher incomes and expanding economic, social and cultural opportunities. Economic growth is important in attaining these benefits; however, economic expansion accompanied by increasing population may bring some problems:

- loss of "small town" atmosphere;
- urban sprawl;
- increased congestion;
- loss of open spaces and surrounding rural lands;
- loss of resource potential such as farmland and forestland;
- reduction in air and water quality;
- overburdened public facilities;
- rising taxes to pay for expanded public facilities and services;
- inadequacy of local governmental structure to cope with increased problems.

Growth, in one form or another, will remain a reality for many American communities in the future. One of the goals of comprehensive community planning is to secure the benefits of growth while minimizing associated problems. Economic planning and land-use planning are both aimed at achieving this goal. Among the land-use planning tools are growth management techniques,

Community Development

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which seek to reduce the costs of growth by affecting the timing, amount, geographic pattern, or public cost of population growth.

This circular and a companion circular examine one aspect of community growth management—control over the timing of development. Control over the timing of development can have two quite separate objectives:

- control over the overall rate of development (covered in this circular);
- control over the sequence in which areas in a community are developed (covered in “Influencing the Sequence of Development,” also in the Community Growth Management series).

This circular describes techniques to influence the rate of development. Many of these techniques

are not new; they have been used and will continue to be used to achieve goals unrelated to controlling the rate of development. When these techniques are used to control the rate of development, however, they must be applied in specific ways, which raise different problems and issues and different probabilities of success than for other objectives. These differences are the focus of this circular.

This circular is organized in three major sections. A number of issues are discussed which any community contemplating growth rate control should consider; techniques that communities have used are then examined. Finally, legal constraints are explored that may limit the ability of Oregon communities to adopt development regulations to restrain the rate of growth.

Issues

The use of techniques described in this circular to limit a community's population growth rate raises a number of issues. Controlling the rate of growth may solve some problems, but it also creates others. The benefits and costs of community growth management must be carefully weighed and potential consequences anticipated.

Household formation

Although many people are questioning the desirability of continued growth, the United States will continue to grow. Even though birthrates have dropped, the large number of young people in our population means that births will outnumber deaths for many years to come. The U.S. population will increase at a rate of just under 1 percent per year until the end of this century.¹ Although this growth rate is down from the approximate 1.4 percent per year for the period from 1950 to 1970, the actual yearly increase in population will be larger in the 1980's than it was in the 1970's. Only about one-fifth of this growth will be due to immigration.

Growth in the number of households will be even greater than the overall rate of growth in the population. Families are smaller today than they have been in the past; there are more single persons and single-parent households; and the large number of current children will be forming new households in the near future. The number of

households will increase by 1.5-2.0 percent per year, or a total yearly increase of 1-1.5 million households. This compares to an average increase of only one million households per year during 1950-70.

Because of this increase in the number of households, the coming years will see a record housing demand. We will need to produce more housing units per year than we ever have in the past. Our cities will have to grow if this demand is to be accommodated.

Mobility

Many communities are growing much faster than the national population because of migration. From 1970 to 1977, Oregon's population grew at a rate almost two and one-half times faster than the nation as a whole.² Some communities within Oregon grew at rates much greater than the state. Many communities are concerned about the impact of such high rates of immigration and question whether it is fair for them to have to accept so many new residents. This question strikes at the heart of what has been a relatively unquestioned American freedom—the right to move.

America is a nation of movers. We are the children of the immigrants who crossed an ocean, the pioneers who crossed a continent, and the farmers who moved to the city in search of a better life. Today, typical Americans move many times

in their lifetimes. Geographical mobility has been at the heart of the social mobility promised by the American dream of opportunity:

The American way of life is a way of movement and change, of going to a new town or state to take a better job, of trying a different climate, of making a new start a thousand miles away . . . Any limitation on mobility would strike at one of the principal proven means that each individual has to control and improve his life.³

An attempt by a community to restrict its growth rate in order to maintain or improve its own welfare thus restricts the freedom of others to move in search of a better life.

Fair share

Regional growth and migration are caused by national economic, social, and demographic forces of considerable power and complexity. Developers and builders usually do not create growth; rather, they respond to it. An attempt by a community within a growing region to restrict the production of housing will not stop growth, but will only force it to go someplace else—to rural areas surrounding a city, or to some other community no better able to deal with the increase. Restricting the growth rate of a particular community will neither stop sprawl, nor stop the disappearance of open space, nor stop the destruction of environmental and natural resources. It will not reduce the need for new public services and higher taxes to pay for them; it will only displace the burden so that someone else must bear the costs.



Placing restrictions on growth by one community invites retaliation by other communities who fear that they may have to accept the overflow. The eventual result could be a regional housing shortage, severe discrepancies between the locations of jobs and housing, and unfair burdens for those communities that do not choose to restrict growth. Therefore, many observers, including courts of law called on to rule on the validity of attempts to restrict growth rates, are calling for regional planning and interaction among communities to distribute the regional housing demand and to resolve conflicts between communities. These observers feel that communities should not be left to themselves to make decisions that have regional consequences.

Exclusionary effects

Use of the techniques described in this circular to limit community growth may cause a substantial increase in the cost of housing or a decrease in the supply of lower cost housing. Large lot zoning increases the cost of lots and encourages the builder to build larger, more expensive homes. Restrictions on mobile homes and multifamily dwellings can drastically decrease the supply of lower cost housing. Other techniques—restrictions on the supply of lots, adequate public facilities ordinances, and permit limitations—may decrease the supply of new housing, resulting in higher prices. A number of studies indicate that zoning can increase the price of land available for housing.⁴ A study of Petaluma, California, tentatively concluded that Petaluma's limitation on the number of building permits granted increased the price of a new house with constant characteristics by \$2,300-\$5,200 in 1978 dollars. Because builders tended to build larger houses due to the growth restrictions, the price of the average new house increased by \$8,300 overall.⁵ The effect of other controls on land and housing prices is unknown because their effect has not been adequately investigated.

The price of both new and older housing may be affected because their markets are closely connected. Prices for older homes rise as new house prices increase. As the supply of new housing decreases, the supply of housing on the market as a whole will decrease, resulting in price increases in both categories.

Increases in the cost of housing tend to exclude low- and moderate-income households from a community. Minorities with a high proportion of low-income households are particularly affected. Young households, with incomes still at the bottom of the pay ladder, find it difficult to obtain adequate housing.

Widespread use of land-use controls, particularly by the suburbs in some metropolitan areas, have in some cases limited the housing choices available to low- and moderate-income households. Such households are typically excluded from desirable suburbs and confined to central cities, thereby increasing segregation. Because a large proportion of low- and moderate-income jobs are in the suburbs, low-income households must often choose between large commuting costs and diminished economic opportunities. Although many communities do not consciously aim to do so, it is charged that some communities purposefully use growth management techniques — disguised under more acceptable purposes—to exclude the poor and the minorities. For example, the Oregon Land Conservation and Development Commission (LCDC) found that one of the major reasons the city of Durham, in Washington County, rezoned one-tenth of its area to a lower density was to eliminate “transients” and “unproductive community participants” rather than to avoid overburdening public facilities.”

Is population growth the only cause of problems?

A high rate of population growth is not the only cause of the problems associated with growth, nor is control of population growth the only solution. Some of the problems associated with growth are more accurately attributed to economic growth and to increased incomes and standards of living.

Urban sprawl and the associated problems of disappearance of open space, environmental degradation, and loss of land resources are caused more by poor land use than by growth per se. On the whole, suburban development has been characterized by monotonous, low-density, leapfrog development with little concern for the capabilities

of the land. Some of the growth management techniques discussed here encourage such wasteful uses of land: large lot zoning and restrictions on high-density multifamily uses increase sprawl rather than decrease it. Adequate public facilities ordinances and permit limitations do nothing by themselves to discourage sprawl; they only slow it down.

Direct control of sprawl and its problems is possible through careful use of existing land-use planning techniques—without actually limiting the growth rate. Land-use planning can be used to encourage clustering of development and higher densities; land banking can be used to protect open spaces and critical environmental areas. A whole series of techniques, including urban growth boundaries, planned extension of facilities, zoning, annexation policies, and subdivision controls, can be used to discourage leapfrog development and to encourage preservation of valuable resource lands.

Although larger cities generally have higher average property taxes than smaller cities, it is not clear that population growth is the only cause. It is also possible that economic growth has resulted in higher incomes that have caused people in larger cities to demand more expensive homes and higher quality services. A recent study in Oregon has shown that the average homeowner's property tax bill is higher in larger cities.⁷ The cause of the higher tax bills in larger cities was not higher tax rates but higher average property values. The study did not determine whether the higher property values resulted from higher values for similar properties or from a higher proportion of newer, larger, or higher quality houses. Nor did it show whether occupants of larger cities received more and better services.



Techniques

Three basic types of regulations have been used to limit community population growth:

- techniques that decrease the supply of land available for housing;
- techniques that tie development to the timed provision of public facilities; and
- techniques that ration the number of development permissions granted per year.

Limiting the supply of land

Traditional planning tools such as zoning, subdivision, and annexation controls can be used to limit the supply of land for housing. Zoning residential areas for large lots reduces the potential number of lots in a given area. Similarly, total exclusion of, or limiting the amount of land zoned for multifamily housing reduces the number of people a given area can house. Zones that exclude residential uses, such as exclusive commercial, industrial, or agricultural zones, withdraw land from the housing market. Communities can limit the number of lots available by setting standards and policies that make subdivisions of land difficult and costly. Communities can also limit the amount of land available by restricting annexations to the city.



Limitations on the amount of public services available may limit the amount of new housing built because sewer and water services are necessary for most high-density urban development. A plan to supply public services at a controlled rate can be formalized into a capital improvements program, which indicates where and when major public improvements will be constructed and the probable source of funds. Limits on the amount of land annexed to a city or special service district can also limit the amount of serviced land available because municipal utilities are frequently

under no obligation to extend services beyond city limits.

Such traditional techniques are frequently ineffective in limiting the community growth rate. They often do not really limit the amount of land available for housing but rather limit the amount of land available for high-density housing. The amount of growth does not change, but its character does. Further, success requires coordination of many decisions about rezoning, subdivision, service extension, and annexation. Decision-makers often have difficulty maintaining a policy of limiting the supply of land in the face of pressure for development in individual zoning, subdivision, service extension, and annexation decisions.

In addition, these techniques may actually contribute to the problems of growth, particularly those associated with urban sprawl, such as loss of open space and natural resources and rising taxes to pay for urban services. Large lot zoning may not decrease the growth rate but rather increase the area over which it is spread. Likewise, limitations on annexations and on the availability of urban sewer and water services may encourage growth to take place in rural areas on large lots rather than in cities at urban densities.

Adequate public facilities techniques

An adequate public facilities ordinance or policy prohibits or severely limits development if public facilities are not available. Controls over the rate of providing public facilities then control the rate of development.

While remaining similar in concept, adequate public facilities plans vary in several important respects among communities using them. First, controls are applied at different stages of the development process. Ramapo, New York, requires that developers must obtain a special permit before applying for subdivision or building permits; the special permit is granted only if services are available. Other communities apply controls at the rezoning, annexation, or utility hookup stage.

Communities differ in the type of facilities that must be available. Ramapo conditions development on the availability of sewers, improved streets, drainage, firehouses, and public recreation facilities. Schools are the major requirement in San Jose, California. Other communities include water services, police protection, or other services in their combination of required facilities.

Some plans have more specific and objective criteria than other plans; in Ramapo, the criteria are very specific and objective. A development must obtain 15 points on a rating scale to receive the special permit. Points are given in five categories. For example, if the development has direct access to an improved street with curbs and sidewalks, it receives five points, but it receives only three points if such a street is one-half mile distant. In contrast, the criteria in some communities are very general. A standard might state only that streets should be adequate to handle increased traffic; it is unclear just what "adequate" means.

Communities differ in the degree of planning for future provision of services. Some communities have developed coordinated capital programs or plans that specify the nature, location, and source of funds of future capital projects. Such a plan clearly specifies the growth rate the community intends to accept. Developers and landowners in these communities have a clear idea of where and when development will be allowed. Other communities using this technique to control growth have very little coordinated future planning, and it is unclear where and when development is to be allowed.



Finally, communities differ in the relief mechanisms used to diminish the burden on individual landowners and developers. Most communities allow developers to provide the facilities themselves. Most communities also include some type of variance procedure, which allows conditions to be relaxed in cases of hardship or special circumstances. Some communities reduce tax assessments to reflect the ban on development where facilities are not adequate. Ramapo credits the developer with points for facilities which the

capital program indicates should be available, even if the town has been unable to keep the schedule.

Adequate public facilities plans differ in their effectiveness, depending on their design. Plans that limit subdivisions and rezonings have many of the failings of techniques that limit the supply of land; they often do not limit development but just encourage it to occur at lower densities. Plans that depend on discretionary criteria may have trouble maintaining a consistent policy on growth. However, plans such as Ramapo's that limit building permits according to objective criteria actually control rates of housing construction. As evidenced by the experience of Ramapo, such plans can be effective in reducing growth in a particular city. The average number of dwelling units built per year in Ramapo declined from 758 during 1963-68 to 234 during 1969-75. Over the same period the Ramapo share of Rockland County annual growth declined from 27 percent to 13 percent.⁸ These figures do not show whether growth and its problems were eliminated, or whether they were simply shifted to other townships in Rockland County or other areas.

Annual permit limitations

An annual limitation on development permits is a technique pioneered by Petaluma, California, but it has since been adopted by a number of communities including Boulder, Colorado; Davis, California; and Woodburn, Oregon. These communities have set a limit on the number of development permits—such as building permits or utility hookups—granted each year.

The available permits usually are rationed through a quality competition so that the best developments are selected. Most communities have developed a rating scale with points awarded in a number of categories according to the characteristics of each project. A committee of citizens, industry representatives, and government officials evaluates each project and awards the points. Points from all categories are totaled, and the projects with the highest totals are granted the permits. Categories used by various cities include those based on adequacy of public services, architectural and site design, provision of amenities, and environmental protection. Criteria may be general, relying on the judgement and discretion of the committee, or they may be specific and objective.

The rationing system can be used to encourage certain types of development. For example, Petaluma uses subquotas within the annual total for multifamily units and developments within certain sections of the city. Boulder and Petaluma attempt to encourage developers to provide low- and

moderate-income housing by awarding points for such provision and by exempting certain projects from the rationing system. Unless such special treatment is given to low- and moderate-income housing, competition for points in categories that measure the quality of developments can price such housing out of the reach of some households.

Some type of relief mechanism is usually provided. An appeal process allows developers to challenge the allocation of points to a project. Small projects are typically exempted from the system. Petaluma exempts projects with ten or

fewer units, and Boulder exempts projects of four or fewer units.

An annual permit limitation, particularly on building permits, is a very direct and effective way of controlling the rate of population growth. For example, the average number of housing units completed per year in Petaluma dropped from 543 during 1970-72, to 250 during 1972-78.⁹ The annual population growth rate dropped from 8 percent to 2 percent over a period during which the total county growth rate remained relatively constant.¹⁰

Legal Constraints

The powers of communities to regulate their rate of growth derive from the police powers reserved to the states by the United States Constitution. These powers must be conferred on cities and counties through specific enabling legislation or home rule charter. In some states enabling legislation confers the power to use only limited specific tools for specific purposes. Legal challenges in such states frequently assert that the power to regulate the rate of development is not granted by enabling legislation. In Oregon, however, enabling legislation is broad and general, and can be interpreted to confer the power to regulate the rate of development. There are three major limitations on these powers, however:

- The regulation must be reasonable and nondiscriminatory to be a proper use of the police power.
- It may not infringe any basic constitutionally guaranteed rights.
- In Oregon it must also meet the statutory requirement that cities and counties must exercise their planning and zoning responsibilities in accord with the statewide planning goals administered by LCDC.

Limits on improper use of the police power

- *Reasonableness.* To be a reasonable exercise of the police power, a regulation must serve a public purpose; the means must be reasonably necessary to accomplish the purpose; and the impact on the individual must not be unnecessarily severe. A public purpose must promote the public health, safety, morals, or general welfare. Most state courts and the federal courts interpret this phrase broadly. The desire to control chaotic and haphazard growth, to maintain a low-density residential environment, to prevent overburdening

community facilities, or to avoid urban problems have all been held to be valid public purposes. Ramapo's desire to economize on costs and to maintain the quality of municipal services was ruled valid, as was Petaluma's desire to maintain open spaces and a small town character.¹¹

Similarly, most courts have allowed communities a broad discretion in choosing means to implement their goals, as long as the means can be expected to aid in the accomplishment of the objectives. The courts have long allowed the use of zoning to control type of use and lot size and the use of broad discretion in subdivision and annexation decisions. The New York Court of Appeals held that Ramapo's adequate public facilities ordinance which restricted development for some parcels for up to 18 years was a reasonable means. In California, a federal circuit court held that limitations on the number of building permits granted annually was a reasonable way for Petaluma to achieve its objectives.

However, the Pennsylvania, New Jersey, and California state courts have concluded that the "general welfare" under some circumstances may refer to the regional welfare—not just the welfare of the local community.¹² They have maintained in recent years that a community cannot contribute to regional housing problems by refusing to accept its "fair share" of regional growth at all income levels. For example, in *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel* (1975) the New Jersey Supreme Court ruled that:

It is plain beyond dispute that proper provision for adequate housing for all categories of people is certainly an absolute essential in the promotion of the general welfare The general welfare which developing municipalities . . . must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality.

Some of the communities in Pennsylvania and New Jersey involved in these court cases have claimed that their purpose is to preserve open space or to avoid overburdening public facilities. The courts, while admitting that these are certainly valid public purposes, have held that the use of techniques that limit availability of housing are not reasonable means to achieve these purposes when the welfare of the total region is at issue. They have said that limitations on housing availability are contrary to the general welfare and therefore unreasonable as long as less harmful means—such as encouraging clustering of development, purchase of scenic easements and development rights, and construction of additional facilities—are readily available.

The California Supreme Court, in an opinion probably grounded in state constitutional law, has similarly concluded that a zoning ordinance with significant effect beyond city boundaries must be evaluated on a regional level.¹³ However, the court test is more flexible and requires an extensive factual inquiry for evaluating the validity of a restrictive zoning ordinance which seeks to balance local and regional interests.¹⁴



Oregon courts have not ruled on a case from which their position on “regional fair share” can be determined. Because the relevant law on the subject is administered by the LCDC and the Land Use Board of Appeals, Oregon’s courts may never be called upon to make such a decision.

- *Nondiscrimination.* The equal protection clause of the 14th Amendment to the U.S. Constitution prohibits communities from unreasonably discriminating between classes of people or classes

of property. Similarly situated people and properties must be treated equally.

The burden of proof initially lies with the challenger of a regulation. The challenger must show that a distinction created by a regulation does not rationally promote a valid public purpose. This burden of proof is very difficult to overcome; therefore, the courts tend to support a decision by a community legislative body that such a distinction rationally promotes a valid public purpose. Categories created by zoning have been held to be reasonably related to the accomplishment of many community objectives.

Perhaps the major equal protection difficulty communities have experienced in the courts has not been invalidation of regulations or policies, but invalidation of the application of a regulation or policy to particular parcels. This can occur when adequate standards or criteria are lacking by which decisionmakers can decide into which category a particular land parcel should be placed. Such a lack of adequate criteria can lead to what appear to be inconsistent decisions. Landowners denied permissions to develop can shift the burden of proof to the community by showing that their situation is similar to that of some other landowner whose parcel did receive the permission to develop, and therefore that they have been arbitrarily discriminated against.

The burden of proof will also shift to the community if the challenger can show that the legislative action creates a “suspect” classification. In this case, the community must prove that the regulation is necessary to further a compelling governmental interest and that less harmful means are not available. Few regulations can overcome this burden. A classification based on race is without a doubt “suspect.” Some challengers of local development regulations have attempted to argue that regulations that increase the cost of housing in effect create classifications based on race, because racial minorities have high percentages of poor people. However, the federal courts and many state courts generally have held that such regulations create classifications based on wealth rather than race, and that a classification based on wealth is not “suspect.” Oregon courts have not ruled on this matter.

The right to travel

Some legal scholars believe that the constitutional concept of the right to travel may pose limitations on the ability of communities to restrict their rate of growth. The right to travel, which includes the right to settle, has long been recognized by the courts as a fundamental liberty

protected by the Constitution. The Supreme Court has stated:

This court long ago recognized that the nature of our Federal union and our constitutional concepts of personal liberty unite to require that all our citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement.¹⁵

In recent years, residency requirements for voting and receiving welfare benefits have been invalidated by the Supreme Court on the basis that they unreasonably restrict the right to travel. It has been argued that a community implementing a regulation that restricts the right to settle must prove that such a restriction is necessary to further a compelling state interest.

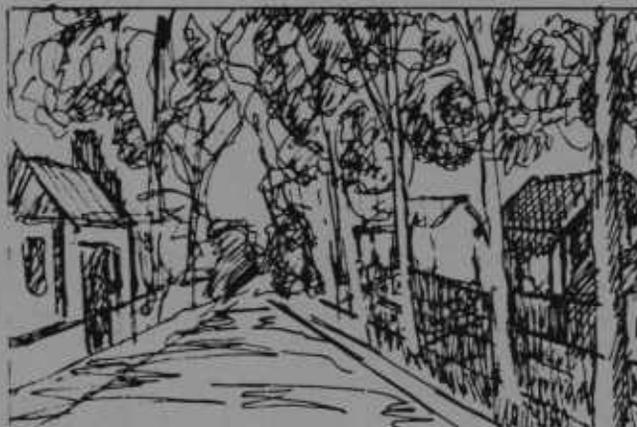
To date, however, this concept has not been extended to limit the power of local governments to restrict their rate of growth. The federal trial court that initially heard the case challenging the annual limit on building permits in Petaluma, California, found that the limitation infringed on the right to travel.¹⁶ The court found that the need to ensure adequacy of sewage treatment and water supply and the desire to protect small town character were not sufficiently compelling state interests. However, on appeal, the circuit court reversed this ruling.¹⁷ The circuit court did not decide on the basis of right to travel, finding instead that the challengers—landowners and developers—had not been restricted themselves from travelling and so did not have standing to assert this claim. The court did indicate that, given U.S. Supreme Court case law on the subject, it probably would not in any case have found an unconstitutional restriction on the right to travel. The United States Supreme Court has found, for example, that a total prohibition of multifamily dwellings in the village of Belle Terre, which ensured that the village would grow much more slowly than it otherwise would have grown, was not an infringement on the right to travel because the policy was not aimed at transients.¹⁸

Oregon's housing goal

In Oregon, state law requires that cities and counties must exercise their planning and zoning responsibilities in accordance with the statewide land-use planning goals administered by the Land Conservation and Development Commission.¹⁹ Recent decisions and policy statements by LCDC clearly indicate that the land-use planning goal and the housing goal pose limitations on the powers of communities to restrict their rate of growth.

The LCDC housing goal states that compre-

hensive plans "shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households." In its Urban Growth Management Strategies Policy Paper, the LCDC states that it cannot specify in general what techniques are acceptable or not acceptable or how much growth a community must be willing to absorb. Such a determination can only be made when the facts supporting the use of restrictive techniques in a particular com-



munity or situation are available. In the same policy paper, however, LCDC does make it clear that the regional impacts of any growth management strategy adopted by a community are an important concern which should be coordinated with affected communities in the region.

The opinions of LCDC in three recent cases shed further light on how the goal will be interpreted in the future. In *Seaman et al. v. City of Durham*, LCDC ruled invalid a rezoning which reduced by one-half the permitted density of about one-tenth of the city's area.²⁰ The LCDC found that where a regional need for more low- and moderate-income housing has been established, a city seeking to reduce the permitted density of a substantial proportion of its total area must carry the burden of showing by compelling reasons how it has complied with the housing goal. The LCDC judged that the desire to remain a low-density community, to avoid urban problems, and to discourage transients were not sufficiently compelling. The LCDC stated:

Planning jurisdictions must consider the needs of the relevant region in arriving at a fair allocation of housing types . . . The housing goal clearly states that municipalities are not going to be able to do what they have done in metropolitan areas in the rest of the country. They are not going to be able to pass the buck to their neighbors on the assumption that some other community will open wide its doors and take in the teachers, police, firemen, clerks, secretaries, and other ordinary folk who can't afford homes in the towns where they work.

In the second case, LCDC refused to acknowledge that the initial City of St. Helens comprehensive plan complied with the goals because it did not have a zoning ordinance adequate to carry out its plan policy to "promote safe, adequate housing for all members of the community" or to meet identified housing needs. The ordinance did not permit mobile homes or apartments in any zones. The LCDC housing policy states, "Where a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, housing types determined to meet that need shall be permitted in a zone or zones with sufficient buildable land to satisfy the need." This does not mean that reasonable conditions cannot be attached to permits for certain kinds of development, but such conditions should be clear and objective, and not have the effect of discouraging that housing type. Vague and broad discretionary criteria such as "in harmony with the surrounding neighborhood" and "encourage the most appropriate use of the land" would not appear to be acceptable.

In the third case, LCDC was asked to acknowledge the comprehensive plan of the City of Aumsville in Marion County, or certify that it was in compliance with the goals. Aumsville, a city with a population of 1,600, had received grant funds to build a sewer treatment plant of a certain capacity, which was planned to meet Aumsville's needs until the year 2000. Believing itself unable

to raise funds to increase this capacity, the city wished to limit development to a rate consistent with the plant's capacity and included such a provision in its comprehensive plan. LCDC was sympathetic to the city's problems and intentions but returned the plan until an ordinance was developed to implement the proposal. The LCDC wished to know whether building permits or sewer hookups were to be limited, and how the limited permits were to be rationed. The LCDC also required the proposal to be reviewed by Marion County for regional impacts. Rather than develop these ordinances, Aumsville chose to eliminate the proposal to limit development from its plan. The decision not to proceed with the development limitation scheme was based largely on lack of time and funds.

These three cases indicate that the Land Conservation and Development Commission is establishing a clear stand against the use of regulations or policies that prevent a community from absorbing its regional fair share of low- and moderate-income housing without compelling reasons. What constitutes "fair share," however, is not totally clear. The LCDC's position on strategies that limit the supply of housing but do not discriminate against low- and moderate-income households is less clear from the record. Its tentative position in the Aumsville case indicates it is willing to consider carefully developed schemes designed for sufficient cause.

Summary

Many communities are experiencing rapid population growth. Problems inevitably accompany this growth, and qualities of the community valued by both new and old residents may be threatened. One way to try to preserve these qualities is to slow down the growth rate.

Several techniques are being used by communities to influence their rate of population growth. Included are techniques that limit the supply of land for housing, techniques that tie development to a timed provision of public facilities, and techniques that ration the number of development permits granted per year.

Use of growth management techniques can bring benefits to a community. Slowing the growth rate may slow down the onset of congestion, urban problems, and overburdened public facilities. It can help preserve small town atmosphere and surrounding open spaces. It can slow down the spreading of urban sprawl. But limiting the growth

rate may not solve all of the problems associated with growth. Wasteful use of land—not growth itself—is responsible for many of the problems brought by urban sprawl.

Community growth management can also create costs. Growth in the United States population between now and the end of this century will create record demands for new housing. Migration in response to national and regional economic and social forces will continue. Attempts to control community growth rates will prevent some people from bettering the quality of their lives by moving to a new community. Refusal by some communities to accept their fair share of this growth will not stop growth or solve the problems growth brings, but will only shift them to some other community. In many cases, limiting the supply of housing can be expected to increase the price of housing.

Communities considering policies or regulations to control their growth rate should be aware that there are legal limitations on their ability to do so. State and federal constitutions require that regulations be a reasonable and nondiscriminatory exercise of the police power. They may not infringe on any basic constitutionally guaranteed rights.

Perhaps the greatest regal restraint, however, lies in the land-use planning and housing goals of the statewide planning goals and guidelines. These goals, designed to protect the rights of potential as well as current community residents, require that communities take positive action to encourage the availability of adequate housing within price ranges to meet needs consistent with the community's fair share of regional growth.

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5. Seymour I. Schwartz et al., *The Effect of Growth Management on New Housing Prices: Petaluma, California*. Environmental Quality Series No. 32, Institute of Governmental Affairs (University of California, Davis, July 1979).
6. *Seaman et al. v. City of Durham*, Oregon Land Conservation and Development Commission Case Number 77-025, Opinion and Final Order, April 18, 1978.
7. Shepard C. Buchanan, "The Relationship Between Population and Residential Property Taxes in Oregon," unpublished Master's Thesis, Department of Agricultural and Resource Economics, Oregon State University, 1979.
8. Stephen R. Seidel, *Housing Costs and Government Regulations: Confronting the Regulatory Maze* (New Brunswick, New Jersey: Center for Urban Policy Research, 1978), p. 220.
9. City of Petaluma Building Department.
10. Seidel, *Housing Costs and Government Regulations*, p. 226.
11. *Golden v. Planning Board of Ramapo*, 285 NE 2nd 291 (1972) and *Construction Industry Association of Sonoma County v. City of Petaluma* 552 F 2nd 897 (1975).
12. For example, see *Appeal of Kit-Mar Builders* 439 Pa 446, 268 A. 2d 765 (1970); *National Land and Investment Company v. Kohn* 419 Pa. 504, 215 A. 2d 597 (1965); *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel* 67 N.J. 151, 336 A. 2d 713 (1975); *Oakwood at Madison, Inc. v. Township of Madison* 72 N.J. 481, 271 A. 2d 1192 (1977).
13. *Associated Home Builders v. City of Livermore*, 137 Cal. Repr. 41, 557 P. 2d 473 (1976).
14. The zoning ordinance analysis must include: (1) a forecast of the possible effect and duration of the restriction; (2) identification of the competing interests affected by the restrictions; and (3) after weighing the competing interests, a determination of whether the ordinance, in light of the probable impact, represents a reasonable accommodation of the competing interests. *Id* 135 Cal. Repr., at 56. Additionally, the extent and bounds of the region itself requires a trial on the fact to define it.
15. *Shapiro v. Thompson* 394 U.S. 618 (1968).
16. *Construction Industry Association of Sonoma County v. City of Petaluma* 375 F. Supp 574 (1974).
17. *Construction Industry Association of Sonoma County v. City of Petaluma* 522 F. 2d 897 (1975).
18. *Village of Belle Terre v. Boraas* 416 U.S. 1 (1974).
19. ORS 197.175, and *Peterson v. Klamath Falls*, 270 OR 249, 566 P. 2d. 1193 (1977).
20. *Seaman et al. v. City of Durham*, Oregon Land Conservation and Development Commission Case Number 77-025, Opinion and Final Order, April 18, 1978.

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