vironmental Conservation presented an overview of this general viewpoint concerning man and his environment.

conservation: an overview

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I have been asked to perform the difficult task of providing the panelists a conceptual framework by using as a basis Vermont's landmark laws and experience with them during the past 2 years. That which is occurring in Vermont is not really much different from that which is occurring in the rest of the nation except for 2 elements:

1. We appear to be farther ahead than other states in making a realistic public commitment to environmental quality. We have action programs in all areas, most particularly in control and review of land use in both general and special categories.
2. Vermont is taking this action before major environmental catastrophe has struck and before it has become too late to do too much more than simply make a bad situation a little better.

As I see it, Vermont's commitment is attributable to 4 environmental principles. The first is a growing appreciation that for every action there is a reaction. That rule applies equally well in environmental matters as in physics. It is a new application of a common law, and it is gaining wide recognition from the public as well as from the committed professional. I need not recount the trends in public concern for the impact of highways. It is no longer simply a matter of evaluating environmental impact of the construction of a highway corridor. People want to know what the secondary effects will be: Where will development be stimulated? What kind of development will it be? What will development do to scenic quality? What will it do to the ability of a town to provide basic services such as police protection and solid waste disposal?

What is happening in Vermont is also based on Barry Commoner's environmental "law," which states "that there are no free lunches"; everything has its costs, and those costs must be weighed against the benefits. Developers in Vermont can no longer lull the apprehensions of communities by telling of the wonderful benefits that their development will bring—more taxes, more economic activity, more growth. The state has encouraged its communities to now ask developers and the towns themselves to perform this exercise of cost-benefit analysis. A good example is the recent controversy over an east-west superhighway from New York to Maine through Vermont. The consultants painted rosy pictures of the tremendous economic benefits that would accrue to Vermont from such a road. The costs were discounted or ignored at local, regional, and state levels. But, Vermont looked at some of the costs and found them too high. The proposal was rejected.

The third thing that is happening is grounded on the realization that environmental quality is not simply aesthetics or unpolluted air and water and is not simply the matter of protection of natural resources or fragile specialized areas. The environment is a composite of everything surrounding man—natural and man-made—and is not limited simply to physical things but encompasses all systems—social, governmental, and economic. And, on this matter, Vermonters are asking questions that pertain to the total environment. What will this development do to the town's fiscal condition? What will it do to the political or social characteristics of the community? How will it affect the region?

Finally, an ethic of wise stewardship for this and continuing generations is developing. Where is the community going? Where is the state going? What is it going to look like, not just tomorrow, but 30 or 40 years from now? Vermonters are looking at development projects no longer in isolation but from the perspective of the future. They are asking whether continuing development of a certain nature is consistent with

community objectives for the long term. They are asking about the possibility of aggregate or serial consequences. It is not merely the presence of one gas station or drive-in stand but the continual inexorable sprawl of many that will lead to strip development and the destruction of public intent and investment in the initial highway. On this basis, development is being refused or redesigned even though it might satisfy all traditional natural resource conservation standards.

Vermont is now trying through the application of these public principles to seek balance between economic growth and the aspirations of Vermonters to maintain the state's environmental quality. We are upholding our belief in Vermont's unique environmental character through a number of environmental protection laws and a comprehensive land use control and planning law. It is somewhat of an experiment—that we have to admit. No other state has attempted such commitment in so radical and far-reaching a manner. Whether the new public ethic regarding its environment can survive the challenges of the future remains to be seen.

Perhaps it would be helpful to have an outline of some of Vermont's programs particularly as they relate to the planning, review, and approval of transportation systems.

Vermont, contrary to popular belief, has for some time exercised considerable control over many aspects of land use under state standards and administration. Since the 19th century, many types of buildings have been subject to state approval for water supplies and sewage disposal systems. Subdivisions were subject to minimum standards as early as 1965; the state has regulated water quality since 1949; and Vermont's efforts to control roadside advertising began in the early 1940's.

However, as in many other states, 1970 was indeed the year of the environment for Vermont. A concentrated legislative effort was made to modernize existing laws, to enact new laws covering previously inadequately controlled land uses, and to recognize the executive branch to enable coordinated and balanced administration.

Thus, for instance, state control was asserted over mobile-home parks and campgrounds; the water quality law was substantially revised and a permit system authorized; and the Agency of Environmental Conservation was created to which natural resource programs and their administering departments, ranging from forest land management to air quality control, were transferred.

It may be safely said that any land development of any significance—commercial and industrial developments, subdivisions, apartment buildings, or the increasingly popular condominiums—is invariably subject to state control and review under one or more regulatory programs.

To a very large extent, land use controls are related to physical capability of the natural resources to support the proposed use such as proper sewage disposal, provision of water, and prevention of soil erosion. Only in the case of projects that are very large, located in areas experiencing accelerated development trends, or that involve radical alteration of land form or existing land uses does state review involve broader considerations such as assessment of impact on schools, fire and police protection, and area capability.

The most significant and far-reaching legislative action in 1970 was the passage of Act 250 creating the state Environmental Board and district Environmental Commissions. Under this law, state control is asserted over virtually all land development activities—commercial, industrial, residential, and subdivisions—of any significance within the state. Without question, this law and the program mandated by it are the most advanced in the United States and are having significant impact on the quality and character of land development.

Because of its novelty and newness, considerable misunderstanding still prevails concerning many of its features and the administrative procedures that have been initiated for its implementation. On the other hand, except for isolated instances, Act 250 has been accepted, and responsible land developers have respected and, in fact, benefited from the program objectives and criteria.

The determination of whether a land development project is subject to Act 250 is frequently complicated, and it is impossible to summarize accurately the jurisdictional provisions of the law. In brief, the following land uses require Act 250 permits:

1. Land development for commercial or industrial purposes, other than agriculture and forestry, under 2,500 ft elevation, if on a tract of land of more than 1 acre (43,560 sq ft) or if in a municipality with permanent subdivision and zoning ordinances of more than 10 acres;
2. Any residential project involving 10 units or more including any other units owned or controlled by the developer within a 5-mile radius;
3. Subdivision of land into 10 or more parcels, each of which is less than 10 acres, including any other lots of less than 10 acres owned or controlled by the subdivider within a 5-mile radius within a continuous period of 10 years beginning April 1970;
4. Any development at 2,500 ft elevation or higher; and
5. Any project for state or municipal purposes involving more than 10 acres.

The Environmental Board has by rule declared that development occurs when the first man-made change is made to the land, and a permit is therefore required even before any site preparation, construction of access roads, and the like are undertaken. Vermont law requires that prior to recording a deed a transferor must certify on the Vermont Property Transfer Return that the subject property either complies with or is exempt from Act 250. The law provides for criminal penalties for development or subdivision of the land without a permit. If there is a dispute as to whether a proposed project is subject to Act 250, a declaratory ruling from the Environmental Board may be requested.

Act 250 specifies that no application may be denied unless it is found that the development will be detrimental to public health or general welfare. In addition, the act specifies that certain affirmative findings must be made by a commission or board before a permit may be issued. Criteria under which a project is reviewed may be divided into 3 categories: (a) natural resources capability—water and air pollution, sewage disposal, water supplies, and soil erosion; (b) long-range resource utilization—local, regional, and state plans, aesthetics, and historic and ecologically fragile areas; and (c) human resource capability—roads, municipal services, and education facilities.

For the purpose of providing evidence in these categories to support affirmative findings, the burden rests on the applicant for categories 1 and 2 and on opponents to the proposal for category 3. Although the law precludes denial of a permit for reasons based on criteria specified in the third category, reasonable conditions may be imposed.

The commission frequently finds that in order to make favorable findings on all criteria, permits must be issued with conditions. For example, permits have contained conditions such as requiring the applicant to submit landscaping plans (aesthetics); to obtain a subdivision permit from the agency (proper sewage disposal); or to phase development over a specified period of years (impact on schools).

Act 250 created the Environmental Board composed of 9 members appointed by the governor with the advice and consent of the senate. It has 5 principal functions.

1. Administrative: The board, under its general powers, has the responsibility of administering itself and its subordinate district commissions and the authority to establish rules of procedure.
2. Regulatory: The board has authority to promulgate regulations establishing standards under the 10 criteria specified in the act. So far, the board has promulgated no regulations other than administrative rules and procedures and standards pertaining to distribution lines. In practice, the board and its commissions have accepted the standards of the various state agencies administering categorical programs such as the subdivision regulations for sewage disposal and water and air quality standards of the Agency of Environmental Conservation.
3. Quasi-judicial: The board by statute is empowered to hear appeals from the decisions on land use permit applications of district environmental commissions. By statute, appeal hearings before the board are de novo, and therefore any issues relevant to the application may be reheard. Proceedings before the board are of record, and consequently formal administrative rules of procedure pertain. Appeals from board action are to the Vermont supreme court.
4. Planning: Under the act, the Environmental Board is mandated to prepare an interim land use capability plan. This plan was officially approved by the governor on

February 9, 1972, and is effective until July 1, 1972. However, board policy enunciated in that plan will continue to be used as a guide in evaluating land use proposals. Two other plans are called for by 1973: a state capability and development plan and a state land use plan. Both plans must be approved by the governor and the Vermont general assembly.

5. Enforcement: Act 250 empowers the Environmental Board to institute legal action to prevent or abate violations of the act or of board regulations. In addition, the Agency of Environmental Conservation in conjunction with the board is empowered to institute suits for restraining orders and civil penalties. So far, most of the proceedings against violators have been handled administratively without court action.

There are 8 district environmental commissions that are subject to the control of the Environmental Board. Each commission has jurisdiction in specified counties. District commissions are composed of 3 members appointed by the governor. The chairman has a 2-year term, and the other 2 members have 4-year terms. Other than accountability to the Environmental Board, commissions are autonomous administrative hearing bodies subject to no control by any state agency. Their principal function is to entertain applications for land use permits under Act 250 and hold hearings. They must hold hearings on applications if requested by the applicant or any other party authorized under statute to do so. Since parties have a right to appeal to the Environmental Board, district commissions customarily permit considerable latitude in receiving evidence and testimony.

District commissions are served by full-time, paid environmental coordinators, who are responsible for commission administration, provide assistance to applicants, keep commission records, schedule hearings, and the like.

Act 250 is specific as to who has the right to be heard before district commissions. A district commission may, however, designate as parties other persons or agencies it feels appropriate or necessary. Statutory parties are the applicant, any unit of local government such as the board of selectmen or planning commission, regional planning commission, any state agency directly affected, and persons owning property adjoining that to be developed.

The Agency of Environmental Conservation plays an important role in Act 250 procedures, most particularly because it administers regulatory programs that overlap or complement Act 250, e.g., regulation of subdivisions. However, neither the agency nor any other state agency exercises control over commissions or the Environmental Board or participates in making final decisions or rulings on Act 250 applications.

To date many applicants have considered the agency to be an adversary. However, it is agency policy to provide assistance to applicants at any time it is requested. Preapplication review with agency staff frequently results in agreement between the state and the developer on project character and specifications. This obviously facilitates processing of applications through a district environmental commission or at least clarifies the issues that a commission will have to resolve. Many developers have benefited from consultations with state personnel even to the point of determining that their proposals as originally conceived were not feasible.

The agency has the same status and acts in the same capacity as any other party entitled to appear before a district commission or the board. It makes recommendations and comments and offers supportive evidence. Illustrative of the relation is the fact that district commissions have issued permits over agency opposition; in several instances, the agency has appealed from commission action to the board, and in at least one instance the board itself rejected agency recommendations.

The agency reviews applications in cooperation with other state agencies having expertise or jurisdiction by way of a review committee that meets biweekly. In most cases a consolidated state position is communicated to the applicant, other parties, and the commissions by filing agency prehearing statements. However, other departments do, from time to time, represent their own interests, most particularly the Department of Health and the Department of Highways.

If an application is of particular interest or presents special problems, state personnel, such as the agency's environmental advisor, may appear before the commis-

sions as witnesses or advocates. In highly controversial cases, the agency prepares and presents a formal case under the direction of an attorney.

The state has attempted to stay clear of purely local issues and to confine itself to aspects of a project over which it has specific regulatory control such as water and air quality. However, where it appears that a development will have effects reaching beyond the locality, the agency may intervene and has done so when it was felt that a development would have serious adverse impact on a state road, scenic area, or stream. Usually the agency simply raises issues to alert the community and other parties of interest that an application may present problems that should be considered such as effect on local roads or school facilities. There have been a number of instances where towns have actively participated in the evaluation of land use proposals after having an issue raised by the state.

In addition to an Act 250 permit, a developer or subdivider usually has to obtain permits from other state agencies that have specific statutory jurisdiction. Although technically these agencies' jurisdictions overlap with those of the Act 250 agency, in practice, as mentioned above, district commissions have accepted their reviews as evidence of satisfactory compliance with Act 250 criteria pertaining to the same subject matter. Thus, for instance, if a subdivider obtains a subdivision permit from the agency under the subdivision regulations, commissions have found that the applicant has satisfied the sewage disposal and water supply requirements of the act; and if a subdivision permit has not been obtained, an Act 250 permit may be issued conditioned upon the applicant's obtaining a subdivision permit. Except in unusual instances, the agency does not have any position on whether Act 250 permits should proceed or follow other permits as long as the applicant clearly understands and accepts that they must be applied for and the applicable standards satisfied.

Act 250 has been in effect a little more than 2 years. As of June 1, 1972, 812 applications had been filed with district environmental commissions, and 682 had been acted on. Of these, 27 were denied, mostly for technical deficiencies such as inability to dispose of sewage adequately. The other denials are largely attributable to poor planning or application preparation that could be or has been remedied by modification of the proposed project or development of more comprehensive engineering analysis.

I would like to cite several observations relative to our Vermont experience. The course we have embarked upon is not easy; there are many levels of perception among the citizens of our state. All do not wholeheartedly agree with the primary environmental ethic. Many applaud the principles and decry the programs that bring them into practice. Government itself resists some of the organizational changes necessary to administer these programs. Fair, equitable, and competent administration requires time-consuming dedication and patience from our staff members. Our role is by necessity educational as well as administrative; the innovative nature of our programs means that the latter cannot proceed without the former. In reaching for these novel solutions, we have created some problems, and now we are in the process of rectifying mistakes, upgrading our techniques, and refining our input.

But through it all, Vermonters, from the executive level down to the municipal, believe that their environment deserves a higher priority than it has ever received. Our commitment to a quality environment demands no less than vigilance, energy, creativity, and consistency of belief that is exemplary and forward-thinking. I believe we have put this ethic into practice in Vermont, and I hope this will serve as inspiration to the rest of the country.

biological values

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Since 1953 Wisconsin has had something akin in principle to Vermont's Act 250. At that time the legislature modified existing (state, county, and local) road statutes to in-