The Quiet Revolution Revisited: A Quarter Century of Progress

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I. Introduction

NEARLY TWENTY-FIVE YEARS AGO, *The Quiet Revolution in Land Use Controls*[1] reported a shift in governmental regulation of land use from local governments back to the states. In nine principal case studies[2] and a dozen "short takes,"[3] *Quiet Revolution* illustrated the ways in which selected states exercised their fundamental police powers to regulate the use of land to implement state and regional policies. In virtually every such state, the exercise of such regulatory authority superseded or replaced local land-use regulations of the typical zoning and development control variety. The states acted because of the relative lack of planning at the local level, together with a disregard of the regional and statewide implications of such unplanned local land-use decision making.[4] *Quiet Revolution* concluded that:[5]

1. The concept of land had changed from a commodity only to both a resource and a commodity;
2. States were attempting to address truly statewide and regional

1. FRED BOSSELMAN & DAVID CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL, Council on Environmental Quality (1971). Prepared as a background report for President Nixon's proposed National Land Use Policy Act (never adopted), the report was the first of a series of such studies and publications, among the most prominent of which was ROBERT G. HEALY & JOHN S. ROSENBERG, LAND USE AND THE STATES (1979), prepared for Resources for the Future. *See infra* note 9 for the spate of recent commentary.

2. Hawaii, Vermont, San Francisco Bay, Twin Cities Metro Council, Massachusetts (twice), Maine, Wisconsin, and New England River Basin.

3. Tahoe Regional Planning Agency, Hackensack Meadowlands Development Commission, Adirondack Park Agency, Delaware Coastal Zone Act, Colorado Land Use Act, Washington Land Planning Commission, Alaska Joint State-Federal Natural Resources and Land Use Planning Commission, wetland and shoreland laws in North Carolina, Rhode Island, Connecticut, Maryland, and Georgia.

4. BOSSELMAN & CALLIES, *supra* note 1, at 3.

5. *Id.* at 314-26. *See also* David Callies, *The Quiet Revolution Revisited*, 46 J. AM. PLAN. ASS'N 135 (1980).

issues rather than merely create another layer of land development control;
3. Nevertheless, duplication was rampant and a permit explosion resulted because few states made changes in local zoning enabling laws per se;
4. There was increased emphasis on planning and the relationship between local and state land-use controls and planning;
5. The new regulations renewed interest in the extent to which land-use controls raised constitutional "takings" problems; and
6. The new laws introduced and focused upon the importance of a state agency to implement the statewide and regional land-use controls.

Since those conclusions, much has transpired.[6] Local zoning has not withered away[7] (nor did we anticipate that it would). There has been precious little permit simplification.[8] Growth management has become the accepted rubric, embracing both state and local land-use development and regulatory reform.[9] The environmental decade of the 1970s continued unabated into the 1980s (though in a somewhat different form).[10] A series of U.S. Supreme Court land-use decisions in the late 1980s and early 1990s[11] rekindled[12] interest in the famous Holmes decision in *Pennsylvania Coal Co. v. Mahon*,[13] which held for the first time that a regulation which goes "too far" is a constitutionally

6. For an interim glance, see Callies, *supra* note 5.

7. As ably documented in CLIFFORD L. WEAVER, CITY ZONING, THE ONCE AND FUTURE FRONTIER (1979).

8. Despite clarion calls for it, as in FRED P. BOSSELMAN, ET AL, THE PERMIT EXPLOSION: COORDINATION OF THE PROLIFERATION (1976).

9. David L. Callies, *Land Use Planning in the Fiftieth State* (Chapter 5), *in* STATE AND REGIONAL COMPREHENSIVE PLANNING 126 (1993) (Peter A. Buchsbaum & Larry J. Smith, eds.); J. BARRY CULLINGWORTH, THE POLITICAL CULTURE OF PLANNING 134 (1993); JOHN M. DEGROVE, PLANNING AND GROWTH MANAGEMENT IN THE STATES (1992); ERIC D. KELLY, MANAGING COMMUNITY GROWTH 104 (1993); KNAAP & NELSON, THE REGULATED LANDSCAPE (1992); RUTHERFORD H. PLATT, LAND USE CONTROL, GEOGRAPHY, LAW AND PUBLIC POLICY (1991); RICHARD WAKEFORD, AMERICAN DEVELOPMENT CONTROL (1990).

10. DANIEL R. MANDELKER, ENVIRONMENTAL AND LAND USE CONTROL LEGISLATION (1976).

11. Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992); Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987); First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987); Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987).

12. Arguably commencing with BOSSELMAN, ET AL, THE TAKING ISSUE (1973) and continued in RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985); BRIAN BLAESSER & ALAN WEINSTEIN, LAND USE AND THE CONSTITUTION (1989); and DENNIS J. COYLE, PROPERTY RIGHTS AND THE CONSTITUTION (1993).

13. 260 U.S. 393 (1922).

protected taking of property—an issue which most state courts had explained away in dealing with challenges to "revolutionary" new land-use regulations.[14] Lastly, several more states have adopted regional or statewide land-use control regimes either to protect resources of more than local concern or to manage growth which promises to have more than local impact.

What follows is a selective survey—a backward glance—of what has happened to the "quiet revolution" in the last two categories: which states have joined the revolution, and how state courts have treated the "revolutionary" laws when challenged.

II. The Continuous Revolution in Land-Use Control

A. *Hawaii, Where "It All Began"*[15]

Hawaii was both prototype and inspiration for *Quiet Revolution*. Its then decade-old Land-Use Law[16] classified all the land in the state into four districts—urban, rural, agriculture, and conservation—and left boundary "amendments" to an appointed state Land-Use Commission upon petition by interested parties. Reviewed every five years under a statutory mandate,[17] the present boundary division and district allocation results in less than five percent of the state's land area in the county-controlled urban district. Virtually all of the remainder is more or less evenly divided between agriculture (where the state Land-Use Commission (LUC) unevenly shares district regulatory authority with the counties) and conservation (where the state's Department of Land and Natural Resources, through its governing Board of Land and Natural Resources, or BLNR, controls the use of land absolutely). No significant urban development is permitted in either of these last two districts, though agricultural "subdivisions" on half-acre lots are permitted on

14. BLAESSER & WEINSTEIN, *supra* note 12.

15. BOSSELMAN & CALLIES, *supra* note 1, at Chapter 1, *Hawaii Land Use Law*. For recent commentary on the Hawaii land-use regulatory system, see DAVID CALLIES, PRESERVING PARADISE: WHY REGULATION WON'T WORK (1993); Callies, *Land Use Planning in the Fiftieth State* (Chapter 5), *in* BUCHSBAUM & SMITH, *supra* note 9; J. BARRY CULLINGWORTH, THE POLITICAL CULTURE OF PLANNING 134 (1993); ERIC D. KELLY, MANAGING COMMUNITY GROWTH 104 (1993); SMITH & PRATT, POLITICS AND PUBLIC POLICY IN HAWAII *Dealing With Scarcity: Land Use and Planning* (1992); and DAVID CALLIES, REGULATING PARADISE: LAND USE CONTROLS IN HAWAII (1984).

16. HAW. REV. STAT. § 205 (1985).

17. Suspended by statute since 1974, the mandatory review was reinserted into the law and the first such review took place in 1993-94 by means of Office of State Planning recommendation (four hefty volumes, one for each of Hawaii's four counties) and Land-Use Commission action. HAW. REV. STAT. § 205-18 (1985).

certain agricultural lands if both the LUC and the county agree.[18] While bills to amend the Land-Use Law emerge every few years, none have so far made much impact on the basic structure of the land-use regulatory system which it embodies. Nor has litigation over the boundary amendment (redistricting) authority of the LUC or the Act itself ever reached the courts.[19]

More critical is the drafting and implementation in 1979 of Act 100, the Hawaii State Plan.[20] Virtually the only state plan which is enacted *tout ensemble* as a statute, the plan requires state agencies such as the LUC and BLNR to conform their decisions and other land-related actions to a series of goals, policies, and objectives contained in the statute, and to use as guidelines eleven subject-specific[21] "functional" plans (which average about thirty pages each). Language requiring counties also to conform their plans and land-use regulations to these state plans was largely stripped from Act 100 in 1984 and, together with the dilution of key definitions such as "conform" and "guidelines," results in a state plan the terms of which make compliance fairly easy. It is, for example, only necessary for a state agency like the LUC or BLNR to "weigh" the themes, goals, objectives, and policies of the plan and determine that its action or decision fulfills one or more of the goals, objectives, and policies, which are very generally stated.[22] A "guideline" is now merely ". . . a stated course of action which is desirable and should be followed unless a determina-

18. HAW. REV. STAT. § 205-2 (1985).

19. Liberal standing to participate in the LUC process was the outcome of Town v. Land Use Comm'n, 524 P.2d 84 (Haw. 1974), as well as the declaration that LUC proceedings—at least on the hearing and deciding of individual petitions for boundary amendments—are contested cases (code for quasijudicial, presumably) with all that this implies procedurally. Likewise, the authority of the LUC to grant special use permits in agricultural districts was broadly upheld in Perry v. Planning Comm'n of the County of Hawaii, 619 P.2d 95 (Haw. 1980), and Maha'Ulepu v. Land Use Comm'n, 790 P.2d 906 (Haw. 1990), though in the former, the Hawaii Supreme Court struck down such a permit for a theme park on the ground that such a use was primarily urban and could not be fit under the special use standards in the statute governing such permits. The latter case permitted the LUC to grant a special permit for a golf course on prime agricultural land even though such a use is expressly prohibited as a permitted use.

20. HAW. REV. STAT. § 226 (1985).

21. Agriculture, education, conservation lands, energy, higher education, health, historic preservation, housing recreation, tourism, transportation, and water resources.

22. *E.g.*, a natural presence policy:

> To achieve the scenic, natural beauty, and historic resources objective, it shall be the policy of this State to:
> 1. Promote the preservation and restoration of significant natural and historic resources.
> 2. Provide incentives to maintain and enhance historic, cultural, and scenic amenities.

tion is made that it is not the most desirable in a particular case; thus, a guideline may be deviated from without penalty or sanction."[23]

Despite the comparative weakness of the planning conformity requirements in the revised Act 100, the Hawaii Supreme Court recently declared, in ringing terms, that plans and planning are the keystone supporting the entire land-use regulatory program in Hawaii. In *Lum Yip Kee v. City and County of Honolulu*,[24] the court responded to a challenge to a city council "downzoning" by holding that all zoning in Honolulu must conform to detailed county development plans formulated with "input" from state and county agencies as well as the general public. While observing that state functional plans are broad policy guidelines and not "legal mandates, nor standards of performance," the court also held that "the formulation, amendment, and implementation of county general plans or development plans shall take into consideration statewide objectives, policies and programs stipulated in state functional plans."[25] The court recited certain state plan goals and objectives which the county had considered, reviewed the extensive hearings, studies, and field investigations preceding the amendment, and held that the county had complied with the state's planning and land regulatory scheme. On balance, then, Hawaii appears to have continued to expand its part in the quiet revolution, and its courts have been broadly sympathetic.

B. *Vermont and Statewide Planning*

In 1971, Vermont, another of the original "revolutionary" states, was notable for its Environmental Board and Environmental Commissions which subjected certain land development decisions to regional review, appealable to a state agency. While contemplating a series of statewide plans, Act 250 actually produced only a preliminary classification system of marginal significance.[26]

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3. Promote the visual and aesthetic enjoyment of mountains, ocean vistas, scenic landscapes, and other natural features.
4. Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage.
5. Encourage the design of developments and activities that complement the natural beauty of the islands.

23. HAW. REV. STAT. § 226-2 (1985).

24. 767 P.2d 815 (Haw. 1989). For extensive commentary on this and other recent land-use and environmental law cases from Hawaii, see David L. Callies, et al., *The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991*, 14 U. HAW. L. REV. 119 (1992).

25. *Lum Yip Kee*, 767 P.2d at 821.

26. VT. STAT. ANN. tit. 10, § 6001 (1984), described in BOSSELMAN & CALLIES, *supra* note 1, at 54-107.

Vermont became serious about statewide planning in 1988 with the passage of Act 200.[27] Establishing twelve statewide substantive planning goals[28] to which each level of government is to conform, local governments' municipal plans are supposedly subject to review and confirmation by regional planning commissions, as consistent with the aforementioned goals. While mandatory conformance to these goals (but not mandatory planning) was stripped from Act 200 by the Vermont legislature in 1989, nevertheless there are advantages to being "confirmed" by a regional planning commission as conforming to the state goals: no state affordable housing review, assured compatibility of state agency plans (which must, under Act 200, be consistent with the aforementioned goals) with municipal plans, authority to levy impact fees on new developments, and eligibility for certain state funds.[29]

C. *Maine: A Step Backward?*

Maine's site location law was also chronicled as a bellwether state in *Quiet Revolution*.[30] Indeed, its 1988 Comprehensive Planning and Land Management Act mandated the preparation of local government comprehensive plans conforming to ten growth management goals, and provided substantial funding to implement the act together with such incentives as (like Vermont) the power to impose impact fees.[31] Unfortunately, the Act fell victim to 1991 budget reductions, eliminating not only funding for the Act's implementation, but the entire Comprehensive Planning Office, as well as the mandatory planning elements of

27. VT. STAT. ANN. tit. 24, § 4301 (1992).

28. 1. Maintaining Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside;
2. Providing a strong and diverse economy;
3. Broadening access to educational and vocational training;
4. Providing transportation systems that respect the integrity of the natural environment;
5. Preserving important natural and historic features of the Vermont landscape;
6. Improving the quality of air, water, wildlife, and land resources;
7. Encouraging the efficient use of energy and the development of renewable energy resources;
8. Enhancing recreational opportunities;
9. Strengthening agricultural and forest industries;
10. Providing for the wise and efficient use of Vermont's natural resources;
11. Ensuring the availability of affordable housing; and
12. Providing an efficient system of public facilities and services to meet future needs.

29. Thomas R. Melloni & Rober I. Goetz, *Planning in Vermont* (Chapter 7), *in* BUCHSBAUM & SMITH, *supra* note 9, at 165–66; CULLINGWORTH, *supra* note 9, at 137–40; KELLY, *supra* note 9, at 112.

30. BOSSELMAN & CALLIES, *supra* note 1, at 187–204.

31. ME. REV. STAT. ANN. tit. 30-A, § 4301 (1993).

the Act. Some funds were allocated to the Department of Economic and Community Development in 1992 to continue the process, and a municipality which chooses to prepare a comprehensive plan must follow the aforementioned state standards.[32]

D. *Florida and Concurrency*

Florida was not a "revolutionary" state in 1970, but it has certainly made up for it in the intervening quarter century. While concern over protecting critical environmental areas, together with the need to control large developments, provides strong impetus for Florida's program, the huge population gains in the 1970s and 1980s probably provided more.[33]

Commencing with the Environmental Land and Water Management Act in 1972,[34] Florida began its foray into statewide land-use controls by protecting areas of critical state concern through state designation and regulating developments of regional impact through regional and statewide oversight by means of an appeal (from local government designation) process.[35] So far, four areas of critical state concern have been designated: Big Cyprus, Green Swamp, the Florida Keys, and Apalachicola Bay.[36]

Developments of regional impact are not often appealed, and some argue they also are not often designated.[37] Florida's supreme court obliged by upholding the concept of state-designated areas of critical state concern in *Askew v. Cross Keys Waterways*[38] in 1978 (though not the methodology because the state legislation did not set out priorities by which an administrative agency would designate such areas) and the regulation of developments of regional impact in *Graham v. Estuary Properties, Inc.*[39] in 1981.

32. ME. REV. STAT. ANN. tit. 30-A, § 4326 (1993), all as discussed in Patricia E. Salkin, *Statewide Comprehensive Planning, the Next Wave* (Chapter 13), *in* BUCHSBAUM & SMITH, *supra* note 9, at 249-50.

33. *See* Thomas Pelham, *The Florida Experience: Creating A State, Regional and Local Comprehensive Planning Process* (Chapter 4), *in* BUCHSBAUM & SMITH, *supra* note 9, at 96; and DEGROVE, *supra* note 9. Population in Florida more than doubled between 1950 and 1970 (2.7 million to 6.8 million), and nearly doubled again between 1970 and 1990 (6.8 million to 12.9 million), and the state continues to grow at nearly 200,000 per year. DEGROVE, *supra* note 9, at 8.

34. FLA. STAT. ANN. § 380.012-10 (1972).

35. Florida thus became virtually the only state to adopt substantial portions of the American Law Institute's Model Land Development Code, particularly its Article 7.

36. CULLINGWORTH, *supra* note 9, at 141.

37. *Id.* at 142.

38. 372 So. 2d 913 (Fla. 1978).

39. 399 So. 2d 1374 (Fla. 1981).

Then, in the mid-1980s, Florida adopted its tripartite planning system and concurrency.[40] The product of a second Environmental Land Management Study (ELMS) Committee, the Florida State and Regional Planning Act of 1984[41] mandated the preparation of a state comprehensive plan and the preparation and adoption of regional plans by each of Florida's eleven planning regions, each to be consistent with the state comprehensive plan. Amendments to the Act in 1985[42] required each local government to prepare and adopt local plans consistent with both regional and state plans, and to implement such local plans through local land development regulations and development orders. The amendments also provided for state financial sanctions against local governments which failed to adopt consistent local plans, and established broad standing requirements for citizens to challenge inconsistent (with local plans) local land-use regulations and development orders. Thus, land-use controls at the local level must ultimately be consistent with state and regional planning goals through the planning consistency process. While the state goals and policies are—like Hawaii—fairly broad-brush,[43] the regional plans are in theory more detailed, and the local comprehensive plan is very detailed indeed. Locally required elements include future land use, capital improvements (particularly sanitary sewers, solid waste, drainage, potable water, and aquifer protection), conservation, recreation and open space, housing, traffic cir-

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40. For a thorough discussion of these and other land planning issues in Florida, see Pelham, *supra* note 33; KELLY, *supra* note 9, at 112; DEGROVE, *supra* note 9.

41. FLA. STAT. ch. 186.001-.911 (Supp. 1984).

42. FLA. STAT. ch. 163.3161-3215 (Supp. 1986).

43. (16) LAND USE—

(a) Goal—In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and the service capacity to accommodate growth in an environmentally acceptable manner.

(b) Policies—

1. Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.
2. Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.
3. Enhance the liveability and character of urban areas through the encouragement of an attractive and functional mix of living, working, shopping, and recreational activities.
4. Develop a system of intergovernmental negotiation for citing locally unpopular public and private land uses which considers the area of population served, the impact on land development patterns or important natural resources, and the cost-effectiveness of service delivery.

FLA. STAT. ANN. § 187.201 (1992).

culation, intergovernmental cooperation, coastal zone management, and mass transit.[44]

Moreover, the 1985 amendments to the Act require the local formulation of a program for providing infrastructure (need and location of public facilities, as well as their projected costs) and forbid the granting of any land development permits unless public facilities will be concurrently available to meet the needs generated by that development. Essentially, if a proposed development cannot meet a level of service standard established by local government across the range of public facilities noted above, then the proposed development must be rejected unless the local government itself is willing and able to maintain that service level.[45]

While implementation of the planning and concurrency requirements thus imposed by statute has resulted in some local-government-imposed delay, development moratoria are apparently not so widespread as was initially feared in many quarters. This, according to one commentator, is due in part to the downturn in the Florida economy, as well as a flexible approach toward concurrency adopted by the state in implementing the concept. Unfortunately, the state legislature has not made funds available for public facilities to meet level-of-service goals, which tends to reduce the effectiveness of the concurrency requirement in those communities strapped for funds.[46] Litigation over the new planning and concurrency requirements has been sparse, but so far Florida courts appear to be receptive and uphold government attempts at compliance.[47]

E. *Georgia Plans*

The largest state east of the Mississippi, Georgia, also commenced serious efforts at state planning and growth management after watching its population more than double between 1940 and 1986, with one-third of that population growth (1.25 million people) occurring since 1970.[48] Often described as a "top-down" approach to statewide land-use controls,[49] Georgia passed a startlingly comprehensive state-regional-local planning consistency program in the late 1980s, despite an indifferent history of land-use regulation in which Georgia courts had held zoning

44. FLA. STAT. ANN. § 163.3177(6)(a)-(i) (1992).
45. *See* CULLINGWORTH, *supra* note 9, at 142–43.
46. Pelham, *supra* note 33, at 114–16.
47. *See, e.g.*, Home Builders & Contractors Ass'n of Brevard v. Dep't of Community Affairs, 585 So. 2d 965 (Fla. 1991).
48. DEGROVE, *supra* note 9, at 99.
49. DEGROVE, *supra* note 9, at 106–07; *but see* KELLY, *supra* note 9, at 121.

to be an impermissible delegation of legislative authority as late as 1956. A large number of local governments (700) coupled with the constitutionally authorized (in 1956) power to zone exercised in only about half, led, with the growth pressures described above, to the formation of the usual study commissions and recommendations culminating in the Georgia Planning Act of 1989.[50]

The Georgia Planning Act closely resembles the conceptual framework of Florida's legislation in several respects, but without some of Florida's mandatory features. The lead state agency, the Department of Community Affairs (DCA), works with a new Governor's Development Council to create a state plan and to coordinate other governmental entities (local, regional, and state) for the purposes of land-use planning and the location of public facilities. Its principal stick is the denial of state grants and other funds to local and regional governments (called "qualified" governments) which fail to produce a comprehensive plan in accordance with state and regional standards. Eleven regional entities called Regional Development Centers (RDCs) are directed to prepare a regional plan and to review local plans for conformity with minimum state and regional standards, and to review local land development regulations for conformance to the aforesaid standards and the approved local comprehensive plan.[51] Local governments are not technically required by the Planning Act to develop plans or land-use regulations, but if they do not, and do not accord with the above regional and state standards, they are not "qualified" to receive state grants and funds.

Thus, like Florida, Georgia local governments—at least those thus "persuaded" to participate—must conform land-use regulations to local comprehensive plans which must, in turn, conform to regional and state plans. The rules promulgated by various responsible state agencies (Department of Natural Resources, Office of Coordinated Planning, Department of Community Affairs) require that local governments identify levels of service for eleven public facilities categories, address coastal resources and prime agricultural and forest land, and produce detailed land-use maps. Other regulations deal with Developments of Regional Impact and with Regionally Important Resources (similar to Florida's critical areas). By April of 1992, 161 cities and fifty-seven

50. GA. CODE ANN. § 50-8-1 (1990). For a thorough discussion of the summary materials noted here, *see* DEGROVE, *supra* note 9, at 99-106.

51. GA. CODE ANN. §§ 50-8-34 and -35 (1992). *See* discussion in DEGROVE, *supra* note 9, at 107-08.

counties had submitted plans, and 151 local government units were determined to be "qualified."[52]

F. *Oregon: Planning as Process*

Oregon is perhaps the paradigm conformance state. Just as the legislature passed the basic legislation (in 1973) establishing its statewide land-use system, the Oregon courts startled the country by establishing that local plans took precedence over local zoning, and that any conflicts between them were to be resolved in favor of the plans.[53] Established by the 1973 legislation,[54] a Land Conservation and Development Commission (LCDC) adopts and enforces nineteen statewide planning goals, to which local plans (and, after the aforementioned court cases, local land-use controls) must conform.[55] The goals are adopted after a complex publication and hearing process.

A 1977 amendment to the statute provides an administrative process by which the LCDC "acknowledges" that Oregon's local government land-use plans are in conformance with the state goals.[56] While the LCDC might either accept completely or reject completely a local government land-use plan and implementing regulations, in practice it continues its review for a period sufficient to give a local government time to cure any alleged deficiencies. However, in the event that a local government's plan and regulations fail to attain acknowledgment, LCDC's statewide goals become the basis for state and local land-use decisions.[57] So far, all of Oregon's cities (241) and thirty-six of its counties have been so acknowledged.[58] The acknowledgment final order is reviewable in Oregon's circuit courts (as compared with other significant land-use decisions described below, subject to review by a special land-use review agency created for the purpose).

Acknowledgment results in local plans and regulations, as well as state goals as the basis for land development in a city or county. Moreover, state agencies are also bound by both the goals and duly acknowledged local plans and implementing regulations.[59] Failure to abide by

52. DEGROVE, *supra* note 9, at 113.
53. Fasano v. Board of County Comm'rs, 507 P.2d 23 (Or. 1973), and Baker v. City of Milwaukee, 533 P.2d 772 (Or. 1975).
54. OR. REV. STAT. § 197.040 (1991).
55. OR. REV. STAT. §§ 197.225-.250 (1991).
56. OR. REV. STAT. § 197.250 (1991).
57. Edward J. Sullivan, *Oregon Blazes a Trail* (Chapter 3), *in* BUCHSBAUM & SMITH, *supra* note 9, at 54.
58. Sullivan, *supra* note 57, at 59-60.
59. OR. REV. STAT. § 197.180 (1991). *See* Sullivan, *supra* note 57, at 64.

either can be challenged by private parties or by the LCDC and results in a compliance order issued after a contested case hearing. The LCDC may limit the issuance of development permits, withhold state revenues, and seek judicial remedies to enforce its order.[60]

Perhaps the most unique aspect of Oregon's process and conformance-oriented state land-use system is the creation of a special administrative court to hear and decide most local land-use controversies besides those dealing with goal compliance as discussed above. Established in 1979, the Land-Use Board of Appeals (LUBA) has the power to review all land-use decisions of local governments, state agencies, or special districts, whether legislative or quasijudicial in nature.[61] This effectively shifts most land-use cases to LUBA from the judiciary as a "court of first impression."

G. *New Jersey: Fragmented Purposes, Fragmented Plans*

The roots of New Jersey's statewide planning effort are different from most of the "revolutionary" states. In the mid-1980s, two disparate and seemingly unrelated events ultimately produced the New Jersey State Planning Act of 1985:[62] the New Jersey Supreme Court rendered its famous landmark fair housing decision, *Southern Burlington County NAACP v. Township of Mount Laurel*,[63] which required adherence to a 1980 State Development Plan Guide, and an incoming governor promptly abolished the state's Division of State and Regional Planning which had prepared the guide.[64] What followed was an attempt to take back from the state supreme court (which had lamented the lack of legislative action and maintained that it acted only after legislative dereliction) the initiative over allocation of affordable housing, coupled with urban growth pressures resulting from the state's location (between New York and Philadelphia). Moreover, New Jersey is the only "revolutionary" state of its size to have dealt with its principle critical areas—the Pinelands and the Hackensack Meadowlands—by separate legisla-

60. OR. REV. STAT. §§ 197.319-.335 (1991).

61. OR. REV. STAT. § 197.015(10) (1991), which defines such a decision as involving either a local government or special district adoption or amendment or application of the statewide planning goals, a comprehensive plan element or a land-use regulation or a state agency decision requiring the application of a state goal. *See* Sullivan, *supra* note 57, at 72.

62. N.J. STAT. ANN. § 52:18A-196 (1993).

63. 456 A.2d 390 (N.J. 1983).

64. For detailed explanation of this history and the legislation itself, see Peter A. Buchsbaum, *The New Jersey Experience* (Chapter 8), *in* BUCHSBAUM & SMITH, *supra* note 9; and DEGROVE, *supra* note 9, at 33.

tion, producing separate land-use plans and regulations administered by separate governmental agencies.

The 1985 Act is long on rhetoric but short on implementation. The resulting 1989 State Plan establishes statewide goals and objectives for land use, housing, economic development, transportation, natural resource conservation, agriculture, farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination. It further divides the state into seven tiers for purposes of deciding where to encourage growth, redevelopment, and resource preservation. Four tiers are for growth (in descending order of intensity): redeveloping cities and suburbs, stable sites and suburbs, suburban and rural towns, and suburbanizing areas. Three are for limited growth (also in descending order of intensity): future suburbanizing areas, agricultural areas, and environmentally sensitive areas. As before noted, the Pinelands and the Meadowlands are excluded from these tiers.[65]

But until 1992 the only means of implementation was by a process called "cross-acceptance": the comparing of planning policies among governmental levels in order to attain compatibility between local, county, and state plans.[66] Originally envisioned to take a few months, it has instead taken several years.[67] Various drafts of the State Plan have contained impact assessment, environmental guidelines for steep slopes, forests, and stream corridors, and low-income housing features.[68] Finally in late 1992, state regulations (issued by the State Planning Commission) to provide for state certification of local plans for consistency with the State Plan may well result in strengthened plan implementation, because zoning in New Jersey must, by statute, be consistent with local master plans, at least with respect to housing and land use.[69]

H. *Washington: More Than an Oregon Clone?*

Apparently reacting to the effects of rapid urbanization on their "Northwest" way of life,[70] the Washington legislature passed the latest in

65. *See* CULLINGWORTH, *supra* note 9, at 151-52.
66. N.J. STAT. ANN. §§ 52:18A-202b (1993).
67. Buchsbaum, *supra* note 64, at 178-79.
68. *Id.* at 179.
69. N.J. STAT. ANN. § 40:55D-62 (1993), and Riggs v. Township of Long Beach, 538 A.2d 808 (N.J. 1988), all as discussed and noted in Buchsbaum, *supra* note 64, at 184-85.
70. Washington's population increased by fifty percent between 1970 and 1990, mostly in the greater Seattle region. DEGROVE, *supra* note 9, at 117; *see* Larry J. Smith, *Planning for Growth, Washington Style* (Chapter 6), *in* BUCHSBAUM & SMITH, *supra* note 9, at 138.

"revolutionary" state land-use laws in 1990 and 1991, both entitled Growth Management Acts.[71] The centerpiece of the legislation is the requirement that all counties with urban growth problems (those with populations over 50,000, or with a ten to twenty percent growth rate) must prepare comprehensive plans with certain mandatory elements: land use, housing, capital facilities, utilities, rural lands, and transportation.[72] Moreover, each such county's plan must reflect a cooperative effort with each unit of local government in that county's jurisdiction, and each mandatory element must be consistent with the other elements in the plan as well as with the plans of each city or county sharing a common border or regional problem.[73] In such counties (indeed, in all counties which have a plan), all land-use regulations must be in conformance with such plans.[74]

This first Growth Management Act was followed in 1991 by a second, which "filled in the gaps and broadened the revolution."[75] State agencies must comply with local comprehensive plans and land-use regulations adopted pursuant to the first Growth Management Act's mandatory elements.[76] Noncomplying growth counties lose substantial state funds.[77] No county can prohibit in its plan the citing of such Locally Unwanted Land Uses (LULU) facilities as jails and sanitary landfills.[78] Finally, the second Growth Management Act extends protection from the first to sensitive and natural resource lands.[79] Washington appears to be moving toward the Oregon system with all deliberate speed.

I. *Rhode Island*

The Rhode Island statewide land-use control system also utilizes strict conformance between compulsory local plans and state planning goals.[80] These are embodied in the Comprehensive Planning and Land Use Regulation Act and the State Comprehensive Plan Appeals Board Act.[81] The former lists ten state goals with which local government comprehensive plans (including implementing programs) must be con-

71. WASH. REV. CODE § 36.70A.10 (1992).
72. WASH. REV. CODE § 36.70A.070 (1992).
73. WASH. REV. CODE §§ 36.70A.070-.110. *See* discussion in Smith, *supra* note 70, at 138-39.
74. WASH. REV. CODE § 36.70A.40(3) and (4) (1992).
75. Smith, *supra* note 70, at 142.
76. WASH. REV. CODE § 36.70A.103 (1992).
77. WASH. REV. CODE § 36.70A.340(2) (1992).
78. WASH. REV. CODE § 36.70A.200 (1992).
79. WASH. REV. CODE § 36.70A.060(1) (1992).
80. For thorough discussion, see DEGROVE, *supra* note 9, at 85; for more brief treatment, see CULLINGWORTH, *supra* note 9, at 153.
81. R.I. GEN. LAWS § 45-22.2-1 (1991).

sistent.[82] Among these are protection of natural resources, open space, recreational, cultural and historic resources, development of affordable housing, economic development, and the compatibility of growth with the natural characteristics of the land.[83] The local plans must also be consistent with a range of regional goals, including public facilities financing for transportation, recreation, and the like.[84]

The state director of the Division of Planning reviews local plans for consistency with the state act as described above. A local government can appeal a nonconsistent determination to a Comprehensive Plan Appeals Board appointed by the governor.[85] In the event that the local comprehensive plan is inconsistent, the director prepares, and the Appeals Board adopts, a comprehensive plan for the recalcitrant local government.[86] Once a comprehensive plan is in place, all state agency plans and projects must conform to it, unless after a public hearing, the state agency can show that its project or plans conform to the Comprehensive Planning Act. A State Plan Guide is needed to protect the health, safety, and welfare of the people of Rhode Island, designed to vary as little as possible from the approved local comprehensive plan.[87]

J. *Maryland: The Latest Revolutionary State*

The Maryland Economic Growth, Resource Protection, and Planning Act of 1992[88] requires all local governments to conform to a series of "visions" set out in the Act and lists a number of required local plan elements, among them: a land-use element, a public facilities element, a transportation element, a mineral resources element, a critical areas element, and a streamlined development applications review in designated growth areas. Particularly, if a local government fails to adopt the latter, state standards instead apply.

III. Conclusion: Came the Revolution . . . ?

While several other states have begun to wrestle with growth management, resource protection, and statewide land-use controls through the

82. R.I. GEN. LAWS §§ 45-22.1-2 and 1-3 (1991).
83. *Id.*
84. R.I. GEN. LAWS § 45-22.2-6 (1991).
85. R.I. GEN. LAWS § 45-22.2-9 (1991).
86. R.I. GEN. LAWS § 45-22.2-13 (1991).
87. R.I. GEN. LAWS §§ 45-22.2-10 and 2-13 (1991).
88. 1992 Md. Laws 437, discussed in Salkin, *supra* note 32, at 248-49.

appointment of commissions and task forces and the drafting of bills,[89] the foregoing represent the major advances in the quiet revolution over the past quarter century. It may very well be true that it is too early to declare the revolution complete, as some commentators have suggested,[90] but if one concentrates only on those states wrestling with growth and/or trying to protect scarce natural and/or cultural resources, the trend is unmistakable. Moreover, the "revolutionary" laws have so far been broadly supported by state courts.

These new "revolutionary" state programs have more in common besides judicial acceptance. Virtually every one is based upon a state plan, though they vary in length and complexity from pages of detailed (and often ultimately inconsistent) goals, criteria, and implementing actions to a few well-chosen standards. Also, most of the new systems either require comprehensive land and facilities planning at the local government level in accordance with state standards, or require those local governments that choose to plan to meet those standards. For the most part, the states offer incentives for local governments to engage in such comprehensive planning. About half go further and impose sanctions for noncomplying local governments. All require a measure of conformance between the state and the local plans, and most specifically require that local land development regulations and permits conform to the state-approved local plan, thereby ensuring a degree of consistency with state plan elements as well. A few jurisdictions are experimenting with direct "concurrency" between public facilities planning and implementation and local land-use permitting, though none appear to have gone so far as Florida. Finally, approval of a local plan by a state agency usually results in a measure of local control over state decisions in that local jurisdiction.

Since protection of natural areas and resources was a primary goal of the original revolution, it is not surprising that most of the new state programs explicitly provide for the protection of such values, whether or not formally called areas of critical state concern. Some states have added historical and cultural values to the list of protected areas. In order to oversee these and other "revolutionary" programs, many of the states have created new state and regional agencies for the purpose. Some—like Oregon—have created "land courts" to hear and decide disputes arising under the new programs.

In sum, state plans and the relationship of local plans and implement-

89. *See* descriptions of activities in Massachusetts, Connecticut, New York, Virginia, North Carolina, and California, all in Salkin, *supra* note 32, at 239–48.

90. *See, e.g.*, CULLINGWORTH, *supra* note 9, at 153.

ing regulations continue to be a hallmark of the revolution. So does the creation of new state agencies. On balance, state courts continue to be supportive, although the continued libertarian and property rights focus of the present U.S. Supreme Court may render some of that support meaningless.[91] Permit simplification continues by and large to elude revolutionary remedy, and there is yet no clear answer on how best to provide public facilities to serve new development.

91. *See, e.g.*, DAVID CALLIES, AFTER LUCAS: LAND USE REGULATION AND THE TAKING OF PROPERTY WITHOUT COMPENSATION (1993); DAVID CALLIES, PRESERVING PARADISE: WHY REGULATIONS WON'T WORK (1993); Joseph L. Sax, *Property Rights and the Economy of Nature: Understanding* Lucas v. South Carolina Coastal Council, 45 STAN. L. REV. 1433 (1993). The U.S. Supreme Court has accepted for review (62 U.S.L.W. 2036) the exaction/condition land-use case of Dolan v. City of Tigard, 854 P.2d 437 (Ore. 1993), which may shed further light on how the Court views the conflict between property rights and land-use controls. Although the factual context is local, *City of Tigard* survived an Oregon LUBA challenge under that state's statewide land-use system.