

DOOR COUNTY, WISCONSIN

ISSUES PAPER NUMBER 2

RESOURCE PROTECTION



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RESOURCE PROTECTION

Introduction

The protection of resources in Door County is a critical issue. Three major resources have been identified that the County Plan must address: natural resources, visual resources, and farmland resources. All three of these resources may be viewed as land based. That is, each resource occupies large tracts of land covering a significant portion of the County. If the land shown as either Primary or Secondary farmland in the 1982 Door County Farmland Preservation Plan is combined with the scenic corridors identified in the 1964 Comprehensive Plan, the majority of undeveloped land in the County is in need of some level of protection.

This paper will not go into the need for the protection. Other papers will address the issue of what land is important and the rationale for its preservation. This rationale has not changed much since 1964; therefore, the real issue is how these resources are to be protected, rather than whether or not they should be protected.

While the population of Door County is obviously more aware of the threats to its environment than it was twenty-five years ago, the real problem is to find a means of protecting the natural resources. Finding a means requires more than proposing a solution; the solution must prove acceptable to the various and competing interests of citizens and elected officials in the County. No goal, however compelling, will be achieved in a democratic society unless a consensus can be reached that there is a reasonable means of achieving that goal.

Definition of Issues

Door County has made attempts at preserving natural resources. A Door County Conservation District was in place before the present State-mandated programs. Door County has a scenic resources overlay district, and the County attempts to use the conditional use procedure to review the quality of development as it occurs. The County also has an exclusive agricultural district for the preservation of agricultural land.

Thus far, however, the County has had only limited success in protecting its natural resources. We must ask why. There are two major reasons for the County's limited success.

First, although the County can adopt a zoning ordinance for preserving resources, the townships are not required to adopt County zoning. Thus, when attempting to preserve resources that

do not respect jurisdictional boundaries, the County can only try persuading the townships to adopt its ordinances. An example is the exclusive agricultural district; only one Township, Clay Banks, has adopted this district. And, although two other townships, Washington Island and Sevastopol, have adopted the prime agricultural land district, this district is not as effective in preserving agricultural land.

The second reason for the County's lack of success is the limited capabilities of the techniques the County has used so far. The conservancy district addresses only wetlands, water courses, and water bodies. The scenic resources district is an overlay zone which permits all uses permitted in the underlying district except for mobile homes--and even mobile homes are permitted given certain qualifications. There is more to preserving scenic resources than prohibiting mobile homes. Thus, although the County has taken some steps toward preserving its natural resources, a more comprehensive approach toward this goal is needed.

For the most part, the County has used traditional large lot zoning and conditional use permits in order to control development; a later section of this paper (Alternative Resource Protection Techniques) explains why these practices are insufficient for the County's needs. In addition, the County has a subdivision ordinance, but it has been a practical nullity for years because of loopholes in the ordinance. State Enabling Legislation may be partially responsible for allowing developments to by-pass the regulations applied to subdivisions, but the County's mistake has been failing to close the loopholes. An amendment to the County subdivision regulations that permits subdivisions with holding tanks will be needed; an amendment to State Enabling Legislation may also be needed. With these amendments, developments on holding tanks would be required to comply with the subdivision regulations. The County could then use the subdivision ordinance more aggressively as a control tool.

Door County staff has repeatedly asked if the existing system of control could be altered in order to solve the County's problems. Although some progress could be made by adjusting the present system, such a response would have few really successful conclusions. If Door County wishes to address its resource protection problems in a successful manner, then the County will have to turn to more effective land use planning techniques.

This issues paper, therefore, focuses on the selection of implementing strategies that are up to the task of protecting resources. The issues that must be explored are those that result in conflict over whether or not to implement a resource protection plan. More often than not, when controversy occurs over an implementation strategy, the measure is usually defeated. As a result, reaching a valid and desirable goal is often prevented because there is controversy surrounding its implementation. Therefore, our aim is to deal with these con-

troveries so that the County has direction in what types of techniques are acceptable for implementing a resource protection goal.

There are two controversial issues that must be dealt with in order to protect the County's resources. The first is how far the regulations can or should go in protecting resources. Any regulation will have far reaching effects; almost every landowner in the County will be affected because of the pervasive nature of the resources. The second issue is that although most property-owners recognize the need for such regulations, they are loath to have them applied to their land.

One of the difficult problems in adopting resource protection regulations is the result of a very direct clash between two opposing views of the land. We can all agree to platitudes that call for the protection of natural, scenic, and agricultural resources. In Door County, there even seems to be an understanding that the loss of resources is a threat to the County's economic health. Yet, if it is our own land on which development is severely limited, then we evoke the rights of property owners with equal vehemence.

Generally, the landowner views land as a commodity to be bought and sold for profit. The community views the land as a resource that functions as part of an overall system; the private landowner is only a temporary trustee of the land. Conventional regulatory responses have heightened the conflict between these two views by focusing on density and lot size as the standard for environmental protection. Worse yet, there is often little direct connection between the zoning standards of density or lot size and the environmental protection to be achieved.

The resource regulations proposed, therefore, must be formulated in such a way that they are acceptable to the community as a whole and that they accomplish the purposes for which they have been passed. These regulations must take into account the degree to which each method of protection actually responds to the environmental problem, be it protection or mitigation, and who pays for that protection.

This paper addresses the technical question of whether or not a protection measure is effective; it also focuses on who must pay the costs. This should assist the readers in evaluating different regulatory techniques as they affect individual landowners and the community. Clearly, a regulation that ignores the interests of landowners is more difficult to adopt than one that at least tries to strike a balance between the landowner's investment point of view and the community's public resource point of view.

The second issue is more difficult because it is a result of an idealistic attitude that often has no substantive basis. "I don't want anybody telling me what to do with my land," is a

typical reaction to the proposal of land use regulation. There are many who view zoning as an infringement on their rights. These people believe that they should be able to use their land in any way they like. There are two major arguments against this sort of attitude.

First, the State of Wisconsin has delegated the power to regulate land use to the County, but at the same time gives townships a veto power over the zoning applied to the township. A township may adopt zoning only if the county does not, or if the township adopts village powers and the county grants approval of the zoning. Legally, then, a county and in some cases a township, has the option of imposing a certain amount of land use regulation. In addition, the State has recognized that the townships' power to block county zoning has had detrimental effects with respect to certain natural resources, the preservation of which is important to the entire State. The result of negative resident attitudes toward local regulation has been for the State to enact legislation to preserve essential natural areas, such as wetlands and floodplains.

Second, the needs of the community should be understood and taken into account by landowners when they decide to what use they will put their land--if the landowners want to live in harmony with the rest of their community. Planning is an expression of this community spirit. Land use regulation is generally adopted for the mutual benefit of all in the community. It preserves land values rather than diminishes them; landowners can invest in improvements to their land with the assurance that their neighbors are prohibited from certain actions that may diminish or endanger that investment.

Viewed from a historical perspective, zoning appears, despite its many problems, to be generally beneficial. In fact, the land values in communities with high zoning standards appreciate more rapidly than they do in communities with low standards. In Houston, the only unzoned major city in the United States, large landowners used "private zoning" or land use covenants in middle and upper class areas in order to achieve needed protection from uncooperative neighbors. The poorer areas of town were often exploited by developers because there were no regulations or covenants to prevent them from doing whatever they wanted. The wealthier areas in Houston, protected by restrictive covenants, have seen property values increase, while the unprotected areas have seen land use changes that have damaged residential values.

In most areas of Door County where the transition from unzoned to zoned has occurred, the citizens have welcomed it. Egg Harbor is an exception. Yet, the citizen's reactions are typical for areas where zoning has been adopted in order to combat an already existing problem.

A community that is either adopting zoning for the first time or is modifying a very old code, is doing so in response to an oc-

currence that the community perceives as bad. The old notion of "if it isn't broke, don't fix it," leads to problems in land use; a breakdown in the system is identified by poor development or poor locations for certain types of land uses. By the time the breakdown is identified, the result remains as a permanent monument in the community. Therefore, with respect to land use, fixing can rarely repair the damage already done; it can, however, include controls that ensure the same problem does not occur again. We should be smart enough to learn from the mistakes of others; unfortunately, history in the United States shows that most communities want to find out for themselves.

In rural areas with no growth pressure, very little happens and mistakes are usually not serious. In Door County, however, the pressure is sufficient to create development problems; in recent years, mistakes have been made that have created problems and will continue to create problems in the future. Some subdivisions developing in inland areas, for example, show little or no sensitivity for the rural landscape.

When the tourist industry began in Fish Creek, it was the character of the area that attracted the tourists. As the tourism industry has expanded, the character of other areas of the County have become increasingly important. Tourism is moving south and the image of the entire County must be maintained.

Legal and Equity Issues

Since resource protection regulations may alter the value of property, the clash between the different views of the land as a commodity and a resource becomes focused in terms of legal and equity issues. Regulations designed to preserve visual resources, sensitive natural areas, or farm land may substantially alter a landowner's expectations. The underlying issue, who pays for the benefits the entire community reaps, is the same whether approached from an equity standpoint or a legal one. The outcome of these two approaches, however, can be quite different.

The Taking Issue

This issue seems to arise whenever a proposed zoning policy results in a significant reduction in development potential. Why have most towns refused to adopt the County's exclusive agricultural district? One reason is that while it affords protection to the resource, it clearly reduces the potential value of the land for development purposes. Since, in many cases, the best farmlands are on deeper soils where septic tanks will work, the pressure to develop these farmlands is even greater. Any time the County proposes a regulation that reduces the development expectations of landowners, it can expect to face the following, incorrect, allegation:

The County is taking my property without paying--that's unconstitutional.

Indeed, both the Fifth and Fourteenth Amendments prohibit the deprivation of property without due process of law. The Fifth Amendment also provides that private property shall not be taken for public use without just compensation; the Fourteenth Amendment requires persons be given equal protection of the laws.

Exploring what the word "taking" means may prove useful, particularly since the popular press's reporting of the recent Supreme Court cases was inaccurate and sensational. "Taking" is usually interpreted differently by laymen than by professionals. A legal taking and what would seem to be a taking in the eyes of a landowner or the general public (from an equity point of view) are often not the same. Over the years, takings litigation has shown that even extreme reductions in land values caused by land use regulation may not constitute a taking in the eyes of the court. While the exact definition of a taking still eludes the legal profession and the courts, clearly, substantial reductions in property value can be sustained before a regulatory action may be considered a taking, as defined in the Fifth Amendment.

Justice Brennan, in his famous dissent in San Diego Gas & Electric v. City of San Diego, first noted that the U.S. Supreme Court has been unable to develop any "set formula to determine where regulation ends and taking begins." In a footnote, however, he adds "After all, if a policeman must know the Constitution, why not a planner?" Each case, therefore, must be decided on its own merits, leaving both municipal lawyers and the landowners' attorneys free to argue their positions.

While there is no hard and fast rule about what is definitively a taking, there are a number of legal cases that shed light on the issue. First, however, it is important to note that most cases involve two basic tests: 1) Does the regulation bear a reasonable relation to the public health, safety, and welfare?; and 2) Does the regulation provide a reasonable beneficial use of the land? With respect to the former test, the courts have continued to expand the concept of a valid public purpose with regard to regulations--even regulations enacted to preserve aesthetic qualities have been upheld. Therefore, resource protection regulations based on an aesthetic purpose are valid.

The second test is more arcane: what is a reasonable beneficial use? Again, this test must be considered on a case-by-case basis, but, in general, determination of reasonable beneficial use considers both the value and use of the property. The first zoning case heard by the U.S. Supreme Court held that a mere diminution in value did not, by itself, constitute a taking. In this case, Village of Euclid v. Ambler Realty Co. (1926), the landowner's property value was reduced by 75 percent, and reductions in value up to 90 percent have been sustained. Thus, while the precise reduction in value that constitutes a taking

in the eyes of the Court is unknown, very substantial diminutions in value have withstood judicial scrutiny.

Nollan v. California Coastal Commission (1987), addresses the use factor in determination of beneficial use. The Nollan's property value was not particularly diminished due to the action of the Coastal Commission; rather, the use of the property was affected. Justice Scalia, writing for the majority noted:

..where the actual conveyance of property is made a condition to the lifting of a land use restriction... there is heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police power objective.

In this case, the California Coastal Commission had essentially required the Nollans to contribute a portion of their property to the public--they could not use that portion of the property for any other purpose but to provide public access to the beach.

Adding to the confusion is the difficulty in simply determining the value of a piece of property. The speculative or development expectations of a landowner may not serve as the basis for measuring value reduction or the notion of reasonable beneficial use. Wetland cases in Wisconsin (Just v. Marinette County), New Hampshire (Sibson v. State), and Florida (Estuary Properties, Inc.), have been a judicial recognition that natural land-forms may not be destroyed to create value. Simply put, the owner of a swamp owns a swamp; the Constitution does not protect the development expectation created by filling the swamp (Estuary Properties, Inc.). In this case, the Constitutional interpretation also considered fishing to be a reasonable beneficial use of the swamp. In a case involving agricultural protection, the Illinois Courts upheld an agricultural zoning district with a 160-acre minimum lot size in McHenry County, Illinois; a county that is about 45 miles from the center of Chicago and part of the metropolitan area. The 160-acre zoning replaced five-acre lots in this agricultural district so the zoning change created very different expectations.

Finally, the courts seem to be increasingly willing to recognize the fact that a large portion of the value ascribed to a property is not a right of the landowner, but rather the creation of a community's investments in public facilities (Penn Central Trans. Co. v. City of New York). This may lead to discounting the degree of the reduced value, making it more difficult for the property owner to demonstrate that a taking has occurred.

Takings decisions are further complicated by the willingness of the courts to consider other elements of the community's program as compensation. In Penn Central, the availability of transferable development rights was considered to be compensation. Legal commentators seem to agree that the courts have invited communities to use such tools to avoid the taking issue. In the

recent Keystone Bituminous Coal Association v. DeBenedictis case, the U.S. Supreme Court found that Pennsylvania could regulate the amount of coal taken to prevent surface damages even though the coal companies had purchased the mineral rights.

Despite all the press on the First Evangelical Lutheran Church of Glendale v. County of Los Angeles, the issue of what constitutes a taking has not been altered. Prior to this case, if a regulation was unconstitutional, the courts did not force monetary compensation from the offending jurisdiction; a repeal of the restriction was considered a suitable remedy. First Evangelical held that property owners are entitled to monetary compensation if a regulation is found to have "taken" their land--even on a temporary basis. Simply put, this case says if a taking occurs, then compensation is a legitimate form of relief. In this case, a decision was never made as to whether or not the floodplain zoning actually constituted a taking.

In Wisconsin, there is a statutory right to file for inverse condemnation (Wisconsin Statute 31.10). The statute uses rather traditional language in stating that if a person possessing the power to condemn property occupies property without condemning it, then the actual landowner of the occupied property has the right to initiate condemnation proceedings. The traditional language implies a physical occupation of the land, an activity in which zoning does not participate.

There are two more elements of the taking issue that should be discussed. One element is the difficulty in convincing the Court to hear a takings case. Four times in the last six years, the U.S. Supreme Court has considered "taking" cases. In all four cases, the Court found that the case was not ripe for adjudication on the taking issue. In MacDonald, Sommer, and Frates v. County of Yolo, the Court appears to suggest that a developer may have to be turned down repeatedly for widely differing plans in order to have suffered damage. The majority in MacDonald noted that:

Rejection of exceedingly grandiose development plans does not logically imply that less ambitious plans will receive similarly unfavorable reviews.

For the landowner, the test will be exceedingly difficult. The most colorful reaction to this is in Bolemus v. Kirby from Rhode Island where the Federal Court stated:

So long as the State offers a suitable prospect for recourse in respect to the alleged "taking," a landowner must mine that quarry before panning for gold in the federal hills.

Thus, proving a taking has occurred is difficult. Landowners must prove that they have been deprived of all beneficial use of their property. Landowners must prove that all remedies have

been exhausted and that the case is ripe for a decision. If the community has made any attempts to mitigate the impact of the regulations, then landowners must prove that the compensation offered is not adequate. Ultimately, the legal definition of the taking issue may be unimportant given the following review of the economic impact of the various proposals for preservation.

Deprivation of Property

Deprivation of property is a substantive due process concern that questions whether the governmental response to a problem is, in fact, appropriate. The aforementioned Supreme Court case, Nollan v. California Coastal Commission, gives weight to this form of appeal. The Nollan decision indicates that the courts may be more inclined to review the degree to which regulations match their purpose. The legal test for deprivation of property requires several stages:

Stage 1: Is there a valid public purpose?

State 2: Are the interests of the public generally, as distinguished from those of a particular class, such that they require the regulation?

State 3: Is the mechanism used for achieving the public goal a reasonable approach?

Stage 4: Are the means used to achieve the goal in balance with the public benefits?

Stage 1: A valid public purpose.

The validity of protecting natural resources and farmland is well established. The courts, including the U.S. Supreme Court, have recognized that governmental regulations serving aesthetic purposes are legitimate. The essential connection in Door County between a major segment of the economy and the quality of the environment, makes it doubtful that a successful challenge to even purely aesthetic regulations could be mounted.

Stage 2: Does the public interest make regulation necessary?

The general public will clearly benefit from the protection of Door County's natural, agricultural, and scenic resources. Residents have strongly indicated that they are concerned with these resources. Tourism makes up a large portion of the County's economy; its success has been born from the County's available natural resources. The County has a unique status similar to Cape Cod or the Florida Keys: Door County is a resource for the State of Wisconsin and the nation. Thus, the benefits of preservation will fall to a large portion of the population, not just a limited group.

An additional consideration in this test is whether a very small number of people are getting special treatment. The actual regulations must be looked at to make such a determination.

**Stage 3: Is the regulation reasonable?
Or is it arbitrary and capricious?**

To determine whether a regulatory mechanism is reasonable, Wisconsin courts, like many other state courts, give the benefit of the doubt to elected officials. That is, even if the means that the elected officials have selected are fairly debatable, the courts have generally been unwilling to substitute their judgment for that of the local officials. In the past, only if the means selected did not really relate to the achievement of the desired objectives would the courts find the regulation arbitrary and capricious. The Nollan decision, however, raises the potential of a heightened judicial scrutiny for the connection between the actual protection achieved and the means to do so.

In dealing with protection issues, focusing on natural resources and the exact form of protection that they need is critical. In general, different zoning districts for each type of resource may be needed. Agriculture is an industry, for example, that is a use of the land, and it conflicts with certain other land uses as most other industries do. The protection for agricultural land may be to exclude conflicting uses and protect the industry from uses that cause an imbalance between the value the land for farming and the value of the land in the market place.

Natural resources are often sensitive areas; in order to maintain their value, they must not be built upon. For these areas, matching the need for resource protection with the means of protection is much more critical. While some natural resource areas are simply unsafe to build in, not all natural resource areas have this defense. Often, development in a resource sensitive area is more valuable than development in another location; waterfront or wooded lots both fall into this category. Also, conflicting views or conflicting uses of the land are particularly evident in these areas. Therefore, great care must be taken to ensure that regulations do the job. If a regulation does not protect the resource, then the regulation may be found to be arbitrary and capricious.

In Door County, protecting visual resources is likely to be difficult because, in a resort-oriented economy, a visual resource is a strong magnet for development. In some respects, the Nollan decision indicates that the courts may demand the strongest linkages in areas where visual resources are involved.

Stage 4 : Does the end justify the means?

Any regulatory technique that does not balance the cost of regulation with the public benefits received has overstepped the po-

lice powers granted by the State. In more colorful terms, the courts have told the government that it cannot use an axe to do a job more suited to a scalpel.

The difficulty in this test for deprivation of property is that the majority of the burden is generally placed on the landowner. Thus, although a regulation may produce great public benefits, it may be too onerous on individual landowners. Where the balance rests is a grey area and must be decided on a case-by-case basis--there is no firm standard that can be applied to evaluate whether an individual regulation meets or fails this test. Yet, in evaluating a series of alternative environmental approaches, it is quite easy to place them on a relative scale. Very conveniently, the whole issue in resource protection is the conflict between the commodity and resource views of the land; therefore, each implementation strategy's performance can be evaluated according to each view.

Two aspects of the issue must be evaluated in order for the Stage 4 test to be complete. On one hand, the extent to which a regulation results in a loss of value must be measured. The greater the economic loss imposed by a regulation, the greater the likelihood that a deprivation has occurred. On the other hand, both the success of a regulation in achieving its intended goal and the degree to which alternative regulations are successful in achieving the same results must be measured. Although the courts hesitate to substitute their judgment for that of local officials, if a regulation is clearly inefficient in either its implementation or with respect to other available measures, the courts may rule a deprivation of property.

The two sides of the Stage 4 issue must be taken together. A strongly protective regulation of an important resource having a great deal of economic impact on the landowners is more likely to meet the test than a regulation giving little protection to a resource but having a significant economic impact. The ideal regulation, therefore, is clearly one that provides the highest levels of protection with little adverse economic impacts.

As discussed earlier in this paper, the question of equity and the degree of economic deprivation is not identical throughout the County. In general, the purchase price paid for undeveloped, environmentally-sensitive land is highly variable. In rural parts of the County, south of the Canal, the development value is not greatly different from the agricultural value. These values cover the full range of natural resources that are to be found in the southern portions of the County. In the northern portions of the County, however, land values are more variable. Coastal areas and locations with a view command very high land prices, while inland farmland is significantly lower in value.

Exclusionary Zoning

There is a long history in the U.S. of people moving into an area, discovering the value of the environment, and proposing regulations that vastly reduce density in order to preserve the environment. While the adopted regulations profess to protect the environment, they often have little positive environmental effects. All too many of these regulations are designed to shut the door on those who might follow in the newest-comer's wake. The impact of such regulations is that the land costs associated with each dwelling unit are driven up. In all too many cases, these regulations have reached the point where only the extremely rich can afford to buy home sites.

The practice of large and very large lot zoning has also resulted in the creation of exclusionary zones where only limited economic groups have access to housing. If land use regulations inadvertently create a "snob" zone of high land values, then it may be argued that the rights of low and moderate income persons to locate in Door County are being violated. Some of this argument is lost because it is doubtful that the right to a second or vacation home is likely to be protected under discussions of exclusionary zoning.

Equity

Ultimately, all the legal concerns may be unimportant when measured against the political consideration of the equity issue. Before any regulation can be challenged in the courts, it must be adopted. While this paper has tried to identify the legal limits of resource protection in terms likely to be leveled at the County during a zoning hearing, these terms have a different meaning to legislators. In order to separate the rhetorical responses, the term "equity" is used rather than terms that clearly have legal meaning. The Legislative branch of government is supposed to balance the needs of different segments of society to ensure that the burdens of regulation are equitably distributed. Equity as to on whom the burden of resource protection regulations falls is, therefore, an important governmental concern.

Recognizing that Door County and its townships have very broad powers to protect the County's resources is important. The courts have clearly indicated that elected officials have a duty to strike a balance between competing interests. The courts are not supposed to substitute their judgment for that of elected officials but only to rule if they have violated the law. One of the major reasons that many well-intentioned efforts to protect the environment have failed is that the proponents of protection have read the law and then attempted to enact regulations that push the limits of what has been upheld by the courts. This results in a political battle between those with different perspectives on the land. In many cases, the environment has lost out.

The best approach is not to see how far to lean towards one view of the land or the other. This encourages a "windfall" and "wipeout" approach to regulation or a failure to protect the environment. The best approach is one that seeks to balance the interests of both parties. Careful construction of the implementing regulations is necessary in order to ensure the regulations are evenhanded. Balancing mechanisms within the regulatory process can be used, such as clustering to reduce impact or transferable development rights. Escape mechanisms can also be provided that permit greater destruction of a resource in extenuating circumstances if there is suitable mitigation either on-site or at a remote site.

As the alternative policies are reviewed, the various legal and equity issues should be carefully considered.

Relationship to Other Planning Objectives

The focus of this paper is on resource protection; that is, implementation strategies available for preserving resources. Sound growth management planning should not be forgotten as a mechanism to help protect the County's resources. Growth management types of strategies will be discussed in a separate paper.

From another perspective, linking protection strategies to other issues and to each other is important. Protection for two reasons, environmental protection and visual aesthetics, is stronger than for either standing alone. Agricultural protection also needs to be clearly related to the County's economic objectives.

Alternative Resource Protection Techniques

There are a variety of techniques that can be used to protect Door County's natural resources. Some are zoning techniques; others can be incorporated into the subdivision regulations, and there are additional approaches that can also be used. The following is a list of these available techniques:

Zoning Techniques

Conservation Zones
Overlay Zones
Historic Preservation
Clustering
Conditional Uses (including PUD)
Performance Zoning

Other Techniques

Environmental Impact Statements
Land Acquisition
Conservation Easements
Subdivision Regulations
Transferable Development Rights
Land Use Policy and Master Plans
Mitigation
Critical Area Legislation
New Planning Organizations
Incentive Programs

Each of these will be discussed in the following sections. In some cases, there will be several variations examined in order to fully explore the possibilities of that technique.

Conservation Zones

Conservation zones are a traditional zoning district response to resource protection. There are two variations on this theme that will be examined: "large lots" of one to ten acres per dwelling unit, and "very large lots" of 20 to 80 acres. Conservation zones share a number of common characteristics. The primary characteristic of the large lot zones is their reliance on low density residential uses to achieve the desired level of resource protection. The notion is that if lot size or density is limited, the impact on the resource will be eliminated. The very large lot zones rely on the notion that there is no real market for residential uses at those densities.

1. Large Lot Zones

The large lot zone is defined here as a residential zone with lots from one to ten acres per dwelling unit (1 to .1 du's/acre). Whether the minimum lot is one acre or ten, this form of zoning is not well-suited to protection. Door County presently has six residential districts in this category ranging from one to five acres in size. Regardless of what title they may be given, these zones are a residential district, not a resource protection district. They will not protect agricultural land and have only weak links to natural resource or visual protection. At best, such lots may ensure that houses can be located to avoid those types of soils on which buildings should not be

located or that suitable soils for a septic field can be found. However, both visual and natural resources enhance the value of residential properties. A house located in woodlands or along the shoreline or at the top of a bluff having a good view is more valuable. Thus, regardless of lot size, those lots will actually sell first. The strongest assets of this approach is that it is easy to administer and it is well-understood by the general public.

A second problem is that lot size is not related to the degree of needed environmental protection. Lot size controls only the number of dwelling units, not the area disturbed. The larger lot will involve a large home occupying more land area. The amount of lawn plus drives is also likely to increase with the size of the lot. This results in an increased amount of land disturbed on a per dwelling unit basis. Roads leading to these lots may break up the environment and damage habitat. Further, where the building is located may be the critical issue, rather than density.

Setbacks from lake shores or bluffs and clearing regulations are more important than density in determining the screening needed to preserve the visual value of these resources. Both these factors are also important environmentally in preventing pollution. Thus, a density regulation, in many instances, bears no reasonable relationship to the actual goals and is therefore not a good technique in light of the tests for substantive due process. In addition to its poor adaptation to resource protection, a density regulation is clearly subject to the charge of exclusionary zoning if used as an environmental protection technique. In terms of habitat protection, the large lot technique, which is the main zoning technique used by Door County, simply encourages low density sprawl with longer lengths of road per dwelling unit. This technique is viewed as counterproductive to the protection of agricultural or natural resources.

While there are some forms of environmental problems that are directly related to numbers of people, others are not. Nonpoint source pollution is a case in point. While pollutant loads rise on a per acre basis as density increases, they decline on a per dwelling unit basis. Thus, what Door County has is suburban zoning rather than environmentally sensitive zoning. While larger lots may mitigate the damage, they do not preserve or conserve resources. Only in wooded areas will five or ten acre lots be of some value in protecting visual resources. However, this may be in direct conflict with environmental goals.

In addition, Door County's dependence on large lot requirements can be considered generally suspect of being exclusionary zoning because of their failure to clearly relate to the desired objectives of environmental protection.

The smaller lots in this category often result in a high commodity value for the land. Although this value falls off rapidly

after three acres, and may even approach farmland prices for minimum lot sizes of 20 acres, properties with unique locational attractions tend to maintain high land prices regardless of minimum lot size. For example, waterfront properties in Maryland, where the minimum lot size was 15 acres, still sold for prices far out-of-reach of most local residents because the wealthy desired and could afford to pay a premium for waterfront properties. The 15 acre minimum lot size excluded even middle-income people from buying land along the shore and did not protect the shoreline from insensitive development.

2. Very Large Lot Zones

Very large lot zoning generally discourages residential development by requiring lot sizes between 20 to 80 acres. It should be noted that this observation comes from agricultural preservation experiences and, in fact, has been the standard approach to agricultural preservation. Very large lot zoning is generally effective at preserving resources and can be quite effective in preserving natural habitats. Very large lot zoning is weakest in preserving visual resources in relatively open land at the low end of the density range. In Door County, 20 and 35 acre zoning has been used.

The economic effect of such large lots is to price the land out-of-reach of most people; and of the wealthy who can afford to purchase such large tracts of land, its appeal is limited to those who really want to live in the country. This form of regulation is almost entirely a resource-oriented regulation. It provides the lowest value for those who are concerned with the commodity value of their land.

Thus, the economic consequence of the measure protects the land almost as much as the density of development permitted. Although the concept of very large lot zoning is easy to understand, and the technique is easy to administer, implementation is difficult because a direct confrontation between landowners and the community results. This is certainly one of the problems facing county zoning in Door County. The exclusive and prime agricultural districts used by Door County illustrate the problem. The unzoned communities remain unconvinced that they are getting anything by joining County Zoning if their land is to go into either of these districts. In the 20 acre version, the landowner who needs to sell a lot must sacrifice a substantial amount of farm land, far more than is actually needed for the dwelling.

The community wants the land protected, but the landowner ends up paying for that protection because very large lot zoning often causes a substantial reduction in the value of the land zoned. If the predominant land use in an area is agriculture, then all land in the area generally has a similar price--agricultural value. However, if very large lot zoning is used in areas where the price of land greatly exceeds agricultural

value, as it does in many areas of Door County, then the larger the minimum lot size required, the more the value of the land is reduced. This transfers the cost of preservation to the property owner. This is especially true in Door County where farms are often near the high value shorelines and the farmers can extend their ability to continue farming by the sale of a single lot.

In upland environments that are generally buildable, very large lot zoning is the worst choice for a protection strategy if balancing the needs of the environment and the owners of the land is of interest. This strategy has proven effective for agricultural preservation because of the linkage between farm size and very large lot size. This is particularly true in high quality agricultural areas where the farmers feel threatened, conditions that do not appear to exist in most of Door County.

Recommendations:

Very large lot zoning, as used in the exclusive agricultural district meeting State requirements, should be continued. An effort to work with the State to get a more flexible, high-performing district needs to occur. The use of very large lots as a resource protection strategy should be offered as an option in other districts.

The large lot zone should generally be considered as an estate living provision and should not be used for resource protection except in narrowly defined circumstances, mostly in wooded situations and, even then, only as an option.

Overlay Zones

Overlay zones have been used with some success as a means of affording protection to targeted environmental attributes (especially floodplains and steep hillsides) throughout the country. Wisconsin mandates this type of approach for critical wetlands, floodplains, and shore land areas in order to ensure that even nominally unzoned communities have a minimum level of protection.

An overlay zone is normally established to protect a single resource; therefore, an overlay zoning classification is created for each resource. The overlay district is mapped to coincide with the resource throughout the County. The overlay district is superimposed over the existing zoning districts wherever the resource is present. The overlay zone provides additional environmental safeguards, above and beyond those that would normally be applied by virtue of the underlying zoning district requirements, by restricting the permitted uses to a limited number or by requiring special construction techniques.

The overlay zone technique is most widely used for protecting floodplains and unstable hillsides since these areas are both environmentally sensitive and pose risks of property damage for those that live there. The logic in mapping all such areas for protection is, therefore, obvious.

The overlay zone works well in areas where there is a single resource needing a common level of protection. The zone is simple to administer and easy for the general public to understand. Unfortunately, some administrative problems arise because a different overlay zone is needed for each of the resources to be protected in order to ensure that the level of protection is consistent with the needs of the resource.

The overlay zone technique loses its rationale when applied to a resource that is actually composed of several different resources--a situation that will be common in natural and visual resource management in Door County. A wetland environmental unit is likely to consist of both wetlands and wooded and open upland areas around the wetland fringe. In other areas, steep slopes may adjoin the wetland. Each of these elements should have a different level of protection. A visual resource can consist of wetland resources, ridgeline resources, bluffs/terraces, etc. Each of these visual resources have different spatial characteristics created by vegetation patterns and topography, and thus need their own set of protective standards. In an overlay zone system, this means a separate overlay for each resource; mapping, therefore, is a major issue and expense with this system.

For resources such as visual resources, developing actual standards for the overlay district would be a complex undertaking since they should to be tailored to the unique needs of the resource to be protected. In practice, any form of zoning district, conditional use, or performance standard may be used with the overlay zone. Its major drawback is the complexity of mapping the possibly large number of different resource management units. The cost of producing accurate maps for all environmental and visual resources to support such a regulatory scheme could easily be a financial burden to the community.

For example, a new series of air photos would be required to determine the current location of vegetated areas. Neither the U.S.G.S. maps nor the soils maps have sufficient detail or accuracy for zoning purposes. Large-scale topographic maps with two or five foot contour intervals would also be required. The accuracy of the base maps is also an issue--base maps can have relatively large margins for error. As a result, some people might be regulated who should not be and others that should be regulated might escape.

Since the overlay technique is primarily a mapping one that is capable of being used with a wide range of environments and land use intensity standards or performance criteria, it cannot be

evaluated separately. The harshness of the regulation will have to be evaluated against the basic public purpose of the regulation to see if the two are in balance.

Recommendations:

The cost and accuracy problems associated with this technique are too great; performance standards can achieve the same results and the cost would be born by the developer threatening the resources rather than by all property owners in the area. Overly zones should not be used.

Historic Preservation

The Wisconsin Statutes state that counties, as part of their zoning and police powers, may regulate places, structures, and objects with special character, historic interest, and any other aesthetic or significant value for the purposes of preserving it and its value. A county may create a Landmarks Commission to designate historic landmarks and establish historic districts; the county may regulate the historic landmarks and all property within the historic districts in order to preserve the historic landmarks and property within the district and the character of the district.

Historic preservation can be applied to a variety of places and structures--"any other aesthetic or significant value" makes for broad interpretation. Yet, the County would have difficulty using this power in order to control the areas identified as valuable historic resource because of their number and dispersal throughout the County. The typical approach would be to form a historic district where all buildings generally share a number of common features. Since many of the County's historic structures are isolated, this approach would not work. Historic preservation implies the traditional architectural regulations, but controlling much of the open land around the structure which preserves the setting, as well as the structure, is needed. Treating historic buildings and the land as a site is the first step.

Architectural review controls the structure, but the County still needs to control the land around each structure. This is a difficult problem because the needs of each structure and its site will be different. Ultimately, it means preserving open space around the structure and perhaps altering the permissible density of sites containing historic structures or sites adjoining them. Transferable development rights would be one means of lessening the impact off-site control regulations.

Recommendations:

The best system would be one in which sites are treated as natural resources to be completely protected, but would give

transferable development rights to the land-owner so that the loss in development potential would be compensated. On large holdings, the transfer could be within the property. Private groups could assist land-owners in setting this system up so that the preservation plan would be intact when the land-owner is approached by a developer. This type of preservation system can be effectively managed by private groups.

Clustering

Cluster zoning provisions regulate by density instead of lot size. There are two basic forms of clustering: one in which only single-family detached units on septic tanks are permitted, and the other, where extreme clustering of either single-family detached or a variety of housing types is permitted. In this latter mode, sewers or holding tanks are required. In either case, the lots can be clustered (grouped tightly together) to avoid building on unsuitable areas of the site. The theory behind both forms of clustering is excellent.

An attractive resource generally results in the attraction of homes to an area that should be preserved. For example, the bluffs overlooking Green Bay and lake shores are generally considered prime residential sites. Cluster provisions for development can result in a concentration of development in, or directly adjacent to, these resource areas--just as happens with large lot zoning--but clustering provides the needed flexibility to work with environmentally sensitive sites. Clustering provisions, however, need additional standards to guide the development of a site.

The cluster provision, as typically used, provides for only a modicum of clustering, leaving perhaps 15 to 30 percent open space. This provides for more flexible and efficient site development. In terms of resource protection, this form of clustering will work only where the resources are small and widely scattered--an uncommon situation in Door County. There are more extreme forms of clustering, where the open spaces dominate. In combination with locational criteria governing building placement, the use of intensive clustering is clearly effective in preserving resources.

Extreme clustering has been used in agricultural preservation; clustering at densities of one house per 40 acres is quite common in the Midwest. Extreme clustering requires that at least 70 to 85 percent of a site be left in open space. The higher the percentage of open space, the greater the level of protection provided. At any given density, extreme clustering is more effective in preserving resources than is conventional zoning. In rural areas, extreme clustering is difficult because of the sewer problem, but the common use of holding tanks in Door County makes extreme clustering a viable solution.

Clustering should not be viewed as something new that is to be feared. Door County, years ago, was developed almost exclusively in the cluster mode. Hotels and homes were concentrated in villages. This pattern is common in Europe. The paradox of extreme clustering is that small, dense settlements retain a rural character because of all the space around the community. This is true even though the cluster itself may reach urban densities. Clustering is a vital concept for the preservation of visual resources and can be effective in the preservation of natural areas as well.

There is no question that, at any given density, clustering is less detrimental to the environment than conventional zoning at normal densities or at the densities of large or very large lots. In all cases, clustering provides needed flexibility to work with the land. The biggest advantage that clustering has over conventional large lot or very large lot techniques is that it is usually possible to achieve a given level of protection at a slightly higher density. This increase in density should not be feared, but should be viewed as a means of providing compensation to private landowners who have to bear the burden of protecting the environment and resources.

A very large number of cluster ordinances and all planned development ordinances use a conditional use procedure (see following section), to ensure the environment is protected. In terms of protecting resources, this procedure is opposite to what it should be. Clustering, especially extreme clustering, is better for resource protection, assuming the standards have been written for that purpose; therefore, clustering should be permitted by right and conventional development should be conditional.

Recommendations:

Clustering should be the preferred method of development in Door County. Extreme clustering is recommended for rural environments and normal clustering of 20 to 50 percent open space is recommended for suburban areas. The extreme clustering will provide for resource conservation and preservation. In suburban areas of the County, the clustering will provide a superior method of mitigating the damage done to resources.

Conditional Uses

There is a wide range of conditional use techniques. No matter what the underlying technical approach is, all conditional use approaches share one element in common. They permit the County to evaluate a project according to a flexible standard. The elected officials have the power to grant, deny, or approve, subject to conditions. In theory, the conditional use process permits the County to attach additional conditions to the site

plan to ensure that environmental, visual, and agricultural resources are protected. In practice, the criteria or standards for approval have either been too vague to ensure the desired results, too rigid to permit a design that protects the environment, or subject to political whim.

The actual conditional use processes come in several forms. The original conditional use process, the kind found in Door County's Zoning Ordinance, simply lists certain land uses as conditional uses rather than permitted uses. Thus, a single-family development might be permitted while other residential uses are approved only on a case-by-case basis. The standards found in most conditional use ordinances are as vague as those found in Door County's ordinance. In nearly every case, some participants in the process can find reasons to criticize a project as being contrary to the public interest. Many of the other standards as well, such as the impact of traffic, can be endlessly debated.

There are now a number of conditional use ordinances where nearly all uses are conditional and very few uses are permitted as a matter-of-right. For example, the A-1 district in Door County has 25 uses listed as conditional uses. In this situation, it is not surprising that there are many hotly contested land use debates. The losers of any of these battles come away thinking the system is unfair and that the elected officials are arbitrary in their decision-making. Nearly everybody in Door County, rightly or wrongly, is dissatisfied with this system.

Nearly all ordinances that permit cluster residential developments make them a conditional use. Planned Unit Developments often have separate statutory authority, but procedurally are similar to a conditional use and will be treated as such here. The process is sharply dependent on the quality of the review board, the preciseness of the standards, and the ability to quantify any of the standards. Some systems have elaborate scoring processes that are intended to reduce the arbitrary elements of these approvals. But, while some very good developments have occurred under some form of conditional use permit, so have some of the greatest travesties.

Our experience has been that the best examples of cluster or planned development originate not with the local regulations but rather with a determined developer who insists on a quality project. These developers often must convince local officials to relax their normal standards in order to achieve a higher level of resource protection. In this light, the ability to provide the developer with adequate economic incentive to support the protection of visual, natural, or agricultural resources may be a crucial factor in the success of a conditional use system.

One of the major problems with a conditional use system is that it encourages case-by-case negotiations. Although there are

some communities that have a lot of experience with these types of negotiations, all too often the resources that should be protected come out second best. This occurs because the nature of conditional use proceedings tends to elicit "its a great idea, but not in my backyard" reactions to development proposals, rather than real evaluations based on the merits of the project.

On the other hand, developers often enter conditional use negotiations with less than good plans in order to leave themselves plenty of negotiating room. The personal and political natures of the approval process cause consistency among decisions to be a rare commodity.

The conditional use process is also uncertain. Developers have no assurance that they will get approval. The various actors involved in the process--citizens, developers, and elected officials--all have different agendas and priorities. The process is frustrating for developers because there are no real rules that are reliable. The process is costly; the uncertainty of project negotiation outcomes creates an economic incentive to squeeze more out of a project than would be considered good planning.

Similarly, the groups representing environmental, agricultural, or visual resources are put to great expense. They must mobilize anew for each project, do research, and present the case for resource protection. The cost of the reviews is likely to be substantial for all parties involved. Plus, the more controversy surrounding a project, the more cost incurred by the planning agency in order to review all the points being made by all the parties. Uncertainty is usually a serious flaw in environmental protection regulations.

Recommendations:

Conditional uses are presently a major problem in Door County. There are alternatives that will provide for better control of development. The risks of inconsistency and the divergence of opinion on the merits of individual projects are too great in Door County for this system to work well in protecting the resources of the County. Only a few uses should be treated as conditional uses.

Performance Zoning

This form of zoning was developed, for the most part, to provide an alternative to both traditional zoning and nonzoning techniques for protecting environmentally sensitive lands. Performance standards, the basis of performance zoning, contain built-in safeguards to protect natural features, visual resources, or agriculture. Performance standards do not apply to zoning districts but apply to the object being regulated or protected, wherever it exists.

There are several types of performance standards that can be applied. The first type sets a specific protection level for each resource as shown in the following Figure.

FIGURE 1

<u>Natural Resources</u>	<u>Open Space Ratio</u>
Floodplains	1.00
Wetlands	1.00
Critical Environmental Area	.95
Critical Visual Area	.90
Stream or Lake Buffer	.90
Drainageways	.50
Forest, young	.50
Forest, mature	.80
Bluffs	.90
Steep Slope >30%	.85
Steep Slope 15-30%	.65
Old Field	.20
Other	.00

Essentially, this approach can be applied to any resource whose destruction or pollution is reasonably well understood.

A second type of performance standard applies not to a resource, but to an aspect of a natural cycle or function that is disrupted by development. While the identification of protection levels helps reduce impacts, in many cases, addressing the specific cycle and the interaction with development that creates a problem is the desirable route. An example is storm-water; this is an environmental problem that can be addressed with specific standards to retard peak flows or to reduce the pollutant loads carried by the resource. A complex analysis is required in order to determine whether a site design meets a particular standard. Unfortunately, a developer may have to test a number of alternatives in order to find one that works.

An alternative is for the community to test several land use alternatives and select one or more of them which meet the standard and write the specifications into the zoning ordinance. In general, this approach has been used most frequently because, although it places some limits on flexibility, developers and staff do not have to process a wide range of tests. Developers have a guide to follow and know if they do certain things they will get approved. This approach is suitable for agricultural preservation where the development occurring may not be developer driven, but rather the simple subdivision of land for a family member or to get a little cash.

The last method combines both the fixed standard and the analysis method. The ordinance contains the fixed standard and, if followed, the developer will get a permit. The ordinance also contains an absolute standard and the formulas needed to evaluate a development. Developers, by demonstrating that their design meets or exceeds the more complex standard, may be permitted to enjoy greater flexibility in the design of their project. This method is particularly applicable in the visual resources area, but also provides greater latitude in the natural resources area.

Performance standards have a tremendous advantage in that they apply not to the zoning district, but to discrete resource units. Unlike the overlay zone, which can also be applied to resource units, it is unnecessary to map each resource. The developer is required to conduct a detailed resources inventory as the first step in the development application process. This means that the resource protection scheme can be tailored to meet the needs of very complex environments and protect them in a variety of zoning districts. If, for example, water quality impacts on lakes are important, then the performance standard might be a certain level of pollutant loading. A table similar to that presented in Figure 2 would permit the calculation of pollution levels on an acreage basis and on a per dwelling unit basis.

Note that conventionally-tilled cropland has the highest pollutant loadings for all three of the factors presented in this chart, while forest lands have the lowest. The pollutant loadings of the various forms of development are located within this range. Generally, as the density of residential development (as measured in dwelling units per acre) or the intensity of nonresidential development (as measured by percent of impervious surface) increases, so does the level of pollutant loading on a per acre basis. One key aspect of the effect of residential development must be noted: although pollutant loadings increase on a per acre basis with increasing residential density, the loadings decrease with increasing residential density on a per dwelling unit basis. Thus, given a constant increase in population, a land use pattern containing high percentages of medium- and high-density development would have lower county-wide pollutant loadings than a land use pattern dominated by more low density development. Such a table could also be developed for air quality impacts.

FIGURE 2

POLLUTION LEVELS FOR VARIOUS TYPES OF DEVELOPMENT
(For Loam Soils)

TYPE OF DEVELOPMENT	% IMPER- VIOUSNESS	loading per SEDIMENT acre	loading per NITROGEN du.	loading per PHOSPHORUS du.
Estate S.F. Res. .10du/ac	3.0%	.06/.6	3.9/39	.3/3.0
Large-Lot S.F. Res. 1.0du/ac	12.0%	.11/.11	6.7/6.7	.8/.8
Med. Density S.F. Res. 4.0du/ac	25.0%	.17/.043	8.8/2.2	1.1/.275
Townhouse/ Garden Apt. Res. 8-10du/ac	40.0%	.27/.03	12.1/1.34	1.5/.166
High-Rise Res. > 30du/ac	60.0%	.24/.008	10.3/.343	1.2/.04
Industrial Medium Imper- viousness	60.0%	.18/NA	10.3/NA	1.2/NA
Suburban Shopping Ctr.	90.0%	.24/NA	13.2/NA	1.6/NA
Central Business District	95.0%	.25/NA	24.6/NA	2.7/NA
Cropland-- Conventional Tillage	1.0%	1.44/NA	16.6/NA	3.5/NA
Cow Pasture	1.0%	0.05/NA	6.3/NA	0.5/NA
Forest	1.0%	0.05/NA	2.7/NA	0.1/NA
Idle Land	1.0%	0.05/NA	3.3/NA	0.2/NA

The use of performance standards also permits the institution of specific measures that focus on density, open space, or impervious surface, whichever is the most appropriate to the task. These regulations provide the ability to calculate the desired impact that is the maximum to be permitted, and then to develop regulations that ensure that the desired impact cannot be exceeded.

In the visual resource area, invisibility might be the primary standard to be met. A cluster development that is masked from view would be permitted at a certain density while a development that is fully exposed would be permitted only at a lesser density. This is an element that is subject to precise measurement. The formula can take into account height, building area, and density.

Performance standards generally rely on clustering or its impacts to drive the system. Landscaping is another important feature of performance standards systems. The systems can also be tailored. It is possible to test several different standards both for their performance against the resource protection goal and their impact on property values. The following figures (3 through 5A) show the performance evaluation of development alternatives within 1000 feet of a water-body on water quality and land value. These analyses demonstrate how a performance system may be fine-tuned and balanced, which is a strong feature if the County ends up in court.

FIGURE 3

20 ACRE CLUSTER ZONING

DEVELOPMENT SUMMARY

	Critical Area	Remainder of Site
TOTAL DWELLING UNITS	19	31
TOTAL ACRES	397.70	92.40
MATURE WOODLAND	34.50	9.00
OLD FIELD	47.10	0.00
CROPLAND	100.40	4.86
WETLANDS	28.70	0.00
WATER	8.20	0.00
2 DU'S/AC.	0.00	0.00
4 DU'S/AC.	0.00	0.00
5 DU'S/AC.	0.00	0.00
TOTAL SITE AREA	490.10	
OPEN SPACE RATIO (OSR)	.64	

ECONOMIC ANALYSIS

AGRICULTURAL VALUE = 105.26 acres X \$1,400/acre = \$147,364

OPEN LAND VALUE = 119.3 acres X \$250/acre = \$29,825

LOT VALUE = 19 @ \$50,000 = \$950,000
 = 31 @ \$12,000 = \$372,000

TOTAL VALUE = \$1,499,189

TOTAL SPECULATIVE VALUE = 397.7 acres X \$10,000/ac. = \$3,977,000
 92.4 acres X \$6,000/ac. = \$554,400

 \$4,531,400

VALUE ADDED = -\$3,032,211 PERCENTAGE CHANGE = -66.9%

POLLUTION LOADING: B.O.D. 8688.56 lbs./yr.
 Nitrogen 3138.19 lbs./yr.
 Sediment 191.75 tons/yr.
 Coastal 963 tons/yr.

ACRES OF WILDLIFE HABITAT 119.3 acres
 CHANGE FROM PRESENT STATE -38.2%

FIGURE 3A

CLUSTER

Density	.05 du's/Ac
TOTAL AREA	498.1 Ac
CRITICAL AREA	397.7 Ac
REMAINDER	92.4 Ac
Lots in Critical Area	19
Lots in Remainder	31

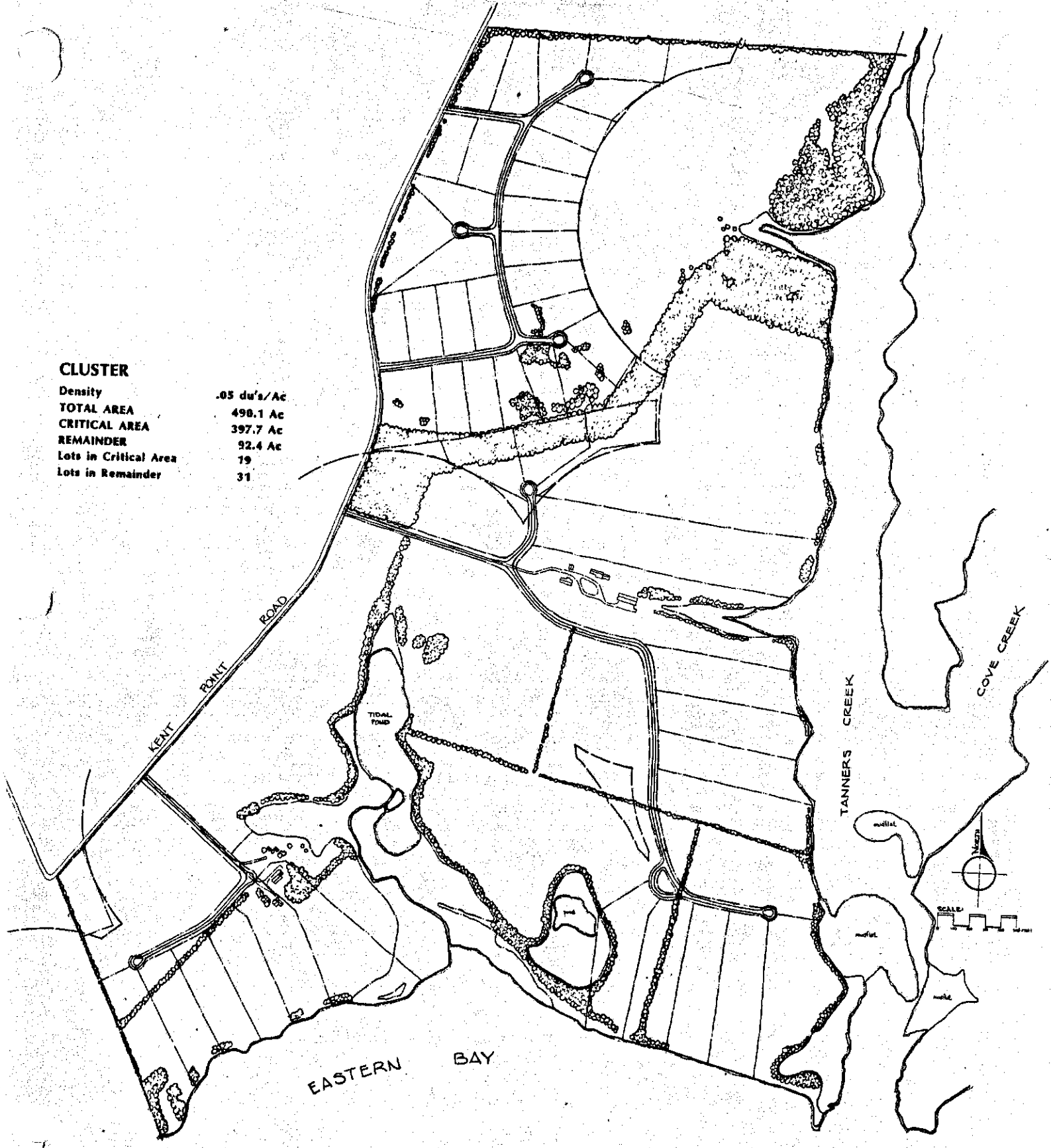


FIGURE 4
PERFORMANCE ZONING A
DEVELOPMENT SUMMARY

	Critical Area	Remainder of Site
TOTAL DWELLING UNITS	39	43
TOTAL ACRES	397.70	92.40
MATURE WOODLAND	34.50	9.40
OLD FIELD	118.62	52.00
CROPLAND	188.18	9.50
WETLANDS	28.70	0.00
WATER	8.20	0.00
2 DU'S/AC.	19.50	21.50
4 DU'S/AC.	0.00	0.00
5 DU'S/AC.	0.00	0.00
TOTAL SITE AREA	490.10	0.00
OPEN SPACE RATIO (OSR)	.92	0.00

ECONOMIC ANALYSIS

AGRICULTURAL VALUE = 197.68 acres X \$1,400/acre = \$276,752

OPEN LAND VALUE = 243.22 acres X \$250/acre = \$60,805

LOT VALUE = 39 X \$40,000 = \$1,560,000
= 43 X \$10,000 = \$430,000

TOTAL VALUE = \$2,327,602

TOTAL SPECULATIVE VALUE = 397.7 acres X \$10,000/ac. = \$3,977,000
92.4 acres X \$6,000/ac. = \$554,400

\$4,531,400

VALUE ADDED = -\$2,203,798 PERCENTAGE CHANGE = -48.6%

POLLUTION LOADING: B.O.D. 7756.08 lbs./yr.
 Nitrogen 3046.6 lbs./yr.
 Sediment 199.11 tons/yr.
 Coastal * tons/yr.

*Level of reduction on the order of 80% but no calculation available.

ACRES OF WILDLIFE HABITAT 243.22 acres
CHANGE FROM PRESENT STATE -25.9%

FIGURE 4A

PERFORMANCE ZONING, A

Density	.10 du's/Ac
TOTAL AREA	490.1 Ac
CRITICAL AREA	397.7 Ac
REMAINDER	92.4 Ac
Lots in Critical Area	39
Lots in Remainder	43

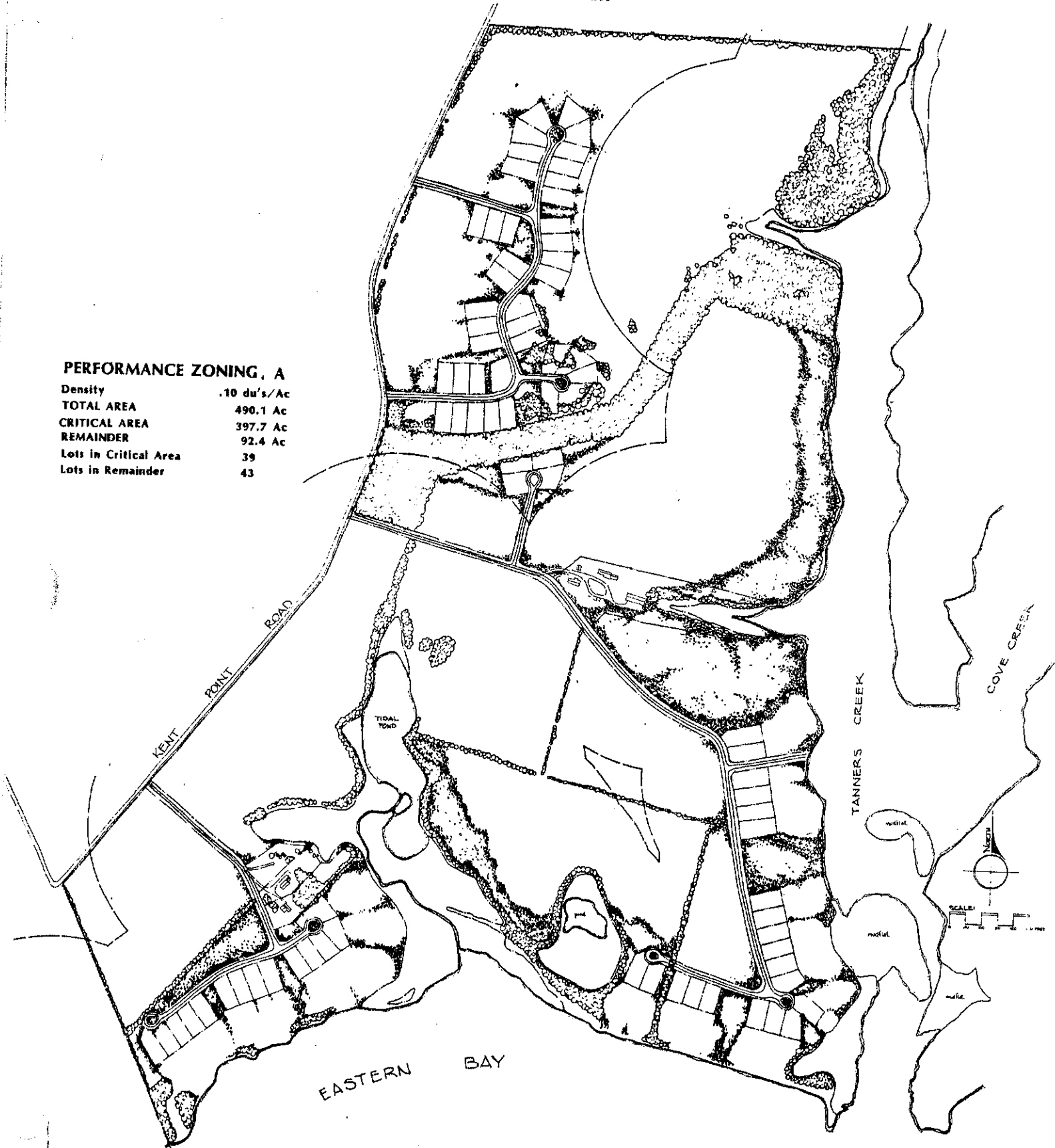


FIGURE 5

PERFORMANCE ZONING B

DEVELOPMENT SUMMARY

	Critical Area	Remainder of Site
TOTAL DWELLING UNITS	78	37
TOTAL ACRES	397.70	92.40
MATURE WOODLAND	34.50	9.40
OLD FIELD	138.46	68.31
CROPLAND	172.24	4.69
WETLANDS	28.70	0.00
WATER	8.20	0.00
2 DU'S/AC	0.00	0.00
4 DU'S/AC	0.00	0.00
5 DU'S/AC	15.60	0.00
TOTAL SITE AREA	490.10	0.00
OPEN SPACE RATIO (OSR)	.95	0.00

ECONOMIC ANALYSIS

AGRICULTURAL VALUE = 176.93 acres X \$1,400/acre = \$274,702

OPEN LAND VALUE = 279.37 acres X \$250/acre = \$69,842.50

LOT VALUE = 78 @ \$28,000 = \$2,184,000
 37 @ \$9,000 = \$333,000

TOTAL VALUE = \$2,834,544.50

TOTAL SPECULATIVE VALUE = 397.7 acres X \$10,000/ac. = \$3,977,000
 92.4 acres X \$6,000/ac. = \$554,400

 \$4,531,400

VALUE ADDED = -\$1,696,856 PERCENTAGE CHANGE = -37.4%

POLLUTION LOADING: B.O.D. 7270 lbs./yr.
 Nitrogen 2869 lbs./yr.
 Sediment 183 tons/yr.
 Coastal * tons/yr.

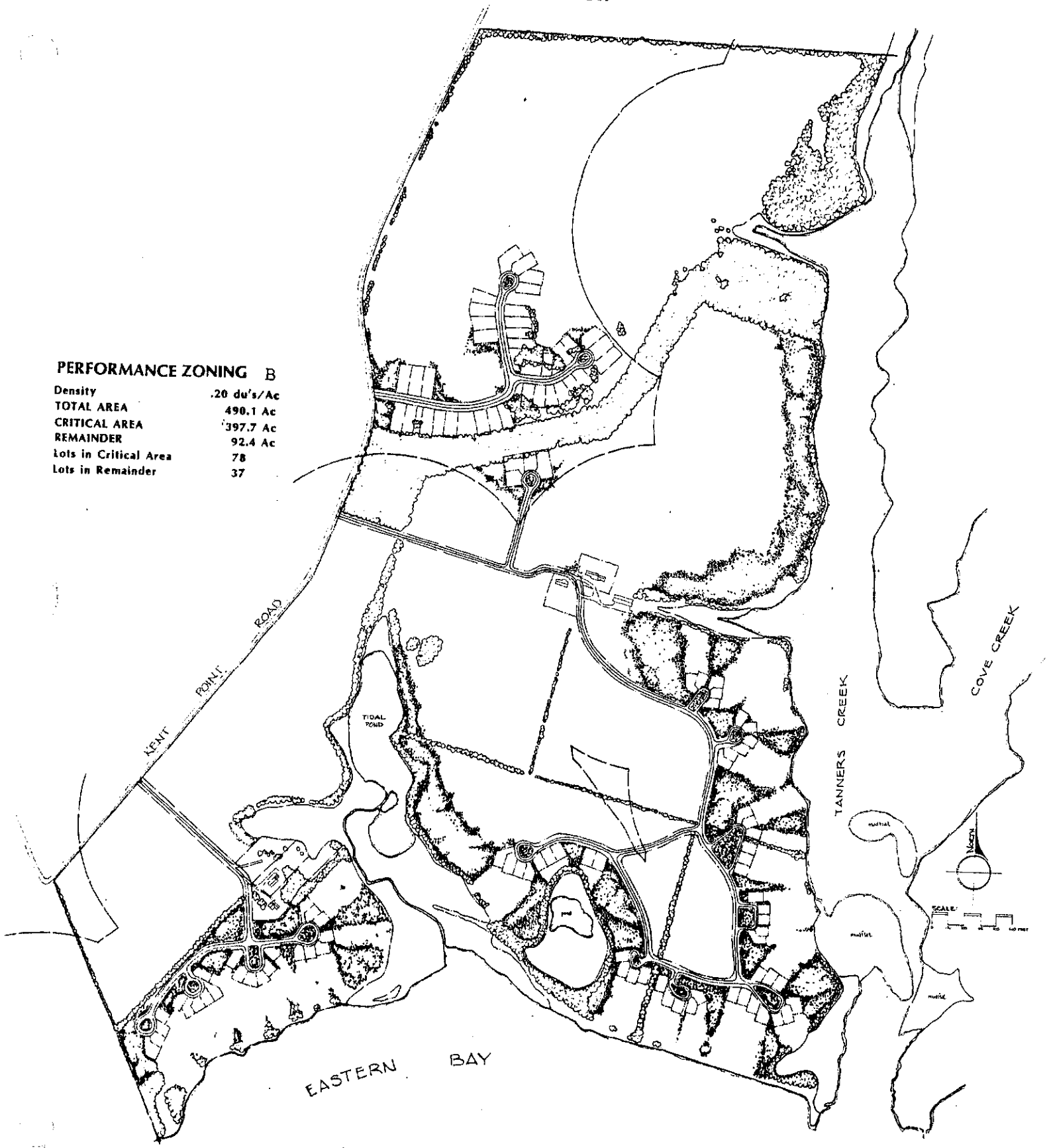
*Level of reduction on the order of 80% but no calculation available.

ACRES OF WILDLIFE HABITAT 279.37 acres
 CHANGE FROM PRESENT STATE +44.6%

FIGURE 5A

PERFORMANCE ZONING B

Density	.20 du's/Ac
TOTAL AREA	490.1 Ac
CRITICAL AREA	397.7 Ac
REMAINDER	92.4 Ac
Lots in Critical Area	78
Lots in Remainder	37



Recommendations:

Performance based districts that include specific standards for natural resource protection and visual resource protection are needed. The districts should be designed to reward sound design and maximum clustering. Rural districts are essential to preserving these resources, but even in suburban districts, we would expect natural resources to be protected to a large degree. The districts would be character based, but there would also be additional standards that cross district boundaries.

Environmental Impact Statements

The National Environmental Policy Act of 1969 was passed as a result of strong environmental and resource protection concerns in the United States. With the sudden advent of a strong resource protection objective, the government found itself without adequate planning or regulatory techniques to deal with environmental goals. Communities are now adopting resource protection elements modeled after the national environmental impact statement requiring an impact statement to be prepared to assess any impacts on the communities resources and to select the best course of action from several alternatives. The system is less a regulation of the land than a process for arriving at a decision. The process is ad hoc and requires the developer to collect a variety of data, to test alternatives, and to present the findings on the impact. Public hearings are held, and citizens or other interested parties are also permitted to submit evidence. The elected officials must then sort through all the information and either accept, modify, or reject the statement.

The ultimate problem with this technique is that it is inconsistent in its long-term results. The quality of the information gathered is going to vary substantially depending on the individual doing the work. The conclusions based on the data are clearly influenced by the objectives of those interpreting the data. The developer and neighbors almost always come to opposite conclusions regarding the implications of the data. The personalities of witnesses, lawyers, and others can have an impact on how the information is viewed. Lastly, the turnover of people doing the evaluation will clearly have an impact on the outcome.

The second major problem is that the cost of running this type of system is many times that of any of the other alternatives. Developers, government, and citizens must all share these costs. The preparation costs for the developer can easily double or quadruple the cost of making an application. Citizen groups must hire attorneys and experts of their own to review the material. While it was originally envisioned that the elected officials would simply sit and listen, the complexity of the issues demands that the community hire its own staff with

expertise in these areas to sort through the complex and conflicting testimony that often arises.

Recommendations:

This process would be even worse than the present conditional use system and is not recommended.

Land Acquisition

Acquisition is one of the oldest methods of protecting a community's resources. Government has the right to acquire land either through negotiation or condemnation, provided there is a public purpose. The land may be acquired by what is known as fee simple means, or government can acquire a more limited interest in the land in the form of a deed restriction or easement. This strategy indicates an acceptance of both the commodity and resource views of the land. Since this strategy would seem to be a perfect balance, why is it not used more often? The answer is simple: the cost is usually too high.

Some resources are so important that they need to be preserved through acquisition and then have public access provided. The State and County Parks and other outdoor recreation in Door County consumed more land in 1964 than all other development uses. Development is now ahead, and the increase in development pressure will make it impossible for government to protect resources through acquisition.

Regulations, within limits, represent a better alternative for preserving resources. Combining regulatory and acquisition programs is also a viable alternative. A limited acquisition program would supplement regulations where the burden would otherwise fall too heavily on landowners. This is being done in Libertyville Township, Illinois and in several eastern seaboard states, Maryland, New Jersey, Massachusetts, and Connecticut.

Recommendations:

Acquisitions should be one of the County's tools. Outright acquisition should be reserved for critical areas where the Plan calls for public use of the land in question. Easements are the preferred way to gain control through purchase.

Conservation Easements

In ordinary situations, there is little difference in cost between the value of fee simple acquisition and the acquisition of a conservation easement that takes all development value. The reason is the large difference in land value for agriculture and for development. In Wisconsin, however, the Uniform Conserva-

tion Easement Act, Sec. 700.40 of the Statutes, in combination with the farm land assessment law makes the exploration of a variation on the theme worthwhile. The Uniform Conservation Easement Act requires assessors to take into account the impact of the conservation easement on the value of the property. Thus, it would be possible to design a conservation easement that would have far greater value in terms of the tax break than does the farmland assessment agreement or zoning. This tax provision applies even if the easement is purchased by local government. Thus, if a source of funds could be found, the County could purchase easements which would result in a large tax reduction in areas where land value had been impacted by developmental pressures. In areas where land values are still agricultural, these restrictions would have some impact, but not of great magnitude. The concept would be to use conservation easements to achieve the desired objectives in the absence of zoning. It might even be an incentive to encourage the adoption of zoning in the townships.

One advantage of this type of system is that it permits the conservation easement to be tailored to the individual property. It would be possible for the County staff to design a property to protect resources--visual, natural, and agricultural. A plan could be worked out to try to give the landowner the maximum development value consistent with the preservation of the values. This would be particularly important in preserving visual resources where the impact of a given intensity of development can be influenced by how the development is designed.

The Nature Conservancy located in Wachapreague, Virginia uses this technique. Its advantage over other forms of easements is that by designing both the resource protection provisions of the easements and provisions for development, the cost of the easements can be reduced to an absolute minimum; thus, the available dollars will go as far as possible. The Nature Conservancy staff is also a source which the Door County staff should tap in their resource protection efforts.

Recommendations:

The use of easements with a predesigned site is the best way in which to spend scarce resources for the acquisition of protective interests in land. Because the County's purchasing power will be limited, and the amount of land needing protection is large, conservation easements represent the best of the "purchasing" strategies.

Subdivision Regulations

There is a desire on the part of many planners to use subdivision regulations in order to accomplish some of the things usually controlled by zoning. By statute, subdivision regulations control the division of land into lots. While placing a

minimum lot size requirement for developments having, sewer, septic tanks, and holding tanks in the subdivision regulations is possible, they would have to be consistent with the minimum lot sizes set in the zoning ordinance for each of those categories. So, while the County may set a minimum lot size in unzoned towns, attempting to go beyond the minimum lot size in a zoned town is likely to be litigated. If the regulations are reasonably related to the health, safety, and welfare, and are truly minimums, then problems are not likely. The further afield the attempt to extend subdivisions runs, the more likely running into trouble becomes. One reason is there are controls on the legislature that govern zoning but do not govern subdivision regulations because their application is ministerial rather than legislative.

We know of one community that is considering placing performance-type environmental regulations in its subdivision ordinance. The regulations have not been adopted and there have been no court cases. There are problems with this method that are not present when using zoning, but the community did not want to go the route of clustering. We believe this approach is vulnerable to court attack.

In terms of other controls, it is clear that the level of design review can be substantially enhanced over what is envisioned in the present Door County ordinance and still stay within the bounds of the statutory authority. Communities all over the country have developed strong review procedures. There is, however, a staff requirement for this to be met. Staff needs to include a planner who is strong in design, generally someone with a landscape architecture or architectural background. While other planners can learn, it is difficult for someone unskilled in design to effectively critique a designer unless a better design can actually be shown to the applicant.

There is one other aspect of the County's regulations that deserves comment. The ordinance, as it now stands, is rarely used and, therefore, meaningless. The distinction between a major subdivision and a land division makes it possible, through a series of land divisions, to avoid having one's project reviewed. In fact, this has been the case throughout most of the time that the ordinance has been in existence. The explanation for this deficiency is that the subdivision ordinance does not recognize holding tanks and the County has avoided confronting this loophole. Only a rather simple amendment to the County subdivision regulations is needed in order to bring them in line with State controls on holding tanks. The County, thus far, has not sought to use this as a land use control element.

The result is that the County has forgone a viable system of controlling site design elements that are easily achievable using the subdivision regulation powers granted by the State.

Recommendations:

The County should close the loopholes in the present subdivision ordinance and adopt an ordinance that is designed to require maximum adherence, rather than maximum avoidance, to County regulations. In addition, there are substantial degrees of control that can be realized, both in terms of mitigating damage to important County resources and in terms of limiting road access and congestion. The County should not, however, attempt to stretch its subdivision powers too broadly. There are issues that best be left to other techniques for control.

Transferable Development Rights

The concept of transferring development rights (TDRs) is based on the fact that ownership of property is a bundle of ownership rights that can be separately bought and sold. The fee-simple ownership of property includes all these rights. The rights that can be separated from the bundle are mineral rights, development rights, hunting rights, logging rights, and scenic easements to name but a few.

TDR's essentially can take three forms. In one form, the rights of a property owner, who may own several parcels, can be transferred from one parcel to another. As a result, parcels most appropriate for development can receive an increase in density by limiting the development potential on other parcels where resources should be protected. The transfer does not permit an increase in overall density, it simply allows the location of all development potential on one or more parcels in return for leaving one or more parcels development-free.

In the second form, by sale or other agreements, several owners may agree to a density transfer. Landowners may sell the right to develop their property to another landowner who can build at an increased density elsewhere as a result. The difference between this second form of TDR and the first is that a receptor district, where the development rights can be used to increase density, is required. There needs to be an area that is permitted to have increased densities capable, of absorbing all the available development rights, if the landowner is to have a reasonable expectation of selling the development rights to builders. One of the most important aspects of this method is ensuring that there is really a market for the commodity. This form of TDR is, as is the first, a voluntary system. Here, the landowner is given the option of developing at restrictive densities or selling development rights.

The third form of TDR is mandatory; it requires landowners in a protection area to transfer their development rights in order to realize any development value from their property. In this case, the zoning mandates either no development or a very low

level of development. As was the case in the second alternative, there needs to be a receptor district which accommodates the development. Unlike the voluntary system, there also needs to be a carefully constructed balance between sender and receptor districts. There must be a market that absolutely ensures that all development rights can be used. The system will fail if there is insufficient land to accept all of the transferred rights. Since there is nothing forcing a landowner to purchase these rights, there needs to be a significant oversupply of receptor district land in comparison to the total number of development rights. The mandatory nature of this third form of TDRs causes the TDR system to require much more careful design than the other two forms.

In Door County, because there is so much sensitive land, the market would probably provide insufficient land to absorb all the development rights that might be created through a mandatory transfer of development rights system. And, while the voluntary system is not market-dependent for its legal workings, its ultimate performance in achieving the desired goal is sensitive to the market. The voluntary systems' major advantage is that they can promote the preservation of some properties in an area that is too large to be preserved with a mandatory system. The voluntary approach encourages the preservation of an area large enough to be used for either agriculture or a wildlife habitat. The extensive agricultural, woodland and wetland areas south of the Canal may be suitable for the application of a voluntary TDR system. This would encourage the preservation of whole farm units. The voluntary approach also provides some leverage for conservation groups who could protect more land if they could market development rights.

An exception to the market limitations of normal TDR systems is a comprehensive TDR system. At this time, however, the comprehensive TDR system is relatively untested. The system was originally proposed in Maryland during the early 1970's as a reform to the entire zoning system. Transferable development rights were, and still are, considered to be a device by which the "windfalls" and "wipeouts" that characterize zoning decisions can be mitigated. The comprehensive TDR system goes further to recognize that a large portion of the value of land is created by governmental investment--a fact noted by the U.S. Supreme Court in Penn-Central.

In a comprehensive development rights system, every property owner in the County would be issued development rights. Each landowner would receive a share of the development potential of the County projected for the next 20 to 30 years. The distribution of rights would be based on land holdings, and while there might be several sub-areas of the County used in the allocation process in order to recognize major differences in land value, they would be very coarse.

In this comprehensive system, the actual land use pattern is separate and distinct from the zoning system. The development rights are fully transferable. A zoning change would not bring instant increases in land value, because to actually build at any given density, one needs to have the development rights as well.

The advantage of this TDR system is that it spreads the benefit of development to all landowners more evenly, and de-emphasizes the role of a zoning change in establishing land values. It provides a mechanism to protect sensitive lands by selling development rights. In terms of pure growth management, the cost of building in one location or another would more accurately reflect the value of public investment and the cost of improving the site, rather than the value of the zoning district.

Although this system has some very attractive features, the fact that it is somewhat radical and relatively untested creates a liability. In addition, the allocation process would be expensive and complicated. Many property owners may end-up with fractional development rights. Depending on the percentage of fractional rights in the system, free market assembly of development rights may be difficult. On the other hand, the system should be periodically updated, either every five to ten years or when 20 to 25 percent of the development rights have been used; therefore it does not have to be tightly constrained economically as in other mandatory TDR systems.

There are other reasons to consider the use of transferable development rights. The U.S. Supreme Court continues to hear taking issue cases. They have, however, given some broad invitations to communities to include such devices as a safeguard against a "taking." In MacDonald, Sommer, and Frates v. Yolo County, they require proof that "any proffered compensation is not just" as a precondition to establishing a taking. Thus, building compensatory devices or alternative choices into an ordinance makes good sense.

Recommendations:

There are several situations in which a TDR program should be used. In rural areas, the use of TDRs on a voluntary basis within districts should be seriously considered. In rural districts, the system will provide landowners with greater flexibility. In addition, there are several resource areas that are in the path of development but where rural intensities will not be acceptable. In these resource areas, a mandatory transfer system should be developed. This system envisions a low density zoning floor, with a TDR program that provides for the transfer of development rights to sites within the district in each township to encourage the creation of new development nodes that would be free-standing hamlets or villages with a tourist orientation.

Land Use Policy and Master Plans

Land use planning represents an approach to the protection of resources that seeks to funnel growth into areas that do not need protection. The first place to begin to implement land use policy is in the development of a master plan. This document, while it has no legal enforceability in itself, nevertheless remains a key element in the process since zoning should be based on a master plan.

The Wisconsin Statutes give power to the counties to develop and adopt a county development plan in order to guide the physical development of the unincorporated areas of the county and areas within incorporated jurisdictions whose governing bodies agree to have their areas included in the county's development plan. The development plan may identify goals and objectives of the county for its future physical development with respect to public and private use of land and other natural resources, and other factors which will improve the physical and economic situation of the county. The State empowers the counties to adopt ordinances which establish districts and regulations which the county's board shall deem best suited to carry out the purposes of the county development plan, pursuant to the State Statutes.

For the most part, all land uses, except those supporting the agricultural industry, are incompatible with agriculture. Depending on the manner in which development occurs, low density residential, particularly if clustered, can be compatible with the preservation of many visual and natural resources. Some natural resources are quite tolerant and can accept suburban types of intensities of all land uses. Other visual and natural resources, such as wetlands and scenic vistas, are intolerant of all forms of development. Traditional urban areas, i.e., commercial, resort/hotels/motel, entertainment, industrial, and office uses are highly destructive since the intensities require the site to be heavily modified. Areas with extensive resources certainly should be zoned to exclude uses that are highly destructive.

If the growth of the County can effectively be funneled into areas that are not considered resource areas and retain rural land uses in the rest of the County, then the major threat to visual, agricultural, and natural resources would be entirely avoided. In California and Oregon, land use planning that creates urban growth areas and rural areas is one of the most effective forms of land use planning. The degree of protection needed on top of rural land use intensities is much lower than the control required for suburban or urban uses. The strategy is based on detecting the threat rather than on regulating the resource.

Recommendations:

The use of a community character based land use system in the development of a master plan is one of the most crucial elements of the planning implementation program. Placing of most of the County's resources in Rural areas will take much of the development pressure off these resources and make the provision of an effective program much less complex. Clearly, there will be some resource areas that will have to receive an Estate or Suburban density; these will use the TDR program to mitigate damage. Similarly, there will be areas where the normal impact of Estate or Suburban densities will have to be considered acceptable. Additional discussion occurs in the growth management paper.

Mitigation

Mitigation is a concept that permits development to occur if the degraded habitat is improved. This concept has the greatest application to natural resources and some visual resources. Throughout the country, most of the original climax forests and many of the streams and drainageways have already been modified. Farms and artificial drainage ditches have replaced the original environments and habitats. In many cases, requiring development to improve degraded resources is sound strategy; the economic resources needed to correct an environmental problem are provided at the time of development rather than leaving open the possibility that the problem might never be corrected. For example, artificial stream channels can be restored to near natural conditions in order to improve water quality. In scenic areas, removal of junk and improving highway landscaping can be conditions for development.

In the process of development, performance standards or negotiated standards can be developed that will mitigate any problems created by development in sensitive areas. The objective is to improve the overall quality of the land as a habitat for both wildlife and people. Where a channelized stream crosses a property to be developed, the artificial channel can be regraded to provide for natural meanders, more flood storage capacity, and less velocity. The channel can be revegetated with materials that trap nutrients and pollutants. Road edges can be revegetated with plantings of grasses and wildflowers. Understory trees, shrubs, and canopy trees may also be included as part of a development in order to filter out pollutants from the development that otherwise reach water courses. Even with a portion of the site being developed for residential purposes, the total area of high-quality habitat can be increased, and the quality of the area, as a whole, enhanced as a habitat. Enhancements for wildlife habitats will increase the diversity of species, provide better cover and feeding environments, and, at the same time, reduce pollutant loadings. These same plantings can be used to improve the visual qualities of the landscape by screening development.

Mitigation can also be used in areas where there is too little land to impose the desired performance types of controls or where the use permitted on the land would otherwise require the destruction of the resource or sharply devalue the property.

Recommendations:

Mitigation should be used in the environmental areas as an option when strict application of the resource protection regulations requiring total protection would create legal problems or severe inequities.

Critical Area Legislation

Up to this point all the techniques discussed have been intended for implementation by the County. As indicated, Wisconsin law permits townships to frustrate county attempts to use zoning to achieve the various resource protection goals. In response, Wisconsin has set mandatory zoning requirements for areas where the State believes such control is essential. While the State's program has never been called critical area legislation, it follows the same pattern as critical area legislation passed in other states. The basic notion is that there are areas of critical State concern which require special planning.

A wide range of states have used one form or another of this concept. There are a variety of approaches that have been used, but all respond to a state perception that critical state resources within one or more communities are not adequately protected by the local governments or the powers available to the local governments. The approaches taken have been diverse. In California, the state created special agencies having direct control over land use. In New Jersey, a special agency had powers to plan and require local consistency. In Florida, the original critical area legislation designated areas of critical state concern and set standards for local agencies to meet. Later, funding for extraordinarily restrictive measures was provided as some compensation to local landowners. In Massachusetts, the state has provided special taxing powers to some of the islands enabling them to better cope with some of the problems they face. In Maryland, the Commonwealth has mandated a plan and specific zoning for critical areas. The State of Wisconsin has been involved in a similar venture on the Lower St. Croix River. It has mandated specific zoning for sensitive bluff and valley areas. Proposals for similar regulations on the Lower Wisconsin River are under consideration.

An alternative to the State program is to look for similar potential revenue sources in the County. There are models for this type of incentive. Martha's Vinyard, off the coast on Cape Cod, found that residents were being forced off the island by the escalating price of the land. The Massachusetts legislature

authorized a real estate transfer tax on the island to be used for the purpose of subsidizing housing for residents. The tax basically affected people purchasing high-priced summer housing; therefore, the burden fell on the group that was causing the development pressure on the community. This technique would have raised \$8,200 for Door County, based on a 1 percent transfer tax in 1986. The money could be used to achieve specified types of relief for zoning regulations.

There are a number of perspectives that a local government can take with regard to critical area legislation. In general, local governments will support the general notion of critical area legislation when it seems to be applicable to broad areas of the state. In many instances, particularly where the community feels the state is forcing regulations on them, local officials have fought the regulations, dragging their feet in implementing them. In other cases, the regulations were instituted at the request of local officials.

The varied reaction to critical area legislation is basically a reaction to two things: whether the regulations are achieving a desired local objective and whether the regulations are viewed as being sensitive to local concerns. In reviewing these techniques, the County should be sensitive to the problems that have been created in other similarly situated communities.

Door County must seriously consider land use regulations. Most of the resource protection techniques reviewed in this section use some type of land use regulation. Door County citizens, therefore, need to decide whether they should adopt such controls locally or get the State to adopt critical area legislation.

Recommendations:

There are two approaches recommended. The first is to use the critical area legislation approach to obtain additional funds to be used for the acquisition of land. The second is to obtain powers to regulate land use in critical areas, resource protection areas, and along the major highway corridors.

We recommend that the County seek critical area legislation that has two major components. One component would be a land use plan that identifies areas where acquisition of protective easements would be a priority. The legislation would empower the County to collect a 1 to 1.5 percent transfer tax on real estate sales. The second component, which would also be a part of the County Plan, would be the designation of critical areas where County zoning would go into effect without veto power by the Towns. While these areas will be identified in the planning process, some logical candidates include the major highway corridors and critical environmental corridors that are threatened by heavy developmental pressure.

New Planning Organizations

In both California and New Jersey, planning organizations with enhanced regulatory powers have been created. The California Coastal Commission came about as a result of a referendum. The Commission exercises land use controls over local coastal zoning, in addition to controlling land uses along the entire coastal area of California. As such, the Commission is essentially a newly constituted level of government.

In New Jersey, the New Jersey Pinelands Commission is based on a more traditional planning approach. The Commission was mandated by the State Legislature to develop an environmental protection plan for the Pinelands. All local governments had to adopt local zoning regulations consistent with the plan, the Pinelands Commission had the power to accept or modify local zoning, and the Commission could regulate, and indeed did regulate, until a local program was approved.

In both these cases, there were many counties and cities involved. In Door County, there is only one county. The underlying concern with all these programs was the belief that local government had failed to do the required job. That is certainly a concern that fits Door County. The commissioning of these studies is recognition that the existing system is not working. There is also the concern that local government is not really committed to the task of preserving critical resources, an issue that citizens have frequently mentioned.

Although Wisconsin counties do have weaker planning powers than do California and New Jersey counties, due to the rural nature of Door County, it is questionable whether the County would have adopted regulations that really protected the environment. The second factor is a State created agenda and agency. The task of the agencies have been issue-oriented, if not one dimensional. Clearly, the concerns were not as balanced as they would be in a traditional governmental agency.

A Door County Planning Commission that would have powers to plan and zone both the Towns and incorporated communities would be the logical creation of this type of system. Officials would likely be appointed, in part by State government and in part by local government, to reflect the agency's mission.

Recommendations:

While no new planning agency is recommended, clearly, the County must work hard to gain more trust from its citizens. While there is uninformed commentary coming from citizens, there is also no doubt that a lack of trust in County zoning exists.

Incentive Programs

The classic incentive program, a farmland assessment law, is one that is used in nearly every state. In Wisconsin, this law takes the form of a state income tax credit. This program is a reflection of the mainstream approach that farms are an essential resource and that tax relief is an appropriate tool. In most states, this type of program provides a tax break to farmers but has no value in actually preserving the land.

Wisconsin went further than most states and made the law apply only to those who were in agricultural zoning districts that actually protected the land use. This type of program links a very real restriction on land use to a form of compensation to the property owner. Since there is a direct link between the two, it is an excellent conceptual model. A problem in the Wisconsin system, however, is that other elements of the Wisconsin law result in a limited level of compensation, thereby severely reducing its incentive value. In areas where land values are near agricultural value, as they are in Southern Door County, the incentive provided by the program is less than needed in order to encourage landowners to accept the restrictions included in the program.

If the problem of inadequate incentives is corrected, Wisconsin's program would be a model method for dealing with resources of statewide importance. Since the resource is of state-wide concern, letting the taxpayers of the entire State pay for the subsidy to the few who must be placed under stringent land use controls is justified. Most important, however, is the implementation link provided by the Wisconsin program; this link must be maintained in order for the program to be effective.

The present proposals in Door County to reduce property taxes will provide a large windfall for nonresident tax payers. In a County such as Door County with a large percentage of the total dwelling unit stock in condominiums and summer homes, this means a loss of revenue that is primarily paid by nonresident tax payers--the ones who are placing the developmental and environmental pressures on the County.

Recommendations:

If critical area legislation for Door County is considered, then a request for revised incentives for farmland preservation should be included. Alternatively, the County should obtain permission to implement more flexible zoning approaches in the agricultural preservation district. These zoning approaches should both maintain the same level of protection as the State law and make the regulations more acceptable, and therefore more of an incentive, to the County's hard-pressed farmers.