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PROTECTING OPEN SPACE

A Guide To Selected Protection Techniques

KLINE, ELIZABETH
HD211
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1975

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PROTECTING OPEN SPACE

A GUIDE TO
SELECTED PROTECTION TECHNIQUES

by
Elizabeth Kline

Kline, Elizabeth HD211.N4K55 1975 #

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INTRODUCTION

The purpose of this publication is to provide townspeople with useful information on how to successfully protect open space. It is a handbook for people who love canoeing down the river, fishing in an unpolluted stream, riding along the trails, skidooing through the woods, or sitting on a park bench watching the world go by.

It is hard to believe that land in New Hampshire will ever be scarce. But in many towns second-home developments and recreation communities are taking lands which were once cornfields, woods, farms, and marshes. Unless we take positive steps to protect open space now there won't be many places for future generations to enjoy.

This report is not an academic study--there are enough of them. It is a resource book that looks in detail at the most successful. techniques used by towns to protect open space. To make it easy to read, it is divided into two sections: the first section gives one page summaries of the various open space protection techniques used. Each technique is briefly defined and a typical scenario is described so that you can see what kind of situation best calls for that technique. At the bottom of the page there is a reference to the page in SECTION TWO where more detailed information on that technique can be found.

The second section describes how to use the techniques, cites relevant laws and lists some towns which have used the technique successfully.

This format was selected because it allows you to skim through the protection techniques listed in SECTION ONE, pick out those most applicable to your town, and jump to the relevant pages in SECTION TWO. You don't have to wade through a lot of data before you get to the parts which interest you the most.

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The order of the protection techniques is not rigid, but may be helpful to someone who has no idea of how to protect open space. The first technique, Technique A, discusses "environmental education". It explains the importance of being aware of man's effect on the environment.

Techniques B and C describe the usefulness of plans, maps and regulations. This information can be used by planning boards and conservation commissions as a first step before deciding what specific projects to undertake.

Techniques D thru G detail different ways to protect land through "designation": scenic road, scenic trail, forest, and wild, scenic, and recreation rivers. These can be useful if a town does not want to buy land, but wants to be sure that certain special values are protected.

Technique H, "Using Conservation Restrictions", explains how to acquire the rights that protect land rather than spend the money to acquire the land outright. Restrictions are good protective devices for towns which don't have much conservation money and who have no desire to own a lot of property.

Techniques I and J deal with taxes -- tax foreclosed land (when an owner abandons his property because he cannot pay his taxes) and tax incentives (to encourage landowners to hold onto their open spaces). Tax foreclosed land is an old idea, but is recently receiving some attention from towns, whereas tax incentives is a new one.

"Gifts", discussed under Technique K, are another good way to protect land. Although gifts are often thought of as acquisition of land, they also can be viewed as a method of keeping land forever open. Gifts can be donated with conditions which tie the recipient to protecting the land.

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The last two techniques, L and M, concern permits either by an authority to do or not do something or by an agency or individual seeking to build something. Permit authority offers the opportunity for people to request and review extensive environmental data on a proposed project.

The last two pages of this publication (pages 82 and 83) list major New Hampshire agencies which have some jurisdiction over land preservation. This list is provided to give a general scope of their responsibilities and powers.

SECTION I

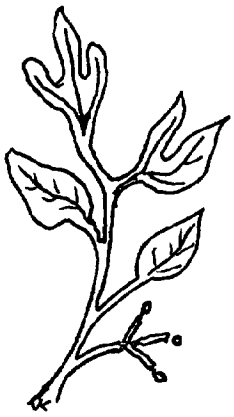
Environmental Education

DEFINITION

a new approach to teaching about man's relationship to his environment: how he affects and is affected by the world around him

SCENARIO

Many trees in a forest located near the center of a town are being indiscriminately chopped down for firewood and for seasonal Christmas trees. There is no effort to re-seed or note where erosion might take place. Hikers and campers use this forest often -- much of the wild flowers and young plants along the trails are being trampled. In addition, the area is full of litter. What was once a beautiful forest is beginning to look like the town dump. The townspeople are most upset. What can they do?



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For further information
turn to SECTION TWO, page 1

Mapping and Planning

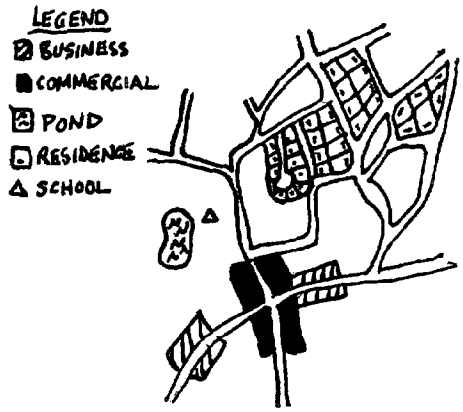
DEFINITION

an analysis and articulation of a community's goals and objectives

SCENARIO

A town is located in southern New Hampshire on a major interstate highway, about 60 miles from a large out-of-state city and 10 miles from a ski area. Only 20% of the town is developed. Much of the remaining land is now farm land, forests, and wetlands. The cost of living and the taxes are rising rapidly. Rumor has it that a large developer is interested in developing a large tract of land in town. Townspeople are most concerned and it has become a controversial issue. They know about other towns where developments like this one have doubled or tripled the population of the town. How can they evaluate the development proposal once it is submitted to the planning board -- especially since the town has no maps, plans or studies? What have other towns done when faced with a similar predicament?

SIMPLIFIED LAND-USE MAP



For further information
turn to SECTION TWO, page 9

Regulating Residential Development

DEFINITION

controls over land use where people live

Most residential land is under subdivision regulations. Subdivisions are large tracts of land divided into smaller units, usually single-family house lots.

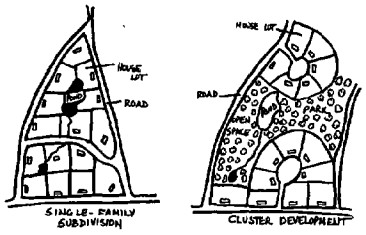
Cluster housing is a more flexible form of subdivision. The number of houses are usually the same, but the size of the lots is smaller. Open spaces can be lumped together.

Planned developments are a variation of cluster housing, where a variation in housing types and all community services are usually provided.

Often, clusters and planned developments require the developer to dedicate a minimum percentage of his site as open space. This land is deeded to the town or to a conservation group and can never be built upon.

SCENARIO

A town of 1,700 residents has many large estates. One particularly beautiful 400-acre estate is owned by a man who can no longer afford the high taxes. He is conservation-minded, but has no choice but to develop part of his property. How does he develop the land and still retain a lot of open space?



For further information turn to SECTION TWO, page 17

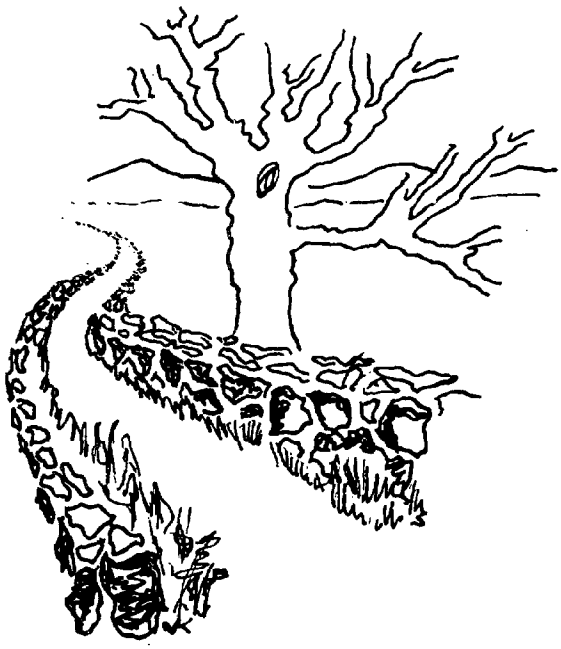
Designating Scenic Roads

DEFINITION

any road (except for Class I and II highways designated as "scenic" requires a public hearing and permission from the planning board before any work can begin which involves removal of trees or a stone wall along that road.

SCENARIO

A beautiful old road winds its way near the town center. For years the town road agent has said that he would like to widen it. But there have always been some people saying that such action would endanger the 100-year-old stone walls and old maple trees along the side of the road. These people have been lucky: the town has postponed its project thus far. However, how do they make sure that the trees and stone walls are always protected?



For further information turn to SECTION TWO, page 31

Designating Scenic Trails

DEFINITION

any portion of the Appalachian National Scenic Trail network

SCENARIO

A town in the White Mountains is very proud of its once remote Indian paths. The townspeople have known about them forever, but recently hikers discovered their existence and find that they connect to the Appalachian Trail. This particular path cuts through property recently purchased to develop vacation homes. Both townspeople and hikers feel the trail is in jeopardy. How do they protect it?

For further information
turn to SECTION TWO, page 36

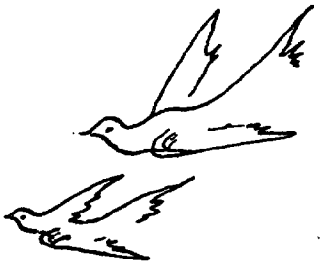
Designating Forests

DEFINITION

land bought and managed for its wood and timber
or preserved for its trees

SCENARIO

Most of the woodland in an old mill town has been cut over. However, there is one piece, owned by an elderly farmer, which still has a variety of good-sized trees. Townspeople want to make sure that the trees are cut selectively. They also would like some trails created to allow horseback riding and hiking in the woods. But they fear that a developer will buy the land and turn the woods into a housing development. How do they protect the woods?



For further information
turn to SECTION TWO, page 41

Designating Wild and Scenic Rivers

DEFINITION

certain free-flowing rivers which have special scenic, recreation, historic and ecological value can be protected. The three types of rivers are:

wild river area	Those unpolluted rivers or segments of rivers that are free of impoundments, generally inaccessible except by trail, and have essentially primitive shorelines and watersheds.
scenic river area	Those rivers or segments of rivers that are free of impoundments, which are accessible in places by roads, but still have shorelines and watersheds that are largely undeveloped.
recreation river area	Those rivers or segments of rivers that have undergone impoundment or diversion in the past, are readily accessible by road or railroad and have some development along the shorelines.

SCENARIO

A historic river -- used by Indians many years ago for fishing and transportation -- has particular recreational value. It is one of the few fast-flowing rivers with rapids within a day's ride of a large metropolitan area and is enjoyed by those who love white-water canoeing. This particular river cuts through a town and is threatened by a proposed in-

dustrial plant which may pollute it. The townspeople and canoeists are most concerned. What can they do?

For further information
turn to SECTION TWO, page 44

Using Conservation Restrictions

DEFINITION

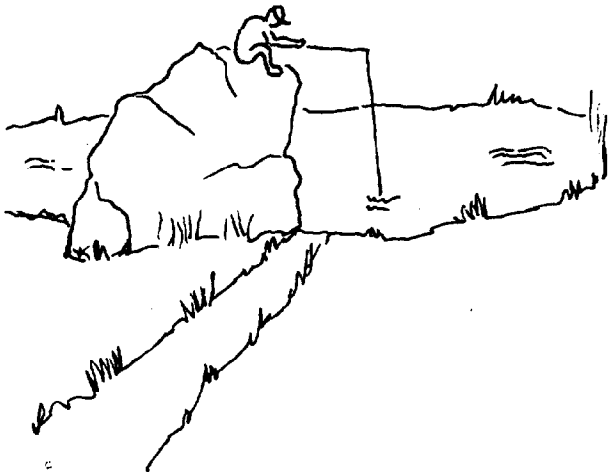
easements, restrictions, covenants or conditions attached to a deed which control the use of land for conservation purposes. They can be donated or sold by the landowner.

Conservation easements are rights allowing the public to use the landowner's property for conservation purposes: to gain access to a pond, use of a hiking trail or fishing rights to a stream.

Conservation restrictions are limitations on the use of land adopted by the landowner. The restrictions may prohibit the construction of buildings, the cutting of trees or the filling in of marshes.

SCENARIO

There is a great fishing stream back aways from any public road. The man who owns the property has always given permission allowing people to reach the stream. Now he is going to sell his land. There is no guarantee that the new owner will be as generous. The town cannot afford to buy the land -- what do the townspeople do to retain access to the stream?



For further information turn to SECTION TWO, page 47

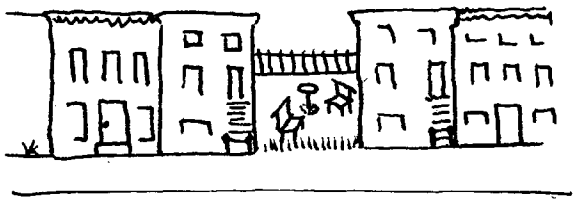
Acquiring and Using Tax Defaulted Land

DEFINITION

land on which an owner cannot pay his taxes

SCENARIO

For years there have been several vacant parcels scattered throughout town. One was taken over by a group of teenagers for a baseball field, but most just collect litter. A conservation commission member who is in charge of finding a good site for a park near the library decides that one of these undeveloped parcels is just what he is looking for. He checks the official records and discovers that four years ago the town took ownership of the land when the original owner couldn't pay his taxes. What can the member do to get the town to agree to use the parcel for a park?



For further information
turn to SECTION TWO, page 53

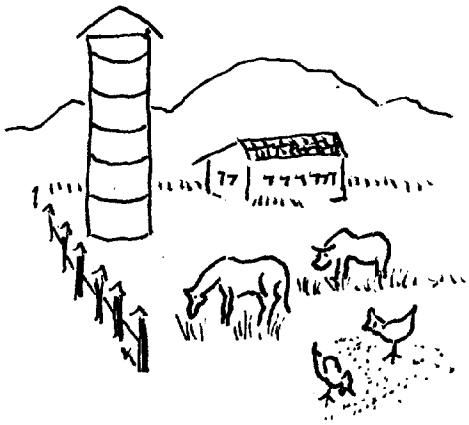
Providing Tax Incentives

DEFINITION

financial inducements to encourage landowners to hold onto their undeveloped or partially developed lands

SCENARIO

There is a rural town in which many of the residents are farmers. One farmer, who owns 500 acres of agricultural land and woodland, is having a difficult time paying his taxes since the assessors assess all properties at potential market value. The farmer's land is valued as if it were fully developed with houses. The farmer loves his work and doesn't want to sell his farm. However, unless he gets some financial help he'll be forced to do so. He wonders if the state has thought about the farmers' plight. Who should he talk to?



For further information
turn to SECTION TWO, page 56

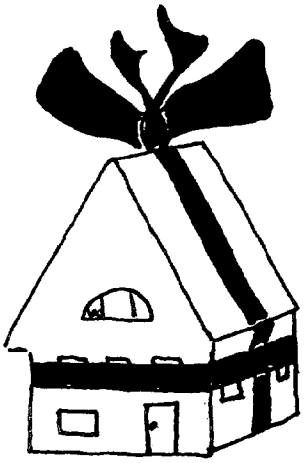
Encouraging Gifts

DEFINITION

a donation of land with or without conditions for its use

SCENARIO

A gentleman, who is very active in the Society for the Protection of New Hampshire Forests, owns a 250-acre piece of land. This wetland area is located in two townships. The man does not want to sell the land, but he wants to be sure that it is kept in its natural condition always. How can he ensure its preservation after his death?



For further information
turn to SECTION TWO, page 62

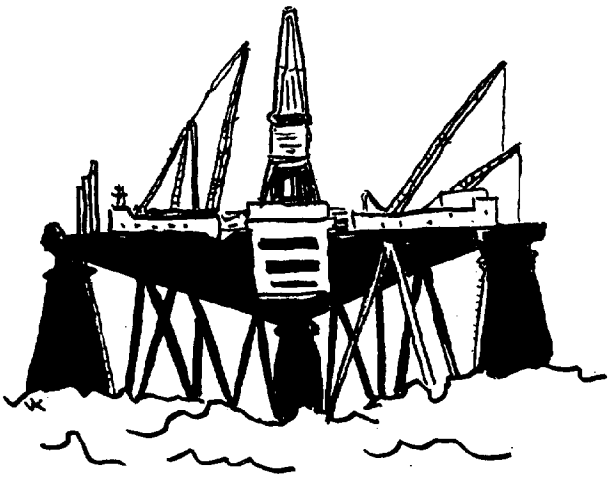
Issuing Permits

DEFINITION

permission from an authorized body to do something

SCENARIO

A person looks out her window one day and notices that a truck full of fill is being dumped into an adjacent marsh. As a member of the planning board she knows that no one has been given permission to build there. In fact, several months ago a developer was denied the right to build an apartment house on that very site. How can she stop the illegal filling?



For further information
turn to SECTION TWO, page 68

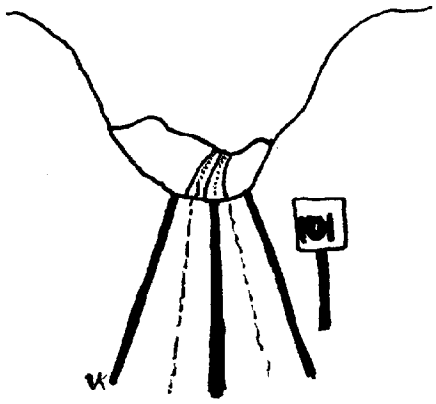
Requiring Environmental Impact Statements

DEFINITION

careful analysis of the effects of projects on the economic, social and natural environment

SCENARIO

The highway department has plans to widen a two-lane highway that will connect some semi-isolated ski areas with the interstate road. Traffic during the winter is now heavy and slow moving along the town roads. This highway would improve driving conditions, but some people are opposed to it because it would also cut through several farms, a wetlands area and open some towns to greater traffic. How does the highway department decide whether it should go ahead with its plans?



For further information
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SECTION II

Environmental Education

EXAMPLES

What kinds of Environmental Programs are there?

At least four types of environmental education programs are available:

1. Courses to teach people a specific skill -- how to identify trees, how to cultivate and care for a forest, how to camp in the woods.
2. Facilities for self-learning -- trails with educational signs; museum exhibits; books and pamphlets.
3. Action programs -- recycling centers, litter campaigns, beautification projects, wetlands mapping.
4. Environmental and ecology study programs in school and town nature areas.

Prior to the first Earth Day (April 22, 1970) the major providers of environmental education were conservation groups like the Appalachian Mountain Club, the Sierra Club, the Audubon Society and the Society for the Protection of New Hampshire Forests. These organizations distributed literature, set up workshops, held lectures, bird walks, film talks and wrote magazine articles and brochures, etc.

However, with the upsurge in interest in ecology many new groups are offering programs. Some of these include:

1. Schools: From the university level to kindergarten, schools offer academic classes, outside workshops, environmental education centers or

camps, field trips, environmental encounters and many other activities.

An unusual school called Habitat in Belmont, Massachusetts is "a private, non-profit organization devoted to environmental research, education and action." (brochure) Students pay $2100 per year to (1) take courses -- attend lectures, seminars, workshops and tutorials in the subject in which they are most interested (2) go on field trips -- last year there were 25 trips ranging from an afternoon at a nearby bog to a week on an island in Maine (3) work on a project. Students are expected to devote roughly half their time to environmental community service projects. Recent land protection projects include: helping the Lincoln (Massachusetts) Conservation Commission map wetlands; the Wilburn (Massachusetts) Conservation Commission generate public support for protecting the environment (developed guidebooks, established trails, got newspaper articles published); studied the effects of deicing salts on the environment.

The quality and results vary from project to project depending on the paid leader, the students and the community with whom Habitat works. Students were useful in supporting the work of the Lincoln (Massachusetts) Conservation Commission members, but were not skilled enough to do independent work. The deicing study was very successful: it was awarded the Presidential Award of Excellence for "Outstanding Achievement in Environmental Protection Services." For further information on Habitat write to: Habitat, Box 136B, Belmont, Massachusetts 02178, or call 617-489-3850.

Interns: Another environmental education program is the Intern

Photo by Annette Cottrell

Program run by the Massachusetts Audubon Society. Under the directorship of John Cook, Jr., each summer more and more people work on environmental projects with existing departments, organizations and towns. In 1972 when the program was first started there were 16 summer interns. In 1973 there were 123 interns, of which 75 worked only in the summer; and in 1974 there were 190 interns. Intern projects vary greatly from writing reports to conducting scientific research to helping a conservation commission. In each instance the intern is expected to produce something at the end of his/her job. This product can be a magazine article, a report or a map. (This book and the Guiding Growth book were both the work of interns working for the Society for the Protection of New Hampshire Forests.) For further information contact John Cook, Jr. at 617-259-9500 or write Massachusetts Audubon Society, Lincoln, Massachusetts 01773. Your town might be able to hire interns for some of your projects. The sponsoring group and the Intern Program share portions of the cost.

Camps: More than 20 New Hampshire school districts participate in school camping programs at resident environmental education centers. Two such centers are the Otter Lake Conservation School in Greenfield, NH and the Pembroke Environmental School in Pembroke, NH. In addition, some seventh and eighth grade classes use the Appalachian Mountain Club's hut facilities at Pinkham Notch, NH.

Some schools use their own facilities as environmental centers. Students at Monadnock Regional High School of Swanzey Center, NH, for example, use the trees, shrubs and wildlife around the school to study them and man's effect on them. Others, like the Derryfield School in Manchester, NH use several community resources and facilities.

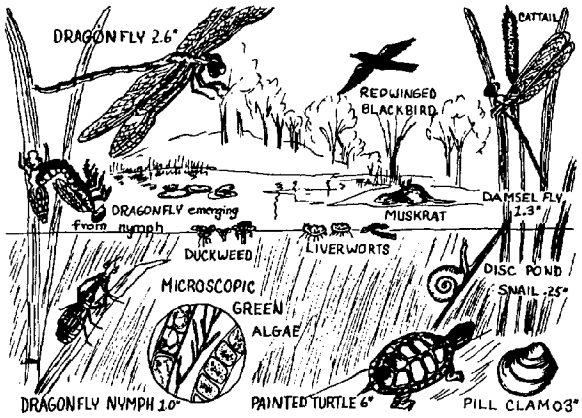
In addition to local facilities, New Hampshire has at least five regional environmental study centers: Squam Lakes Science Center (Holderness, NH 03245), Odiorne Point State Park (Odiorne Point, Portsmouth, NH 03801. Audubon runs this during the summer. They also run three others: Bear Brook (Allenstown, NH 03275), Paradise Point (Hebron, NH 03241) and Willard Pond (Antrim, NH 03440)), the Regional Center for Educational Training (Wilson Hall, Hanover, NH 03755), the Monadnock Ecocenter (Monadnock State Park, Jaffrey Center, NH 03454) and the White Mountain National Forest (Box 638, Laconia, NH 03246).

During the school year the Society for the Protection of New Hampshire Forests runs a day laboratory in Conservation and Outdoor Education at Bear Brook (Allenstown, NH 03275).

2. Associations and Trusts run workshops for local landowners. In 1967 the Beaver Brook Association (Brown Lane, Hollis, NH 03049) held a six

to eight month course in woodland management for owners of woodlands. Twenty-five people learned how to care for and protect their lands. So far, none of them have sold their land. Other activities sponsored by this association include day trips, in-school lectures, summer students' projects, independent research and adult classes.

3. Conservation Commissions and Groups are putting together pamphlets, tour guides, brochures and books explaining open space laws, describing particular environments, teaching how to set up a recycling program, etc. Winchester Trails in Massachusetts, for example, in cooperation with the Winchester (MA) Public Schools and the Winchester (MA) Conservation Commission wrote several guidebooks. One guidebook gives a brief description of what you can see on the trail: "At the stone wall you may see evidences of the farm which was once here: the wall itself, Concord grape vines, the old apple tree, and the farmer's trash heap. On the way up the hill are sassafras trees and low-growing sarsaparilla, used by early settlers to make tea and root beer." (Station 3: Guide to Smith Pond Nature Trail). Another is a more in-depth explanation of the history and environment (same trail). A third is a guide for leaders explaining how to teach students to have an enjoyable and educational



FROM: WINCHESTER GUIDE

walk along Long Pond. It offers suggestions of projects children can do while they are on their walk.

4. Government Departments like the New Hampshire Cooperative Extension Service, the U.S. Forest Service and the County Forester help communities figure out what resources they have and how to care for them. The Cooperative Extension Service organizes an educational, environmental planning team to assist towns (main office: University of New Hampshire, Durham, NH 03824).

The U.S. Forest Service is completing new guidelines for the management and use of the White Mountain National Forest. The foresters are helping to continue the tradition that a forest can be used by many people with different interests. (Forest Supervisor, White Mountain National Forest, Box 638, Laconia, NH 03246.)

County foresters working with the Cooperative Extension Service help landowners improve their lands, augment their harvests, control soil erosion, protect wildlife, locate old roads, manage their forests and provide nature trails. (Main office: University of New Hampshire, Durham, NH 03824.)

The program the North Country Resource, Conservation and Development has built 15 to 30 minute walking trails on public lands. According to Gib Dodge of the Extension Service, over 50,000 people used these trails in Shelbourne, Sanbornton, Franconia Notch, Warren Fish Hatchery and Wildcat Mountain. (North Country Resource, Conservation Development Project, Inc., P.O. Building, Littleton, NH 03561)

The Educational Planning Council of New Hampshire, under the

chairmanship of Bill Ewert, has published an assessment of people's environmental needs, a resource directory and a recommended state plan for operationalizing programs. This group consists of 22 people representing conservational education interests in the state and is three years old. For further information contact: Bill Ewert at the New Hampshire Department of Education, 64 North Main Street, Concord, NH 03301 (telephone 271-3293).

HOW TO DO IT

Through federal, state and local environmental education programs residents can become interested in and can learn how to protect open lands.

New Hampshire offers a variety of environmental programs, besides those already mentioned in this report. The following books describe the range of these programs:

Environmental Education Programs and Resources (41 pages) published in September, 1973. It is available free from: Consultant, Science, N.H. Department of Education, 64 North Main Street, Concord, NH 03301.

A Directory of Projects in Environmental Education for Elementary and Secondary Schools, compiled in 1972 by John F. Disinger, describes approximately 200 projects. It can be obtained for $6 from: ERK Center for Science, Mathematics and Environmental Education, 1460 West Lane Avenue, Columbus, OH 43212.

"Environmental Education for New Hampshire: A Plan for Community Involvement" published by the N.H. Charitable Fund, 1 South Street, Concord, NH 03301. It describes programs, recommends courses of action, offers a model for promoting citizen involvement and lists places to get additional information.

There are also several excellent films and slide shows related to environmental awareness:

"New Hampshire Countdown" is a slide/tape presentation of the need for local participation in conservation work. 20 minutes long. Obtainable from the Society for the Protection of New Hampshire Forests, 5 South State Street, Concord, NH 03301.

"The Land Boom Comes to New Hampshire" is a 16 mm. film portraying land-use changes, with interviews with citizens, developers, and town officials. 30 minutes long. Obtainable from the N.H. Office of Comprehensive Planning, State House Annex, Concord, NH 03301.

"Marsh Lands are Not Wastelands" is a 16 mm. film on the importance of protecting tidal marshes. 25 minutes long. Obtainable from the Society for the Protection of New Hampshire Forests, 5 South State Street, Concord, NH 03301.

"The Flooding River" is a 16 mm. film depicting the Connecticut River flood plain as a necessary part of the river system. Makes a good case for flood plain protection. Obtainable from the Society for the Protection of New Hampshire Forests, 5 South State Street, Concord, NH 03301.

For additional visual presentation materials try the Audubon Society of New Hampshire, 3 Silk Farm Road, Concord, NH 03301 (telephone 224-9909).

Mapping and Planning

Town planning is a community deciding its own future. Don't wait for developers to propose filling in the marsh or building high-rise apartments. Begin now by making maps of your town's soils, water drainages, wetlands, major vegetation, etc. Then develop plans which describe how you want your town to grow and vote in regulations to insure that your plans are implemented. The first step in town planning is getting a knowledge of what your town looks like now.

Many different kinds of maps and plans help people understand their towns: land-use maps, master plans, soil analyses and surveys, hydrology maps, vegetation maps, wetland maps, slope analysis maps and aerial photographs. The next section "HOW TO DO IT" will describe how to make and use some of the most important maps.

Most New Hampshire towns have some maps, although they vary in number, detail and content:

Plymouth has no master plan, but has recently completed an accurate tax assessment map based on aerial photographs.

Sanbornton decided to up its zoning to a minimum of six acres per lot until it could develop a good land-use policy. The town purposely tried to slow down and stop growth until it could create such a plan.

Hollis Planning Board, with the help of a consultant, worked out a comprehensive zoning and subdivision plan.

Cornish has several zoning ordinances based on maps and plans -- wetlands zone, flood plain district, 100-foot buffer from all streams.

Londonderry and Peterborough have very elaborate land-use inventory and buitability maps which indicate the conditions of the land today and location of lands most suitable for development.

Eaton, with help from some students at Harvard University's Graduate School of Design, developed some natural resource maps.

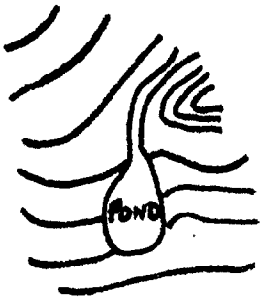
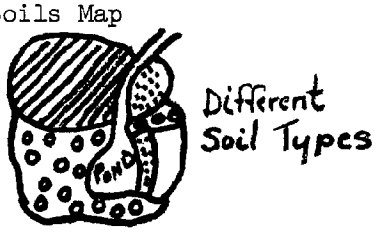
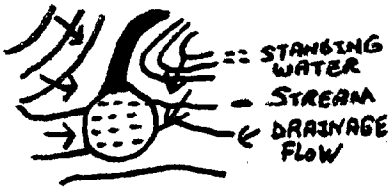
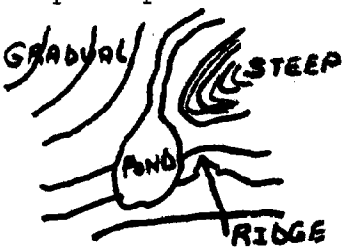
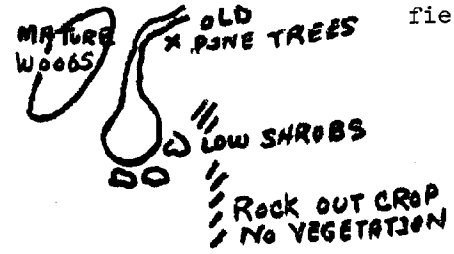
The Regional Field Service from Harvard University's Graduate School of Design, published a detailed study on Peterborough in 1972. It is a collection of inventory maps and suitability maps.

As more towns realize that they are faced with where does new growth go rather than whether there is to be growth, there will be even a greater need for good maps and plans. This information doesn't tell people the optimum population size for their town or the best density for housing, but it gives them data on which to make these policy determinations. For example, to know how large a town should be requires knowing information like:

How many people there are now in town?
How many dwelling units could legally be built under the current zoning laws?
What are the soil characteristics of the undeveloped lands?
How much land is too wet, too steep or too rocky to build on?
Where has growth been occurring in the past year, 5 years, 10 years?
How much land is owned by the town, the state or the federal government (parks, public facilities, wildlife refuges)?

HOW TO DO IT

Many towns cannot afford to spend $80,000 (as Duxbury, MA recently did) to hire a consultant to do an elaborate study. However, they have many very enthusiastic and competent local people who could volunteer their work. For those towns who want to know how to do a natural resources inventory of their lands and to be able to decide where new housing, parks and businesses should go, follow this process (based on the Peterborough Study and on "Subdividing in the Wildlands of Maine" by the Maine Land-Use Regulation Commission, September, 1973):

MAKE MAP	WHERE TO GET INFO	REASONS	WHAT TO LOOK FOR
Topographic Map 	U.S. Geological Survey; aerial photos; field work	gives a good overall view of the character of the land	avoid building on steep slopes because of erosion, downhill pollution; avoid building in valleys because of water drainage; avoid building in wet areas; fit building into landscape
Soils Map 	Soil Conservation Service	gives ability of soils to drain water and to support weight of buildings	avoids erosion; avoids polluting waterways with sewage; avoids building on bedrock
Ground Water Map 	U.S. Geological Survey; Water Resources Division	need good drinking water	avoid building on wetlands; avoid erosion; avoid building on low water table; avoid destroying potential water sources
Slopes Map 	Topographic Map	helps determine where building is most suitable (least expensive, least disruptive of the land	avoid building on steep slopes (15%); avoid building roads on more than 8% slope
Vegetation Map 	Aerial photos; field work	provides habitat for animals; timber is important for paper; gives privacy and scenic beauty; can cut down on nois	avoid building near sensitive plants; protect unique areas

Some organizations which provide technical advice are:

1. Soil Conservation Service -- agents can make soil serveys and recommend soil conservation practices. Federal Building, Durham, NH 03824, telephone 868-7581.

2. N.H. Cooperative Extension Service -- help with soil testing, forest management, agricultural and recreational planning. Contact your county agent or the statewide center in Durham. University of N.H., Durham, NH 03824, telephone 862-1520.

3. N.H. Association of Conservation Commissions -- provides information and referral assistance to town conservation commissions. 5 South State Street, Concord, NH 03301, telephone 224-9945.

4. N.H. Department of Resources and Economic Development, Resources Division -- has district foresters available for forest management assistance and community recreation service staff help with recreational and open-space planning. State House Annex, Concord, NH 03301, telephone 271-2343.

5. N.H. Regional Planning Commissions are located in several regions:

   North County Council, P.O. Box 269, Franconia, NH 03580, telephone 823-8108.

   Lakes Region Planning Commission, 11 Lang Street, Meredith, NH 03253, telephone 279-6550.

   Upper Valley-Lake Sunapee Region, On the Mall, Lebanon, NH 03766, telephone 448-1680.

   Southwestern N.H. Regional Planning Commission, Municipal Airport, Swanzey, NH 03431, telephone 357-0557.

   Central N.H. Regional Planning Commission, Grandview Road, Bow, NH 03301, telephone 225-2225.

   Southern N.H. Regional Planning Commission, 815 Elm Street, Manchester, NH 03101, telephone 669-4664.

   Nashua Regional Planning Commission, 92 Main Street, Nashua, NH 03060, telephone 883-0366.

   Southeastern N.H. Regional Planning Commission, 10 Front Street, Exeter, NH 03833, telephone 772-6913.

   Southern Rockingham Regional Planning Commission, 19 Main Street, Salem, NH 03079, telephone 893-8233.

Strafford Regional Planning Commission, 600a Central Avenue, Dover, NH, telephone 742-2523.

Other useful maps which are fairly self-explanatory are:

Depth to Bedrock
Historic and Unique Features
Scenic Views
Depth to Water Table

Now comes the fun part! Using various maps on transparent paper, overlay them to determine suitability of the land. A description from the Londonderry study gives a good idea of what can be learned by placing maps on top of each other.

By overlaying the slope, depth to bedrock and depth to water table maps you can determine which areas have no limitations for development to those which have slight, moderate, severe and very severe limitations for development:

SLOPE	BEDROCK	WATER TABLE	
0-3%	10 feet	5 feet or more	NO AND SLIGHT LIMITATION
3-8%	5-10 feet	3-5 feet	MODERATE LIMITATION
8%	3-5 feet	0-3 feet	SEVERE AND VERY SEVERE

By overlaying the slope, water table, vegetation, topography, soils, bedrock and visual character maps you can measure the sensitivity of the land to development. In the Londonderry study five categories were established:

Minor permits high-density residential, commercial and industrial development.

Slight permits one dwelling unit per acre residential and some commercial development.

Moderate permits recreation, forestry, agriculture and one dwelling unit per acre residential development.

High permits recreation, agriculture and institutional open space.

Major permits recreation, conservation and no development.

The "major" classification fits Londonderry's needs; each town is different. Your town may choose to protect more land or to permit higher density building on what Londonderry calls "moderate" land. The important aspect of this procedure is that it forces people to look at all the land in town and to consider which is suitable or not suitable for development.

These maps can also be very helpful to planning boards, conservation commissions and other groups for specific tasks like defining wetland zones or watershed districts, for selecting the most scenic open spaces for acquisition, for selecting the least harmful (to the natural environment) site for a town dump or for evaluating a subdivision proposal.

CAUTION WITH USING THE LAND-USE INVENTORY METHOD

Like any other method for protecting lands, this one is not a solution by itself. It helps planning boards and others understand the layout of the land and its natural limitations, but it does not determine policies. Only townspeople can decide questions like:

Should the marshes be protected?

Should planned unit developments and cluster housing developments be encouraged as alternatives to single-family subdivisions?

Should open space be acquired outright or protected through conservation restrictions (see page 47).

In fact, land inventories should not even determine maximum density or location of development. There are many examples where the land can hold or "carry" more development than townspeople may prefer. For example, a parcel of land may be entirely suitable for development after analyzing all the maps, but such development is undesirable because the cost of providing public services for the new residents would be too great a burden for the town.

Maps are extremely useful in illustrating -- from a natural land-use view point -- where development is most or least suitable. This information can form the basis for creating policies and regulations. For example, a wetlands map shows all the areas which have a high water table or which are wet a high percentage of the year. This map can be used to determine the boundaries of a wetlands or flood plain district. Regulations protecting all lands within such a district can now be enacted.

LAWS

N.H. RSA 36:11 Zoning Powers of a Planning Board.
N.H. RSA 36:12 Authority to Recommend Amendments of Zoning Ordinance.
Planning boards have the power to recommend zoning changes.

N.H. RSA 36:13 Purposes of the Master Plan.
Planning boards have the duty to make a master plan to promote desirable development of streets and other ways, water fronts, open spaces and public facilities.

N.H. RSA 36:14 Preparation of Master Plan.
The master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and

harmonious development of the municipality and its environs which will, in accordance with existing and probable future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds and the adequate provision of public utilities and other public requirements.

In the preparation of a master plan the planning board may make careful and comprehensive surveys and studies.

Regulating Residential Development

EXAMPLES

Subdivisions:

Two innovative subdivision regulations are in effect in several New Hampshire towns. The first requires that developers pay not only a normal filing fee, but also pay for all costs incurred in excess of this basic amount, and that the payment must be done prior to the planning board's approval or disapproval of the final plan. The City of Claremont adopted this type of provision on May 6, 1974. Patterned after the model subdivision ordinance prepared by the Upper Valley-Lake Sunapee Council, Claremont's regulation calls for a $15 basic filing fee plus a $10 per lot basic fee (for all subdivisions larger than two lots) plus "any and all design, engineering and review costs incurred by the municipality."

The money goes into the town's general fund and is used to pay for basic costs such as paper work, mailings, notices, storage of equipment and for clerical and consultant help. This technique seems reasonable from both the town's and the developer's point of view. The town wants to do a careful evaluation of the proposal and the developer wants approval to build.

If you want more information contact Bob Ward at the Upper Valley-Lake Sunapee Council, 7 Main Street, Newport, NH, telephone 863-4644.

The second new subdivision regulation concerns varying the sizes of lots depending on the soil and slope conditions. Bow, NH townspeople voted in, on March 7, 1974, such a subdivision provision. No lot can be smaller than the size permitted in the zoning regulations. However, under certain conditions -- spelled out in the subdivision regulations -- the planning board can require that a particular lot be larger than the minimum if it contains steep slopes or poor soils for building.

This requirement makes a lot of sense. The zoning requirements assume that all lots are of equal composition. They are not. There should be some kind of adjustment for lots which contain unbuildable areas. Instead of increasing the lot size through zoning, this technique gives the planning board the flexibility to make adjustments.

For further information contact Michael Blake, Assistant Planner at the State Office of Comprehensive Planning, Room 123, State House, Concord, NH 03301, telephone 271-2155 and Chairman of the Bow Planning Board.

Cluster Zones:

Milton, Massachusetts voted in a cluster zone in 1971. Any parcel of land ten acres or greater is eligible to apply for a cluster development. The benefit to the town of a cluster is that 25% of a site must be set aside as open space.

Unlike other residential zones (like a 40,000 square-foot zone or a one-acre zone) a cluster zone is not always a zoning change.

In some towns an owner must apply to the Planning Board or to the Board of Adjustment for a special permit. If the permit is denied the zoning remains the same as before the application.

Plymouth, Massachusetts has several cluster developments in progress. One is a 1,000-unit cluster sponsored by the Rhode Island Development Company. By building a cluster rather than a normal subdivision the Town of Plymouth gets to require much more detailed environmental data, to preserve more open space (10% of a site) and to have an on-site inspector, paid by the developer, who checks to make certain that the approved plans are followed in construction.

Although New Hampshire does not have any state enabling legislation, some towns have considered cluster development. Dunbarton proposed to allow cluster housing as a special type of subdivision, but townspeople then decided to press for no new development. Concord planners considered cluster subdivisions, but dismissed the idea because they felt that people prefer to own their land rather than to share ownership with a group of residents or with the town. Londonderry has one cluster development, on an area of 114 acres, off Litchfield Road and East and West Yellowstone Drives. There will be 96 houses and 26 acres of open space.

Planned Developments:

A variation of the cluster development is a planned development (also called a planned unit development or planned community development). Like the cluster, houses are grouped together leaving

open spaces. However, planned developments permit many more types of structures: single-family and multi-family residences; condominiums, homes and apartments; industry; commercial facilities; and recreational facilities such as tennis courts, pools, riding and hiking trails, community centers and golf courses. Some of the most well-known planned developments are Columbia, Maryland; Reston, Virginia and Radburn, New Jersey. These large-scale planned developments are called "New Towns" because they contain several residential neighborhoods, many stores and some industry.

As more and more open space succumbs to development some towns are beginning to consider planned developments as a way of protecting open space. As ironic as this may seem (large-scale development providing open space) it is true.

New Hampshire has several planned developments in the form of ski resorts and vacation home developments. Beaver Meadow Village in West Concord will be a development of duplex houses. Originally intended as a retirement community, it is now being proposed as a family development. Because of the change in plans and in owners this planned development is still in the conceptual stage. The "Harvey Construction Development" in Concord is a little more advanced. The planning board is currently reviewing a site plan and maps showing 450 housing units of single-family houses detached, attached row houses, apartments, light industry and businesses. Planners are working with this and other developers to help them understand the benefits of building cluster housing. They help analyze the site and explain how they can site

houses to maximize the protection of special natural features like a brook, pond or grove of trees.

The latest such development being constructed is one by the Controlled Environment Corporation in Grantham and Springfield. On a 2,500-acre tract approximately 1,700 single-family homes, 400 condominiums, a 300-acre lake, golf course, ski slopes and trails will be built. Houses will be tucked into the landscape on an average of one- to two-acre lots. The restaurant, lounge and golf course will be open to the public; otherwise the recreational facilities will be used by residents, guests of the Eastman Community Association and certain groups such as the New London Outing Club and the Dartmouth Outing Club.

Special features of this development are the techniques for protecting open space and for siting houses. An owner buys a plot consisting of a house or condominium and land. He then agrees to turn over the development rights on some of the land to the Eastman Community Association (a group of residents from the planned development). In effect, he owns <u>all</u> the land but cannot build on some of it. The portion that is protected from development consist of special open spaces such as a brook, a rock-out crop or a trail.

This concept controls where buildings can and cannot go. At first the developer was concerned that potential buyers would be hesitant to participate in such an innovative and new concept. However response has been "excellent", with the house lots selling quickly.

The significance of this type of planned development is that it accommodates people's desire to own property and while at the same time providing for protected open space.

HOW TO DO IT

1. Subdivisions:

The most common residential development is the single-family subdivision. This form of residential development is especially easy to do in towns which have no zoning or subdivision regulations. The developer can build whatever he wants to. Of New Hampshire's 234 municipalities, only 65% or 153 towns have some form of zoning and a similar percentage or 158 towns have subdivision rules. Thirty-five other towns are in the process of adopting one or both of these regulations.

According to the New Hampshire laws, planning boards can have alot of control over subdivisions. They can control the streets, open spaces and lot sizes.

The planning board must approve all subdivisions. To do a good job in evaluating a proposed subdivision a planning board should know more than the number of proposed house lots. Some useful information is relatively straight-forward, like soil analysis, drainage and erosion control plans, sewage disposal plan, road layouts and vegetation maps.

Under subdivision regulations a town may require a developer to dedicate some land for open space. (This requirement was upheld as legal in a California case in 1971: Associated Home Builders of Greater East Bay, Inc. v. The City of Walnut Creek, 4 Cal. 3d 633, 94 Cal. Rptr 630, 484 P. 2d 606.) The amount of open space varies in each instance -- it should be a "reasonable" amount given the size and density of the development.

Other requirements are much more complex. For example, Wayland, Massachusetts now requires each subdivision to be studied for its impact on the town: the projected cost of public services, the increase of traffic, the projected number of school children, the effect on drainage, etc. By knowing this kind of information a planning board can decide how much of a negative impact the subdivision will have on the town. There should be no assumption that growth is good.

2. Cluster Housing:

This concept allows for a compact grouping of houses on a parcel of land in order to provide a contiguous and common open space, but it does not permit more house lots than would be allowed under conventional zoning.

Basically, each house lot is smaller, the houses are closer together and the remaining open space is pooled together. Conservation restrictions and easements can be written to ensure that the open space is maintained that way forever. Some cluster bylaws require that the developer dedicate a portion of the open space for public use.

The advantages of cluster development are numerous:

1. Protection of special and unique features such as a ridge, a rock outcrop, an old stand of birch trees or a stream.

2. Less streets to maintain because the houses are closer together.

3. Reduced costs to the developer of installing utilities.

4. Conservation of open space for residents and for the general townspeople.

5. Better siting of houses -- can locate on the best soils, slopes, etc.

6. Greater safety for children -- can play away from the streets.

Although cluster development is attractive for all these reasons it is still a rarity. Why? Some people prefer individual private lots. They move to the suburbs or country to buy a house with land and they resist any change towards a different life style. Some people are turned off by the cluster housing they've seen. Others like the concept, but don't know how to write a bylaw. If you are one of these people you might be interested in buying the book, "Cluster Zoning in Massachusetts" by Katherine A. Kulmala published by The Planning Services Group, Inc., 18 Eliot Street, Cambridge, Massachusetts 02138. Although it refers to Massachusetts and not New Hampshire, it gives a good description of what a cluster is, what to take into account when writing a cluster bylaw, and how to write one.

The process often followed for approving a cluster development is similar to that of a planned development, only simplier. The clearest way to understand this process is to see it applied to an example.

What distinguishes a "good" cluster development from a "bad" one?

GOOD CLUSTER	BAD CLUSTER
1. Large, usable open spaces	1. Small, unconnected strips
2. Protection of unique environmental characteristics	2. Destruction of environmental features -- such as filling in a brook or cutting down a lot of trees
3. Good access to and from major roads -- no or little traffic congestion	3. Isolated from major access points
4. Near shopping areas	4. Far from shopping areas
5. Adequate and non-obtrusive parking areas	5. Insufficient and prominent parking areas
6. Design of housing which gives a sense of privacy to each unit	6. Design which creates a crowded atmosphere
7. Each house has view of open space	7. Houses which face each other

3. Planned Developments:

The Town of Wayland, Massachusetts has been chosen to illustrate the cluster and planned development process because (1) it is a fairly rural town (2) its process is explicitly described in its bylaw (3) its process benefits and protects the town, not the developers.

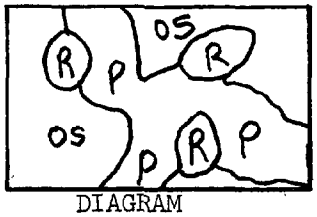
In the fall of 1973, a local landowner came to the planning board saying that he could no longer afford to keep all of his 700 acres and that he wanted to develop approximately 370 acres. The town's zoning bylaws allow him to build only single-family homes. Since he felt strongly that a division of his beautiful woodland into 180 lots would destroy its character he asked the planning board to write an addition to the town's bylaws to permit a planned development. After 14 months of

careful study and drafting the planning board members, with the help of a part-time planning consultant, town counsel, the League of Women Voters, town boards and citizens, wrote a very detailed Planned Development Bylaw. They feel that this bylaw "greatly protects and benefits the town."

Under the bylaw, any owner of at least 125 contiguous acres (not divided by an existing street or aqueduct) can apply to the planning board for consideration of a planned development. This definition was chosen to appeal to large landowners and to limit the number of eligible sites to a manageable number (five). The owner then presents a Preliminary Development Plan which describes, in conceptual terms, the basic layout of the streets, housing units and open spaces. Only single-family homes and condominiums are allowed -- no apartments. The plan is evaluated by all town boards and by townspeople at a public hearing. At the next town meeting the planning board issues a report and voters decide whether the site is appropriate for a planned development. If two-thirds of the voters approve the site, the applicant (he may be the owner and/or the developer) can then begin to get elaborate technical studies leading towards a development plan. This plan is reviewed by town boards and citizens. The planning board holds a public hearing and gives a written report to the Board of Appeals (equivalent to the Board of Adjustment). In Massachusetts this board has the power to issue special permits. Until this permit is given the land remains at the current zoning.

Once it is approved the applicant can seek building permits.

At this stage he must deed 35% of his site to the town for public open space. In our example, the owner will turn over approximately 125 acres to the town. This donation is offered before <u>any</u> construction has begun and cannot be retracted even if the project fails. The applicant then applies for his first building permit. When he receives it he must deed to the town building rights to another 35% of the site. This land is kept as "private open space" and can be used by the applicant as a golf course, recreation facility or some other conservation or recreational use.



DIAGRAM

OS = Public Open Space
P = Private Land
R = Residential Units

This by-law may seem very restrictive and beneficial to the town -- especially considering that the density allowed is between 1.0 and 1.75 dwelling units per "buildable acre" (total acreage of the site minus wetlands). It is however; its conditions are acceptable to the landowner.

The important lessons from the Wayland, MA example are:

sometimes a planned development is better than a subdivision;

work closely with potential applicants when developing a bylaw so that final result is workable;

don't be afraid of writing a strict and protective bylaw.

Because the townspeople of Wayland, MA believed that the planning board had done a competent and thorough job they voted for the

zoning amendment. They, too, were convinced of the need to offer landowners of large tracts of land the option to build a planned development. There are five major reasons why planned developments may be desirable:

(1) Offers an alternative type of housing attractive to older people and to young couples with no children. The units will still be expensive, but they are smaller and easier to care for.

(2) Protects open space. Seventy percent of each site will be left open space; half of which will be accessible to the public. Unique and special features can be saved by careful siting of the buildings and roads.

(3) Maintains the tax rate. Economic studies show that Wayland, MA may receive more in revenues than it would cost to provide services. Part of the reason for this may be that the average size condominium is limited to two bedrooms -- so there will not be the number of children living there as would be in a home of the same price. Economic studies must be calculated very carefully. People, often, assume that any new development easily pays for itself, only to discover that the figures show otherwise. Be sure to include all potential costs to the town such as hiring new policemen, firemen, teachers, building new classrooms or a new school, widening an existing town road, putting in traffic lights, laying new water pipes, etc. Henry Selle, a consultant in Hanover, developed a system of measuring the impact of growth on municipalities and school districts by using a computer. Any person wishing to learn more about his method can contact him at: 7 Claflin Circle, Hanover, NH 03755, telephone 643-4680.

(4) Allows the town to regulate development according to its ability to provide the necessary services. Each site for a planned development requires a vote of the town, a permit by the Board of Appeals, and approval of a development schedule (listing the number of units to be built in each phase and the time period for each phase). The town can spread out the development over a number of years. Under the subdivision regulations the town has no control over the rate of construction.

(5) Preserves the rural character of the town. Buildings will be grouped to fit into the woods; no one traveling along the road will be able to see any of them; trees, ponds, rocks and fields will remain in their natural state.

Towns with large tracts of undeveloped land should consider

low-density planned developments. If you are interested in the concept be sure to do careful studies of your town's needs to determine the best size, density, housing type and administrative controls. For more information on Wayland, MA contact: The Planning Board, Town Building, Wayland, Massachusetts 01778.

LAWS

N.H. RSA 36:2 Grant of Power to Municipality.
Any municipality is authorized to create a planning board.

N.H. RSA 36:19 Grant of Power to Regulate.
Planning boards can approve or disapprove of subdivisions and of site plans for development of non-residential parcels of land.

N.H. RSA 36:19-a Further Power of Planning Boards. (1973 Supplement)
Annotations: (1) Zoning changes (2) Approval

N.H. RSA 36:21 Regulation of Subdivision of Land (Revised 1973 Supplement)
Before exercising the powers referred to in section 19 hereof, the planning board shall adopt regulations governing the subdivisions of land within its jurisdiction. Such regulations may provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire department, or other public services, or necessitate an excessive expenditure of public funds for the supply of such services. Such regulations may provide for the harmonious development of the municipality and its environs; for the proper arrangement and co-ordination of streets within subdivisions in relation to other existing or planned streets or with features of the official map of the municipality; for open spaces of adequate proportions and for suitably located streets of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air, and access of firefighting apparatus and equipment to buildings, and be co-ordinated so as to compose a convenient system. The regulations of the board may require in proper cases that plats showing new streets or narrowing or widening thereof submitted to it for approval shall show a park or parks suitably located for playground or other recreational purposes; they may require that proposed parks shall be of reasonable

size for neighborhood playgrounds or other recreation uses, and that the land indicated on plats submitted shall be of such character that it can be used for building purposes without danger to health; they may prescribe minimum areas of lots so as to assure conformance with local zoning ordinances and to assure such additional area as may be needed for each lot for on site sanitary facilities and generally may include provisions which will tend to create conditions favorable to health, safety, convenience, or prosperity.

N.H. RSA 36:22 Additional Requisites.
The planning board can stipulate conditions over street grading and improving.

Designating Scenic Roads

EXAMPLES

The entire road does not have to be designated as scenic; portions of roads are acceptable. Charlestown, NH has five approved scenic roads: Lamb Road, Meany Road from the top of Breakneck Hill to Langdon Line, Old Putnam Road from Donovan Merrill's to Boys Camp, Stage Road from the top of Bailey's Hill and North Charlestown to the North Hemlock Road by Don Leberge's. As you can see, road descriptions include names of people, organizations and geographical sites or landmarks.

According to Sally Comstock of Charlestown, the criteria used to select these roads were:

made of dirt
semi-traveled
scenic in character
not heavily populated

So far no road has been threatened with change even though the roads abut property which Ms. Comstock feels "would be desirable for residential development."

Some towns begin by designating some roads "Scenic" at one town meeting and then add more roads at subsequent meetings. This gives people a chance to evaluate the effects of the first designations and to do a careful study of other possibilities. Amherst, NH approved nine roads in 1972 and two more in 1973. The criteria used, according to a selectman, were: public opinion; presence of gravel base; types and

numbers of trees; and little maintenance required. Like Charlestown, there have been no challenges, or requests for roadwidening.

Scenic road designations are sometimes a part of a larger program to protect open lands. The Hillsborough Conservstion Commission open lands. The Hillsborough Conservation Commission has, among other things, sponsored a junker clean up (95-100 cars were removed with the aid of the local National Guard), a tree planting program (planted approximately 50 trees in the center of town), a river walk (along the Contoocook River) as well as promoted and helped get acceptance for two scenic roads (Shedd-Jones Road and Dean Hill Road). Although one of these roads has an approved subdivision adjacent to it, it will probably not be widened. Rosemary L. Sprague, Secretary of the Hillsborough Conservation Commission, said that two more scenic road designations were requested at the March Town Meeting. Twenty-two of the thirty

property owners abutting one of these roads are out-of-state residents!

Fourteen town roads were accepted by the Town of Acworth as "scenic". The general public played an important role in their designation: comments voiced at the required public hearings resulted in alterations of some of these roads. So far, the town has "experienced no serious conflict between the concept of a scenic road and the needs of normal safety and maintenance."

Powder Mill Road (from Old Wolfeboro Road to New Durham Town Line) was selected by the townspeople of Alton, NH because of its "esthetic" value and its rural character. No threats to the road's preservation have occurred since its designation.

Not all scenic designations are successful; widening may take place despite the designation. Antrim, NH has such examples. Of the ten roads approved as "scenic" in 1973 one has been widened for a school bus and stone walls and trees were removed from private property on another. On a third road, Route 31, the state removed a stone wall, widened the road and replaced the wall!

In any case, the public must be informed of any proposal to widen a scenic road prior to any action, and the public has the power to pressure against such action or to ensure that the walls and trees are preserved.

HOW TO DO IT

The planning board, conservation commission, historical commission or ten voters of a town can request that a particular road be

designated as "scenic". Voters then decide at a town meeting whether to officially approve the road(s).

Prior to acceptance of a road as "scenic" abutters (or those people who live or own property along the proposed scenic road) must be contacted and informed of the designation. Letters may not be sufficient; one town, Hillsboro, NH found that regular letters were not always received. So, in the future, registered letters will be sent.

Once the road is officially designated as "scenic" any repair, maintenance, reconstruction, or paving work done to that road cannot involve the removal of trees or any portion of a stone wall except with the written permission of the town planning board (or selectmen, if no planning board exists) after a public hearing is held.

Under the 1973 revision, trees up to 15 inches in circumference at a height of four feet above the ground can be removed without permission. In addition, necessary trimming for power and telephone lines does not need approval.

Scenic designation places no restriction on the property owner with respect to work on his property and does not affect the eligibility of the town to receive Town Road Aid (TRA) funds from the State Department of Public Works and Highways.

LAWS

Scenic Roads [New]

N.H. RSA 253:17 Scenic Roads; Designation.
Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner.

Upon petition of ten persons who are either voters of the town or who own land which abuts a road mentioned in the petition, (even though not voters of the town,) the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The town clerk shall notify by regular mail within ten days of the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above.

N.H. RSA 253:18 Effect of Designation as Scenic Roads.

I. As used in this subdivision, "tree" means any woody plant which has a circumference of fifteen inches or more at a point four feet from the ground.

II. Upon a road being designated as a scenic road as provided in RSA 253:17, any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this act, after a public hearing duly advertised as to time, date, place and purpose, two times in a newspaper of general circulation in the area, the last publication to occur at least seven days prior to such hearing, provided however that a road agent may remove portions of trees, shrubs, vegetation, and other natural or man-made obstructions from within three feet of the main traveled portion of such road which interfere with the safe traver upon such road without such consent, and provided further that a road agent may, in emergency situations, cut and remove trees without the written consent of the selectmen without such hearing.

III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction or reconstruction aid pursuant to the provisions of RSA 241 for such road. Any application by the selectmen of said town for such aid for a scenic road shall include a request to the commissioner of public works and highways to suspend operation of specifications as provided in RSA 241:7,I.

IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property.

Designating Scenic Trails

EXAMPLES

The Appalachian Trail System extends through New Hampshire. How successful is it? There are at least two ways to measure its success: first consider how much land has actually been acquired for preservation. All public lands along the trail are now part of the system. Negotiations are currently underway to obtain conservation restrictions over the private lands through the White Mountains. Acquisition guarantees that the trail will be continuous through New Hampshire and will be accessible to the general public.

The second criterion of success is based on the use of the trails: have more people used the trails in recent years? Statistics of hikers, skiers and campers have not always been kept. However, through conversations with staff of the Appalachian Mountain Club (which are authorized by special permit to administer the shelters or huts on National Forest land) and the National Forest Service (which, with the help of a number of cooperating organizations, maintains the trails on Forest Service land) it is clear that the numbers of people have increased tremendously in the past several years. Steve Maddock of the AMC cites the use of once-remote paths such as the Mahoosuc Trail to the northeast of the Presidential Peaks as an indication of the growing numbers of hikers. Also, he feels that more people are prepared to spend the night camping outside or in the huts and that there are many more spring skiers

than ever before. Cross-country skiing or touring along the trails is very popular, especially since the energy crisis has made down-hill skiing more difficult to get to.

Hoyt Hall, at the White Mountain National Forest, has some figures which support Steve's impressions:

VISITOR DAYS*

Year	Hiking	Camping	Cross-Country Skiing
1970	33,900	30,300	400
1971	63,500	40,700	500

* 1 visitor day = 12 man-hours of time spent

Because of over use, the White Mountain National Forest instituted a policy to disperse hikers to less popular trails and to concentrate campers in certain sites. Beginning in 1972, camping restrictions on capacity and length of stay were put into effect at 12 sites along the Appalachian Trail. As a result, camping use dropped to 27,600 visitor days that year. The policy seems to be working: according to Mr. Hall, grass is reappearing in some areas, people are taking shorter hikes, side trails are being utilized and people are going to new places such as in Wild River Country.

However we measure open-land protection -- by the amount of land preserved or the number of users of that land -- it is clear that the Appalachian Trail is successful and should be supported with funds and donations of conservation restriction easements.

HOW TO DO IT

This scenic trail law ties New Hampshire land to the Appalachian National Scenic Trail System.

As of its effective date, August 22, 1971, the Commissioner of the Department of Resources and Economic Development can:

* acquire by purchase, gift or eminent domain land to create a trail across New Hampshire, between the Connecticut River and the Maine State Line. Outright purchase, which can be costly, is not necessary. The commissioner has the authority to buy and accept easements or rights which exclude development on the trail, but don't require ownership of that land.

* provide shelters and other facilities

* maintain the trail

* use funds to carry out the tasks listed above

LAWS

CHAPTER 216-D [NEW]

APPALACHIAN NATIONAL SCENIC TRAIL

N.H. RSA 216-D:1 Declaration of Policy

It is declared to be the policy of the state of New Hampshire that the New Hampshire portion of the Appalachian National Scenic Trail be preserved in its natural character as proposed by Public Law 90-543, October 2, 1968.

N.H. RSA 216-D:2 Appalachian Trail.

The commissioner of the department of resources and economic development may acquire by purchase, gift, eminent domain or otherwise such land, including rights of way and easements for the purpose of protecting or enhancing scenic beauty, as he may deem necessary to establish, protect and develop a trail across the state between the Connecticut river and the Maine state line to be known as the Appalachian Trail, and he may provide shelters and other facilities thereon, provided however that the power of eminent domain shall not be utilized to acquire more than twenty-five acres in any mile of trail. Any department or agency of the state, or any political subdivision, district or authority may transfer to the department land or rights in land for said purposes on such terms and conditions as may be agreed upon, or may enter into an agreement with the commissioner providing for the establishment and protection of said trail. The Appalachian Trail shall be held, developed and administered under this chapter primarily as a foot path and the natural scenic beauty thereof shall be preserved insofar as is practicable, provided however that the commissioner may permit other uses of the trail and land acquired hereunder, by the owner of adjoining land or others, in such a manner and at such seasons as will not substantially interfere with the primary use of the trail. Nothing in this section shall be construed to limit the right of the public to pass over existing public roads which may be or become part of the trail, nor prevent the department from performing such work as is necessary for the purpose of forest fire prevention and control, insect pest and disease control and the removal of damage caused by natural disaster.

N.H. RSA 216-D:3 Powers of Commissioner.

The commissioner may grant temporary or permanent rights of way across lands acquired under this chapter under such terms and conditions as he may deem advisable. The commissioner may enter into cooperative agreements with agencies of the federal government or with private organizations to provide for the maintenance of the trail. No person who has granted a right of way for said trail across his land, or his successor in title, shall be liable to any user of the trail for injuries suffered on said portion of the trail unless the same are caused by his willful or wanton misconduct.

N.H. RSA 216-D:4 Use of Funds.

The department of resources and economic development is hereby authorized to use any funds which may become available to carry out this chapter. Any available funds from the United States land and water conservation fund or other federal assistance programs may also be used to accomplish this purpose.

Designating Forests

EXAMPLES

With the help of a $1,625 grant from the Ford Foundation the townspeople of Pembroke, NH are fixing up their town forest. The 27 acre parcel was donated to the Pembroke Conservation Commission in 1970. Improvement plans, now in progress (according to Theodore Natti, Chairman of the Pembroke Conservation Commission) include developing a roadside buffer and parking area, establishing self-guided nature trails for "very low key day use" and enlarging the pond. "The general public seems to support the multiple use of this land and there is great interest in acquiring additional similar areas . . . "

HOW TO DO IT

A town or the state, through the Department of Resources and Economic Development, can purchase, manage and improve forest lands. The laws already exist for such actions.

The forest designation can encourage reluctant landowners to donate their forest land because the donation can be accompanied by conditions restricting its use. Under New Hampshire law state forest land can be used for public use only if such use is not contrary to the conditions placed on the gift by the donor.

The town also benefits from the forest designation. It can receive money from the state in lieu of taxes it would have gotten if the land were privately owned. If the town owns a forest it can keep all the proceeds from the sale of wood and timber from such land.

If a town has or wants to have a town forest it can seek the free advice of experts from:

Division of Resources Development, Third Floor, State House Annex, Concord, NH 03301, telephone 271-2343

Fish and Game Department, 34 Bridge Street, Concord, NH 03301, telephone 271-3211

Society for the Protection of New Hampshire Forests, 5 South State Street, Concord, NH 03301, telephone 224-9945.

Forest Service, White Mountain National Forest, Box 638, Laconia, NH 03246, telephone 524-6450

Cooperative Extension Service, University of New Hampshire, Durham, NH 03824, telephone 862-1520.

LAWS

N.H. RSA 31:15 Purchase of Lands.
Towns may at any legal meeting grant and vote such sums of money as they shall judge necessary to purchase, manage and improve lands for the purpose of growing woods and timber.

N.H. RSA 31:16 Management.
The Department of Resources and Economic Development has the power to manage any town forest.

N.H. RSA 219:1 Reservations.
The Department of Resources and Economic Development is authorized, with the consent of the governor and council, to purchase and to receive gifts of suitable tracts of land for public reservations and to make provisions for the management of them.

N.H. RSA 219:7 Rules and Regulations.
The Department of Resources and Economic Development has the power to make rules and regulations for the use of all state forest and reservations, including fines up to $200.

N.H. RSA 219:8 Use of Land for Recreational Purposes.
State forest land can be used only for public recreational and park purposes if such land use is not contrary to the conditions placed on the gift by the donor.

Designating Wild and Scenic Rivers

EXAMPLES

Twelve states have active scenic river programs. Eleven other states are considering legislation. New Hampshire has suggested no rivers for potential inclusion into the national system, but has passed a resolution stating that "it is the policy of the state that these rivers shall be preserved in a free-flowing condition." The state is making an inventory of the rivers which should remain in their wild condition.

Because of its extensive canoeing interests, the Appalachian Mountain Club (AMC) is organizing groups to study and to designate specific wild and scenic rivers in the New England area. Tricia Neill (5 Joy Street, Boston, MA 02108, telephone 523-0636) is the AMC's coordinator of this project. Her major work, thus far, has been to set up committees in eight regions and to fight against a dam being built on the St. John River in Maine. Roioli Schweiker heads New Hampshire's efforts. Her group has decided to place lower Pemigewasset and Baker Rivers as their first priority as wild and scenic rivers. They will study other New Hampshire rivers and determine which should also be designated. For further information contact Roioli Schweiker, 12 Chapel Street, Concord, NH 03301, telephone 224-0598.

Soon you will be able to get a packet from Roioli of information including:

a copy of the National Wild and Scenic Rivers Act,
copies of some states' acts,
a model bill asking for designation,
a pamphlet on how to study a river (what information is necessary before proposing designation), and
a check list of items to determine whether or not a particular river is eligible for designation.

Meanwhile, you may wish to order ($6 -- non-AMC member; $5 -- members) a copy of the New England Canoeing Guide, compiled by a group of very knowledgeable canoeists at the AMC. Just write to: AMC, 5 Joy Street, Boston, MA 02108.

The first "wild and scenic river" proposed in the eastern United States is a 75-mile stretch of the upper Delaware River which divides New York State's Catskills and Pennsylvania's Pocono Mountains.

HOW TO DO IT

A river may qualify for inclusion in the national system if requested by the state governor, designated by the state legislature as wild, scenic or recreation river areas with land areas managed by a state agency at no cost to the federal government, and if it fits criteria set forth by the Congress and by the Secretary of the Interior.

If approved, the Secretary of Interior can provide technical assistance, advice and encouragement. For further details read Guidelines for Evaluating Wild, Scenic and Recreation River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System under Section 2, Public Law 90-542.

LAWS

Wild and Scenic Rivers Act, PL 90-542 (October, 1968)

Certain rivers in the United States which, with their immediate environments, possess outstanding, remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural and other similar values, are to be preserved in a free-flowing condition, and protected for the benefit and enjoyment of present and future generations.

The act further encourages the inclusion of state rivers into the national system by providing that upon request by the governor, the rivers which have been designated by the state legislature as wild, scenic or recreational river areas and which meet the criteria set forth by the Congress and any supplemental criteria developed by the Secretary of the Interior, may be protected as part of the national system.

Photo by:
Malcolm Taylor

Using Conservation Restrictions

EXAMPLES

Many towns in New Hampshire are experimenting with conservation restrictions (CR). Two towns are trying to convert rights-of-way into recreational trails. The Lancaster Conservation Commission applied for and received funds from the Ford Foundation to study possible recreational uses of an eight-mile trail extending from the center of town to the Kilkenny Mountain range. This trail, once used for logging, is now used for snowmobiling, cross-country skiing and hiking although much of it is over-grown from years of dis-use. The study, still underway, includes surveying the property and investigating the purchase of conservation restrictions (CR).

The Rockingham Recreation Roadway Committee in Derry is working to get a 26-mile railroad right-of-way converted into an active recreational path. Townspeople seem interested in the idea -- over 175 people attended a public hearing in October, 1973. The town decided at its 1974 town meeting against zoning the land for recreation. Meanwhile, people use it for hiking, snowmobiling, biking, riding and touring.

Acworth is also involved in getting conservation restrictions. At the last town meeting voters approved a conservation commission proposal to create a 100-foot "conservation zone along the banks of all streams and ponds within the township." This could severly limit new building within this zone. It is early to judge whether this kind of

restriction does prevent or modify development.

East Alton people were given a 1,500-foot easement along Beaver Brook, a state stocked stream, by Tree Growers, Inc. of Newport, New Hampshire. The conservation commission will manage the area and keep it free of litter. The public has free access to this area for fishing, hiking and "other activities designed to create, preserve and promote an interest in nature."

HOW TO DO IT

Conservation Restrictions (CRs) are any easements, restrictions, covenants or conditions attached to a deed and running with the land. You may decide that you want to formally encourage the public to use portions of your land for hiking or fishing or other conservation purposes. You would then grant an *easement* to the town (or willing conser-

conservation organization). Or you may decide that you don't want the public on your property but that you would be willing to limit your own use of the property such that its open-space character would be protected forever. You would then grant a *restriction* to the town in which you would agree not to do certain things (which may be specified) that would destroy the open-space quality of your land. You would essentially be giving to the town the right to *enforce* these restrictions.

Once you decide on the nature of the easement or restriction to which your land is to be subjected and once you find a willing grantee, the easements and/or restrictions are incorporated in a legal document called a Conservation Restriction Deed, which deeds to the grantee

(1) an easement to use your property for specific conservation activities, and/or

(2) the right to enforce the restrictions which you have imposed upon yourself and all subsequent owners.

The Deed is then filed in the Registry of Deeds in the county in which the land lies.[1]

Conservation Restrictions (CR) are acquired through gifts or purchase. There are several reasons why a town may decide to obtain a conservation restriction (CR) rather than to buy the property outright (i.e. become fee owner of the land):

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[1] Under the 1973 Law (Chapter 477:45-47) the following requirements must be met for the CRs to be legal: (1) the CR must be for "conservation" purposes (2) the right to enforce the CR must be granted to a governmental body or to a private organization whose purposes include the conservation of land and water areas; it cannot be granted to one or more private individuals.

1. The cost of conservation restrictions are usually less than the price of buying the entire property -- since the purchaser is just buying certain rights to use the land or to enforce restrictions against the use of land for non-conservation purposes.

2. The value of the land may be enhanced by the conservation restrictions. A stream, a grove of old trees, or a mountain ridge are assets which people will often pay extra to own or to be near.

3. The land stays on the tax rolls, though, often, at a reduced rate. As an inducement to landowners a public agency or governmental body can offer a lower tax rate taking into consideration the development restrictions placed by the easement (Gowan v. Swain (1939) 90 NH 383, 10 A. 2D 249). Still the land is privately owned and, therefore, taxed.

   If properly drafted, restrictions granted to and accepted by a town may qualify the land for special treatment under the Current Use Assessment Law (RSA 79-A). Before applying for a "discretionary easement" under this law check to see if your assessor is already assessing your land at below market value -- many assessors do this now.

4. Landowners get to keep their land, which might otherwise be condemned and purchased by the town.

5. The value of the conservation restriction can be entered as a charitable deduction on an owner's income tax if the donation is long-term and given to a proper organization or agency.

6. Because the ownership of the land remains with the private individual, the town doesn't pay for maintenance. In some instances, this can be a considerable savings.

What is wrong with conservation restrictions? Some people would rather raise money to purchase land outright than to seek conservation restrictions because they feel that the town is better off having total control over the use of the land. Jim Simonds of Eaton is against conservation restrictions for this reason. After talking to the Fish and Game Department staff he became convinced that conservation restrictions could cause "trouble" for the town. He and some other residents have purchased 1800 acres of conservation land. Some of

the cost was paid by Bureau of Outdoor Recreation funds.

The Society for the Protection of N.H. Forests (5 South State St., Concord, NH 03301, tel. 224-9945) can provide detailed information on the use of conservation restrictions. The Society is developing a conservation restriction program to help meet its open-space protection efforts. Write for their Conservation Restriction Fact Sheet.

LAWS

N.H. RSA 477:45 Conservation and Preservation Restrictions. Definitions.

Conservation restrictions may impose limitations on the use of land or may encourage certain activities on the land provided the limitations or activities are consistent with the protection of environmental quality.

N.H. RSA 79-A:1-26 Current Use Taxation.

Provides for granting of easements to towns for the purpose of preserving open space. The application must initially be made to the town planning boards.

N.H. RSA 4:29 Acquisition and Disposal of Real Estate. By Purchase.

The governor, with the advice and consent of the council, may obtain the fee interest rights, or easements, by purchase or otherwise for public use which, in this context, would include natural area protection. An act of the legislature is necessary for acquisition of dams, real property, rights and easements.

N.H. RSA 36-A:4 Conservations Commissions. Powers.

Said commission may receive gifts of money and property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the selectmen in a town, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the town or city by gift, purchase, grant, bequest, devise, lease or otherwise the fee in such land or water rights, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future

use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

N.H. RSA 52:18 Taking Land.

Village districts, which may be created to, among other things, establish parks and recreation areas, may purchase and take land and/or easements for the purposes of the district.

Acquiring and Using Tax Defaulted Land

EXAMPLES

A 300-acre piece of tax-defaulted land in Acworth, NH located at the highest part of town (1700 feet) continues to be held by the town after 20 years. Possible uses for this property are being considered in conjunction with the master plan now underway.

According to Jeffrey Smith, a member of the Hollis Conservation Commission five parcels of land have been accepted as conservation land under a tax default policy. These are: Parker Meadow (10 acres), Sanderson Lot (3 acres), Howe Lot (3-3/4 acres), Charleton Lot (3/4 acre), and Tenney Lot (3 acres). One of these lots was integrated into the existing town forest; a second is a wetlands area; a third has unique vegetation. None requires much maintenance. In general, the Hollis Conservation Commission is very pleased with the town's tax default policy.

In 1973, the voters of Alton, NH approved a tax title policy. According to H. G. Tapply of the Conservation Commission: "Mainly as a result of the tax title policy, the Commission has assumed management of a 40-acre parcel of woodland in the Alton Mountain area. The Conservation Commission has done some selective cutting and plans to preserve this area in its present wild state."

HOW TO DO IT

Different towns have different policies for accepting tax default lands. Some insist on a vote at a town meeting; other communities authorize their selectmen or conservation commission to accept such lands.

The Selectmen of Hollis, NH established a policy stating that land which passes to the town for back taxes is transferred to the Conservation Commission which then determines if such land should remain as open space.

Alton, NH has a policy requiring that 45 days prior to the selling of any tax title land, the selectmen must submit a complete description to both the planning board and the conservation commission. These boards may make a written recommendation to the selectmen requesting the retention of the land(s) for town purposes -- recreation, open space, wildlife habitat, etc.

Townspeople have nothing to lose by creating a tax default policy. If the land is unsuitable for town purposes it can either be sold or traded for more attractive land.

LAWS

RSA 80:42 Transfer of Tax Lien; Sale of Property Taken in Default of Redemption.
A community can retain lands acquired for failure to pay back taxes. A town meeting or city council can vote to hold onto such areas if they are deemed to be of value for conservation or other public purposes.

N.H. RSA 80:42-a [New] Retention for Public Use.

Towns and cities may retain and hold for public uses real property the title to which has been acquired by them by tax collector's deed under the provisions of RSA 80:42, upon vote of the town meeting or city council approving the same.

Providing Tax Incentives

EXAMPLES

Current Use Assessment: As the New Hampshire law became effective only in April, 1974 its success will take several years to determine. However, it is at least an incentive to owners of open space (farm land, forest land, wetland, recreation land, flood plains, wild lands) to hold onto their land rather than sell to developers depending on how high this land had been assessed before, the owner can now realize a subtantial savings.

The interim current use law (March, 1972 to July, 1973) was not used by a great number of people. The reasons for their hesitancy, according to Floyd Price of the Department of Revenue Administration, are perhaps:

(1) that they are unsure of the impacts on the town's tax base of assessing lands for current use;

(2) that most towns have used a sliding scale anyway, assessing open space land less than developed lots;

(3) that the concept was new and was seen as a temporary measure.

The new law, coming right after the interim one, may help convince people that the concept is worth pursuing.

We also know Maine's Farm and Open Space Law (Title 36, Chapter 105) has produced a limited success. In 1972, 39 towns received 139 applications, of which 63 were approved as "farms" and 40 as "open space". The tax valuation of both farms and open spaces decreased: 27.5% for farms and 43.3% for open spaces. The average reduction in property tax for each approved applicant was $90.

A survey by the University of Maine Extension Service evaluated the law and concluded "experience in Maine during the first year of the Farm and Open Space Land Law parallels that of other states such as Connecticut and New Jersey that have enacted preferential assessment legislation. Participation is limited as many take a 'wait and see' position."

Vermont legislature is considering amending its laws (32 V.S.A. Chapter 153) to give property tax relief in three cases:

1. Depending on one's income, tax relief up to 80% can be given on the first 100 acres of land owned by a Vermont resident if that land is contiguous to his homestead.

2. If an owner agrees that he will not subdivide his land for 15 years, he can get his taxes reduced by 25%. Not eligible are commercial open lands, such as golf courses and ski areas.

3. An operating farm will not have to pay more than 6% of its gross receipts in property taxes on real and personal property devoted exclusively to farming. It is estimated that up to 10% of Vermont farmers can benefit from this law.

Two other bills were passed in Vermont:

(1) requiring payment of a state capital gains tax on undeveloped land which is sold before six years. The tax, which is on a sliding scale could exceed 50% for land sold within one year. This seems to be working -- developers are beginning to look at land in New Hampshire and Maine instead of Vermont.

(2) $10 million tax relief plan which benefits people who earn $15,000 or less annually if the cost of property taxes or the share of rent computed as property taxes exceeds 7% of their incomes.

Tax Abatement: Instead of a tax reduction some states offer tax abatement programs. Tax abatement means the exemption or deferment of taxes under certain conditions, either for a specified time period or until the conditions are no longer met. Taxes can be abated in New Hampshire for providing shade trees adjacent to highways and for not cutting timber.

Selling Development Rights: A new approach to encouraging farmers and large landowners to hold on to their property is being studied

in New Jersey. The basic idea is to allow landowners to sell development rights to either the state or to a developer. In this way, they make money on their open land while agreeing never to build any more on it.

Two groups of people are working on this concept:

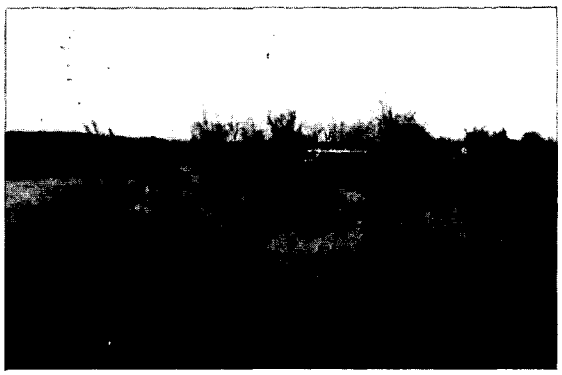
1. Blueprint Commission on the Future of New Jersey Agriculture, appointed by Governor William T. Cahill, devised a plan whereby owners of land designated by a town or borough as an "open space preserve" could sell their building or development rights to the state. The owner would be paid the difference between the market value of the land and the farm value. The program would be financed by a 0.4% tax on real estate.

   So far, a report entitled "Report of the Blueprint Commission on the Future of Agriculture in New Jersey" and can be obtained from the Secretary, New Jersey Department of Agriculture, Trenton, New Jersey 08625.

2. A team of lawyers and planners under the direction of B. Budd Chavoosian of Rutgers University has developed a slightly different plan. Local municipalities would authorize planning boards to designate farms, woods, historic sites, flood plains, or aquifer recharge areas as "open space". The planning board then computes the number of dwelling units that could have been built on that land under current zoning. If the zoning were four dwelling units to the acre and the farmer owns 1,000 acres, he has 4,000 development rights to sell. He can sell these rights only once, but at any time.

   Who buys these rights? Developers who want to add units to their zoned developable land in order to build larger projects.

   This scheme is still an idea, but it is an interesting one and should be watched. For further details contact Budd Chavooshian at Cooke College, Rutgers University, New Brunswick, New Jersey 07103.



HOW TO DO IT

Current Use Assessment: New Hampshire owners of farm land, forest land, wetland, recreation land, flood plains, wild land, and other land designated as open space for ten or more years by a town or city can apply annually to local tax officials to have their land assessed at its current value rather than at its market value (if developed). Thus, Undeveloped farm land is recommended to be assessed at up to $25 an acre, permanent pasture land at between $20 and $100 an acre, forest lands at $20 to $35 an acre, wild land at $10 an acre, recreation land at $10 an acre, and wetland at $10 an acre. A bonus (20% reduction in value) is given to owners who make their land available to the public without charging an entrance fee.

Owners who don't qualify under any of these categories can apply to the planning board or selectmen for a *discretionary easement* if they guarantee that no development will occur for at least ten years. If approved by the town board, the owner gets a tax reduction and the town gets the "easement".

If an owner is unsure whether his land qualifies or needs advice in filling out the tax forms he can go to the Society for the Protection of N.H. Forests, 5 South State St., Concord, or to the New Hampshire Cooperative Extension Service, University of N.H., Durham, for help.

Tax Abatement: Any person can apply to the selectmen to have his taxes abated if he plants and protects shade trees along a highway adjoining his land.

A person who owns and cuts woodlands as a business has to file with the proper assessing officials in the town where such cutting is to

take place a notice of intent to cut. This notice includes, among other things, his name, residence, an estimate of the amount and species to be cut. A copy of each notice is forwarded by the tax commission to the Division of Resources Development of the Department of Resources and Economic Development.

This procedure enables tax officials to tax an owner for the wood that is cut; otherwise the land is taxed without counting in the wood.

Tax Deduction: The federal government provides some inducements to encourange people to donate land or conservation restriction on their land (see page 47) to the public either during their lifetime or else in their wills. A person can deduct, on his federal income tax return, the amount of the value of the property or conservation restriction donated, subject to a ceiling on the allowance for charitable gifts -- 30% of the taxpayer's adjusted gross income (Internal Revenue Code §170) in any one year. The adjustment may be spread over a six year period.

If the estate is willed upon death to a duly qualified tax-exempt body or to a municipality for a public purpose, then the estate has a deduction on the federal estate tax in the amount of the fair market value (Internal Revenue Code §2055 (a)).

LAWS

N.H. RSA 79-A:1-26 Current Use Taxation.
Local tax assessors may appraise open space land based on current use values and may permit discretionary easement of development rights.

N.H. RSA 76:19 For Shade Trees.
The selectmen can abate taxes for planting and protecting shade trees.

N.H. RSA 79:2 Release from Taxes.

All growing wood and timber (except fruit trees, sugar orchards, nursery stock, shade or ornamental trees shall not be subject to general property or school taxes -- although the land on which they grow is taxed.

N.H. RSA 79:3 Normal Yield Tax.

A normal yield tax shall be assessed at the rate of 10% of the stumpage value at the time of cutting.

Title 36, Chapter 105, Maine's Farm and Open Space Law (1971)

Title 32, Chapter 153, Vermont laws and proposed amendments

Encouraging Gifts

EXAMPLES

The John Hay National Wildlife Refuge, a 164-acre tract of land near Sunapee State Park is a recent gift to the Department of Interior by the widow of Hay's son. Under the conditions of the donation, she gets to use the property the rest of her life. However, the public has limited access to the mansion for environmental education programs. According to William L. French, the regional biologist for the Interior Department: "It is a great potential value to students in years to come because what unprotected land is not developed now, you can be sure will be (here for) another generation."

In 1963 the Keddys donated Mt. Castor Marsh to the Town of Amherst, MA. According to the conservation commission it is "an ideal observation area for students of zoology and botany". It adjoins a much larger tract of undeveloped land owned by Amherst College.

Watershed Associations and Land Trusts:

One of the major organizations set up to receive gifts of land is a watershed association or a land trust. Souhegan Valley Land Trust was established three or four years ago in order to accept a gift of land which lay in two New Hampshire towns, Mt. Vernon and Lyndeboro. The conservation commission of both towns maintain the property called Purgatory Falls and both towns have chipped in money. It is used by

scouts, hikers, cross-country skiers and sightseers attracted to the scenic falls.

The Nissitissit River Land Truse in Holli, NH was incorporated on December 26, 1968 to acquire conservation restrictions and land, to assist organizations interested in conservation and recreation projects in the river valley, to maintain trails, and to conduct hiking, snow-shoeing and canoe trips during the year.

Plymouth County Wildlands Trust in Massachusetts has been successful in getting three land donations in less than 2 years. It was organized in 1972 by a group of citizens "disturbed by the current rate of development and concerned about the future land use in Plymouth County" (their promotional brochure). The Board of Directors and Trustees do "not seek to stop growth" but to "assist in preserving the natural condition and otherwise promoting the protection of open lands, wetlands, woodlands, marshes, meadows and ecosystems . . . " (Declaration of Trust, Plymouth County Wildlands Trust).

The three parcels donated include a 100-acre tract near Long Pond in the Town of Plymouth, a contiguous parcel of 30 acres, and a one-acre piece in Kingston in an Undeveloped area of ponds, trails, and woods. The small parcel is intended as a place for people to look at and enjoy whereas the larger parcels are already being used for hiking and for scientific study.

Examples of other active watershed associations:

Powwow River Watershed - South Hampton, Kingston, East Kingston, Newton, Hampstead, Danville, Sanborn, Amesbury (MA)

Blackwater River Watershed - Andover

Contoocook Watershed - Peterborough

Lake Kanasatka Watershed - Tilton

Merrimack River Watershed - Hudson

Miller's River Watershed - Athol (MA)

Piscataquog Watershed - New Boston

Salmon Falls River Watershed - Somersworth

HOW TO DO IT

Most people think of gifts as strictly land acquisitions. Yet, these donations are often given under conditions which maintain their current use as a marsh, wildlife refuge, pond, etc. They can also be seen as land protection.

Gifts are financially appealing to donors because of the tax benefits. The Tax Reform Act of 1969 offers a donor two choices as to how he can calculate his income tax deduction:

(1) he can deduct up to 30% of his adjusted gross income up to six years, depending on the fair market value of the land which was donated. At the same time the landowner does not pay the federal capital gains tax.

(2) he may deduct up to 50% of his adjusted gross income in each year for a charitable contribution if he first reduces the value of the contribution by one-half the amount of the capital gain (Section 170 (e) (1) (A) of the Tax Laws)

The donor can give away portions of his land at a time.

In addition, New Hampshire property transfer tax does not have to be paid on donations of land.

Trust and Watershed Association:

There are several reasons why a donor may choose to give to this type of organization rather than directly to a town:

* land may be acceptable to a trust or association which is not to a town -- such as land lying in two townships

* a donor giving to a trust or association can place restrictions on his gift to ensure that his intentions are carried out whereas a town may later use the land in ways not acceptable to him

* trusts and associations are less political -- they can afford to be more concerned with the natural value of the land and with the donor's wishes. Care should be taken to ensure that trusts are not used to keep out people or to create exclusive or elitist places.

* trusts and associations may be "publically supported organizations" by the Bureau of Internal Revenue Services standards (Section 501(c)(3) I.R.S. Code). Although this is sometimes a difficult status to obtain it can offer tax savings to donors, similar to tax savings from donations to governmental bodies.

* trusts and associations can often purchase and hold lands until a town can appropriate the necessary funds. Two of the most well-known land holding organizations are the Society for the Protection of New Hampshire Forests and the Nature Conservancy which buy endangered lands.

How to Establish a Land Trust or Watershed Association

Setting up a land trust or watershed association is not difficult, but it is time consuming. It may be helpful to follow the steps taken by other successful organizations:

Step 1. Call together persons interested in the idea.
Discuss the reasons why you propose forming an organization.
State the specific purposes and objectives of such a group.
Vague descriptions and generalizations should be avoided.
Objectives should be clear and precise so that everyone -- including potential donors -- understands the ideas behind the trust or association.

Step 2. Find a lawyer. Most New Hampshire trusts and associations find a local lawyer interested in conservation to help them set up the organization and to act as its counsel (See the model charter and model bylaw in "The Formation of Land Trusts and Watershed Associations" published by the Society for the Protection of New Hampshire Forests).

Step 3. Publicize your organization; recruit new members. Try to get representatives from different geographical areas and from various professional backgrounds.

Step 4. Raise funds to pay for the upkeep of the trust or association and to buy lands. Some fund-raising suggestions are: mailings, direct appeals, fairs and lectures.

Step 5. Seek donations.

For more information about land trusts and watershed associations, contact the Society for the Protection of N.H. Forests, 5 South State St., Concord, NH 03301, telephone 224-9945, or send for their free book "The Formation of Land Trusts and Watershed Association",

Finding Sources:

The Land and Water Conservation Fund, administered by the Bureau of Outdoor Recreation (BOR) can be vitilized by any political subdivision in the state (planning boards, conservation commissions, state agencies, etc.) as a source of money for the protection of open space. Funds for land, rights in land or the recreational development of land may meet BOR criteria for financial assistance.

1. Outright Acquisition: The town may acquire a piece of property by paying the owner one half the appraised price. The other half would be paid by the BOR 50% matching fund.

2. Outright Acquisition with Partial Gift: The landowner may be willing to give to the town a portion of the land to be acquired. If he donates one half the appraised value, the donation may be used as the town's match to BOR. BOR would then provide the other portion of the appraised value which would then be turned over to the owner as payment for the property.

3. Acquisition of Rights in Land (Conservation Restrictions, etc.): BOR funds may be used by towns for this purpose.

4. Using donations of land or rights in land to generate acquisition or recreational development varies: When such donations are made to a town, the town may apply to BOR for cash equal to the appraised value of the donation. This money must be used to acquire land or rights in land, or for recreational development of property owned by the town.

One controversy note: land that is to be sold or donated to the town will usually have a lower appraised value if it is encumbered by any conditions or restrictions placed on it by the owner. This may significantly reduce the amount of BOR funds that can be applied to the project. For instance a parcel of land in Conway was appraised at $40,000 with restrictions, $100,000 without them.

Landowners are encouraged to deed their land without restrictions and to work out an arrangement whereby the town enacts strict management guidelines, policies and regulations controlling the use of the land.

For additional information contact Joe Quinn, Bureau of Outdoor Recreation, State House Annex, Concord, NH 03301, telephone 271-3627.

LAWS

N.H. RSA 292:1 Incorporators; Purposes.
N.H. RSA 292:12 Holding Property.
Corporations which may be formed by five or more persons for any lawful purpose, including the protection of parks, forests and fish and game, may hold land.

N.H. RSA 31:19 In General.
Towns may take, and hold in trust, gifts and grants for parks and public purposes.

N.H. RSA 36:49 Finances.
As part of a regional planning commission, planning boards may accept gifts for public purposes.

N.H. RSA 36-A:4 Powers.
A conservation commission may acquire by gifts, purchase, lease -- the fee interest in land, water rights or easements including those rights subject to covenant.

Issuing Permits

EXAMPLES

One of the most publicized state agencies using its permit granting authority is the New York State Department of Environmental Conservation. Under the Commissionership of Henry L. Diamond, this department last August denied permission to a developer to build a large-scale development (Planned Unit Development) on private land within the Adirondack State Park.

The Adirondack State Park Agency was set up by the State Legislature on June 25, 1971 (Chapter 706) to prepare a comprehensive plan for the use of the land in the Adirondack State Park, much of which is privately owned. Until the plan is completed the agency has interim regulatory powers to prohibit development that would have a substantial and lasting adverse impact on the park.

The park contains approximately .6 million acres, 38% are public lands and 62% are private. The plans released thus far oppose large development of second homes, discourage uniform lot sizes, and promote cluster-type housing within new average density rules. The proposed densities are: on an average, only one building per 42 acres on 53% of the land; no more than one building per 8.2 acres on another 32%; no more than one building per three acres on another 10%. The remaining 5% is already heavily built up. In general, the plans call for low density and maximum preservation of open land.

The application submitted by Louis Paparazzo proposed to build a "recreation community" of some 20,000 people on an 18,386-acre tract now primarily forest land in the heart of the Adirondack State Park, just north of the village of Tupper Lake. In denying the application, Commissioner Diamond said:

> "What this decision says is simply that we will use all the permit authority as vested in the state to try to bring about rational land use plans that never really affect what happens on the ground."

Another example of a working permit system is provided under Maine's Site Selection Law. This law, enacted in 1970 by the State Legislature, gives the Environmental Improvement Commission the authority to rule on plant site selections by industries whose operation would substantially affect the environment. The Commission seeks public opinion about a proposed project before it issues a permit. Since its passage, the Site Selection Law has resulted in the rejection of a refinery on an island in Penobscot Bay and of an aluminium smelter in Trenton.

One of the most recent and potentially extremely powerful laws is New Hampshire's dredge and fill statute. A permit must be approved by the Special Board in Concord before any such activity can take place in a wetland area. Although many conservation commissions -- which are empowered to administer this law -- are only beginning to understand the complexities of the law and its procedures, some are already very involved. Nashua has dealt with over 50 applications since the law took effect. A look at a few cases will give a good idea of what powers this law provides.

A man filled in approximately an acre of wetlands and built a house. In doing so, he dammed a brook causing his neighbors' property to be flooded. They complained to the conservation commission which, in turn, brought the case before the Special Board. The Board decided that:

(1) the owner was negligent in not filing an application to build in a wet area
(2) he should not be allowed to build there, and
(3) he had to remove all the fill that he dumped.

An applicant filed to fill in three acres of wetland including a brook to build three apartment buildings. The Special Board denied him on four occasions. Finally, he revised his plans to preserve the brook.

The Special Board gave a permit to an applicant to put clean fill near a brook. Meanwhile, he started to fill in the brook, claiming that his permit allowed him to do so. When pressured to make public his permit, people realized that his actions were illegal and he was stopped.

According to Virginia Fraser, a conservation commission member very active in administering the dredge and fill law in Nashua, it took a while before developers, residents and the Special Board took the commission seriously. Now, however, people are "flooding" her with calls reporting violators tampering with wetlands. They know that the commission will take immediate action -- to hold a public hearing, bring the case before the Special Board, or go to court for a stop order to prevent further dumping or dredging.

The permit process is not necessarily a negative tool to prevent development or growth. In New York State, the Commissioner of

Environmental Conservation will, no doubt, grant permission to applicants with proposals which fit into the park's land-use plan; in Maine the Site Selection Law can be a means for choosing the most appropriate sites for various projects; and in New Hampshire the dredge and fill law can encourage building on suitable lands.

HOW TO DO IT

The process depends on the laws of each state. In general, the person who wants to build must seek permission from an official body, such as the Environmental Improvement Commission in Maine the Department of Environmental Conservation in New York, or the Special Fill and Dredge Board, 37 Pleasant St., Concord, NH 03301, telephone 271-2147.

The permit procedure recognizes the public nature of a proposed project and its state or regional environmental influence.

This procedure has not yet really been tested and refined by the courts. Some judges are reluctant to permit states to control development on private land; others have interpreted the states' actions as a legitimate way of planning for the "public good" and "general welfare". For a detailed discussion on some legal mechanisms for preserving open space read Edward Damon's appendix to Guiding Growth, "A Legal Reference to Guiding Growth" published by the Society for the Protection of New Hampshire Forests, 5 South State St., Concord, NH.

Because the dredge and fill law is important and its procedures may not be familiar to many people it is worth describing them briefly.

Step 1. Applicant goes to a town official (town clerk in most instances) and asks for an application form.

Step 2. He fills it out in triplicate. The Special Board of the Water Resources Department in Concord gets one copy, the town clerk keeps a second, and the third is transmitted to the conservation commission.

Step 3. The conservation commission has seven days to decide if they want to "intervene". If they do then they must send a letter stating such to the Special Board in Concord before the seven day period is up. This is very little time -- especially if the conservation commission does not receive its copy on the first day it is filed.

Step 4. The conservation commission has 30 days after being on record with the Special Board to hold a public, informational meeting. Notices must be sent to government departments and abutters and must be advertised in local newspapers or on the radio.

To help gather technical data, some conservation commissions depend on the services of the Soil Conservation Service. They can help define what land is flood plain or flood prone.

Step 5. On-site inspection. All conservation commissioners should be encouraged to look at the site under study. Maps and plans are useful, but are no substitute for an investigation of the land.

Step 6. Hold a public hearing.

Step 7. All testimony is transcribed and sent to the Special Board which studies this information at an official meeting. Conservation commission members and the general public may attend.

Step 8. The Special Board decides whether to issue a permit.

Step 9. If a local conservation commission disagrees with the decision it can request the Special Board hold a public hearing and reconsider its action.

Step 10. If still unsatisfied, the case can be brought to Superior Court.

So far, no case has gone through the tenth step. On one occasion the Nashua Conservation Commission asked the Special Board to hold a public hearing. The Board reversed its decision.

It may take some time for the Special Board and conservation commissions to create close, cooperative working relationships. It is always difficult for a governmental agency such as the Water Resources Department to share its decision-making powers. However, the first step has been made and seems to be working well.

LAWS

N.H. RSA 212:11 Establishment.
The director of the Fish and Game Department may authorize refuges for the protection and propagation of fish and game, including private refuges with the owner's consent.

N.H. RSA 149:8a [New] Dredging.
Any person proposing to dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the border of the surface waters of the state must submit plans to the New Hampshire Water Supply and Pollution Control Commission. This commission then decides whether to grant a permit.

N.H. RSA 48 A-A:1
The Water Resources Board regulates fill, excavation and dredging of lands adjacent to state waters.

N.H. RSA 36:19 Grant of Power to Regulate.
Planning boards must approve subdivision plans.

N.H. RSA 483-A:1-6 Tidal Waters.
An application must be filed prior to the dredging or filling of any waters. Notice of any proposed dredge and fill must be given not only to the Water Resources Board, but also to the town clerk, who shall send copies to the selectmen, the mayor or manager, the planning board, and the conservation commission.

Site Selection Law (1970) Maine State Legislature

Adirondack Park Agency (1971) New York State Legislature

Requiring Environmental Impact Statements

EXAMPLES

The State of Connecticut wants to build a section of Route 7 between Norwalk and Danbury. The 280-mile highway is projected between Norwalk and Burlington, Vermont. All along the route citizen committees have formed to oppose it. One of these groups, the Conservation Society for Southern Vermont went to court because it felt that the Environmental Impact Statement prepared for the Connecticut section was inadequate. The judge found that "substantive issues were nor resolved"; specifically, the statement neglected to study all unique areas along the proposed route, failed to account for unstable streams, and did not consider impact of the highway on the national forest through which it would pass. In this instance, townspeople forced a revision of the impact assessment which may lead to changes in the project. At the least, transportation officials were made to consider environmental features which had been neglected.

The Environmental Protection Agency (EPA) which reviews all proposals from other government agencies that affect the natural environment, can be very effective in raising issues. For example, EPA requested the Department of Transportation (DOT) to do an environmental impact statement on a proposed segment of Interstate 93. When the Department submitted its draft statement, EPA asked that it add an alternative to

the proposed highway -- tourist buses. In this case, EPA forced another agency to consider a possibility beyond that which it would normally investigate.

Citizen groups are becoming adept at using the environmental impact statement (EIS) as a means of forcing changes in a proposal. The Appalachian Mountain Club and the Society for the Protection of New Hampshire Forests claim that the draft EIS submitted by the N.H. Department of Public Works and Highways for the segment of I-93 proposed to go through Franconia Notch, a National Natural Landmark, does not address the delicate relationship of the highway to the natural features that conprise Franconia Notch State Park. Court action against the Department of Transportation may be necessary if the project is approved.

In another example, neighbors to a proposed 138-unit low-income housing project, Forest Glen, have sued the Housing and Urban Development Agency (HUD) to force them to write an environmental impact statement. HUD claims that the project would not "significantly" affect the environment and therefore such a statement is not required. However, the judge overruled the agency. A draft environmental impact statement was prepared, comments solicited, and a final EIS was submitted to the judge. He ruled that certain sections were inadequate, especially those dealing with the effects of run-off from the proposed project to a natural wetland area down stream. HUD is now in the process of revising its EIS. In many circumstances, delays that cost the developer money can be enough to stop a project.

Environmental impact statements should be viewed not as "another paperwork barrier" but as "a major stimulus for better design". (page 65 Architectural Record, February 1974) It can be particularly useful in helping to fit a project into an existing area. For example, knwledge of the land can result in the maximum use of existing slopes drainage and natural features instead of extensive trenching and other site-disrupting approaches.

Some states have enacted state environmental impact legislation. Bill Hicks of the Massachusetts Executive Office of Environmental Affairs, which administers the environmental impact analyses process, says that it is still "too early to tell whether EIS will cause agencies to change their projects in Massachusetts". To date, approximately 550 projects were sent to this office stating that no impact statements were required. Of these about 4/5 get approved -- that is the agency or individual does not have to write an EIS; most of the rest get resubmitted in revised form. Only twenty environmental impact reports have been produced. Hopefully, as agencies become more familiar with the EIS guidelines they will learn to use them as planning tools to give them additional information before they make their decisions.

A few conservation-minded towns are adopting local environmental impact legislation. Stoughton, MA proposed that all projects be evaluated according to their impact on the natural environment (air, noise, land, wildlife), the man-made environment (surrounding land-use, density, zoning, architecture), the public facilities (water supply and distribution sanitary sewerage facilities, storm drainage, solid waste disposal,

traffic facilities, electric power, gas), the community facilities (schools, recreation, police, fire, public works), and the economic considerations (cost-benefit studies, time schedule). (Stoughton Conservation Commission, Stoughton, MA)

Several problems may arise with requiring such detailed impact statements on a local level:

1. Who writes the impact statement? On the federal and often on the state level, the agency granting either the permit, funds or license for the proposed project fills out the EIS or hires a consultant to do so. On a local level, many small towns don't have the man-power or funds to write an EIS. If the applicant of a project is given this responsibility who will review his data and report?

2. Is it fair to require an impact statement of a project if a town does not have available town-wide data? Duxbury, MA solved this problem by requiring the town to have on hand a whole list of resource maps and statistics. However, most towns don't have this kind of information. Problems occur when a developer is asked, for example, to study the effects of his project on drainage conditions or on water pollution and the town has no studies relating to these areas and no paid experts to obtain this information. Does the town get the developer to do studies which it should really do?

   In many instances, community interest and willingness to participate in data-gathering can suffice for the preliminary work of consultants. Contacting a professional or using the free services of state agencies (Office of Comprehensive Planning for instance)to interpret this data then becomes a minor problem. This technique has been used in many NH towns and the results have been very satisfactory. Contact the Society for the Protection of N.H. Forests, 5 South State St., Concord, NH 03301 for information on motivating and organizing for such community action.

3. What is the motivation of requiring an impact statement? Is it to prevent low and moderate income housing, apartments, or vacation homes by using the argument that the site is not "environmentally acceptable"?

4. How far can a community go under existing laws? Environmental impact local laws must relate to state zoning laws and purposes. Preventing growth and keeping costs down have been held invalid zoning purposes.

Locally required EIS must, therefore, stick close to public health, welfare and safety issue such as effect on sanitation, drinking water, water supply and traffic.

These and many other questions will appear as more towns create this kind of legislation. It is important to think through the motivations for and the appropriate requirements of an environmental impact statement prior to enacting any policies or laws.

HOW TO DO IT

Each federal agency or private development project completing an EIS must first file a draft environmental impact statement or assessment which contains:

1. Design of project.

2. Description of environmental setting.

3. Probable environmental effect (both the short and long term) of the proposed project in terms of impact on:

   (a) Areas of historic, scientific, or archaeological significance.
   (b) Impact on natural, ecological, recreational or scenic resources.
   (c) Impact on vegetation, slopes, soils, wildlife and other existing site features.
   (d) Increased congestion (traffic, recreational, etc.)
   (e) Impact on esthetic or visual quality.
   (f) Impact on air quality, water quality, or noise level.
   (g) Fire, flooding, erosion, earthquakes or other natural hazard conditions.
   (h) Consistency with community environmental growth and other plans and goals.
   (i) Displacement of people, businesses, etc.
   (j) Growth-inducing impact.

4. Impact minimization measures.

5. Other data: studies often include analyses of the level of local concern, the nature of the approval process, cost analyses of minimization measures.

6. The alternatives to the project or proposed action.

7. Summary and conclusion (p. 65 *Architectural Record* February 1974).

Many of the EIS produced so far concentrate their information and technical data on the impact to the natural environment: noise, water, wildlife species, etc. However, few even attempt to measure the effects of the proposed project on the social environment. Part of the reason for the lack of social data is that no knows how to measure or quantify social information. How does one know whether the project will cause a terrible psychologic effect on neighbors? or whether the project will destroy the "diversity" of an existing place? or change the character of a town so that the residents now living there will decide to move out? Until sociologists figure out a way of getting this kind of information, it is unlikely that federal and state agencies will include it in their statements.

After the draft EIS is written it is circulated to a number of federal, state and local agencies. If you are interested in reading one call up the agency responsible for producing the EIS and ask them to send one to you. The public is entitled to read all environmental impact statements.

Comments from these people are then incorporated into a final EIS. This statement fulfills the agency's legal obligations under the 1970 National Environmental Policy Act. A copy is sent to the Council on Environmental Quality, but the statements and comments included in the EIS can be used or ignored.

LAWS

National Environmental Policy Act (PL 91-190) January 1, 1970
Executive Order 11514 March 5, 1970

> All federal agencies, to the fullest extent possible, must direct their policies, plans and projects to protect and enhance the environmental quality. Agencies are required to view their actions in a manner calculated to encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and the natural resources important to the Nation . . .
>
> Agencies are required to build into their decision-making process, beginning at the earliest possible point, an appropriate and careful consideration of the environmental aspects (social, natural and economic) of proposed actions in order that adverse environmentas effects may be avoided or minimized and environmental quality previously lost may be restored.
>
> (A full description of the Environmental Impact Statement requirements can be found in the Council of Environmental Quality's "Preparation of EIS Guidelines" published on August 1, 1973)

Many states have adopted legislation similar to the National Environmental Policy Act: California, Washington, Delaware, Montana, Wisconsin, North Carolina, Indiana, Massachusetts and the Commonwealth of Puerto Rico. Hawaii has impact requirements through Executive Order and Arizona requires similar statements for fish and game projects.

If an environmental impact statement is required by both the federal and state governments, often the federal statement is enough.

OTHER PERTINENT LAWS*

Department of Resources and Economic Development (DRED) can:

1. receive gifts (RSA 12:9)
2. receive land for state forest or reservation (RSA 219:5)
3. open reserves to the public (RSA 219:3)
4. hold and manage lands deeded to the state for a 10-year for reforestation (RSA 221:2)
5. preserve and developunusual scenic and recreation areas and to expand the park system (RSA 216-A1A)
6. use all of its land for recreation and parks, unless this would be contrary to conditions of a gift (RSA 219:8)
7. manage any town forest (RSA 31:16)

Fish and Game Department can:

1. receive gifts and property with the approval of the governor and council (RSA 206:39)
2. close lands to hunting and fishing (RSA 206:15a)
3. authorize refuges for protection and propagation of fish and game, including private refuges with owner's consent (RSA 212:11)

Right-of-Way Board

Upon recommendation of the Board to the governor and the council, any state land transaction must provide for acquisition or retention of a right-of-way to waters in or bordering such land. the right-of-way is for recreational purposes (RSA 258-B:2)

Water Supply and Pollution Control Commission can:

1. approve sewage disposal systems in subdivisions (RSA 149-E)
2. receive plans and issue permits for dredging, excavating, filling, mining, transporting forest products, or undertaking construction in or on the border of surface waters of the state, or altering character of terrain which may impede natural runoff (RSA 149:8a)
3. approve plans for sewage disposal, dredge and fill on islands and/or marshed (RSA 149-C:3 and 4)

* Source: "New England Natural Areas Project" prepared by Ernest J. Babcock, published by the Conservation Law Foundation of New England.

Water Resources Board can:

1. maintain watershed project fund for recreational purposes (RSA 481:27 III)
2. preserve wetlands (RSA 483-A:1 (b))

Forester

Unless land is to be converted to other than timber purposes, no more than 50% of the timber may be cut from areas within 200 feet of public waters or highways without a permit from the state or county forester (RSA 224:44 (a))

Board of Health

Municipal boards may adopt health regulations, including restrictions on use of wetlands (RSA 147:1)

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