The new regulation comes to suburbia

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The spread of a new kind of government regulation through the country’s economic life has provoked growing doubts about the goals of regulation and its cost to society. Past research is not very helpful in resolving these doubts. As Paul Weaver pointed out in the Winter 1978 issue of The Public Interest, the traditional description of regulation no longer fits the realities. Most of the new regulatory agencies enjoy considerably more authority than their predecessors in an adversary setting that discourages anything like the old compromises. It remains a question, however, whether more power for the regulators produces more benefits for the public. One way to find out the answer is to take a close look at how a new-style regulatory system works in one field—who uses it, for what purposes, and with what results.

Homebuilding is a closely regulated industry, but it has not attracted much attention in the current debate because the regulators are state and local agencies operating outside the spotlight of the national media. State and local governments across the country have joined the trend toward tighter regulation by putting into place a

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variety of new laws, permit requirements, and review procedures for land development and housing construction. The driving force behind much of this was the sense of environmental crisis that emerged in the late 1960's and the commitment that it fostered to protect the natural environment against unrestrained suburban growth. By 1975 half the states had begun to require environmental-impact reviews for at least some private housing developments, while suburbs by the hundreds rushed to apply new growth-management techniques. The resulting "permit explosion" came at a time when the gigantic postwar generation was just reaching the home-buying stage of family life. Millions of young families therefore had an important stake in whatever effects the new environmental and growth controls were going to have on homebuilding.

The growth-control movement is a national trend, but its power is especially evident in areas where many local governments have become involved. The practical implications of the movement's ideology can be seen most clearly in these areas, of which northern California is the outstanding example. A look at the way growth controls are working there turns up disturbing evidence that confirms the suspicions of critics of the new regulation.

Environmental and growth controls have laid heavy cost burdens on California homebuyers. They have been contributors to the exceptional inflation of house prices there; yet they have produced few corresponding environmental benefits for the public at large. The benefits have gone mainly to established suburbanites in the tightly regulated communities that have protected themselves against the inconvenience of growth. But the growth has gone elsewhere in the region, usually to places where the environmental costs are higher. Contrary to widespread belief, environmental regulation of homebuilding is not simply a minor cost of doing business; it is a way of blocking developments and disrupting housing markets. California's experience amounts to a demonstration of how the new regulation can be turned against the average family.

A familiar critique

What are the environmental goals that justify the new growth-management controls? The leading environmentalist analyses of urban growth problems, such as the Rockefeller Brothers Fund's *The Use of Land*, start with a critique of suburbia that dates back to the 1940's and 1950's. They characterize suburbia as inefficient, monotonous, and ugly. What makes it that way, in their view, is the
scatter of small subdivisions through the open countryside as well as the unimaginative designs of individual developments. Conventional suburban tracts offer nothing more than single-family houses standing on individual lots, with no mixture of other housing types, no common open space, and no facilities that would encourage community activities.

Social-science research (such as Herbert Gans's *The Levittowners*), as well as the evidence of the marketplace, suggests that most Americans find this same suburbia highly desirable and satisfying despite its faults, but in an age conscious of resource and budget limits, energy conservation, and air quality, the 20-year-old critique has come to life again. The problems emphasized today are that sprawling developments add unnecessarily to the cost of building roads and utility lines to reach them, while the spread of new homes across open territory adds extra miles to commuting trips and therefore increases gas consumption as well as air pollution. So there are some plausible environmental arguments in favor of managing suburban growth differently. To cope with the problems of suburban sprawl, environmental analysts consistently favor locating new housing on left-over parcels of open land near already built-up areas. As an alternative to small tracts of single-family homes, they support large "planned-unit developments" of several hundred homes, offering a variety of housing types, built-in community services and facilities, and unified site designs that cluster the houses around common open space. Part of this program for more compact use of land is to channel the planned developments into places where they will not damage outstanding features of the natural landscape.

If new community-growth management produced these results, we could count it a success in environmental terms and then go on to investigate how much it costs and who is paying the bill. But the record of development controversies in northern California shows that neither environmentalists nor most others who use the new regulatory systems actually support proposals for compact, planned-unit developments on left-over sites. Of five major developments that I studied in the San Francisco area, four were of this kind; yet environmental groups opposed them all. They based their opposition on a general ideological commitment to stop the development of open land, without giving any sign of a real commitment to guide the growth of the San Francisco area according to environmental principles.

The stands environmental activists take in development controversies tell more about their purposes than the doctrines of environ-
mental literature. In the San Francisco area, the Sierra Club opposed some suburban housing on the grounds that it would generate unnecessary long-distance commuting—a position consistent with environmental-management principles. But when other housing was proposed close to a suburban industrial belt, they opposed that too, on the grounds that new housing should instead be located close to the central cities. When another large development was proposed just outside San Francisco, the Club once again came out in opposition because it would, they said, use up scarce open space close to the urban population. Another environmental group, People for Open Space, objected to housing in the valleys near San Francisco because the soil was better suited to farming, but they also objected to housing on the hillsides, on the grounds that hill developments would increase the chances of landslides, floods, and fires. The main principle underlying all these positions seems to be hostility to growth of any kind.

The fact that growth regulation is in the hands of local suburban governments makes it especially inviting to growth opponents, and encourages others to join environmentalists in exploiting the system to stop new housing. Local officials who preside over the process and make the final decisions have no incentive to strike a fair balance between the need for new housing and the protection of the environment. The voters who elect them have no interest in supporting new housing, since most of them are already comfortably established in their own suburban homes, and are in fact more likely to worry about the threats new developments may pose to their own social, fiscal, and environmental advantages. Aside from the inconveniences of having construction work nearby, there is always the possibility that new neighbors may lower the social tone, demand costly public services, congest the local roads, and crowd the schools—all this while spoiling open vistas with their new homes. As a result, the long list of speakers who come to the drawn-out public hearings on growth regulation are almost uniformly opposed to new housing. The only person with a commitment to build is the developer himself, but he is usually an outsider regarded with the deepest suspicion. Participants in the public hearings tend to speak of him as if he were a snake-oil salesman rather than a legitimate businessman providing a useful product. Occasionally building-trade unionists with a stake in construction jobs will come to his support, but opponents from areas near the site and anti-growth environmentalists almost always dominate the proceedings.

The localism of this regulatory system shuts out the people who
have the greatest stake in its outcome: families who want to buy homes. Most of them live outside the community, and until they turn up to look at model homes there is no way of even knowing who they are. They are unorganized, and probably unorganizable. Nobody in the proceedings represents their views except, by default, the builder, and he is a very poor representative. His own position is very weak, there are conflicts of interest between him and his clients, and he is prepared to make compromises that will be costly to home buyers if that is the only way to get his permit.

The purpose of new environmental and growth-control systems, then, is above all to protect the existing community against unwanted change. Homebuilders confront a powerful alliance of fearful residents, the local officials responsive to them, and environmentalists with ideological commitments to preserve as much open space as possible. None of the usual participants sees much value in building homes, while almost all of them consider the protection of the existing environment an unqualified good thing.

Managing the growth freeze

The establishment of new growth controls, in an atmosphere of widespread concern about environmental protection, has spread the belief that each community alone has the right to decide how much homebuilding it wants to accept. Local officials acting on this principle have shown rare ingenuity in inventing techniques for stopping growth while staying within their legal authority. Some communities have taken traditional land-use controls, such as large-lot zoning, and made them tougher. Suburbs in much of the country discovered long ago that they could discourage the building of homes for a middle-income market by requiring excessive lot sizes, such as two or three acres per house. They rarely thought of going beyond five acres per house, since they believed the courts were likely to find such requirements unreasonable. But counties around San Francisco have already gone to minimum requirements of 20, 40, and even 60 acres per home in agricultural areas. Many suburbs have also taken advantage of recent state legislation to establish large agricultural or open-space preserves, where property owners agree to withhold their land from development in exchange for reduced tax assessments, with the state compensating participating counties for some of the tax losses.

Local governments also freeze land from development by drawing up boundaries beyond which they will not extend utility lines. Many
in California and elsewhere have imposed moratoria on new utility connections even where water and sewer lines are already in place. The formal justification for a moratorium is usually some temporary shortage of water supply or waste-disposal-treatment capacity, but many places are in no rush to solve the problems and some even purposely create them. Marin County’s water shortage made national news when the county put a strict rationing scheme into effect in 1976 and 1977. Although the press attributed this situation to abnormally low rainfall, Marin’s drought was mostly man-made. Several years earlier conservationists on the water board had decided that a good way to block possible population growth was to avoid tapping any new sources of supply. The lack of water reserves then justified the moratorium on new water connections that began in 1973. A few exceptionally dry years beginning in 1975 promptly used up most of what was in the reservoirs, and cut off the water even for people already living in the country.

Other communities discourage homebuilding by putting a direct tax on each new home in the form of special “hook-up” charges for the use of public services. These sometimes add more than $5,000 to the cost of a single-family house. A few places, of which Petaluma is best known, have taken the more direct approach of setting an annual quota for new building permits.

The homebuilder who somehow threads his way through the zoning restrictions, agricultural preserves, and permit moratoria is not yet in the clear. Another consistent feature of the new growth regulation is a long and complicated series of government reviews that eventually leads to a decision on his development plan. Traditional land-use controls set out specific requirements for lot sizes and setbacks, street widths, and utility-pipe capacities. If a plan met the requirements, it was normally approved. The new growth controls depend instead on a series of discretionary reviews in which governmental bodies use far more ambiguous standards to judge the quality of a proposal, the adequacy of its public-service provisions, the impact it will have on its surroundings, and its suitability for the site. Developers bring their plans from one regulatory body to another, and sometimes more than once to the same place. At each stage, county agencies commission time-consuming technical studies and hold drawn-out, usually abrasive, public hearings. In addition to local government requirements, state law in California mandates the preparation of an elaborate environmental-impact report for all important housing developments, with the result that California communities now prepare some 4,000 environmental-impact reports a
year—four times as many as the Federal government. The report then becomes the subject of separate sets of hearings before the particular county's planning commission and its board of supervisors. These deliberations can consume a great deal of time: One big and complicated proposal in San Mateo County went through nine years of reviews and negotiations before the board of supervisors finally killed it. Other big projects usually take three or four years to complete all the reviews; small ones may finish in two years.

Despite the trappings of scientific analysis in the environmental-impact studies, the review process itself is basically political. Its major function in practice is to give local residents plenty of time to organize their opposition and repeated chances to block approval of a project. Nor do the technical studies provide a counterbalance to ideological opposition. Most of them highlight every feature of the proposal that could conceivably create future problems, using worst-case assumptions about how costly it will be to service new residents and often exaggerated assessments of how threatening the development will be to the natural environment. In the San Mateo County nine-year review, for instance, official studies claimed the housing development was a threat to two endangered species. An independent review discovered that one of the species was neither rare nor endangered, and that the presence of the other on the site had never been verified. In reviewing a different housing development, Contra Costa County officials even conjured up claims that it would somehow hurt our national bird, the bald eagle. Although they conceded that bald eagles neither nested nor fed in the area, they argued that the eagles might sometime fly over the site.

If a proposal appears to be making headway through the review process, or if it is actually approved, opponents have still another powerful tactic for stopping it: lawsuits and the threat of lawsuits. Environmental groups and other opponents often go to court to challenge the validity of local decisions or the adequacy of the environmental-impact reports used in reaching them. Litigation is a deliberate tactic used to stop homebuilding, which is employed even when the chances of winning a case are small. A handbook for local environmental activists gives this advice: "Lawsuits have a number of advantages. First of all, there is obviously a chance of winning the suit. However, the mere threat of a suit can also be an impressive political tactic. . . . Suits can be an effective delaying tactic in order to force compromises. . . . Extensive delay may even force the developer to abandon his plans due to financing difficulties." Growth opponents take this advice to heart. Between 1971 and
1975, lawsuits brought on environmental grounds alone challenged development proposals concerning 29,000 housing units in the San Francisco region, an amount of housing equal to two-thirds of a year's normal production.

**Back to the drawing board**

Local environmental and growth regulation is so heavily slanted against development that builders soon learn to make compromises in order to survive. Defenders of the new regulation maintain that environmental reviews are a way of getting developers to correct specific features of their plans that might have detrimental effects—say, to redesign a drainage system or keep the bulldozer away from a particularly scenic hillside. According to this view, the developer keeps most of his plan intact but makes a few beneficial changes at minor cost to himself and to the people who buy his homes.

It doesn't happen that way in northern California. Developers manage to get approval for large projects only by going back to the drawing board to eliminate much of the housing they intended to build, and to redesign what is left for a luxury market. One good example is a development plan proposed for the Oakland foothills in 1971 which contained 2200 houses and apartments with an average price just under $30,000. After a five-year controversy involving the usual reviews and hearings, a citizens-group lawsuit, and the threat of a second lawsuit, the developer came to terms with his opponents by drawing up a totally new plan. He eliminated 90 percent of the housing he had originally proposed and carved up most of his site into 100 large "estate lots" priced to sell from $35,000 to $75,000 for the land alone. What remained of his own homebuilding plans were 175 single-family homes to be priced between $40,000 and $60,000. In Alameda, a more ambitious plan filed in 1972 called for building 9,000 condominium units at prices that were expected to range from $21,000 to $37,000. Here a four-year controversy led to passage of a local referendum prohibiting further apartment construction, repeated compromises on zoning, two major revisions of the plan, the preparation of no fewer than three separate environmental-impact reports, and a half-dozen lawsuits. The outcome was a compromise plan in 1976 that eliminated two-thirds of the housing and tripled the price of the rest.

This is a consistent pattern of compromise. The big developments that survive regulatory reviews and environmental controversies do so by cutting back their plans for homebuilding. This solution satis-
fies environmentalists because it leaves more of the land open and untouched, and it satisfies nearby residents because there will be fewer newcomers to inconvenience them. But it is a solution that inevitably drives prices upward, because the developer has to spread his land and overhead costs among fewer homes. Knowing that the price increases will put his houses out of reach of families with average incomes, he has to redesign both his development and his houses to appeal to people in higher income brackets. So the solution is not a happy one for the average family that wants to buy a home.

Neither does this solution make sense as a way of managing urban growth according to environmental principles. In fact, it leads to the opposite of the efficient use of land that environmentalist critics want to encourage. In places like Oakland and Alameda, it means using scarce open sites close to jobs and transportation at far less than their reasonable capacity. People who could have lived in these places will instead have to go further from the urban centers in order to find new homes they can afford. There they are likely to commute longer distances to work, at higher costs in time, energy consumption, and air pollution.

Housing market disruptions

Although the effects of the new regulation show up most clearly in the inflated prices at individual projects, its indirect effects on the larger housing market are even more important. In four large projects that I studied, regulatory decisions and compromises between 1972 and 1976 eliminated 22,000 housing units—half the normal annual construction volume for the entire San Francisco Bay Area—that developers originally intended to build. Regulatory controversies surrounding other developments at the same time probably affected at least as much new housing as in the cases I studied. The housing that was scrapped would not have become available right away: Much of it was scheduled for later phases of projects that would extend several years into the future. Still, the losses were great enough to make a dent in the supply of new homes becoming available during a time of very strong demand.

When real estate ventures abort, for whatever reason, some other developer will normally find a way to build for the unmet demand. But delays under market conditions of the 1970's raise housing costs abnormally. First, delays mean that potential buyers are putting upward cost pressure on a limited supply. Second, the period has
been one of steady inflation in construction costs. Moderate-cost housing that was feasible in 1973 was no longer feasible for the same price by 1975 or 1976. With construction costs rising faster than consumer incomes, building later meant building much more expensive homes.

The new regulation also reduces competition at the point of sale. One builder told me of his long and trouble-filled experience trying to develop housing in the California coastal zone, where the regulations are especially tough and time-consuming. His problems were so numerous that I asked why he kept on trying to build near the coast. He agreed that the risk of having his proposal rejected was very high, but pointed out that any developer who manages to survive the regulatory reviews will have a virtual monopoly on new housing along the shore and will be able to market his homes at an exceptionally high return. In any local area where the demand is strong and permits are scarce, the terms of competition are changed. Homebuilding has traditionally been a very competitive, small-firm industry, and the competition for the consumer's dollar kept prices down. Now builders compete against each other for permits, and those who can manage to obtain them and build will face very little competition in the marketplace.

Regulatory delays also disrupt markets by preventing homebuilders from responding quickly to changes in demand. Homebuilding is a highly cyclical industry, with wide swings in demand depending on the availability of mortgage money. When California began to recover from the recession and building slump of 1974-75, record inflows of deposits to savings and loan associations made mortgage financing suddenly available on a massive scale, and let loose a flood of eager home buyers. But builders who sensed the quick turnaround in housing demand were unable to build soon enough to meet it. Getting a building permit had become a two-year process for most developers. The collision of sudden demand and slow production resulted in housing shortages, widespread buying on speculation, and tremendous increases in home prices in the major California markets in 1976 and 1977.

After 10 years of inventing and applying new growth controls, San Francisco now has housing prices to match its standing in the environmental movement: first in the country on both counts. Between 1970 and 1977, the average price of new homes almost doubled in metropolitan San Francisco, going from $39,600 to $75,400—the fastest rate of increase and the highest 1977 price level of any large metropolitan area. Its 1977 price level was one and one-half
times the national average, with most of the difference probably resulting from the combined effects of growth restrictions, environmental politics, lawsuits, construction delays, and project revisions. In addition, the high price of new homes generated strong demand for older houses that drove their 1977 average price up to $71,000, which was also one-and-one-half times the national average.

Consumers are paying for the new regulation by getting reduced housing choices as well as high prices. As the counties closest to the center of the region clamped on the tightest growth controls, moderate-cost new homes virtually disappeared from much of the area. Homebuilding for the average family shifted further out. Marin County, lying just north of the city of San Francisco, managed to reduce its share of the region's homebuilding after 1970. Most people who wanted to buy homes in that part of the Bay Area had to look next in Sonoma County, in communities lying 40 or more miles from downtown San Francisco and even further away from most other job centers. During the 1970's, Sonoma County doubled its share of the region's homebuilding.

Further, the controversies that have surrounded almost every large planned-unit development have sent a message to homebuilders: To avoid regulatory trouble, build on the fringe of the region—where there are fewer neighbors to raise objections—and build only a few houses at a time. Small developments do not attract the attention of environmentalists, and very few people bother to bring lawsuits against them. But small conventional developments also cannot offer the community facilities, common open space, and varied housing types that many people value. The new regulation is well on the way to prompting a return to old-style suburban sprawl, with less choice for consumers and more faults to anger the environmental critics.

**Who benefits?**

More power for the regulators has not produced more benefits for the public at large. But it has given some influential groups what they want, particularly established suburbanites who are anxious to protect their turf. Protecting the suburban single-family neighborhood has always been a basic purpose of local land-use controls. In the past, that meant mainly keeping out unwanted neighbors, such as the poor and minority groups. With the new regulation in hand, suburbanites have raised their sights higher to aim at keeping out even the average middle-income family. The current goal is no
longer to exclude people who are different, but to freeze growth for
the sake of preserving scenic resources and the appearance of a
small town. With the new regulation, it is possible to freeze growth
at very low cost, since there is no need for the taxpayers to buy open
land in order to block homebuilding. Besides, the ready availability
of environmental rhetoric gives new respectability to what would
otherwise appear to be narrow self-interest. Suburban-growth oppo-
nents now declare themselves to be guardians of scarce resources
who preserve land for the sake of future generations.

Environmental ideologues also benefit from the new regulation.
They take pride in preserving open space wherever they can, with-
out considering that stopping growth in one location usually means
shifting it somewhere else. And their ideology fits comfortably with
their self-interest. Environmental activists are mostly well-educated,
well-to-do professionals and executives who can afford to live in
tightly regulated suburbs. Their concern is clearly not with impro-
ing the environment for the public at large, but mostly with looking
after their own environment.

Sometimes the new regulation boomerangs against the people who
support it, as in the case of the residents of Marin County whose
water policies not only kept out newcomers but made their own
taps run dry. But there are hardly enough self-correcting features
to suggest that suburbanites will themselves turn against the new
environmental and growth controls. Californians in fact have man-
aged to eliminate one of the few penalties suburbanites did begin
to pay for freezing growth. When highly desirable communities
succeeded in blocking most new homebuilding, people who wanted
to move in began to bid up the price of older houses. California's
efficient tax assessors promptly raised the property valuations, and
local governments enjoyed a property-tax windfall. By early 1976,
Marin County residents were protesting their new assessments. But
the passage of Proposition 13 protected homeowners from tax in-
creases by rolling back assessments to 1975-76 levels and limiting
the tax rate to 1 percent. California's growth controls helped trigger
the events that led up to Proposition 13, but now suburbanites can
safely continue to restrict homebuilding and enjoy the rising value
of their own homes without feeling much pain in their tax bills.

The main victims of new environmental and growth regulations
are young families trying to buy their first home. They are a very
large group, but not as large as the number of homeowners who
have already gained a foothold in suburbia and want to close the
gates behind them. And the young families are not organized in a
way that would allow them to influence suburban policies. They may eventually turn to state government to limit the power of local growth regulators. However, many homebuyers underestimate the cost of local regulation and attribute high prices entirely to an inflationary national economy. The underlying inflation does indeed have its origins elsewhere, but local growth policies are making an important contribution of their own.

Despite the bizarre nature of many of the environmental controversies around San Francisco, northern California’s growth policies are not unique. Development restrictions are on the rise across the country. Nationwide, builders report increasing delays in the time it takes to get building permits and cite as the most frequent result of environmental reviews a reduction in the amount of housing they can build. California is more a leading indicator than an aberration. As the new environmental and growth controls spread to other parts of the country, the old Hollywood slogan may well apply: “Watch for it soon in your own neighborhood.”