

In 1990, the Merrimack County office of UNH Cooperative Extension provided a series of fact sheets about innovative zoning including: Incentive Zoning, Phased Development, Transfer of Development Rights, Planned Unit Development, Cluster Development, Performance Standards/Impact Zoning, Environmental Characteristics Zoning, Accessory Dwelling Unit Standards, and Floating Zone. These fact sheets were intended to give a brief overview of the land use controls listed in RSA 674:21. The fact sheets on the following pages are provided for historical reference.

INNOVATIVE LAND USE CONTROLS

introduction to the series

Conventional zoning is a means the municipality has to guide the growth and development of private property (RSA 674:16). Through zoning, voters are able to divide the municipality into districts and regulate the use of land and the use, height, and area of buildings in that district. The purpose of zoning is to avoid the undesirable side effects of development by segregating incompatible uses.

Legislative actions over the past several years have given municipal officials additional growth management tools to supplement traditional zoning and guide the growth of the municipality (RSA 674:21). ***Innovative Land Use Controls*** offer the municipality's legislative body the opportunity to adopt standards that could provide

cost savings, reduce design monotony, implement community goals (e.g. low cost housing, the "New England Village" look, or environmental protection) and be better able to address larger-scale development. Use of these innovative techniques may require greater planning expertise and often requires negotiation with the developer; but, they allow greater flexi-

bility in land use and design than traditional zoning.

This fact sheet series is intended to give a brief overview of the land use controls listed in RSA 674:21. Liberty has been taken to combine some of the control methods. Flexible and discretionary zoning is a general category covering numerous techniques. Three of them, planned unit development, incentive zoning, and trans-

fer of development rights, are listed in the RSA and are addressed in separate fact sheets. Overlay zoning, the most common technique to implement environmental characteristic zoning, is referenced in that fact sheet. Two other innovative techniques, conditional rezoning and contract zoning, don't apply to

The following innovative land-use control methods are covered in the series.

- Incentive zoning
 - Timing incentives
 - Intensity and use incentive
 - Inclusionary zoning
- Phased development
- Transfer of development rights
- Planned unit development
- Cluster development
- Performance standards
 - Impact zoning
- Environmental characteristics zoning
- Accessory dwelling unit standards
- Floating zone (one of the flexible techniques)

New Hampshire.

Local officials are encouraged to search for land-use control techniques that will assist them in implementing the goals and objectives of their community. Professional assistance to develop master plans and ordinances is available through regional planning commissions and consultants. Technical, educational, and other assis-

tance also is available through the staff of the Office of State Planning, USDA Soil Conservation Service, UNH Cooperative Extension, and public interest groups (e.g. Society for the Protection of New Hampshire Forests, the Farm Bureau, County Conservation Districts, and the New Hampshire Timberland Owners Association).

Adoption and Implementation of Innovative Land Use Controls

by William Klubben
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To be fully functional, innovative land use controls must be adopted as a zoning amendment according to standard procedures outlined in statute (RSA 675:1,II). The procedures include a properly noticed public hearing held by the planning board, access by the public to the full text of the amendment, and an affirmative vote by the legislative body. Depending on the form of local government, the legislative body is the city council, board of aldermen, town council, or town/precinct meeting.

The planning board, through subdivision and site plan review regulations, may partially implement innovative techniques which function like "phased development" and "environmental characteristics zoning." The planning board may adopt or amend its regulations, following a properly noticed public hearing, under the general authority granted by the town or city through RSA 674:35 and 43.

The amendment implementing any innovative land use control must contain the standards and criteria applicable under the control and should specify who has the authority to administer it and issue permits. If the planning board isn't designated to administer the control, the administrative procedure established must include review and comment by the planning board prior to final consideration of permit applications.

Due to the complex nature of innovative land use controls, and the lack of planning board experience with such techniques, professional planning assistance is recommended. Assistance is available through regional planning commissions and private consultants.

The idea and funding for this project came from the Merrimack County Commissioners, and members of the Delegation of Merrimack County. This concept was further developed through efforts of the Merrimack County UNH Cooperative Extension Council.

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Table

Innovative Control Techniques Appropriate For Specific Community Issues

Community Problem	Innovative Land Use Technique								
	Incentive Zoning	Phased Zoning	Transfer of Devel. Rights	Planned Unit Development	Cluster Devel.	Perform.Stan. Impact Zoning	Envi. Char. Zoning	Acc.Dwelling Unit Stand.	Floating Zone
Rapid growth		✓				✓		✓	
Traffic congestion		✓	✓	✓	✓	✓			
Noise and odors						✓			
Community Need									
Upgrade services		✓							
Encourage Commercial Development	✓			✓					✓
Allow compatible but mixed uses	✓			✓		✓			
Encourage affordable housing	✓			✓	✓			✓	✓
Provide housing for minorities	✓								
Day care	✓								
Zone transition easing	✓			✓	✓				
Open space maintenance			✓	✓	✓				
Aquifers, wetlands, & flood plains protection			✓		✓		✓		
Maintenance of scenic views			✓		✓		✓		
Protection of agricultural lands			✓		✓		✓		
Protection of wildlife habitat			✓		✓		✓		
Technique Characteristics									
Board negotiates with developer	✓			✓	✓				
Criteria spelled out in ordinance	✓	✓	✓	✓	✓	✓	✓	✓	✓
Easy to administer		✓					✓	✓	
Somewhat complex to administer	✓		✓	✓	✓	✓			✓

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College of Life Sciences and Agriculture, County Governments, N.H. Departments of Resources and Economic Development and Fish and Game, U.S. Department of Agriculture, and U.S. Fish and Wildlife Service cooperating.

INCENTIVE ZONING

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Definition

Incentive zoning is a voluntary exchange of development incentives for public benefits between the community and a property owner. The community offers the property owner an incentive or bonus which reduces development costs or improves marketability. In exchange, the property owner contributes a desired amenity or benefit to the community that can't be mandated. The exchange system supplements existing land use regulations; it links specific development incentives with specific public benefits in predetermined formulas. Incentive zoning gives all parties to land use decision-making new opportunities to satisfy community and development needs frustrated by traditional zoning systems.

Zoning and subdivision regulations are inflexible by design. Lists of permitted or prohibited uses, specific design requirements, and the zoning map fix what can and can't be done on a given piece of property. In practice, traditional regulatory systems limit the community's options as well as the developer's. Both find great difficulty making land use decisions which respond to changing public policies, the peculiarities of individual land parcels, changes in building technology, innovative design principles, market needs, new development pressures,

development on the edge of zoning districts, the unforeseen effects of existing development, or the complex interplay of social, economic, and environmental issues that surround land development.

Incentive zoning helps overcome some of these limitations. Based on a mutual exchange of needs and interests, incentive zoning enables communities and developers to be more

sensitive to change and to individual development circumstances. It gives the community the opportunity to exercise site-specific land-use control and gives developers the opportunity for greater economic return.

"Incentive zoning encourages improved building and site design, phased development, and lower development costs. In addition, community officials gain an improved ability to implement public policy goals related to social equity, fiscal responsibility, economic development, and environmental quality."

Technique

Incentive zoning systems are authorized by the community's legislative body and become part of the basic zoning ordinance. Regulations spell out formulas matching the provision of a development incentive to the provision of a public benefit. Participation is an option extended to the developer by the community.

Development incentives usually permit the developer to exceed the established requirements of the community's land use regulations. They can grant the developer a greater, more intensive, or different use of the property. They can speed the application review and approval process, change the effect of a growth manage-

ment ordinance, or alter the construction time frame of a project.

- **Intensity incentives** allow developers a greater or more intensive use of the property. Intensity incentives permit higher density in terms of lot sizes, units, floor area or height. Greater intensity can generate construction savings from consolidated utilities or roads or add income by increasing the number of units the developer can sell or lease.

- **Use incentives** permit mixing of uses in a development or provide for unspecified uses. For example, a convenience store might be allowed in a housing project, or residential units in a retail development. Use incentives can provide design flexibility and improve the economics of a development.

Public amenities or benefits which either go beyond the requirements of the community's regulations or are desired as a matter of public policy are given by the developer in exchange for the development incentive.

- Public benefits contributed by the developer include such items as parks, boat ramps, swimming or fishing access, recreational facilities, plazas, pedestrian facilities, day care centers, public transit access, observation decks, bike paths, parking, more open space, preservation of special environments, or cluster development design.

- **Inclusionary incentives** (sometimes called *inclusionary zoning*) help implement public goals to expand housing opportunities for racial minorities or low and moderate income residents. The inclusion of a specified number of affordable housing units is tied to a development incentive. For example, a zoning ordinance allowing one unit per acre as a right could

include an incentive of two additional units per every ten acres if the additional units were designed for low or moderate income families.

Administrative Requirements

Incentive zoning requires well-designed basic zoning regulations which state what is permitted as by a right. The incentive zoning ordinance defines how much bonus or deviation is allowed. Development incentives should be attractive enough to encourage the participation of the developer while at the same time fulfilling the intent of the zoning ordinance.

Incentive zoning regulations must contain clearly stated purposes and policies, such as improving pedestrian traffic or encouraging certain housing mixes, and must relate to the goals and objectives of the master plan. Based on these purposes, specific benefits and amenities are selected, their values determined and the formula for the benefit incentive exchange defined. The regulation must state how the system will be administered, either as a right or through special permits.

Specialized expertise may be needed to decide how much of an incentive each benefit is worth and to ensure the rights of the public and the developers are protected. Incentive zoning systems should be reviewed periodically to ensure their continuing conformance with community policies and their effectiveness in producing desired results.

Legal concerns center on issues related to uniformity of treatment requirements, balance of costs and benefits and conformity to the master plan. There has been little litigation of incentive zoning schemes, perhaps because participation is voluntary. Careful drafting of the regulations should preclude legal challenges.

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PHASED DEVELOPMENT

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Definition

Phased development is a land use technique which matches the rate of development with the capacity of the community to provide the facilities and services the development requires.

Technique

If the legislative body in a New Hampshire town (town or city council or the town meeting) has adopted phased zoning, the planning board is authorized to evaluate the current infrastructure conditions in the community to determine if there's a need to require a developer to spread construction of a development over a specific period of time. Using the master planning and capital improvements program planning processes, the community has had the opportunity to develop a schedule for expansion of facilities and services that is consistent with projected growth of population and infrastructure needs. By limiting the number of units that can be built in a specific development in any one year, the community can ensure that the expansion of facilities and services is consistent with long-term community growth.

A phasing plan is developed at the beginning of the subdivision or site review process. The phasing plan details construction schedule, consequences of that schedule not being met, and the community's commitments to the developer. Examples of a community commitment

include: allowing the entire development to be built based on the regulations at the time of initial approval, relaxed requirements before occupancy permits are granted (e.g. final road finish), or density, or other incentive. (See *Incentive Zoning, Fact Sheet #2.*)

Phased development is situation specific. While other growth management techniques apply their criteria broadly to the entire community and to all development, phased development is applied only in situations for which the planning board feels it's appropriate, having determined that services aren't adequate to handle the added units for a specific application.

Administrative Requirements

The zoning ordinance authorizing the planning board to require phasing of a development whenever the development would put a strain on services will need to give broad guidelines under which the board must operate. Needed are a statement of purpose which stresses that the intent is to accommodate development at a rate the services can support, and an indication of a time period over which the development is to be phased. The length of time doesn't need to be specific but does need to relate to the expansion of services.

A well-developed master plan and capital improvements plan are needed so the planning board will have a criteria to justify their actions.

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TRANSFER OF DEVELOPMENT RIGHTS

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Definition

Transfer of Development Rights is an innovative land use technique that allows the community to identify areas where higher density could occur (*receiving zone*), areas where there's a need or desire to limit development (*sending zone*); and it establishes development rights for various classes of property and allows development rights to be transferred from the sending zone to the receiving zone.

Technique

Transfer of development rights (*TDR*) is based on the principle that there are a number of rights attached to real property. Among these are rights to minerals, water, air space, and development. A development right refers to the landowner's entitlement to the benefits of developing a given parcel of land for its highest valued use as defined by local zoning. In a TDR program, an unused development right can be removed from one parcel and transferred to another. The legality of transfer has been extensively reviewed and generally upheld by the courts. However, recent court rulings show that legal questions persist.

In a typical TDR program, a landowner is restricted from developing a parcel in the sending or preservation area and receives negotiable development right certificates (*DRC's*) as compensation. Landowners in the receiving or transfer zone are allowed to purchase *DRC's*, which enable them to develop parcels at higher densities than permitted by existing zoning.

Administrative Requirements

TDR is a flexible land use tool which can be modified to the specific legal, political, or economic situation in a community. Nevertheless, there are three critical design issues which are common to all programs. These issues are: 1) whether the program is mandatory or voluntary; 2) how the development right certificates are allocated; and 3) how the transfer zone is designed.

TDR programs can be mandatory or voluntary, and both types of programs are currently in existence. The mandatory program automatically restricts development in the preservation zone and thus ensures that the resource will be protected. However, mandatory programs have been more susceptible to legal challenges. In *Fred F. French Investing Co., Inc. v. City of New York* (1976), the New York Court of Appeals concluded that the uncertain economic value of the particular development rights in that case violated the just compensation requirement of the U.S. Constitution. When there is some uncertainty concerning the marketability of the *DRC's*, a voluntary TDR program will obviate any legal challenge because landowners freely elect to give up their development rights. The trade-off is that the voluntary program may not provide adequate protection of the resource.

DRC's can be distributed in a number of different ways; but there are two primary ones: 1) distribution by area, and 2) distribution by value. In the first case, *DRC's* are awarded per unit of area (acreage or building lot). In the

second case, DRC's are assigned per unit of development value. It's much simpler to determine the number of DRC's using the area method; however, it's less equitable in areas where the land differs in quality. While the value method is more accurate and equitable, an economic model must necessarily be devised to estimate the development value for each parcel in the program.

The transfer or receiving zone can be structured in different ways. Transfers can be made between parcels owned by one or more landowners. Permitting transfers between landowners is the most flexible approach. In addition, transfer zones can be designated or they can float. Designated transfer zones are specific areas defined at the outset of the program. Floating transfer zones can be defined by a set of criteria (e.g., the presence of sewers and public water, or the absence of farmland and wetlands). The floating transfer zone approach lends flexibility to the program, but may violate good planning standards. The best solution may be to have a designated component and a floating component to the transfer zone.

The adoption of TDR programs in the Northeast has been very low in comparison to other land use programs. Considering this region has been the leader in development and adoption of innovative measures, the future of TDR's is uncertain. The continued success of preferential assessment programs and the growing support and implementation of purchase of development rights programs is presently overshadowing the TDR approach. Between 1972 and 1980, 12 counties or townships in the Northeast adopted TDR programs. Actual transfers have been few in number.

The fact that TDR ordinances have resulted in very few transfers doesn't altogether preclude the possibility that, with the proper planning and market conditions, TDR provisions would be used. There are a number of possible reasons for the lack of use of enacted ordinances:

1. Incentives for a landowner to sell aren't strong enough to induce a sale or offset the beliefs that a better price will exist in the future or zoning will be relaxed.
2. Incentives for a developer aren't great enough to compensate for additional costs and complication of transfer. In addition to the allowed increase in density, necessary incentives include assurance that the local government is committed to facilitating development in the development area.
3. Demand for development isn't great enough to justify higher densities (i.e., incentives provided for developers are irrelevant).
4. Opposition by neighbors to the development tract is too great.

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PLANNED UNIT DEVELOPMENT

*by Gerald W. Howe, Extension Specialist
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Definition

A planned unit contains a mix of building types, land uses, or densities, or a combination of these categories within a parcel. A planned unit development (PUD) is a development that integrates a variety of land uses within the same development proposal. A planned residential development (PRD) integrates a variety of residential types within the same development. And a planned unit residential development (PURD) combines both of these.

Technique

Such development recreates a traditional rural village center that isn't possible using other types of zoning. The planned unit (PUD, PRD, or PURD) would be difficult to apply to the areas of a community that have already experienced growth and development; but, it would be a useful option for those outlying areas that are relatively undeveloped.

Planned units enhance community well-being by intermingling a variety of land uses. The enhancement might be proximity to services such as small grocery stores, laundromats, or restaurants. It's conceivable that a person could live, work, shop, and worship in the same development. That was the philosophy behind the old village center, which was a self-contained community that provided, within reason,

all that a person needed. It creates a neighborhood feeling and identity that many times is lost when other types of zoning are employed.

Traditional zoning that establishes zones for specific types of land use had been developed to separate incompatible uses from each other. This was a response to the threat to property values posed by land use conflicts.

The most appropriate use of planned units is to integrate compatible uses. As a community grows, the private sector support services that residents use get farther and farther away from the home. It makes sense to have a

"It creates a neighborhood feeling and identity that many times is lost when other types of zoning are employed."

commercial enterprise located near the people who'll use it. Planned units accomplish this. They can be used to create a mixture of residence types, recreational facilities, and businesses that would be a center of activity within a larger community.

The types of allowable uses to be integrated would be specified by the community that is using this innovative method of land use control. It might integrate multi-unit housing with single-family housing and allow some commercial sites to serve residents, or it might integrate light commercial with residential and recreational uses. Planned residential developments, simply a mix of residence types or densities, encourage different dwelling opportunities, but don't allow business or industrial uses.

At this time in New Hampshire's rural communities, it doesn't make sense to apply planned units to industrial developments or intensive commercial complexes. There are times when the scale of the commercial or industrial development might lend itself to the concept of planned unit developments; but, in those rare cases, it might be better to use something like discretionary zoning or special exceptions. There's a relative scale of use compatibility, and the closer together on that scale the uses are found, the more they'd lend themselves to being included in a planned unit.

Administrative Requirements

The administrative requirements associated with planned units apply during the development approval process. They don't require continual monitoring. The planning board is responsible for evaluating them based on the criteria established by the community. There are no unique skills other than those required

for adequate site plan review or to operate the equipment necessary for the administrative process. The administrative requirements are very similar to those needed for traditional zoning, though applied on a much smaller scale.

Like cluster developments, planned units demand the most energy and resources during the developmental phase. Assistance could come from the regional planning commissions, the Office of State Planning, or from private sector consultants. Once developed, they don't have intensive administrative demands.

Planned units are a zoning tool, implemented like other zoning regulations by a town vote. The planning board drafts and proposes the ordinance based on the goals of the community master plan. They then hold public information sessions and place the ordinance before the community's appropriate legislative body, town meeting, or council meeting.

Definitions

Planned Unit contains a mix of building types, land uses, or densities, or a combination of these categories within a parcel.

Planned Unit Development (PUD) is a development that integrates a variety of land uses within the same development proposal.

Planned Residential Development (PRD) integrates a variety of residential types within the same development.

Planned Unit Residential Development (PURD) combines PUD's and PRD's.

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CLUSTER DEVELOPMENT

*by Gerald W. Howe, Extension Specialist
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Definition

Cluster development is the grouping of residential, commercial or industrial units within a subdivision, reducing the size of the lot, and leaving the remaining undeveloped area undivided as *permanent open space*.

Technique

Cluster development allows for an adjustment in the location and density of construction on a particular site as long as the total number of units involved doesn't exceed the allowed density for the entire parcel. The number of units may, in some instances, increase because less land within the parcel is needed for roads than would be in a "traditional" subdivision plan.

A cluster development can be designed to conform to the unique constraints and potential of a particular parcel or site. For example, slope, soil types, and wildlife, wetland and scenic area preservation can all be considered when a community allows a developer to use a cluster approach. Both the community and the developer benefit. Some communities offer a

bonus incentive to developers to encourage the use of clustering. The developer benefits from the reduction in cost of development: fewer feet of road to construct, smaller investment in providing utilities to the site, and less site work in general.

Clustering allows communities to protect and preserve environmentally sensitive areas, to lower the cost of providing community services, and to provide development and open space on

designated sites. It doesn't necessarily increase the developmental density in a community – it merely shifts the development on a site to meet the objectives as set forth in the master plan. Because the units are all in one area, the cost of providing services such as school bus

pick-up, snow removal, and road repair are minimized. If sites are served by public sewer, eliminating restrictions on lot size because on-site disposal isn't required, clustering becomes a viable option and should be considered. A secondary benefit to the community is diversity of landscape through the provision of the open space which is derived from cluster development.

In New Hampshire, the most appropriate use of cluster development would be to preserve, as

Community Advantages of Cluster Development

- *Protects and preserves environmentally-sensitive areas*
- *Lowers the cost of providing community services*
 - *School bus pickup*
 - *Snow removal*
 - *Road repair*
- *Provides development and open space on designated sites, diversity of landscape*

much as possible, the open appearance and feel of the traditional rural community.

There are very few communities in the state that will escape the pressures of growth and development. Those communities that do experience the pressure will try to manage the change while preserving the traditional look and feel of the town. Minimum lot sizes applied equally across the entire community won't accomplish this since that approach tends to homogenize the look of the community. Clustering, on the other hand, does allow for the preservation of relatively large tracts of open space.

When a cluster development proposal is submitted to the planning board, the *entire* parcel is considered. The subdivision plan, when recorded with the registry of deeds, includes the protected open space. This ensures that the open space won't be developed in the future, one of the fears in communities when clustering is first considered. RSA 674:21-a addresses this issue by explaining that, while no recording at the Registry of Deeds is necessary, it *is* recommended to avoid uncertainty.

The ability to save open space could also be an important consideration for those with agricultural land who've been under considerable pressure to develop it. Agricultural producers who are faced with selling land, for whatever reason, can protect their most productive land by the use of cluster development.

Cluster development also creates a sense of community that many times is missing in new development in rural areas. The cluster can be planned in such a way that a rural feeling will be

achieved without the accompanying feeling of isolation that often occurs in sparsely settled areas.

Cluster development isn't the answer to problems of growth for every site in every community. However, it can provide the answer on specific sites in many communities.

Administrative Requirements

The administrative requirements for clustering or cluster development are relatively simple. The community must first have an operative and contemporary master plan that clearly articulates the goals and objectives of the town. Cluster provisions must be in the zoning ordinance and implemented through subdivision regulation.

As with other subdivision regulations, the planning board is required to hold public hearings prior to the adoption of those that implement cluster development. The ordinance and the regulations must be specific enough to permit only "clusters" which are consistent with the concept and in keeping with the community master plan. However, the ordinance must be flexible enough to adapt to design features of diverse sites.

There is no specialized equipment or technical expertise required for the *administration* of this innovative land use technique. If additional expertise is needed, it would probably be in the drafting of the regulations for clustering. Help with this is available through the regional planning agencies, the Office of State Planning, or private sector consultants.

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PERFORMANCE STANDARDS/ IMPACT ZONING

*by Gerald W. Howe, Extension Specialist
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Definition

Performance standards/impact zoning establishes both the standards which must be met by a development and the process which determines the impact that development would have on the physical, social, economic, and environmental conditions within its community.

A performance standard, when applied to land use controls, is a "provision that substitutes a quantitative measurement of an effect for a qualitative description of that effect" [Office of State Planning OSP 1980]. It establishes definite measurements that determine whether the effects of a particular use will be within preestablished limits.

Technique

Performance standards address the *effects* of a use, rather than the particular use itself. In performance standards zoning, undesirable *impacts* rather than *uses* are excluded. If a use performs to a set standard — one that has been quantitatively established by the overseeing body — then it's allowed.

The standards may be applied to the entire community or they may be used in conjunction

with traditional zoning, which would mean variable standards for different locations in a community.

The standards can be related to natural resources such as soil and groundwater or to the community infrastructure, such as roads, schools, or sewage capacity. Specifically, for example, they might relate to the size and illumination of signs, the amount of noise that's audible

off-site, the generation of odor, and the increase in certain types of vehicle traffic.

These standards are set by the planning board, based on community concerns and acceptable limits. Performance standards allow for

flexibility of design and use, enabling the community to diversify areas by integrating compatible uses while protecting property values and community finances.

The development of performance standards that allow heavy industrial and residential uses to coexist requires a great deal of time. The standards are quite complex and cumbersome to administer. And for industry to comply with the standards requires substantial expense in either land or technology.

Examples of Categories for Performance Standards

- soil and groundwater quality
- sewage capacity
- roads
- schools
- size and illumination of signs
- amount of noise audible off-site
- generation of odor
- vehicle traffic flow

Administrative Requirements

The critical administrative component for performance standards is the technical analysis needed for development, monitoring, and enforcement. Monitoring, unlike traditional zoning, must be continuous. It increases the administrative burden; but this burden must be weighed against the community benefits of integrated development.

In the 1980 OSP publication, Performance Standards for New Hampshire Communities, there are three basic administrative requirements when considering any land use control: 1) equipment, 2) personnel/skills, and 3) finances.

Equipment: The equipment will vary with the technical complexity of the standards. For example, if a performance standard stipulates a maximum noise level, the community must have, or have access to, equipment that can measure noise in decibels. If the standard merely stipulates that the activity not be visible from the street, the necessary "equipment" is much less complex. It will be the level of sophistication and complexity of the standards that dictate the equipment necessary to monitor technical compliance.

Personnel/Skills: The monitoring is usually done by the Code Enforcement Officer. However, the number and skill level of these officers will depend on the complexity of both the standards and equipment necessary to monitor the standards. Also, because monitoring is

ongoing, the number of staff needed will be more than that needed for a one-time check. It might be possible to make arrangements with other communities to share monitors for checking compliance or to use computer-assisted evaluation tools when reviewing proposals under a performance standard system.

Finances: The cost of administering performance standards is tied directly to complexity of monitoring equipment and number of personnel required to enforce those standards. These costs, however, don't have to come out of community revenues. Many communities use application fees as a source of money to pay costs directly associated with the application. Equipment costs may also be borne by the applicant.

Performance Standard Zoning is a variation of traditional zoning that uses *performance standards* to regulate development instead of separating zones by *uses*. However, performance standards may also be used within traditional zoning to regulate certain kinds of uses.

The responsibility for developing performance standards is in the hands of the Planning Board. Once enacted, the administration of the standards are the responsibility of the person or board designated by the town.

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ENVIRONMENTAL CHARACTERISTICS ZONING

*by John M. Halstead, Assistant Professor, and
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Definition

Environmental characteristics zoning is zoning which considers two factors: the potential impact of development on the environment, and the extent that change of these environmental features is acceptable.

Technique

Ecologically, carrying capacity defines the point beyond which the environment cannot sustain further change without degradation of the target resource. For example, within a community, a piece of land has the ability to absorb and clean the waste water from a given number of septic systems. When that capacity is exceeded, it's likely the water will

become contaminated and/or waste water will surface and cause health and odor problems.

Environmental protection is necessary to assure people that their community's natural resources will be available when needed, and to protect the residents' health, safety, and property. Wetlands recharge groundwater, control flooding, and provide wildlife habitat. Floodplains serve as floodwater storage to protect downstream residents; and the "meandering" of rivers on floodplains slows the water, reducing

erosion. Farm and forest lands provide food, fuel, wildlife, lumber, open space, promote clean air and water, and supply potential recreation sites. Scenic areas provide both an added "quality of life" value and an economic benefit as a tourist attraction.

Often, we've been unaware of the damaging impact we can have on our environment, and the effect of that damage on our lives. Construction on wetlands leads to problems related to

foundation stability, wet basements, and sewage disposal. Building on floodplains eventually results in lost or damaged property. While the scenic value of steep slopes often draws us to them as construction sites, that results in problems for road building and re-

pair, utility and service access, and erosion. Aquifers are the present and future suppliers of significant amounts of water, and contamination is costly.

The extent human beings are permitted to affect this environment is determined by the standards set by the community, as well as state and federal laws. The establishment of community standards is done through the master planning process. The standards are set forth in the zoning ordinance, site review pro-

Although not commonly known as Environmental Characteristics Zoning, this method is commonly used in New Hampshire to regulate development.

Current and potential uses of this technique include limiting or prohibiting development that would adversely affect wetlands, floodplains, prime or important farmlands, unique forest or wildlife areas, steep slopes, aquifers, scenic areas, or other environmentally sensitive resources of importance to the community.

cedures, sub-division regulations, and other regulations that control operations within the community (e.g. gravel pits). They can be specific to a zone (such as agricultural, scenic view, or river corridor), or to a resource (such as aquifer or capacity of soils to accept effluent).

In the water quality area, an example of standards would be regulations related to construction and runoff from a construction site that influences the quality of water off-site. The water quality is changed but the standards set limits on how *much* it can be changed.

In some situations, planning to protect one environmental entity conflicts with other goals. For example, restrictions against building on steep slopes may be relaxed to provide additional setback for scenic vistas, even though this may also increase erosion. In these cases, the community has to decide which objective has highest priority.

The "overlay zone" technique (superimposing one zone over another) is one way to single out environmental concerns that have well-defined boundaries. It's a good technique to use to identify and control management of aquifers, wetlands, farmland, shorelines, scenic areas, and unique features. Environmental constraints are in addition to other restrictions placed on development by traditional zoning.

Administrative and Monitoring Requirements

A natural resource inventory provides the basis for the *Environmental Characteristic Zoning* technique. This inventory becomes part of the Master Plan. It provides needed base information from which municipal officials and study committees decide the future use or change of these resources.

The inventory includes soils, surface and

ground water, farmland, slopes over 15 percent, floodplains, wetlands, and unique forest, wildlife, and scenic areas of importance to the community. It identifies what exists, the use and pressure on each resource, and the potential for use and mis-use in the near future.

A High Intensity Soil Survey (HISS) identifies soil types and their locations on specific parcels of land, providing soil characteristics accurate to twenty feet. This information is valuable to planners and developers for administering regulations and planning roads, lot sizes, wetlands, drainage, building location, and other features in a development.

Goals for the management of each resource need to be developed so there can't be any misinterpretation about a resource's importance to the community. There's usually negotiation between those who believe there should be no change and those who feel change is beneficial. Air and water quality are examples of standards that may require change if the current conditions are below acceptable levels.

The tools needed to reach these goals are created by the community legislative body (the town meeting, town council, or the city council) or the planning board, depending on the implementation technique. Zoning always needs to be approved by the legislative body.

Monitoring to guarantee standards are being met is necessary at the plan review stage, the construction stage, and periodically thereafter. The depth and frequency of review depends on the potential for degradation.

Specialized help in developing the inventory and environmental standards is available from the local Conservation Commission, Regional Planning Commissions, the U.S. Soil Conservation Service, UNH Cooperative Extension, Conservation Districts, and private consultants.

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ACCESSORY DWELLING UNIT STANDARDS

*by John F. Damon, Extension Specialist
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Definition

An accessory dwelling unit is a second dwelling unit, detached or attached, which is permitted on the same lot as the principal dwelling unit.

Technique

A common practice in a residential zone is to limit residences in a building and on a lot to one household. A household is often defined as a family, a single person, or unrelated individuals (the number of whom is often limited) residing in a dwelling unit that includes eating, sanitary, living, and sleeping facilities.

There are situations in which the need for housing can be met by increasing the density of residences in areas already developed. This can be done in several ways: adding an accessory apartment to an existing structure by remodeling the interior of an existing building; adding living space to an existing building; or, adding a detached unit to the property.

Other advantages to accessory dwelling units are that they could help reduce sprawl, provide

older residents with income and/or labor to maintain property, or provide residences with "mother-in-law" units. When such units wouldn't adversely affect the intent and character of a zone, a relaxation of traditional rules may be appropriate.

Administrative Requirements

The real challenge to the municipality will be to develop criteria that ensure that the second dwelling unit will actually be "accessory." To be accessory, it would need to be smaller than the main residence in size.

Conditions imposed to allow accessory dwelling units must be site-specific in order to predetermine whether the existing lot is adequate to provide on-site water and/or sewerage treatment (if applicable), proper setbacks from lot lines, and other amenities that affect the character of the zone.

The town meeting or town or city council must authorize the establishment of accessory dwelling unit standards as part of the zoning ordinance.

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FLOATING ZONE

a flexible zoning technique

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Definition

A floating zone is a zoning district for which requirements have been developed in the written part of the ordinance but the location hasn't yet been noted on a zoning map. The location won't be indicated on the zoning map until an application for development has been made, the requirements met, and an amendment approved to the zoning map.

Technique

While not used extensively in New Hampshire, the floating zone can be used to accomplish a community objective while maintaining flexibility in terms of identifying the specific site.

The decision about site is influenced by criteria in the ordinance as accepted by the legislative body.

The technique has application to the future needs for manufactured housing developments, multi-family developments, industrial areas, and shopping centers.

The floating zone can control both type and amount of development. If, for example, a municipality needs 200 units of housing for the elderly, it can create a floating zone establishing acres, access, units per building, water,

sewer, recreation, screening, security, and other factors of importance to the community. This sends a message to those with business and development interests to look for and propose a development that will meet those criteria.

Administrative Requirements

Designers of the floating zone should be particularly careful to see that the criteria and process reflect the intent as developed in the master plan.

It should be clear that the floating zone serves an identified public need and not just a private need. If it can be shown that a floating zone ordinance is designed primarily to assist private special interests, it's likely the ordinance will be called "spot zoning" and be declared invalid.

Professional assistance is recommended in the development of criteria that need to be met by an applicant.

The application and review stages should be relatively straightforward.

If the criteria are met to the satisfaction of the review board (often the planning board) and an amendment is adopted by the legislative body of the community, the location is fixed on the zoning map.

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