REPORT TO THE 118TH LEGISLATURE REGARDING THE 30% EXPANSION RULE PURSUANT TO THE MANDATORY SHORELAND ZONING ACT, 38 MRSA SECTION 439-A(4) AS REQUIRED BY:

PUBLIC LAW 1997 CHAPTER 502,
"AN ACT TO CLARIFY AND AMEND THE STORM WATER MANAGEMENT LAWS, THE EROSION AND SEDIMENTATION CONTROL LAWS, AND THE SITE LOCATION AND DEVELOPMENT LAWS"

SUBMITTED BY THE:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND AND WATER QUALITY
DIVISION OF LAND RESOURCES REGULATION
SHORELAND ZONING UNIT

JANUARY 1, 1998

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.
GOVERNOR

EDWARD O. SULLIVAN
COMMISSIONER

MEMORANDUM

TO: The Honorable Senator Sharon Treat
The Honorable Representative Steven Rowe and other members of the Joint Standing Committee on Natural Resources

FR: Edward O. Sullivan

DA: January 1, 1998

RE: Report to the Legislature Regarding the 30% Expansion Rule Pursuant to the Mandatory Shoreland Zoning Act, 38 MRSA, Section 439-A(4)

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I am pleased to submit the Department of Environmental Protection's report to the Legislature regarding its study of the current 30% expansion limitation rule for non-conforming structures, and recommended alternatives thereto, as the Legislature has directed. The Department is recommending that the 30% expansion rule be amended, providing a more workable alternative for municipalities which choose to adopt such an alternative.

The Department is also recommending that the Legislature amend the Mandatory Shoreland Zoning Act to require certain mitigation measures to be implemented when significant modifications are made to structures which fail to meet the water body or wetland setback requirement. As an incentive for landowners to move non-conforming structures further from the water or wetland, and maintain vegetative buffers, the Department is also recommending the adoption of a special provision allowing a "bonus" expansion where a quality buffer exists or is created.

The Department believes that the implementation of the recommendations in this report will provide for a more workable and effective shoreland zoning program. We look forward to discussing the contents of the report with the committee.

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EXECUTIVE SUMMARY

The 118th legislature enacted LD1582, An Act to Clarify and Amend the Storm Water Management Laws. Among other issues, the law required the Department of Environmental Protection to study and report on: whether approval of an expansion of a non-conforming structure in the shoreland zone should be made contingent upon a reduction in the total nonpoint source pollution from the lot; and whether the 30% expansion limitation rule set out in the Maine Revised Statutes, Title 38, section 439-A, subsection 4 and Department rules adopted pursuant to that subsection should be amended to improve the equity of its application. The legislation also called for the Department to form a study group to assist with the study and the formation of recommendations.

With the assistance of the study group, the Department has concluded that certain expansions and other modifications, such as the addition of a basement or the relocation or reconstruction of a building, should be contingent on the reduction in the total nonpoint source pollution from the lot. The Department is recommending that approval of such construction activities be contingent on certain mitigation measures such as seeding and mulching unstabilized areas, and modifying roof drainage systems and driveways and parking areas to prevent concentrated flow of stormwater runoff from reaching surface waters.

The Department is not recommending that mitigation measures be required for an expansion which is less than 30%. However, it is proposing an amendment to the expansion limitation rule which will allow for a "bonus" expansion of up to 500 square feet if the structure is at least 50 feet from the normal high-water line or upland edge of a wetland and a 50 foot vegetated buffer meeting the Department's minimum standards exists, or the owner plants such a buffer. The expansion bonus will serve as an incentive to create vegetative buffers and to move structures further from the water body or wetland.

Regarding the equity of the 30% expansion limitation, the Department believes the law can be made more equitable and easier to administer. It is recommending that an alternative to the 30% expansion limitation be enacted as an option for municipalities. Under the alternative, municipalities would limit expansions based upon the setback of the structure from the water or wetland, and floor area and height, rather than on floor area and volume. Municipalities adopting the recommended alternative would no longer be required to track percentage increases in expansions, nor undertake complicated volume calculations.

Although the Department is recommending that both the mitigation requirements and the alternative to the existing 30% expansion rule (the equity issue) be enacted, the legislature can address the equity issue alone by adopting the proposed alternative rule which bases expansion allowances on floor area and building height, rather than floor area and volume.

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"buffer" area. Neither water quality nor the shoreland area's natural beauty were being adequately protected. The 30% expansion rule was a reasonable and valuable step toward limiting expansions of nonconforming structures, although it remains less restrictive than expansion provisions for such structures in general zoning ordinances.

The current 30% expansion rule has been in effect for nine years. Over that period most municipal officials, real estate and construction interests, and the general public have come to understand and accept that building limitation. Such knowledge and acceptance of the rule did not come overnight. The learning curve regarding the expansion limitation has been long. Only in the past few years has the Department become convinced that most municipalities are adequately administering the 30% limitation. DEP staff also believes that most affected parties now understand the intended goals of the limitation such as the preservation of the character of Maine's shoreland areas, the protection of water quality and the maintenance of an equitable balance between the standards for new construction and the limitations which are applied to existing development which does not meet current standards.

Establishment of A Work Group to Study the Expansion Limitation

In September of 1997, the Department convened a work group to address the requirements of LD1582 as it pertains to shoreland zoning. The Department's shoreland zoning coordinator, Richard Baker, served as the group's chairperson. The remainder of the group consisted of the following individuals and organizations:

Richard Bourne	(planning board member from Belgrade)
Jonathan Champagne	(representing the Maine Building Officials and Inspectors Asso.)
Rep. Scott Cowger	(member of legislative Natural Resources Committee)
Ron Faucher	(Maine Water Utilities Association)
Tim Glidden	(Natural Resources Council of Maine)
Will Johnston	(Land Use Regulation Commission)
Steve Kasprzak	(Kasprzak, Inc., and shorefront property owner)
Dan Prichard	(Asst. Shoreland Zoning Coordinator, DEP)
Rebecca Warren Seel	(Maine Municipal Association)
Clyde Walton	(Congress of Lakes Association)

In addition, all written materials generated by the work group were forwarded to Rep. Sharon Libby Jones of the Natural Resources Committee.

The work group met five times throughout the fall of 1997. During its deliberations it also considered written comments from several code officers currently administering shoreland zoning provisions. Those code officers expressed support for a change to the current 30% rule.

Is the Current 30% Rule Equitable and the Most Appropriate Method of Limiting Expansions?

Since the enactment of the 30% expansion limitation, several themes have been regularly brought to the attention of the Department staff who provide general oversight of the shoreland zoning law.

First, the rule bases the expansion allowance solely on the size of the existing structure. It does not consider the distance the building is away from the water, the size of the lot, or the amount of screening that exists between the building and the water. The larger the existing building, the larger the amount of expansion allowed. For example, the current rule allows a 1,200 square foot structure at the shoreline on a very small lot to expand by 30%. On an adjacent property a 480 square foot structure on a much larger lot, and nearly at the setback distance, is also limited to a 30% expansion. The larger structure near the water can be expanded by 360 square feet, while the smaller structure, further from the water, can be expanded by only 144 square feet. (See figure 2) Many argue that basing expansion allowances solely on the size of the existing building is unfair and does not mesh well with the purposes of the shoreland zoning law.

EQUITY ISSUE pertaining to 30% Rule

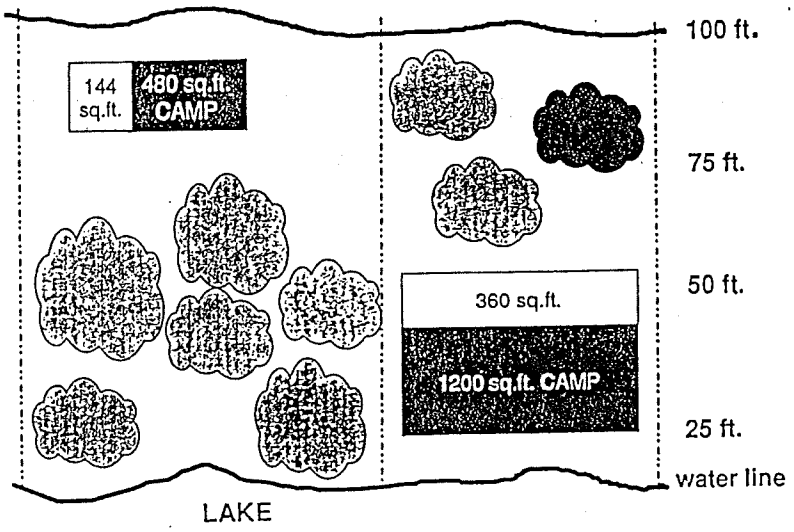

Figure 2.

The second problem with the existing 30% rule is that the current system requires municipalities to track the size of the permitted expansions over time. The current rule is based on the size of the building as of January 1, 1989. Because the 30% expansion rule applies to the lifetime of the structure, when it has been expanded by 30% it can no longer be further expanded. Municipalities must know when that limit has been reached. Therefore, local officials must keep a record of the building size as of January 1, 1989, as well as the size of any expansions thereafter. Many of Maine's smaller communities, however, are not prepared to maintain the necessary records to track expansions over the long run.

The third problem with the current 30% expansion limitation is that expansions are based on both floor area and volume of the structure. Floor area is quite easily determined as it is a two-dimensional calculation. Calculating volume, however, is more problematic and has been the subject of complaints from both the public and local officials, particularly the code enforcement officers who have to administer and enforce the 30% rule, as well as provide technical assistance to landowners. Code officers appear to be united in their concern over the volume limitation in the current rule. Most argue that limiting the building height can accomplish the same goal as the current volume limitation, but with less complication.

Although the current 30% expansion limitation has been in effect for nine years, and when viewed in a broad sense, is equitable, the work group concluded that a more equitable alternative could be designed. However, the group recognized that the shoreland zoning rules are administered by municipal officials who are mostly part-time volunteers, resulting in a long learning and acceptance curve. It is also known that local officials and the public argue against rule changes which are not absolutely necessary. Therefore, the group felt that any alternative to the 30% rule should be optional, rather than a mandatory change.

Near the beginning of the deliberations, the work group concluded that any alternative to the 30% rule should be roughly equivalent to the current rule. In other words, the overall expansion allowance within the "buffer" area should not be significantly different than what is allowed under the 30% rule, but should focus on over-all development within the buffer, rather than a structure by structure cap.

The work group considered several alternatives. Early on, the group determined that any alternative approach should be based on a "sliding scale". It concluded that the amount of allowable expansion should be based on one or more factors such as setback from the water, lot size, and frontage. The earlier considered versions based the expansion allowance on the amount of frontage, with limitations on building height based on the setback of the structure from the water.

As the deliberations progressed, the preferred alternative changed. The work group

ultimately decided that a more appropriate method of limiting expansions would be to base the expansion allowance on the setback (the distance of the structure from the water), in conjunction with a height limitation. This combination would replace the current volume limitation.

The majority of the group members believe that it is imperative to keep the expansion limitation calculation as simple as possible. There is wide recognition of the fact that planning boards and code enforcement officers are mainly volunteers and part-time officials that do not deal with these issues on a daily basis. In addition, planning board members in particular, change from year to year and may not be well versed in shoreland requirements. For these reasons, the work group decided that the expansion limit for any alternative to the current 30% rule should be based on one main variable (setback).

Throughout the continuing efforts to design an alternative system the work group remained unanimous on the concept that expansions should not be permitted within 25 feet of a waterbody or wetland, except for water dependent structures. Permitting expansions within 25 feet of the water does not serve the water quality or aesthetic considerations of the shoreland zoning law.[1]

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[1]As the work group reviewed different alternatives, the Department's shoreland zoning staff undertook a limited study of existing development along two shorelines of Long Pond in Belgrade where differing development patterns exist. The study looked at two typical shoreline subdivisions. One, was a mix of seasonal and year-round homes located near a major road and services. The other was a more isolated area made up of seasonal camps with private road access. The square footage of all principal and accessory structures was determined from town records, and confirmed along with shoreline setback distances by field measurements. In comparing the two areas, the most interesting finding was that although the year-round subdivision had generally larger homes (averaging 26% larger) and more accessory buildings, the amount of development within the setback area was nearly identical (700 square feet within 75 feet of the shoreline, and 1200 square feet within 100 feet of the shoreline). This finding confirmed the Department's perception that the more seasonal, recreation-focused properties had smaller buildings located closer to the water, while the year-round homes with less recreation focus tended to be further from the water, and larger, to accommodate other interests. In both subdivisions nearly all of the development was 25 feet or more from the shoreline.

Should an expansion of a non-conforming structure in the shoreland zone be made contingent upon reducing the total nonpoint source pollution from the lot, including installing and maintaining best management practices?

In initial discussions, the majority of the work group concluded, that expansions of nonconforming structures should be contingent upon implementation of best management practices (BMPs) to reduce nonpoint source pollution from the lot. It was further concluded that if there is a requirement for BMPs to be installed pursuant to an expansion under an *alternative* to the 30% rule, the same BMP installation requirement should apply to municipalities which may opt to keep the *current* 30% expansion limitation. However, as discussion continued, the group members became less supportive of making all expansions within the buffer area contingent on implementation of best management practices.

Several issues factored into this reduction in support. First, not all projects are of a large enough scale to require significant expenditures for such things as buffer plantings, dry-well systems and driveway modifications. Secondly, some group members questioned whether it was punitive to require significant mitigation measures to be taken for nonconforming structures in the shoreland zone, yet not have the same requirements for structures along smaller water courses that are not in the shoreland zone, but which flow directly to the shoreland zone. It was also recognized that many conforming structures have significant nonpoint sources of pollution which would not be addressed by a requirement that pertains only to expansions of nonconforming structures.

As the group continued its work, it became evident that abating the most significant sources of nonpoint source pollution would involve significant effort and cost. For example, improperly designed and maintained gravel driveways are significant sources of phosphorus runoff. Furthermore, the lack of a quality uneven-aged vegetated buffer between development and the water contributes significantly to the phosphorus runoff problem. Yet, to modify a driveway or plant an effective buffer would require significant expenditures. For relatively small projects, such as a 30% or equivalent expansion, it would not be feasible to require major modifications through BMP installation.

Therefore, the work group ultimately concluded that only more significant construction projects should require new installations and maintenance of BMP measures. Such activities include the addition of a basement, and reconstruction or relocation of an existing nonconforming structure. The required BMP measures should include stabilizing areas of bare soil, and modifying driveways, parking areas and roof drainage systems when appropriate, to prevent concentrated flow of stormwater from reaching a water body. The group recommends that mitigation measures required as a condition to obtaining a permit also be required to be filed in the registry of deeds. Some towns may also require mitigation measures to be designed by certified professionals, although the Department is not suggesting that such a requirement be put into the law.

The work group, recognizing that quality buffer strips can provide a filter for stormwater runoff as well as visual screening, and that many nonconforming structures do not have an effective buffer, discussed ways to encourage landowners to create vegetative buffers. After considerable thought and discussion, the group agreed to support a concept which will allow a landowner to build a somewhat larger structure than normally permitted under the expansion formula, provided that the structure is at least 50 feet from the normal high-water line and that there is at least 50 feet of vegetative buffer meeting the Department's minimum standards for buffer areas, or that the owner agrees to plant, document, and maintain such a buffer. This system will reward those who have maintained or are willing to plant a quality buffer. It will also provide an incentive for those who have structures which are less than 50 feet from the water to move the structures back at least to the 50 foot distance. If the structure is moved back and an effective buffer is planted, the landowner would be permitted a larger structure than normally allowed.

Acceptance of the above concept was not without reservation by some of the group members. Enforcement of buffer strip standards is not an easy task. Most code officers do not have the time to regularly inspect existing buffers for compliance with the rules. Therefore, there is some concern whether existing buffers would remain adequate, or whether planted buffers would meet their expectations. To partially address concerns over the establishment and maintenance of newly planted buffers the committee has recommended that planting plans be required in writing and that those plans be filed with the registry of deeds. It is also recommended that the Department be notified of each permit which is issued pursuant to the "bonus" provision, so that the ability to monitor that provision will be available.

If the legislature is receptive to the above option with the mitigation requirements, it should consider requiring the mitigation for similar projects (basements and reconstructions and relocations) under the existing 30% rule. While the Department supports that requirement as sound, it recognizes that it would be a new mandate that may not be well received by municipal officials.

Recommended Alternative to 30% Rule

The Department has considered the work group's input and has drafted a recommended optional provision for dealing with expansions of nonconforming structures. The option would be added to section 439-A of the Mandatory Shoreland Zoning Act. The Department recommends that the following draft amendment be adopted as a voluntary alternative to the existing 30% expansion limitation.

While we believe that the proposed option will be easier to administer and will protect the shoreland zone at least as well as the existing 30% rule, we do not recommend that it

completely replace the existing 30% rule. We fully recognize that municipal officials oppose mandated changes to existing local rules. The current 30% rule has been in place for nearly nine years, and many local officials will oppose a mandate which changes the way the towns are currently regulating expansions of nonconforming structures. The Department also recognizes that all of the municipalities currently have language in their respective local ordinances which limit expansions of nonconforming structures to 30%. If the new option were to be enacted as an overriding provision, it would result in much confusion until local ordinances are changed. The Department, however, believes that the draft option represents an improved method of dealing with expansions of nonconforming structures, and will encourage municipalities to adopt those provisions if enacted into the shoreland zoning law.

The following is the recommended text of the proposed alternative to the existing 30% expansion limitation rule:

NON-CONFORMING STRUCTURE EXPANSION OPTION

Add new section: 38 MRSA, Section 439-A.

4-A. ALTERNATIVE SETBACK REQUIREMENT.

A municipality may permit expansion of principal and accessory structures which do not meet the water setback requirements by enforcing the requirements of subsection 4, or by adopting an ordinance consistent with the requirements of this subsection.

1. ***Reduction in setback prohibited.*** *All new principal and accessory structures, excluding water dependent structures, shall meet the water setback requirements approved by the Board. In addition, expansion of existing structures which do not meet the water setback requirement, shall not further reduce the existing water body or wetland setback distance.*

2. ***Certain expansions prohibited.*** *Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water setback requirement. Furthermore, no portion of any accessory structure which is located closer to the normal high-water line or upland edge than the principal structure may be expanded even if the expansion will not increase nonconformity. This paragraph is not intended to prevent normal maintenance and repair of a nonconforming structure.*

3. ***Size of structures.*** *Legally existing principal and accessory structures which do not meet the required water body or wetland setback may be expanded or altered as follows, provided that lot coverage limitations and other applicable land use*

standards are met, and nonconformity is not increased:

Distance from water body or wetland	*Maximum combined total floor area for all structures*
less than 75 feet	*1000 square feet*
less than 100 feet	*1500 square feet*

Maximum structure height

Less than 75 feet from water body or wetland.....20 feet, or height of existing structure, whichever is greater.

Greater than 75 feet from water body.....25 feet, or height of existing structure, whichever is greater.

Existing principal and accessory structures which exceed the above limits may not be further expanded, except as described in paragraph 5 below.

For purposes of this section the following definitions shall apply:

*A. **Floor Area** is the total square footage of all floors, including porches and decks, but excluding basements.*

*B. **Basement** is any portion of a building with a floor to ceiling height of six (6) feet or more and having more than 50 percent of its volume below the existing ground level.*

*C. **Structure Height** is the vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances having no floor area.*

4. ***Addition of a Basement.** When a new basement is added to an existing structure, or as part of a reconstruction or replacement structure, the structure and new basement must be placed such that the setback requirement is met to the greatest practical extent as determined by the planning board, or its designee.*

5. ***Special Expansion Allowance.*** *A municipality may permit the expansion limits established in paragraph 3 above to be exceeded by not more than 500 square feet provided that:*

A. The principal structure is set back at least 50 feet from the normal high-water line of a water body or upland edge of a wetland, and;

B. A well-distributed stand of trees and other vegetation, measured from the normal high-water line, as defined in the minimum guidelines, extends at least 50 feet in depth from the normal high-water line or upland edge for the entire width of the property, and;

C. Adjacent to great ponds, ground cover and vegetation less than 3 feet in height shall be allowed to naturally re-establish itself within 50 feet of the normal high-water line, except that a footpath not to exceed 6 feet in width, may be established and maintained. Natural revegetation may be supplemented by planting of native trees, shrubs and other ground cover.

If a well-distributed stand of trees and other vegetation meeting the minimum guidelines is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, approved by the planning board or its designee, to re-establish a buffer of native trees, shrubs, and other ground cover within 50 feet of the shoreline.

The plan must be implemented at the time of construction, and be designed to meet the minimum guideline standards as the vegetation matures. The plan shall require the establishment and maintenance of a well-distributed stand of trees spaced so that there is at least one tree per 80 square feet of newly established buffer. Planted trees shall be no less than three (3) feet tall for coniferous species and no less than six (6) feet tall for deciduous species. The planting plan shall include a mix of at least three native tree species growing in adjacent areas, with no one species making up more than 50% of the number of trees planted unless otherwise approved by the planning board or its designee, based on the adjacent stand composition.

6. ***Mitigation Required.*** *For all projects involving Special Expansion Allowance, reconstruction or replacement of more than 50 percent of the market value of the principal structure, or the addition or replacement of a basement, the following mitigation measures shall be implemented and maintained:*

A. Unstabilized areas resulting in soil erosion shall be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies and wetlands. In addition, cleared openings created as part of a

building relocation or reconstruction shall be replanted with trees and other vegetation according to the provisions of Paragraph 5 above.

B. Roofs and associated drainage systems, driveways, parking areas, and other non-vegetated surfaces shall be designed and/or modified, as necessary, to prevent concentrated flow of stormwater runoff from reaching a water body. Where possible, runoff shall be directed through a vegetated area or infiltrated into the soil through the use of a dry-well, stone apron, or similar measure.

7. ***Recording.*** *Planting plans and mitigation measures required as a condition to obtaining a permit shall be filed in the registry of deeds of the county in which the property is located.*

8. ***Notification.*** *A copy of all permits issued pursuant to the Special Expansion Allowance shall be forwarded by the municipality to the Department of Environmental Protection within fourteen (14) days of the issuance of said permit.*

Discussion of Recommended Amendment

The proposed option prohibits expansions of accessory structures which are located closer to the water than the principal structure.

The proposal employs a three tiered approach for determining expansion limits, based on the existing setback of the structure. It incorporates the work group's recommendation prohibiting expansions of portions of nonconforming structures which are located within 25 feet of the normal high-water line. As noted earlier, the work group strongly supported a prohibition on expansion of nonconforming structures within close proximity to the water, both from a water quality and aesthetic perspective. At distances greater than 25 feet but within 75 feet of the normal high-water line or upland edge of a wetland the maximum combined total floor area for all structures is limited to 1000 square feet, and within 100 feet that maximum combined total square footage is limited to 1500 square. (see figure 3) The volume limitation has been eliminated and replaced with height limits.

The proposal also contains a special 500 square foot extra expansion allowance if the structure is at least 50 feet from the normal high-water line of a water body or upland edge of a wetland, and there is a buffer meeting the Department's minimum standards or the owner agrees to plant a buffer that will meet those standards. (see figure 4)

Note: Unless a municipality has adopted setback requirements which are greater than those contained in the Department's minimum standards for shoreland zoning ordinances, the 100 foot setback requirement applies only adjacent to great ponds and rivers that flow

ALTERNATIVE EXPANSION OPTION

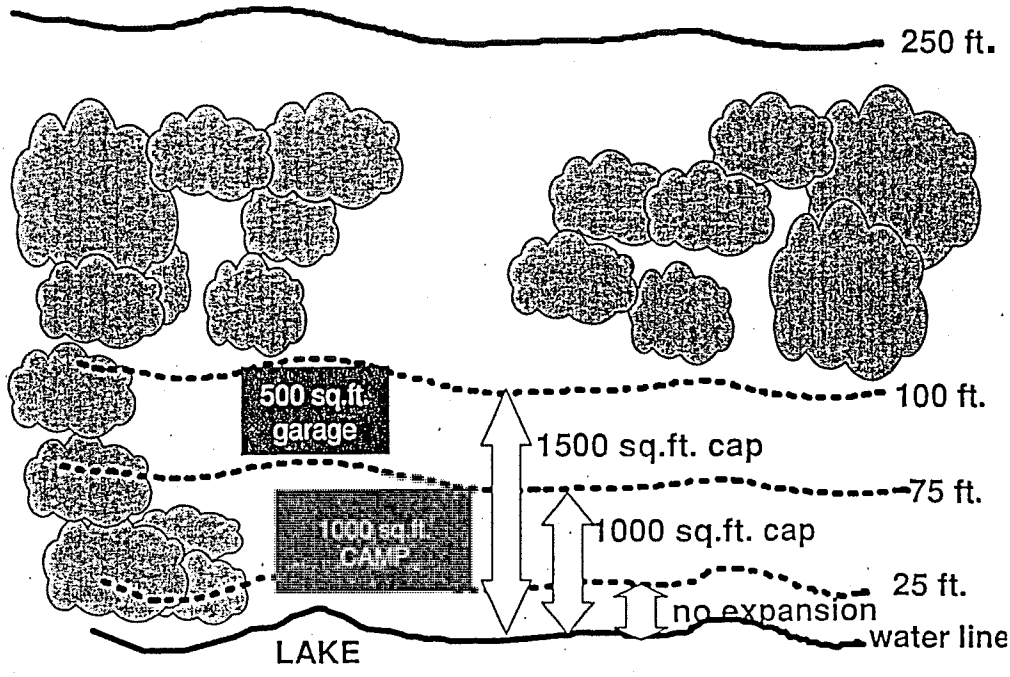

Figure 3.

SPECIAL EXPANSION ALLOWANCE

Up to 500 sq.ft. above cap allowed provided:

Camp greater than 50 ft. from shore, and

Buffer planted and maintained within 50 ft.

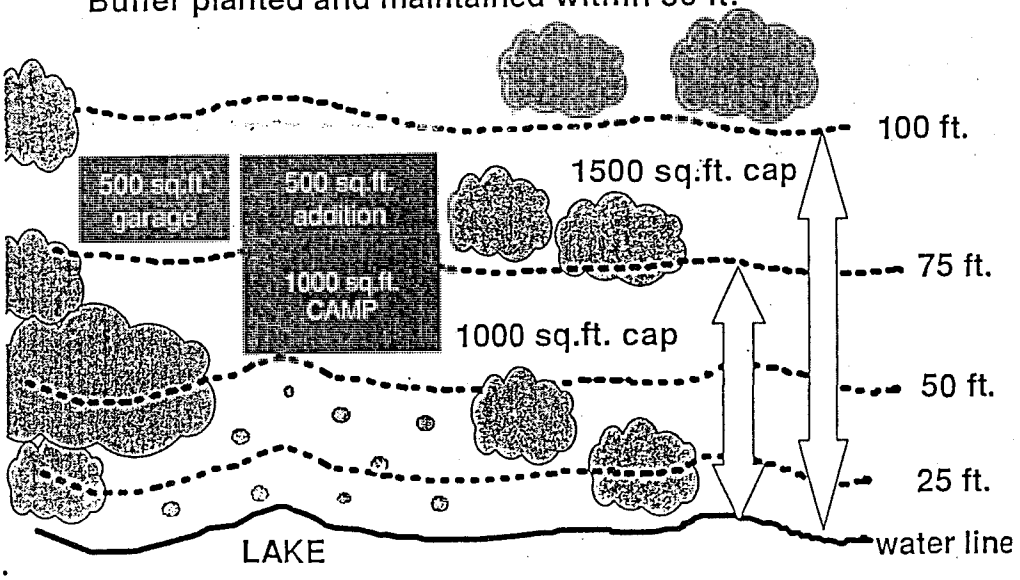

Figure 4.

to great ponds. Adjacent to other water bodies and wetlands, structures which are at least 75 feet from the normal high-water line or upland edge are conforming and are not subject to the expansion limitation.

The committee discussed basing the amount of allowable floor area on a "per foot of setback" basis rather than the chosen "tiered" (0-25 feet, 25-75 feet and 75-100') system. Under the "per foot of setback" method the amount of expansion allowed would vary for every foot of setback the structure is from the water. For example, if a person were allowed 15 square feet of floor area for each foot of setback, a structure fifty feet from the water could be 750 square feet, while a structure fifty-five feet from the water could contain 825 square feet. The Department recommends the tier system as we believe it will be easier to administer, and fits well with the concept that the setback requirement adjacent to great ponds was 75 feet until the early 1990s. Those that are at least 75 feet from the water will get the maximum amount of floor area allowed within the 100 foot setback area. The majority of the work group were supportive of the tiered system.

The group also discussed the development of a "point" system for determining the amount of allowable expansion. Points would be accumulated based on such things as setback, vegetative buffer, quality of septic system, length of driveway, etc. The Department recommends against the adoption of the point system because we believe it would be more complicated than the current 30% rule, and difficult for most municipal officials to deal with.

The work group was split on the issue of height restrictions. Approximately half of the members support a provision that allows expanded structures throughout the setback area to be the greater of 25 feet in height or the height of the existing structure before the expansion. The remaining members, believe that within the 75 foot setback area structure heights should be limited to no more than 20 feet (some preferred 18 feet) or the height of the existing structure. This limitation will keep structures within the 1 to 1 1/2 story range. The current 30% expansion rule effectively prohibits a single story structure from becoming a two story structure. Thus, in order to keep the new option equitable with the 30% rule, we recommend the 20 foot height limitation. It will also better protect the natural beauty of our shoreland areas.

An interesting, and appealing, provision of the proposed option to the existing 30% rule is that it sets a square footage cap for all structures in the setback area. This method of limiting floor area will, generally, allow a person to remove an existing accessory structure and add the square footage to the principal structure. Under the existing 30% rule each structure is treated separately, and in most cases the floor area of that accessory structure could not be added or credited to the principal structure. This optional provision will allow landowners more flexibility in designing expansions, and eliminate the need for municipalities to track expansions over time.

Rulemaking

Rulemaking associated the adoption of the recommended optional expansion limitation provision should be minimal. The Department anticipates that it may have to further elaborate on the replanting standards, and may need to develop guidelines for certain mitigation measures. It is our plan, however, to address mitigation measures through the development of a basic "best management practices" guide for shorefront property owners.

Summary

The Department supports legislative enactment of an alternative to the existing 30% expansion limitation rule found in 38 MRSA section 439-A(4). The alternative, among other positive features, will eliminate the need for towns to track percentage expansion amounts over time, and will no longer require complicated volume calculations on the part of landowners and town officials. While we believe that the proposed alternative is superior to the existing 30% limitation, we recommend that the existing 30% limitation remain in the current statute, with the new alternative being optional for municipalities to adopt. We recognize that municipalities do not support mandated changes. If enacted, the Department will encourage municipalities to adopt the option, but we are reluctant to force that provision on communities.

The proposed option contains an expansion "carrot" of 500 square feet of additional floor area in exchange for maintaining, or establishing a wooded buffer between the expanded structure and the shoreline. Because the ability to create an effective buffer is possible only if there is a significant distance between the development and the shoreline, the option is only available when the structures are at least 50 feet from the shoreline. This standard, and the proposed prohibition on expansions within 25 feet of the normal high-water line or wetland create incentives to relocate buildings away from the shoreline.

The option also requires mitigation measures to be implemented for those projects that involve significant site disturbance such as the addition of a basement, or the relocation or replacement of a structure. This same requirement can also be included in the existing 30% expansion limitation rule.

The mitigation measures to address nonpoint sources of pollution and the 500 square foot bonus provision in the option are separate issues from the matter of the equity of the existing 30% rule. While the Department supports the adoption of the entire package presented earlier in this report, the equity issue can be addressed by simply adopting the paragraphs 1-4 of the option, including the square footage and height caps. If the full option is enacted, the Department recommends that it be reviewed after five years to determine if the "bonus" provision is working as it should. In particular, the Department

will need to determine if buffer strips are being adequately established and maintained.

The Department does not recommend that the 500 foot bonus be incorporated into the existing 30% expansion rule. Many structures in the setback area already exceed the square footage limitations prescribed in the new option. It would be unfair, and environmentally unsound, to allow those structures to expand by 30% and then obtain an added 500 square feet of floor area.

Finally, the Department included the Land Use Regulation Commission (LURC) as a member of the study group for two reasons. First, that agency is currently reviewing its own rules regarding nonconforming structures and it was believed that that agency should be aware of what the Department is considering regarding those structures. Secondly, we are hopeful that by working together on this issue, both agencies can establish similar standards and limitations for nonconforming structures. Currently, the rules for nonconforming structures in unorganized territories and in organized municipalities are significantly different even though one portion of a lake or other water body may be located in an unorganized territory and another portion of the same waterbody is located in an organized town.