

# Toward a State Landscape Policy: Incremental Planning and Management in Vermont<sup>1</sup>

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Abstract: The issue of landscape management and enhancement has been of deep concern to Vermonters for many decades. This concern, which has been institutionalized through specific policies, stems from the dual desire to maintain the unique attractiveness of rural Vermont and the need to preserve and enhance a landscape which is basic to a huge recreational and tourist industry. From a planning theory perspective, this has taken place over a period of years, through a discrete number of policy and managerial judgments and in a generally incremental fashion. Yet today, Vermont has created as comprehensive a landscape quality management policy as has any state in the nation.

## INTRODUCTION

The terrain of planning theory is littered with the books, papers and plans of those who have consistently articulated the logic of comment. If the rhetoric of planning theories runs this way, certainly the style and performance does not. What appears more typical are disjointed and incremental approaches which one critic and theorist (Lindbloom 1959) has called "muddling through." The wise maker of policy, accordingly, "proceeds through a succession of incremental changes" and "avoids serious lasting mistakes. . . ."

Landscape has rarely been seen as a central concern for planners. Even in land use

planning processes, the problems associated with landscape value and quality are either unaddressed or are more frequently sacrificed in some trade-off equation. Evidence tends to confirm this as the body of land use case law suggests that landscape and scenic parameters are only now becoming controlling elements in litigation. As Norman Williams (1975) notes in his major treatise on land use law "while the subject matter is one of the important emerging fields of planning law, this is a field where the case law is as yet relatively unimportant, because there has been so little of it."

## THE VERMONT CONTEXT

The development of a landscape policy in Vermont has been typified by incremental and disjointed approaches. Indeed, it is so fragmented and uncoordinated that few Vermonters, including policy-makers and planners, would acknowledge that such a policy exists. In a slightly cynical vein, this may explain why the state's approach to landscape and scenic resources has been successful.

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The issue of landscape management and enhancement has been of consequence to Vermonters for several decades. This concern, which has been institutionalized through specific policies and programs, stems from the dual desire to maintain the rapidly disappearing attractiveness of rural Vermont and the need to preserve a resource base fundamental to the survival of a major recreational and tourist industry.

Vermont's policy is composed of a set of strategies which operate on two levels: a macro-scale, which transcends the entire state and a micro-scale, far more site-specific. The first category is composed of the following elements: the statewide bottle and can deposit law; limitations on mountaintop development through Act 250; a backroads restoration and preservation program, and highway sign prohibitions. The second grouping of policies consists of other factors: specific project review under Act 250; a natural areas system; farmland and open space contracts and other methods to preserve farmland; and local historical preservation programs.

#### STATEWIDE POLICIES

Numbers of specific policies and programs have been implemented which impact the landscape of the entire state. As such, their importance is obvious and is little affected by regional or local variations. As a grouping of policies, they represent some of the unique perceptions Vermonters have of their collective landscape.

##### Beverage Container Law

While it may seem odd to include such a policy in among landscape quality programs, few steps have been as significant in maintaining scenic value as has this piece of legislation. Vermont's first attempt at a "bottle bill" occurred in 1953 when the state legislature passed an act which prohibited the sale of "beer or ale in nonreturnable glass containers." Extended in 1955 for another two-year period, and found a constitutional exercise of the policy power in Anchor Hocking Glass v. F. Elliot Barber, 118 Vt. 206, 1954, the law nevertheless died in 1957 under heavy lobbying by the glass bottle industry. Vermont's second and present law took effect in 1973. Amended in 1975, the law became more effective in that it now banned detachable flitops on beverage cans and all throw away glass bottles.

In terms of its landscape implications, the greatest impacts have been in terms of the reduction of highway litter. A Vermont Highway Department survey of "before" and "after" highway litter noted that during the 1973 annual summer highway clean-up, 25,403 bottles and cans were

collected. One year later, after the law came into effect, only 6,082 bottles and cans were collected. This was a reduction of over 75 percent.<sup>3/</sup> At the same time the return rate was over 80 percent. Robert W. Fraser (Franchot 1978) of the state's highway department has observed that "the bottle law has greatly influenced the reduction of litter volume along Vermont roadsides, and it is noticeable. We receive considerable correspondence from tourists and transient motorists who express amazed pleasure at the cleanliness of our highways." The legislation has created jobs, saved fuel, spawned the recycling of other materials and contributed in a most fundamental way to the reduction of highway litter and the enhancement of the roadway landscape.

##### Mountaintop Development Limitations

The Green Mountains are the backbone of Vermont. Stretching the entire length of the state, the mountains are the essence of Vermont. Forested slopes are critical both to the forest resources and recreational industries. The protection of mountaintops above 2500 feet --deemed an important ecological dividing line --has been given special recognition in the state's omnibus land use law, Act 250. While development above the 2500 foot mark is not prohibited outright, a special permitting process is required and the Environmental Board--the quasi-judicial body which administers the program--must find that the development "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas."<sup>4/</sup> The burden of proving an "undue adverse effect on aesthetics" lies with those parties opposing the grant of a development permit. To date, the majority of applications for development have concerned the installation of communications facilities, though some logging operations and ski lifts have also been involved. A ruling dealing with the application of Karlen Communications, Inc. (Declaratory Ruling No. 89) suggests the difficulty in implementing and enforcing this

<sup>3/</sup> "State of Vermont Special Highway Litter Evaluation Project," Vermont Department of Highways, Montpelier.

<sup>4/</sup> Criterion 8 (10 V.S.A. 6086 (a) (8)).

measure. Karlen sought to construct two micro-wave disc antennae on the top of the highest peak in Vermont, Mt. Mansfield. After an initial granting of a permit, an appeal was lodged by several parties, including the Town of Stowe, the site of the proposed development. Stowe's attorneys argued that any increase to the visual impact of existing man-made structures would be detrimental to the natural and scenic beauty of the mountain. The town further argued that its economic base was dependent upon scenic qualities and that further development would constitute a negative factor. The town did not, however, provide the studies necessary to substantiate its claims. That the construction would be visible from roads entering Stowe was not debated. The town maintained again that the impact of this would be adverse while Karlen argued that it would be minimal. The state's Agency of Environmental Conservation, which supported Stowe's position, argued that the concept of "undue adverse effect" was impossible to evaluate and that "individual applications represent piecemeal development" and that the cumulative effect of developments is not being considered. The case raised, in a most direct way, the point that landscape policy is a "threshold" issue which makes the evaluation of individual projects most difficult. The Environmental Board decided in favor of the Karlen application. What, then, can be said of this section of Act 250 relative to the preservation of mountain landscapes? First, some of the most odious developments have been discouraged by Criterion 8 of the law. Second, what development has taken place has come under close public scrutiny. A review of the records indicates that modification of development plans and designs has often occurred. Third, the cost of development has risen as a result of this process of project review, as developers have intentionally sought to minimize the impacts of their proposals.

#### Backroads Restoration and Preservation

Vermont's scenic highway law was passed in 1977. The bill established that it was "the policy of the State of Vermont to preserve through planning the scenic quality of its rural landscape, and enable municipalities to designate town scenic highways which may be improved in accordance with standards combining aesthetic and functional criteria."<sup>5/</sup> The standards for road improvement were to be

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<sup>5/</sup> Public Act No. 58, Journal of the House of the State of Vermont, Adjourned Session, 1976.

developed jointly by the Vermont Agency of Transportation and the Vermont Scenery Preservation Council--created in 1966--which had advisory and consulting powers vis-a-vis towns in the state.

Scenic roads may be designated by towns with concurrence of the Council. A scoresheet utilizing a quality rating and weighting factor is required before a road may be termed "scenic." Factors considered include: vegetation (forest patterns, field and forest patterns, significant tree stands, leaf tunnel effects, birch tree stands, wildflowers, etc.); landscape features (scenic terrain, focal points and vistas, gravel road surfaces, etc.); waters (lakes and ponds, marshes and wetlands, rivers, streams, and waterfalls); buildings and man-made structures (picturesque buildings, farmsteads, round or octagonal buildings, covered bridges, stone walls, historical sites, village edges). Likewise, some negative elements must be evaluated as well; i.e., lumbering scars, erosion, junkyards, strip development, protruding culverts, etc.

Once a road is listed on the state's scenic roads registry, towns and state agencies must maintain and reconstruct roads according to standards as established by the Department of Transportation. These standards prescribe that scenic roads will be "maintained as nearly as possible in the condition which existed at the time of designation" and that "permitted roadside maintenance shall be detailed at the time of designation."<sup>6/</sup> In an effort to aid town highway supervisors in maintaining backroads designated as scenic, a study entitled The Vermont Backroad: A Guide for the Protection, Conservation, and Enhancement of Its Scenic Quality was published with specific programmatic recommendations and practices.

The scenic highway law does not require the designation of scenic roads and in the future more specific aesthetic criteria will be required if a court challenge is offered.<sup>7/</sup> Yet, in a state where tourism--especially leaf-gazing during autumn--is a major economic factor, valuable landscape assets such as backroads may be retained through the adoption of similar programs.

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<sup>6/</sup> Rule No. 118-3, "Standards and Rules for Designation, Maintenance and Reconstruction of Scenic Roads," Vermont Department of Transportation, 1977.

<sup>7/</sup> See Sena v. Board of Zoning Appeals of the Incorporated Village of Hempstead, 45 N.Y. 2d 105 (1978) which makes this point clear.

## Highway Sign Prohibitions

## SITE SPECIFIC POLICIES

### Project Review Under Act 250

This aspect of Vermont's landscape policy may be the oldest. Largely through the efforts of one individual, Rep. Horace Brown, Vermont adopted an advertising sign law in 1939. Brown's Law restricted signs along roads and highways through a formula which mandated that there may be no more square feet on the face of a sign than there are feet between the sign and the road. Norman Williams has noted of this control that "no total prohibition is involved--merely a reasonable setback regulation. Yet, the statute has been very effective, at least against the normal-size large billboards." (Williams 1974-1976). The constitutionality of the law was affirmed in Kelbro v. Myrick, 113 Vt. 64, 30 A.2d 527(1943). The coming of the interstate system, however, proved the inadequacy of Vermont's existing statute. Under the leadership of Rep. Theodore Riehle, a new Vermont law on highway signs was passed in 1967.<sup>8/</sup> Considerable support for this far-reaching program came from diverse groups, including the Vermont Hotel and Motel Association, which clearly understood the relationship between highway visual quality and tourism. Essentially, Riehle's bill removed all billboards from Vermont highways and replaced them with uniform, small directional signs located at nonscenic locations (which were paid at the state's expense) and strategically placed travel plazas furnishing local service information. In an evaluation of the strategy by Peat, Marwick, Mitchell and Co., it was determined that nearly 100 percent of the visitors to Vermont favored the new system, while local businessmen were evenly divided.<sup>9/</sup> Again, Williams writes that "the most remarkable part of the recent Vermont experience is that there has been no direct legal challenge to the validity of what is (in the context of current American law) a rather drastic scheme to remove all existing billboards and in effect to socialize the billboard industry (Williams 1974-1976).

<sup>8/</sup>Vt. Laws 1967, No. 333 N.S.A. Tit. 10, 321 et seq.

<sup>9/</sup>"Measured Effectiveness and Public Acceptance of the Travel Information System in the Brattleboro, Vermont, Area" (1971).

While this is not the place for a protracted analysis of Act 250, suffice it to say that it is Vermont's attempt at a comprehensive land use coordination and planning system. The law comes very close to being a system of performance standards for land use allocation. Ten requirements or criteria must be met before a development proposal receives permission for construction. The ten criteria include such parameters as "will not result in undue water or air pollution," "will not place an unreasonable burden on the ability of the local government to provide municipality or governmental services" and, again, criterion No. 8, "will not have an undue adverse impact on scenic beauty, aesthetics, historic sites, rare and irreplaceable natural areas, endangered species, or necessary wildlife habitat."<sup>10/</sup>

An example of how this latter criterion applied in project review is provided by a 1971 ruling on a permit application for a Mobil Oil Corporation service station in the Town of Richmond. The proposed development site was to be located on a 4.5 acre parcel of land zoned for commercial use, lying adjacent to the Richmond interchange on Interstate 89. Testimony taken on the matter confirmed that undue stress would be put upon the aesthetics and landscape of the area. A case in point was made by the Secretary of Vermont's Development agency when he argued that the project was not in the interests of the state:

Vermont's appeal to out-of-state visitors is based upon our uniqueness in that we have taken great strides to protect our scenic beauty and environment and have not over-commercialized our roadways and our landscape as other states have done. Vermont has taken great strides to protect the scenic views from Interstate 89 and one of the most attractive areas of Vermont is the view of the river valley in Williston and Richmond which combines the mountain splendor with rich agricultural land and typical Vermont countryside.

On the basis of much evidence, the regional environmental commission denied a permit for development on five findings of fact:

<sup>10/</sup>Title 10, VSA, Chapter 151.

- (1) The view from Interstate 89 of the Winooski Valley, which includes the proposed development site, is a unique and irreplaceable area of scenic and natural beauty.
- (2) The proposed development for which the applicant seeks a permit will have an adverse effect on the scenic and natural beauty of the area.
- (3) The findings that the proposed development will have an adverse effect on the scenic and natural beauty of the area is based on uncontradicted evidence to that effect.
- (4) The proposed development will have an undue adverse effect on the scenic and natural beauty of the area.
- (5) The District Commission #3 finds that the gain of a gasoline service station at the expense of marring a unique area of great scenic and natural beauty is detrimental to the general welfare of the people of the state.

As happens in many of these cases, the applicant came back to the commission after several years and reapplied for a permit for development. This time, however, Mobil radically re-designed its project on a smaller scale, with landscaping in harmony with the site and a greatly reduced sign which does not have an "undue adverse effect" on the landscape as seen from the road.<sup>11/</sup> A permit was granted and the station now exists.

In a more recent case, a projected 82-store shopping mall in semi-rural Williston was denied a permit, though not on criteria 8 findings. The Pyramid Mall would have been big enough to contain 10 football fields. It would also provide more commercial floor space than exists in the state's largest city, Burlington (pop. 39,000). While many of those opposed to the mall tried to argue against it on criterion 8 grounds, the district environmental board found that an undue adverse effect was not created:

- (1) the scenic and natural beauty of the area was "already affected" by a power transmission line traversing the site, a large water tank located

on an "adjacent hill," and various commercial activities on some of the adjoining properties";

- (2) the proposed mall building would not exceed 35 feet in height;
- (3) the proposed mall building would "follow the contours of the land and be of subdued colors";
- (4) any signs erected "would not be lighted" when the mall was closed to public use;
- (5) the landscaping plan submitted by the applicant included "berms and extensive planting" which "would screen most of the mall buildings and parking lots from the view of motorists on the adjoining highway," and thus "would reduce visibility" from Interstate 89; and
- (6) the implementation of an alternative plan submitted regarding exterior lighting systems involving the erection of 108 poles, each not exceeding 30 feet in height, would not exert the "undue adverse effect on the aesthetics of the area" that the implementation of a preliminary plan submitted, involving the use of 55 poles ranging from 30 to 50 feet in height, would have exerted on aesthetics, due to the "greater visibility both day and night of this latter system of lights."<sup>12/</sup>

The project was turned down on the basis of other criteria. "What the commission said, in effect, after months of deliberation, was that the mall would place great burdens on Chittenden County's traffic network and municipal services, that it would violate the rural character of the area and might seriously damage the future of Burlington (Green 1978).

#### Natural Areas System

Vermont is not alone among the states which have inaugurated a program for unique

<sup>11/</sup> Mobil Oil Corporation File, Environmental Board, Montpelier.

<sup>12/</sup> Pyramid Corporation File, Environmental Board, Montpelier.

natural areas. Enacted in 1978, Vermont's program<sup>13/</sup> established a system for the identification and protection of areas which are characterized by unusual or significant flora, fauna, geological or similar features with scientific, educational or ecological value. In Vermont's context this has meant the registration of important bogs and marshes, tundra ecosystems on mountaintops, virgin northern hardwood stands, unique nesting areas, etc. The registration system for natural areas is maintained by the Vermont Agency of Environmental Conservation and any project which may directly or indirectly influence or impact upon a natural area is required to go through an impact assessment process. Moreover, the Act 250 permit process must also be followed since "rare and irreplaceable natural areas" receive a degree of protection under criterion No. 8. The importance of a natural areas system has been summed up thusly:

Natural areas are not necessarily scenic, historically significant, or valuable for recreation. Rather, they are principally ecological preserves whose unique qualities distinguish them from the general landscape. For example, there are less than a handful of virgin beech-maple stands in Vermont. This fact makes them special, even though they are dominated by two species of trees common to New England. In these stands, as nowhere else, ecologists can study the results of undisturbed natural processes. By comparing them with the man-altered environments found virtually everywhere else, scientists can estimate the accumulated impact of<sup>14/</sup> our way of life on the environment.

In terms of a landscape policy, the need to preserve such areas lies in their distinctiveness, ecological and otherwise, from the overall landscape. Some 70 such areas have been identified in the state and about half of these are smaller than 50 acres in extent. The ownership of these areas is mixed: some are owned by the State of Vermont (i.e., arctic

alpine plant communities on the summit of Camel's Hump); others are privately controlled (i.e., epaphically distinctive plant communities at the Sugar Hollow Fern Colony); and still others have been donated by the Nature Conservancy to the University of Vermont (i.e., Four Brothers Islands in Lake Champlain). The diversity in ownership is probably as important as the actual diversity of the sites themselves. In addition to protecting such areas, the State of Vermont can and does acquire new areas through its Division of Forests, Parks and Recreation.<sup>15/</sup>

#### Farmland Retention

Vermont is, above all else, a working rural landscape. Though hill farms have been disappearing over the past several decades, the river valleys of the state still support an active agriculture. Yet, problems for Vermont farmers abound, and hence problems with the retention of farmlands also exist. Urbanization pressures, changing ownership patterns, the recreational pressures, the reduction in capital available to the farming community, the lack of effective marketing practices and other factors are all having an impact upon farmland retention. Vermont has yet to develop a comprehensive farmland preservation program (Lapping and Feldman 1979, Lapping 1978). At the present time, Act 250's criterion No. 9 offers limited help in that it seeks to preserve "prime agricultural soils" with the burden of proof upon the applicant for a development permit. A differential tax assessment program is in the process of being implemented and a local option tax stabilization program exists for agricultural and forest lands.<sup>16/</sup> A capital gains tax on land

<sup>15/</sup>Title 10 VSA, §2010.

<sup>16/</sup>Title 24 VSA, §2741 and Title 32 VSA, §3846. These laws differ only to the degree that the former requires an affirmative vote of the community at town meeting while the latter stabilization contract does not require such a vote and can be extended directly by town selectmen.

<sup>13/</sup>Title 10 VSA, Chapter 157.

<sup>14/</sup>Summary Report, Vermont Natural Areas Project (Phase II) (Montpelier: Vermont Natural Resources Council for the Vermont Agency of Environmental Conservation, 1978), p. 3.

sales also exists, the purpose of which is to take much of the profit out of speculative land sales. The effectiveness of this law has yet to be determined.<sup>17/</sup> Currently, the State Planning Office is in the midst of public hearings for a state economic development plan which contains several useful policies in regard to agriculture. Yet, it appears that these methods alone will not be enough to halt the loss of Vermont's farmland effectively. This area is the weakest element in the maturation of Vermont's landscape policy. Until such time as comprehensive programs which address both the land and economic viability of agriculture questions are created, Vermont can anticipate losing more of its farms. In a region where the contrast between farm and forest is so striking and so fundamental to landscape and scenic quality, a landscape policy without a farmland retention strategy will not be effective.

#### Historical Preservation Efforts

Vermont has been continuously settled for well over 200 years. As such, sites of historic and cultural relevance exist throughout the state. These may include homes, churches and other buildings; covered bridges, farms and other agricultural units; some stone walls and other elements. Vermont's man-made landscape is an invaluable resource. Once again, the primary element of policy is a state historic sites registry tied in to the national system. Also Act 250's criterion No. 8 seeks to protect historic sites from "undue adverse impact" of projects. Likewise, sites of archeological importance are being identified and under the A-95 review process and Act 250 may be protected. Through a local option law, sites of historical importance may be exempted from inclusion on the "Grand List" and hence have no local property tax applied to them. Large village areas as well as distinctive individual sites have become registered historical sites. While in a strictly formal sense, a policy does not exist linking man-made landscape elements with those of a generally more natural resources-oriented type, a certain degree of convergence does exist within the decision-making process to protect both types of elements.

#### Other Landscape Policy Elements

Vermont possesses other important laws and policies which must be included in any

discussion on the state's landscape strategy. Phosphate bans and shoreland zoning both contribute to preserving the integrity of water resources. Currently a wetlands protection bill is before the legislature, though it appears doubtful that it will pass during this session. Airports, power plants, highways and other facilities are also subject to review and evaluation. And stretches of rivers which may be termed "scenic" are also being evaluated for possible protection.

#### CONCLUSION

These elements of a landscape policy have evolved over several decades. If one is to speak of a "Vermont landscape policy," however, one must be willing to see it for what it is: uncoordinated, disjointed, clearly incremental in nature, and hardly articulated. Yet, something very real exists and has been effective to a large degree. While this paper has dealt with legislation and public policy, final mention must be made of the "Vermont mystique" which is so well defined and captured by the state's official magazine, Vermont Life. This element in landscape policy cannot be discounted, for it is the ideological underpinning of all efforts at protecting and enhancing the state's landscape quality. Wallace Stegner (Hall, Holt, Hard 1969) has put things properly when he wrote:

Vermont is a little like the ocean waters along the continental shelf-- hitherto safe, now threatened, but with a chance of salvation if it can organize itself to act ahead of, rather than behind, the boom.

. . . [I]f Vermonters can rise above their historical conservatism, which means also above their traditional individualism that sometimes approaches mule-headedness, and also above their Yankee appreciation of an immediate profit, they may yet save this corner of the continent, green and lovely."<sup>26/</sup>

I would submit that they have begun.

<sup>17/</sup>Title 32 VSA, Chapter 236.

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