



1974

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Recommended Citation

R. M. Smith, *Does Petaluma Lie at the End of the Road From Ramapo*, 19 Vill. L. Rev. 739 (1974).

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DOES *PETALUMA* LIE AT THE END OF THE
ROAD FROM *RAMAPO*?

R. MARLIN SMITH†

THERE is no neat, simple answer to the question as to whether environmental controls serve to guide or block land development. They can do either. If our only concern were to be alert for unworthy, exclusionary land use practices disguised as environmental concerns, the problem would not be nearly so difficult. But, increasingly, we must expect that, where environmental issues are concerned, competing public interests will tug us in different directions.

At the outset, the issues seemed so simple because everyone was in favor of clean air and pure water. It was only as actual cases developed that the conflicting bundle of policy considerations which underlay environmental objectives was exposed. A specific example will illustrate the problem: There would be general agreement that the protection of valuable natural resources such as coastal wetlands and the fish and wildlife that inhabit those areas is rightfully an important objective of environmental policy. However, the creation of thousands of new jobs for the unemployed and underemployed, especially when many of those jobs will be filled by members of a community suffering from chronic unemployment, is an equally important public policy objective. One would suppose that these two objectives could never collide. Yet they did, and the conflict produced strange antagonists: the Florida Audubon Society on one side against the Urban League and the NAACP on the other.

At issue in *Florida Audubon Society v. Callaway*,¹ recently decided by a federal district court in Florida, was the fate of Blount Island, a small man-made island in the St. John's River near Jacksonville, 10 miles from the Atlantic Ocean. More specifically, the issue was whether the defendant, Secretary of the Army Callaway, should issue a permit allowing the Jacksonville Port Authority to dredge and fill certain areas around and on Blount Island, thus making it feasible for Offshore Power Systems, Inc. to develop the island as a site for the manufacture of floating nuclear power plants. The Audubon Society, concerned with protecting the natural environment of Blount Island, sought to enjoin Secretary Callaway from issuing the permit because of alleged deficiencies in the environmental impact

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statement filed by the Corps of Engineers. On the opposing side as intervenors were the Jacksonville Urban League and the NAACP, among others, who wanted Offshore Power Systems to build its plant because it would employ 10,000 to 12,000 people, 90 per cent of whom would be from the Jacksonville area and at least 23 per cent of whom would be drawn from minority groups. The case raised technical objections to the environmental impact statement, all of which the court rejected. Although it was not necessary for the court to weigh the merits of protecting fish, birds, and small mammals against the desirability of providing jobs for unemployed or underemployed persons, this unstated issue still pervaded the case. Which is more important: scarce species of wildlife or the dignity of decent, full-time employment for the jobless? Fortunately, in *Florida Audubon Society* these objectives were not mutually exclusive — there was ample marsh and wetland left in the St. John's Estuary for the finned, feathered, and furred creatures. However, had this not been the case, then a conscious choice would have been necessary.

Another case which involved competing values was *In re Spring Valley Development*,² which upheld the Maine Site Location of Development Law.³ The statute applied to certain types of commercial or industrial development, and the court held that this included all residential developments over 20 acres.⁴ The Maine legislature had wanted to ensure that the types of development specified in the statute would be "located in a manner [having] a minimal adverse impact on the natural environment of their surroundings."⁵ The Supreme Judicial Court of Maine interpreted the statute and concluded that

[t]he language of the Act and its clear underlying purpose reflect the Legislature's intention that a development with a particular propensity to damage the environment should not be located in areas where the environment is particularly incapable of sustaining the impact without public injury.⁶

The "minimal impact" standard seems to be an absolute one. It leaves no room for a comparison of the benefits to be gained from competing public needs and objectives. If there is more than a "minimal impact" on the environment, development may not take place. The Maine Site Location of Development Law was passed, in part, in apprehension of the pollution of the Maine coastline that might occur if its harbors

2. 300 A.2d 736 (Me. 1973).

3. ME. REV. STAT. ANN. tit. 38, §§ 481-88 (Supp. 1973).

4. 300 A.2d at 746.

5. *Id.* at 745, quoting ME. REV. STAT. ANN. tit. 38, § 481 (Supp. 1973) (emphasis

6. *Id.*

were used as deepwater ports for oil tankers and the inevitable, attendant storage tanks were built on shore. In the light of the current national petroleum shortage, the policy conflict becomes acute. Must the motor fuel needs of the thousands of persons dependent upon petroleum products for transportation be secured at the cost of an extensive adverse environmental impact upon valuable natural assets?

While the conflicting policies may not always be as dramatic or obvious, there are equally clear conflicts between the public objectives created by environmental concerns and the national need to provide new housing for both the expanding population and the large percentage of our population that is still ill-housed. Parochial ordinances dictated by the inhabitants of exclusive suburban fiefdoms too frequently prevent the construction of new housing in the metropolitan suburbs.

It has been little more than 10 years since persons concerned with providing an ample supply of decent housing for those of low or modest incomes discovered that zoning laws and subdivision and building codes were being utilized to prevent the construction of multiple-family housing in the suburban ring.⁷ However, exclusionary land use devices have been yielding rapidly to attacks both in the federal courts, where they have been deemed racially discriminatory,⁸ and in the state courts, where they have been found to be economically discriminatory in restricting access to the suburbs to the affluent by increasing housing costs or by preventing the construction of less expensive forms of housing such as apartments.⁹ In Pennsylvania, *National Land and Investment Co. v. Kohn*¹⁰ held that municipalities could not use the cost of new public services as a justification for excluding new housing. In *Appeal of Girsh*¹¹ and *Appeal of Kit-Mar Builders, Inc.*,¹² this concept was broadened to impose a public responsibility upon suburban communities to accept their share of the burden of providing new housing.

Just when the defenders of exclusion seemed to have been routed, a new weapon was found: they began to denounce urban sprawl as destroying the quality of the environment. All of the arguments for clean air, pure water, and protection of countryside amenities were

7. See, e.g., Babcock & Bosselman, *Suburban Zoning and the Apartment Boom*, 111 U. PA. L. REV. 1040 (1963).

8. See, e.g., Dailey v. City of Lawton, 425 F.2d 1037 (10th Cir. 1970); Sisters of Providence v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971); Kennedy Park Homes Ass'n v. City of Lackawanna, 318 F. Supp. 669 (W.D.N.Y.), *aff'd*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971).

9. See, e.g., Bristow v. City of Woodhaven, 35 Mich. App. 205, 192 N.W.2d 322 (1971); Southern Burlington County NAACP v. Township of Mount Laurel, 119 N.J. Super. 164, 290 A.2d 465, *certification granted*, 62 N.J. 190, 299 A.2d 724 (1972).

10. 419 Pa. 504, 215 A.2d 597 (1965).

11. 437 Pa. 237, 263 A.2d 395 (1970).

12. 439 Pa. 466, 268 A.2d 765 (1970).

quickly transformed into arguments for limiting or prohibiting the construction of new housing.

The most sophisticated approach was the ordinance adopted in Ramapo, New York. It should be noted in fairness to its authors that they insist their scheme was not intended to be exclusionary. The Ramapo growth control ordinance was preceded by four volumes of comprehensive planning studies which were implemented by a master plan and a comprehensive zoning ordinance. Additional drainage and sewage studies were followed by a capital budget providing for the 6-year development of the improvements specified in the master plan. A capital program provided for the location and sequence of additional capital improvements in the 12 years following the period covered by the capital budget. No permit for residential development would be issued unless the proposed development accumulated 15 points on a sliding scale of values assigned to each of five essential facilities or services: (1) public sanitary sewers or approved substitutes; (2) drainage facilities; (3) public parks or other recreational facilities, including public schools; (4) roads and highways; and (5) firehouses.¹³

The New York Court of Appeals upheld the Ramapo ordinance, but not without expressing distinct uneasiness.

There is, then, something inherently suspect in a scheme which, apart from its professed purposes, effects a restriction upon the free mobility of a people until sometime in the future when projected facilities are available to meet increased demands. Although zoning must include schemes designed to allow municipalities to more effectively contend with the increased demands of evolving and growing communities, under its guise, townships have been wont to try their hand at an array of exclusionary devices in the hope of avoiding the very burden which growth must inevitably bring.¹⁴

The uneasiness over the obvious opportunities for abuse in the Ramapo plan led the court to issue a warning:

What we will not countenance, then, under any guise, is community efforts at immunization or exclusion. . . .

. . . .

. . . While even the best of plans may not always be realized, in the absence of proof to the contrary, we must assume the Town will put its best effort forward in implementing the physical and fiscal timetable outlined under the plan. Should subsequent events

13. *Golden v. Planning Board of Town of Ramapo*, 30 N.Y.2d 359, 366-68, 285 N.E.2d 291, 294-95 (1972).

14. *Id.* at 375, 285 N.E.2d at 300 (citations omitted).

prove this assumption unwarranted, or should the Town because of some unforeseen event fail in its primary obligation to these landowners, there will be ample opportunity to undo the restrictions upon default. For the present, at least, we are constrained to proceed upon the assumption that the program will be fully and timely implemented.¹⁵

Suddenly, "phased growth," "sequential development timing," and "growth control" entered the environmental lexicon, and communities all over the land hastened to emulate the Ramapo example. However benign the intentions of the prophets of phased growth might have been, their disciples quickly got out of hand. It immediately became obvious that, in addition to controlling and phasing growth, such techniques could be used to retard or stop growth altogether, despite *National Land* and the warnings in *Ramapo*.¹⁶

Deferring for a moment a discussion of the more fundamental problems raised by Ramapo-type ordinances, a special problem has arisen because many of the communities that have attempted to place limits on growth failed to lay their planning groundwork carefully. There have been many hastily enacted ordinances that litigation has shown to be supported by little or no knowledge about the ability of the community to support growth.

In Palm Beach, Florida, a comprehensive plan's restrictive downzoning of the only portion of the community with substantial developable land was based on population projections that a trial court described as at least 100 percent incorrect.¹⁷ In Largo, Florida, after years of scrambling for annexations and pursuing growth as "progress," the town council, in response to public clamor, downzoned the one large tract available for multiple-family development only 3½ years after approving a high-rise development for the same site.^{17a} The trial judge observed:

The record makes it clear as spring water that the zoning classification adopted at the May 3, 1972, meeting was not based upon factual consideration, but, to the contrary, was taken over the recommendation of the town's own planning consultant. Patently, the Town Commission was not relying upon what was best

15. *Id.* at 378, 382, 285 N.E.2d at 302, 304 (citations omitted).

16. See Bosselman, *Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?*, 1 FLA. ST. U.L. REV. 234 (1973).

17. *First Bank of Boca Raton v. Town of Palm Beach*, No. 70 C 3415 (Cir. Ct., Palm Beach County, Fla., Apr. 27, 1972), *rev'd for mootness*, 298 So. 2d 443 (Fla. Dist. Ct. App. 1974) (copy on file at the *Villanova Law Review*). For a companion case, see *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

17a. *Imperial Homes v. Town of Largo*, Civil No. 37160 (Cir. Ct., Pinellas County, Fla., Aug. 1, 1973) (copy on file at the *Villanova Law Review*).

for zoning, but was simply reacting to the pressure from disgruntled property owners.¹⁸

In Boca Raton, Florida, voters approved a referendum setting a housing limit of 40,000 dwelling units, thus placing a ceiling of about 100,000 on the town population. No planning preceded this "density cap"; it was placed on the ballot by a citizens' petition. Fourteen months after the ceiling went into effect, and despite a moratorium on the construction of multiple-family dwellings, there had been a 40 percent increase in population.¹⁹ Camarillo, California, approved a master plan for 1150 acres, and then, 3 years later, after the developer had over \$15 million invested in the project, the city imposed a moratorium in order to study whether the over-all density should be reduced from five dwelling units per acre to one dwelling unit on each 5 acres.²⁰ In Boulder, Colorado, an effort was made to use municipal control over the extension of water service into unincorporated areas of the county to determine the pace and timing of growth. A Colorado court has now held that although the Boulder interim growth policy is constitutional and does not offend a federally protected right to travel, its growth control policies may not be used to select which developments the city will serve with water and which it will not.²¹

The ultimate absurdity came in *Nucleus of Chicago Homeowners Association v. Lynn*²² in which plaintiffs, in an attempt to prevent acquisition of sites for court-ordered housing, alleged that poor people and their housing were pollutants that would adversely affect the environment. Plaintiffs claimed the National Environment Policy Act of 1969 required an environmental impact statement on public housing.

In support of this position, the plaintiffs allege that they are members of the "middle class and/or working class" which emphasizes obedience and respect for lawful authority, has a much lower propensity toward criminal behavior and acts of physical violence, and possesses a high regard for the physical and aesthetic improvement of real and personal property. The plaintiffs further allege that, as a "statistical whole" tenants of public housing possess a higher propensity toward criminal behavior and acts of physical violence, a disregard for the physical and aesthetic maintenance of real and personal property, and a lower

18. *Id.* at 7.

19. 2 LAND USE PLAN. REP., No. 1 (Jan. 14, 1974), at 10.

20. See Complaint at 11-15, *Pardee Constr. Co. v. City of Camarillo*, No. 56637 (Super. Ct. of Cal., County of Ventura, filed Feb. 19, 1974) (copy on file at the Villanova Law Review).

21. *Robinson v. City of Boulder*, Civil No. 72-2033-1 (Dist. Ct., County of Boulder, Colo., May 20, 1974) (copy on file at the Villanova Law Review).

22. 372 F. Supp. 147 (N.D. Ill. 1973).

commitment to hard work. Therefore, so the plaintiffs insist, the construction of public housing will increase the hazards of criminal acts, physical violence, and aesthetic and economic decline in the immediate vicinity of the sites. The plaintiffs maintain that these factors will have a direct adverse impact upon the physical safety of the plaintiffs residing in close proximity to the sites, together with a direct adverse impact upon the aesthetic and economic quality of their lives.²³

One of the most controversial of the new growth control ordinances was adopted by Petaluma, California. After experiencing increasingly rapid growth in the 1960's, Petaluma imposed a temporary building moratorium in 1971. In August, 1972, Petaluma unveiled its new Residential Development Control System. The new ordinance limited to 500 the number of dwelling units that could be built in any 1 year between 1972 and 1977. Half of the 500 units had to be single-family dwellings, half multiple-family dwellings. In addition, 300 of the units had to be built in the western, or older, portion of Petaluma, leaving only 200 that could be built in the eastern portion of town where most of the recent construction had taken place. Having established its quota system, Petaluma did not leave the question of which dwellings would be built first to the vagaries of "first come, first served." Instead, it provided for an annual competition among all builders who hoped to build in Petaluma during the coming year. A partisan of this bizarre quota system described the procedure:

The competition takes place once a year. By September of last year, anyone who hoped to build more than four units in the coming building season had to file plans with a special "residential development evaluation board" (made up of elected officials, appointed officials of the city and four school districts, and citizens). With the plans before it, the board first rejected any proposal which did not fit the city's general plan and its environmental design plan. (A developer can ask the city council to amend these basic documents beforehand.) The remaining proposals were rated by an elaborate two-part point system. A plan could be assigned up to 30 points for access to existing and adequate services: sewer mains, drainage channels, fire protection, streets and schools. Another 80 points could be awarded for excellence of design, for the provision of open space and trail links, and for the inclusion of lowcost housing and needed public facilities. Any development failing to get a minimum number of points (25 out of 30 in the first group, 50 out of 80 in the second) was dropped.²⁴

23. *Id.* at 148-49.

24. *Hart, The Petaluma Case, 9 CALIF. ENVIRONMENTAL QUALITY CONTROL JOURNAL 2* (Spring 1974), at 6-9.

After a public hearing, the review board's recommendations would be passed to the city council which would make the final decision as to which 500 dwelling units would be built.

It is not altogether clear that concern over growth was the sole wellspring of the Petaluma plan. There was a distinct measure of concern for the visual aesthetics of new construction underlying the Petaluma regulations:

The "new" Petaluma, seen from the freeway, from the fields which remain outside or from its own streets, is depressing, even appalling. Its houses, perhaps not quite uniform, yet implacably alike, are set back a standard distance in small lots along enormous asphalt boulevards incongruously called "lanes." In its flatness and sameness, the area seems larger than it really is: a whole horizon of low brown roofs. It is to the landscape of the city what a clearcut is to the forest.²⁵

In *Construction Industry Association v. City of Petaluma*,²⁶ the United States District Court for the Northern District of California held that Petaluma's growth control ordinance violated the federal constitutional right of persons to travel and settle freely. At the time of his decision, Judge Burke stated:

[F]or the purpose of this case, at this stage I must find that the basic constitutional rule is that no city can regulate its population growth numerically so as to preclude residents of any other area from traveling into the region and establishing residence therein.

By its announced policy in the application of that policy the City of Petaluma violates the constitutional right to travel as indicated. I use the word "travel" in general fashion to include travel for the purpose of residence either temporarily or on a permanent basis.

The relief which the plaintiffs are entitled to will consist of an order that the City through its responsible officers must evaluate all future building applications without regard to any policy intended to regulate population growth numerically. Quite obviously this is not designed to preclude the application of other considerations in these matters.

The ruling is not intended to mean that Petaluma may not evaluate building applications based upon traditional zoning and community planning considerations. This, of course, does not include a consideration of numerical growth.²⁷

25. *Id.* at 8.

26. 375 F. Supp. 574 (N.D. Cal. 1974).

27. Reporter's Partial Transcript at 4, *Construction Indus. Ass'n v. City of Petaluma*, 375 F. Supp. 574 (N.D. Cal. 1974) (copy on file at the *Villanova Law Review*).

In reaching its conclusion, the court relied in part on *Edwards v. California*²⁸ and *Shapiro v. Thompson*.²⁹ The city had attempted to defend its exclusionary measures on the ground that they were justified by "compelling state interests" because (1) existing sewage facilities were inadequate; (2) the existing water supply was insufficient; and (3) the zoning power gave Petaluma "an inherent right to 'control its own rate of growth.'"³⁰

The court rejected all of the city's defenses. It dealt with the claim of inadequate sewage treatment facilities by stating:

The sole issue in this case is whether or not people currently excluded from Petaluma have the right to immigrate into the area. If so, relief will be granted and their rights will be enforced; after which the matter of dealing with the natural burdens that the exercise of those rights places upon the municipality falls entirely within the discretion of city officials, or the city electorate. Neither Petaluma city officials, nor the local electorate may use their power to disapprove bonds at the polls as a weapon to define or destroy fundamental constitutional rights.³¹

The city's claim that its water supply was insufficient received short shrift:

Where a municipality purposefully limits the quantity of any particular commodity available, then seeks to justify a population limitation based upon an alleged inadequacy of that commodity, it has not stated a compelling interest which supports the limitation. Petaluma has so proceeded in the present case, and accordingly, it has failed to offer a compelling state interest in this regard.³²

Petaluma's last line of defense, the sanctity of the zoning power, was also rejected:

Defendants point out that virtually all zoning schemes limit the manner in which people move about in one way or another. In doing so, they contend, finally, and most frankly, that, by virtue of its zoning power, the city has an inherent right to "control its own rate of growth" and that its citizens' desires to protect its "small town character" are sufficiently compelling reasons to justify the exclusionary ordinances. This last defense assertion states the essence of the matter and aptly defines the issue: may

28. 314 U.S. 160 (1941). In *Edwards*, a state statute prohibiting the transportation of indigent persons into the state was held unconstitutional as a barrier to interstate commerce. *Id.*

29. 394 U.S. 618 (1969). In this case, a state statute denying welfare assistance to residents of less than one year was held unconstitutional as a denial of equal protection. *Id.* The Court found that the statute inhibited the migration of indigents and that it violated the constitutionally guaranteed right to interstate movement. *Id.* at 629-31.

30. 375 F. Supp. at 581-83.

31. *Id.* at 583.

32. *Id.*

a municipality capable of supporting a natural population expansion limit growth simply because it does not prefer to grow at the rate which would be directed by prevailing market demand. It is our opinion that it may not.³³

In disposing of the zoning power argument, the court was careful to narrow the issue. It was no more than "whether or not a municipality may claim the specific rights to keep others away."³⁴ In concluding that no municipality may restrict or bar the entry of new residents, the court quoted with approval an especially persuasive passage from the plaintiffs' brief:

This case is a study in anti-planning, the refusal of a city to come to grips with the fact that it has joined a metropolitan complex and is no longer the sleepy small town that it once was. In a world in which nothing is as unchanging as change, Petaluma wants to stay the same. The means to that end is to draw up the bridge over the moat and turn people away. This is not the use of police power, but the abdication of that power

In a large sense this case sets up the constitutional protections against a single small city's passing laws to keep people away, to maintain "small town character" at the expense of depriving people of mobility, their right to travel, and of decent housing or perhaps any housing at all

In a narrower sense, this case [holds] . . . that local police power may [not] be used to shift the burden of providing housing to other cities in a metropolitan region which have their own police power and their own problems. This issue . . . [questions] the jurisdiction of one town to visit its problems on another.

The prospective resident turned away at Petaluma does not disappear into the hinterland, but presents himself in some other suburb of the same metropolplex, perhaps in some town with as many problems or more than Petaluma By this means, Petaluma legislates its problems into problems for Napa, Vallejo or Walnut Creek.³⁵

Thus, *Petaluma* drew clear lines between competing interests. For those already residing in Petaluma, the need to limit growth in order to control the rate at which the community changed must have seemed to be sufficient justification for the exclusionary effect of the Petaluma plan. To them the issue was whether the municipality would control its own future. Set against these considerations was the continuous market demand for new housing which had to be satisfied somehow, somewhere. Viewed from this perspective, the question

became whether home buyers could be prevented from traveling to and settling in Petaluma just because it had decided that it had had enough housing construction for one year. If mobility is a fundamental attribute of American citizenship, then there is no room for the use of local police powers as a combination wall, moat, and drawbridge.

Petaluma purported to have acted in the general welfare, but its concept of the general welfare was a narrowly circumscribed one that only extended to the geographic boundaries of the town. The demographic demand for housing will not go away just because one community, or many, attempt to fence out new residents entirely or to restrict their numbers by use of quotas. This effort only shifts the burden elsewhere, and once the burden is shifted, other communities will feel compelled to adopt their own exclusionary laws. Thus, one exclusionary growth limitation will inevitably spawn similar restrictions in other communities as they scramble to shift the burden of providing new housing for a mobile population to the last community to act. In the end, the exclusionary impact of one municipality's limitations will be multiplied exponentially.

*Florida Audubon Society*³⁶ underscores the great respect accorded by the courts to what are essentially administrative decisions. Local government has asked for, and quite commonly received, similar respect for its particularized land use decisions in the form of the traditional presumptions of validity and reasonableness. But as the environmental considerations that affect land use decisions become more complex and depend more upon the evaluation of the work of experts, these presumptions become anachronistic. We are fast approaching the time when we will no longer be able to pretend that there is no need to provide a method for reviewing, at some broader governmental level, the wisdom of local land use decisions.

Growth control devices like the Ramapo and Petaluma plans demonstrate that some land use decisions must be made for and by governmental entities broader than those interested only in problems occurring within the narrow confines of a single municipality. For example, it is probably not meaningful to attempt to control growth unless the demographic demand for housing is allocated throughout the metropolitan region generating the demand. However, regional approaches to land use controls require that the idea of the sanctity of unfettered local authority over land use decisions be discarded. There are no guarantees of environmental protection inherent in any

36. *Florida Audubon Soc'y v. Callaway*, Civil No. 73-824 (M.D. Fla., Jan. 29, 1974) (copy on file at the Children and Law Center, San Diego, accompanying note 1 *supra*).

local allocation of authority. One municipality's decision to protect its environment by forbidding development may only ensure a cumulatively greater environmental impact elsewhere.

Only new approaches to land use legislation which mandate increasing involvement by state or regional land use agencies in major planning decisions can assure that exclusionary land use controls will not be able to masquerade as environmental concerns. One new approach would be the type of federal financial assistance to state land use planning that was envisaged by the proposed Land Use Policy and Planning Assistance Act of 1973.³⁷ The Act would have provided financial assistance for a state's land use planning process that would have encompassed inventories of land and natural resources, and data on population, economic and environmental conditions, and growth trends, including projections of land needed and suitable for various types of development. Within 5 years, participating states would have been obliged to develop land use programs which, among other things, would have had to provide methods for controlling large-scale development as well as assuring that local regulations did not effect the arbitrary exclusion of public facilities, utilities, or housing with regional benefit.

The proposed Model Land Development Code³⁸ of the American Law Institute provides a similar approach. It would confer on the state planning agency the authority to designate areas of "critical state concern" and to supersede or supplement local land use regulations for these areas if such regulations did not meet state standards. In the absence of local regulations, the regulatory power for areas of critical state concern would rest with the state agency.³⁹ Areas of "critical state concern" would include "area[s] containing or having a significant impact upon historical, natural or environmental resources of regional or statewide importance . . ." ⁴⁰ These areas may include, as the Reporters note, those which have a state or regional impact because of the nature of a proposed development.⁴¹ It is only a short step from such concepts to a determination that a refusal to permit development also has a regional impact.

The New York Court of Appeals was willing to credit the good faith of Ramapo and indulge the presumption that the community would accept its share of the market demand for housing at a pace it

37. S. 268, 93d Cong., 1st Sess. (1973). The House version is entitled Land Use Planning Act of 1973, H.R. 10294, 93d Cong., 1st Sess. (1973).

38. ALI MODEL LAND DEVELOPMENT CODE (Tent. Draft No. 3, 1971).

39. *Id.* at §§ 7-201 to -208.

40. *Id.* at § 7-201(a)(3)(b).

41. *Id.*, Note at 11.

could absorb, and the reasonableness of Ramapo's capital improvement schedule was apparently not questioned. The Ramapo ordinance may operate as a numerical limit no less than the Petaluma plan, but the ordinance was neither so obvious nor so blatant. Moreover, the concerns that moved the *Petaluma* court do not appear to have been raised in *Ramapo*. It is too early to know whether the *Petaluma* decision will be upheld, but for the moment the real roadblock appears to be the constitutional barriers to exclusionary growth control ordinances raised by that decision. If *Petaluma* is upheld, it will serve as a powerful incentive for more rational methods of making major land use decisions.