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Integrating Land Use and Natural Resource Management

Final Report of the

Land Use Regulatory Reform Committee

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EXECUTIVE SUMMARY

Origin

During the First Session of the 116th Legislature in 1993, L.D. 1487, An Act to Improve Environmental Protection and Support Economic Development under the State's Land Use Laws, was introduced and referred to the Joint Standing Committee on Energy and Natural Resources. This legislation raised issues concerning the organization of the state's land use and natural resource management laws, the roles of state and local governments in land use, the jurisdiction of state agencies over certain land use activities, and the coordination of various regulatory entities.

The Energy and Natural Resources Committee found broad support for the concept of examining Maine's land use and natural resource management laws. At the committee's request, the Legislative Council authorized the creation of a study committee during the interim between legislative sessions to review the issues raised by the bill.

Background

The Land Use Regulatory Reform Committee, formed to study the issues raised by L.D. 1487, conducted hearings on a wide range of issues related to Maine's land use and natural resource management system. The committee received testimony from numerous individuals including private citizens, municipal officials, state agency officials, and business and environmental lobbyists. The committee also reviewed individual, municipal and state experience with the Growth Management program. The committee also examined a number of issues related to the management of natural resource information, particularly regarding the mapping of significant wildlife habitat and the operation of the state Geographic Information System.

The committee considered the issue of possible conflicts among and the need for coordination in Maine laws affecting growth management, land use and natural resource management. This was done from two perspectives: first, the broad policy direction and second, the detailed operation of specific laws and regulations in individual circumstances.

Even though specific regulatory requirements are typically justified, the committee found that each agency's mandate, including that provided for local government, is tightly circumscribed: limited to only a portion of the overall picture. This situation greatly hinders interagency coordination and removes any institutional incentive to reorganize state and local programs to meet the changing needs and conditions of the state. Thus, the committee found that there is an inadequate framework and mechanism for state agencies and local governments to administratively coordinate their efforts and to evolve new approaches to both land use and natural resource management.

Recommendations

The primary direction recommended by the committee will require greater state and local cooperation which in turn will require a much stronger local capacity for land use management. This can be best accomplished through a reaffirmation of the Legislature's commitment to the Growth Management program; the creation of needed mechanisms for state agency coordination; strengthening local capacity; and better regulatory coordination in the limited number of areas identified by the committee.

In addition, the committee makes recommendations for the directions in which future administrative consolidations could move to better integrate the policy objectives of the state's land use and environmental laws. Within the overall framework of the Growth Management Act, the committee seeks to encourage growth and development in suitable areas, through capital investment and appropriate regulatory treatment, while continuing to strongly discourage projects in unsuitable areas.

Finally, the committee recommends a strong commitment to the Geographic Information System which can serve as the linch pin for a system of well coordinated and accurate natural resource management information to better inform land use planning, development and regulatory decisions.

While the changes recommended here should serve to improve the overall operation of the state's land use and natural resource laws, it is important to remember that some individual projects will continue to raise controversy. This is not an indication of failure but of the unavoidable need for constant reexamination of the state's management of its growth and natural resource heritage.

I. Introduction

A. Origin of Study

The past decade saw considerable legislative activity and controversy surrounding Maine laws that impact land use. The boom years of the middle and late 1980s brought a surge of legislative enactments, repeals and amendments that affected Maine's core land use and environmental laws (see Appendices C and D). This activity included consolidation of various natural resource statutes into the Natural Resources Protection Act, major revisions of the Site Location of Development Act and the Shoreland Zoning Act, and enactment of the Growth Management Act.

This period was characterized by a broad consensus that stronger and more comprehensive environmental controls were necessary to deal with burgeoning development and a legacy of lingering environmental problems from earlier periods. While there was sometimes acrimonious debate between those who sought stronger and more restrictive environmental and land use laws and those who questioned the validity of environmental claims and the economic impacts of new legislation, the general tendency was to extend the existing regulatory structure, though some steps were taken to increase the administrative flexibility of the regulatory structure (e.g. permit by rule provisions). Only the Growth Management program, enacted in 1988, offered the first inklings of an alternative to traditional environmental regulation. This program, based on comprehensive planning and stronger state and local cooperation, promised to improve natural resource management, including environmental protection objectives, and to allow more effective consideration of the cumulative impacts of development while avoiding the reactive qualities of the existing regulatory system.

The close of the '80s heralded a sharp economic downturn. In the context of that climate, questions about the structure of Maine laws affecting land use and development took center stage. Concerns focused on whether these laws wrongly impeded economic growth by the restrictions they placed on activities, by the manner in which they were organized, or by the review process they required for development projects. Legislative action centered on exempting certain activities from laws and streamlining review processes, an approach perceived by some people as piecemeal and uncoordinated revision of Maine's environmental laws. At the same time, sharp budget cut-backs hobbled efforts to promote alternative regulatory structures and greatly reduced state support for local growth management efforts.

Toward the conclusion of the First Session of the 116th Legislature in 1993, a bill was referred to the Joint Standing Committee on Energy and Natural Resources that sought a variety of changes in Maine's

land use and environmental laws. LD 1487, advanced by the Maine Alliance, a business lobbying group, raised issues concerning the organization of these laws, the roles of state and local governments in land use, the jurisdiction of state agencies over certain land use activities, and the coordination of various regulatory entities.

This legislative proposal came on the heels of the issuance of a report, "Working and Living with the Land: A Proposal to Restructure Maine's Land Use Laws," which was commissioned by the Maine Alliance Foundation. The report described the state's land use laws as fragmented, contradictory and inadequate to deal with today's issues. It included a proposal "to fundamentally restructure and streamline Maine's land use system."

The Energy and Natural Resources Committee reviewed the report and listened to public comment concerning LD 1487. The committee found broad support for the concept of examining Maine's land use and environmental laws and recommending appropriate changes. However, because of the late introduction of the bill and the broad scope of the proposal, the committee requested, and was granted, approval of a study committee during the interim between legislative sessions to review the issues raised by the bill (see Appendix A).

B. Study Process

1. Committee charge, membership and schedule

The Land Use Regulatory Reform Study Committee was formed to comprehensively examine the major Maine laws that impact land use and to propose legislative changes it deemed appropriate.

The committee consisted of 8 legislators:

Rep. James Reed Coles, Chair
Rep. Michael H. Michaud
Rep. Richard A. Gould
Rep. John F. Marsh
Rep. Virginia Constantine
Rep. Jason D. Wentworth
Sen. Margaret G. Ludwig
Sen. Rochelle Pingree

The committee met six times between September 23 and December 20, 1993. On December 27 the Legislative Council authorized one additional meeting on January 5, 1994 to allow the committee to complete its task.

In addition to the materials presented in this report and the appendices, further material generated in the course of the study is available through the Office of Policy and Legal Analysis.

2. Defining the issues

Committee members prepared for the study by examining a variety of pertinent background materials. These included LD 1487 (the impetus for the study) and the report, "Working and Living With the Land." In addition, committee members reviewed a variety of overview materials prepared by the legislative staff. These materials included summaries of Maine's major laws affecting land use and a time graph of legislative activity concerning these laws (see Appendices C and D). The summarized laws were the Natural Resources Protection Act, the Land Use Regulation Act, the Shoreland Zoning Act, the Site Location of Development Law, the Growth Management Act and the Subdivision Law.

The committee solicited testimony from interested parties and members of the public in response to four questions it felt would help identify areas in which to concentrate its efforts. The four questions were:

- Does the pattern of land development in Maine pose any problems for the citizens or environment of the State?
- What are the basic strengths and deficiencies of Maine's current land use management system? Those who testified were asked to include specific examples and take into consideration significant changes enacted during the past session.
- What are the most important basic goals and objectives of the changes in land use management that you expect to propose?
- What is the appropriate role for state government in land use management? For local government? For other governmental units?

The responses to these questions led the committee to conduct further investigation in several areas, as discussed below. This testimony also provided much of the basis of the general findings and principals articulated in Chapter 2 and the substantive areas of recommendation highlighted in chapters 3 through 6.

3. Experiences with growth management

The committee heard testimony from four municipalities about how the Growth Management Act worked on the local level. The four communities were:

- Casco
- Fayette
- Washburn
- Westport

In addition, a representative from the Department of Economic and Community Development presented an overview of the state's role in land use management.

These discussions led directly to a series of findings and recommendations to strengthen the local role in land use management through various measures. These are found in Chapter 3.

4. Conflicts and coordination

The committee examined the issue of possible conflicts and redundancies and the need for coordination in Maine laws affecting growth management, land use and natural resource management from two perspectives: first, from the broad view of overall policy direction and second, at the more detailed level of the operation of specific laws and regulations in individual circumstances.

Historically, this debate has focussed on detail: the intricacies of how individual regulatory provisions of specific laws interact. Perhaps because of this focus on the details, the problem has typically been presented through 'micro-anecdotes'. Legislative attempts to address these concerns have concentrated on complicated but narrowly applicable special exemptions, variances and other similar efforts to make the land use laws work together as a system. Up to 1987, there had not been a comprehensive effort to start at the 'other end of the problem' and to harmonize the overall policy objectives of the state's land use and environmental laws in a manner that would result in a more coherent and effective system. In 1987 and 1988, significant progress was made toward this goal:

- A wide variety of natural resource protection laws were consolidated;
- The Site Location of Development Law was given a substantial overhaul (local delegation mechanisms and exemptions for activities in the unorganized territories have since been expanded); and
- Most significantly, the Comprehensive Planning and Land Use Regulation (Growth Management) Act was passed to establish a broad framework for more effective land use and natural resource management at both the state and local level.

Throughout the course of the study, the committee examined how Maine's major land use programs worked together to advance the broad goal of promoting orderly growth and development in an environmentally sustainable manner.

However, in order to first examine the detailed operation of these programs, the committee invited interested parties and members of the public who attended meetings to submit specific examples of conflicts, overlaps or redundancies in Maine's major laws affecting growth management, land use and natural resource management. Perhaps the most striking result of this exercise is the committee's finding that, taken as a whole, the State's land use and natural resource laws are not, in fact, characterized by pervasive conflict and redundancy in their objectives. Considered narrowly, specific regulatory requirements are typically justified.

In a broad sense however, the committee found that each agency's mandate, including that provided for local government, is tightly circumscribed: limited to only a portion of the overall picture. This situation greatly hinders interagency coordination and removes any institutional incentive to reorganize state and local programs to meet the changing needs and conditions of the state. As noted earlier, efforts to change these conditions are also limited by the budget reductions of the early 1990's. Thus, the committee found that the problem lies in the lack of an adequate framework and mechanism for state agencies and local governments to administratively coordinate their efforts and to evolve new approaches to both land use and natural resource management.

The primary direction recommended by the committee will require greater state and local cooperation which in turn will require a much stronger local capacity for land use management. In addition, the committee makes recommendations for the directions in which future administrative consolidations could move to better integrate the policy objectives of the state's land use and environmental laws. At the same time, the committee notes that these changes must not be made at the expense of environmental quality. Within the overall framework of the Growth Management Act, the committee seeks to encourage growth and development in suitable areas, through capital investment and appropriate regulatory treatment, while continuing to strongly discourage projects in unsuitable areas.

Chapters 3, 4 and 5 include the committee's recommendations to reaffirm the Legislature's commitment to the Growth Management program, to create the needed mechanism for state agency coordination, to strengthen local capacity and to provide for better regulatory coordination in the limited number of areas identified by the committee. While the changes recommended here should serve to improve the overall operation of the state's land use and natural resource laws, it is important to remember that some individual projects will continue to raise controversy. This is not an indication of failure but of the unavoidable need for constant reexamination of the state's management of its growth and natural resource heritage.

5. Natural Resource Data

Since the major laws affecting land use are used in part or in whole to protect and manage natural resources, the committee heard testimony concerning the state's natural resource data requirements. Testimony included the following:

- An interagency overview presented by the Department of Environmental Protection about data needs, available information and gaps in information (see Appendix H).
- A case study of forested wetland identification in land administered by the Land Use Regulation Commission (see Appendix I).
- A discussion of a conceptual framework for natural resource data management.

In addition, the committee visited the office of the state's Geographic Information System (GIS). GIS personnel gave the committee a presentation of the system's mapping capabilities. They also explained how GIS can be used to provide state agencies, local governments and private individuals with land use and natural resource information.

A discussion of natural resource issues and related recommendations are found in Chapter 6.

II. General findings and principles

A. General Findings

The committee strongly endorses the practice and concepts of community planning and growth management. The committee heard from a broad range of people who offered testimony both in favor of and in opposition to planning and growth management. Upon consideration of these views, and upon review of Maine laws that affect land use and the implementation of those laws, the committee found that planning and growth management offer communities and the people of Maine a wide array of benefits they would otherwise forgo.

Chief among these benefits is that planning can lead to a high level of citizen involvement in shaping the character, look and future of a community. Such involvement is a key and cherished element of a democratic society. In addition to encouraging citizen participation on a community level, planning also provides a forum for individual landowners. This results in a greater awareness of landowner property rights and preferences. Planning allows municipalities to incorporate these individual rights and preferences into community-wide growth management programs.

While strongly reaffirming Maine's commitment to planning and growth management, the committee also recognizes that local and state decisions affecting land use can be better integrated. A higher level of coordination and interaction will make government action more effective, efficient and consistent. These steps will also allow more effective consideration of the cumulative impacts of development and thus, better natural resource management. In many situations, a regional approach to land use and natural resource planning and management makes the most sense. At the same time, the committee concluded that effective regional efforts will require strong, enthusiastic local support. The committee also found that there are existing regional organizations in some parts of the state that do have strong local support including some regional planning organizations, councils of government and other entities.

The committee heard testimony critical of Maine's major laws affecting land use. This testimony characterized the laws as disjointed, developed in isolation of each other and void of a systematic approach. The committee found that Maine laws serve important individual functions and, while developed in separate legislation, were not passed without consideration of those laws already in effect. Rather, the committee found that there is a clear need for better coordination of the basic roles of state and local government in administering the land use management system. From this coordination will evolve the measures necessary to harmonize the objectives of Maine's land use and environmental laws. In the very limited number of cases where problems seem to exist between regulatory provisions of individual laws, the committee has recommended an appropriate remedy.

To further its goal of reforming and improving Maine's land use laws, the committee has chosen to recommend improvements in current laws and to pursue better integration of current laws. The approach of consolidating laws or offering major rewrites was rejected in favor of preserving legal precedents and forgoing the potential for uncertainty and confusion that new laws can bring. Improved coordination and integration will bring greater authority to local planning and more certainty in regulatory decisions. The committee also expects these recommendations to result in better natural resource management and improved protection of environmental quality. Taken as a whole, the committee's recommendations will also result in better planned, and thus more rational and efficient expenditures of local and state capital investment dollars.

B. General Principles

Based on these discussions and its findings, the committee endorses the following general principles as an organizing framework for Maine's land use management system:

- It is vital that Maine citizens think of themselves as members and stewards of a single community. In that context, it remains in the best interests of all of the citizens of the State that the 10 goals that form the core of the Growth Management Act be realized and that administration of the many related, but separate land use and natural resource management programs be coordinated with these goals.

- At the same time, it is evident that local government provides the most effective and open forum for determining the appropriate means by which to achieve the state growth management goals under the wide range of conditions found in Maine.

- An effective local planning process leads to a more vital and democratic decision-making process, a more engaged citizenry, greater community involvement in shaping a town, and greater sensitivity to the property rights of individual landowners.

- Better integration of planning, regulation and investment will result in stronger local control over local land development patterns, the use of a wider range of land management tools (including nonregulatory approaches), more effective economic development efforts, clearer and more predictable regulatory decisions and more efficient public investment. This integration will require new, regional approaches to many natural resource management issues (e.g. watersheds).

- The current land use management system contains many of the basic elements necessary for success. Reform and a process of continual evaluation and improvement is needed to make this system work in the best interests of the State and its citizens.

- The Growth Management program, revised according to the recommendations of this study, offers the best framework for achieving those goals that are in the interests of all Maine's citizens and for doing this in a manner that is consistent with these principles.

III. Actions to Strengthen the Local Role in Land Use Management

State laws that advance statewide interests must continue to be sensitive to Maine's strong tradition of local control over land use matters. The Committee received compelling testimony that some state goals predetermine the solutions municipalities must choose. The Committee believes Maine's state land use laws should give a municipality more flexibility to decide how it can meet state land use goals.

A. Increased flexibility for local implementation of growth management goals.

The first and central goal of the Growth Management Act is

"to encourage orderly growth and development in appropriate areas of each municipality, while protecting the State's rural character, making efficient use of public services and preventing development sprawl" (30-A MRSA §4312, sub-§3, ¶A)

To achieve this goal, the Act provides for a voluntary local planning process to identify the areas in each town that are appropriate for such development.

The committee received substantial testimony from individual citizens, town representatives and other interest groups that, in practice, some towns had experienced considerable difficulty in identifying "growth" areas under the current guidelines provided by the state. It appears that this is particularly true when dealing with residential growth issues in small rural towns with historically low growth rates or in towns with severe natural resource limitations and no public water and sewer systems. In these cases, it was suggested that greater flexibility was required to reasonably adapt the Act to the wide range of conditions found throughout the state.

At the same time, the committee received testimony that the basic exercise of identifying areas suitable for growth and development and those areas in which development should be discouraged was absolutely essential to achieve the goals of the Act.

Finding: *The committee finds that it would be both practical and desirable to provide some additional flexibility to municipalities that choose to undertake local growth management programs. The committee further finds that, based on the testimony and evidence reviewed, certain historical and physical conditions exist in some towns that make it very difficult to locate areas within which residential development can be successfully encouraged.*

Recommendation: *The committee recommends that the Legislature enact statutory changes to permit greater local flexibility in the identification of growth and rural areas. This flexibility should be based, in the first case, on limitations imposed by natural resource conditions or the lack of basic public services and, in the second case, on historical and projected low residential growth rates within a town.*

B. Simplification and increased flexibility within the growth management program.

The Committee received several proposals intended to simplify the administration of the growth management program and to build more flexibility into the relationships between the Department of Economic and Community Development and those towns that choose to enter into the planning process.

Finding: *The committee finds that the priority listing developed pursuant to the original growth management laws for the disbursement of planning and implementation grants is no longer relevant. Further, a more flexible means of applying available state support is needed.*

Recommendation: *The committee recommends repeal of those provisions in Title 30-A, section 4346 that require the Office of Community Development to use the municipal priority list when awarding grants.*

Finding: *The committee finds that planning grants and implementation grants should be combined into one grant program to provide more flexibility during the planning process.*

Recommendation: *The committee recommends repeal of Title 30-A, section 4346, subsection 1 and 2 and enactment of new statutory language creating a single "financial assistance grant" that may be used for both purposes.*

Finding: *The committee finds that technical assistance is an integral part of the comprehensive planning process and should be provided by the Department of Economic and Community Development.*

Recommendation: *The committee recommends that the Legislature create one full-time Senior Planner position and one full-time Planner II position to provide technical assistance to municipalities and to assist the office in the evaluation of the program.*

Finding: *The committee finds that towns should follow the same procedures when amending a comprehensive plan as they did when they adopted that plan.*

Recommendation: *The committee recommends that the original intent of the Legislature be clarified to reaffirm that towns use the same procedures for citizen participation, public notice and public hearing when amending a comprehensive plan as they used when they adopted the plan.*

Finding: *The committee finds that current language in the growth management law could be interpreted to limit revisions to adopted growth management plans to those revisions necessitated by changes caused by "growth and development".*

Recommendation: *The committee recommends a clarification to indicate that periodic revisions of a growth management plans should be undertaken by a town to account for any significant changes to the community, not just to account for changes caused by growth and development.*

C. Integration of Mandatory Shoreland Zoning and Growth Management

The Mandatory Shoreland Zoning Act was enacted in 1971 to protect water quality, wildlife habitat, wetlands, archaeological sites, historic resources and commercial fishing and maritime industries. Its purposes also included conserving shore cover, natural beauty, open space and public access to water resources. The act required municipalities to adopt shoreland ordinances at least as stringent as a model ordinance developed by the Board of Environmental Protection. If a municipality fails to adopt an ordinance, the BEP may impose a shoreland ordinance upon the locality.

In 1988, the Legislature enacted the Growth Management Act to promote, in general terms, orderly growth and development while providing proper management of natural resources. Virtually all of the objectives of the Shoreland Zoning Act are incorporated in the Growth Management Act. However, the model shoreland zoning ordinance contains certain provisions that the BEP has determined are necessary to protect water quality and other values, but which may conflict with the Growth Management Act.

The committee took testimony on several examples and proposed solutions. For example, the model shoreland ordinance imposes a standard minimum lot size regardless of whether a development is served by public sewer or utilizes a septic system. The Growth Management Act, meanwhile, encourages "orderly growth and development," which includes "preventing development sprawl."

Using the minimum lot size example, one method of integrating the objectives of the two laws could be to allow municipalities with certified growth management programs to protect water quality and other values through watershed-based planning and management strategies. This would allow municipalities to meet the Shoreland Zoning Act requirements by planning for development according

to density and land use types throughout an entire watershed, not just within the shoreland zone. The application of such an approach could bring more efficient use of public services, greater preservation of shoreland habitat and equivalent protection of water quality and other values. By tying the ability to perform such planning to certified municipalities, statewide goals of protecting water quality and other values would be met, while ensuring the existence of adequate local mechanisms.

Findings: *The committee finds that, though both the Shoreland Zoning Act and Growth Management Act seek to protect the quality of certain natural resources, the actual implementation of these programs can work at cross-purposes.*

The committee further finds that the land use management tools available to a town under the Growth Management Act and Home Rule should provide opportunities to attain the objectives of the Shoreland Zoning Act without requiring strict and literal compliance with the provisions of the existing shoreland zoning model ordinance.

The committee finds that better integration of these two programs would reduce the potential for inequitable treatment of shoreland and near-shoreland zone property owners, simplify a town's implementation and administration of its land use laws, and result in equal or superior natural resource management.

Recommendation: *The committee recommends that the Department of Economic and Community Development and the Department of Environmental Protection jointly develop a legislative proposal to integrate the goals and requirements of the Shoreland Zoning Act with the Growth Management Act. The two agencies should present their proposal to the Joint Standing Committee of Energy and Natural Resources by January 15, 1995.*

The purpose of this integration would be to provide greater flexibility and authority to municipalities with certified growth management programs, while ensuring accomplishment of the Shoreland Zoning Act's policy objectives. The integration would exempt certified municipalities from the requirement they adopt a shoreland ordinance strictly based on the state's model ordinance.

D. State Agency Compliance with Local Zoning

State agencies take actions that frequently have direct local impacts on land use patterns through such projects as road building and construction of state-owned correctional, recreational and other facilities. Under existing law, local zoning decisions are purely "advisory with respect to the State" (30-A MRSA §4352, sub-§5). At the same time, the Growth Management Act requires state agencies to

conduct their activities in a manner that is consistent with the goals of the Act. There is no clearly established mechanism in law or practice to harmonize the types of state activities mentioned above with local land use decisions taken to implement the Growth Management Act.

Finding: *The committee finds that where a municipality has invested the time and effort to adopt and implement a certified growth management program, a local zoning ordinance adopted as part of the program should be binding on the types of state activities discussed above, absent an over-riding state interest.*

Recommendation: *The committee recommends the enactment of statutory changes to require that state agencies comply with local zoning provisions adopted as part of a certified local growth management program absent a demonstrable, overriding state interest. The agency activities in question should include any development activity in which the state holds or will hold a direct ownership interest. Recognizing the difficulty of achieving an appropriate balance between state and local interests on a wide range of possible developments, the committee offers the attached statutory language as a starting point for further discussions to implement this recommendation.*

IV. Integrating state and local planning land use regulation and capital investment.

The committee believes that growth management creates many beneficiaries. Economic development efforts benefit from community foresight, certainty in decision making, and adequate provision of public services. Environmental protection and natural resource management benefit from the location of development in appropriate areas and the provision of adequate services to accommodate the impact of development. Taxpayers benefit from the well coordinated expenditure of public dollars to provide services at the lowest costs and to guide development to areas that will keep service costs low in the future.

The actions recommended by the committee in this chapter speak to these issues directly through the coordination of state grant and investment programs with community-based growth management programs. These actions also create incentives for local participation in the growth management program by giving towns access to new sources of capital investment funds and by giving new weight to local land use decisions in state capital investment decisions.

A. Incentives to participation in the Growth Management Program

The Committee discussed the role of incentives in planning and the appropriateness of linking incentives to participation in the comprehensive planning process. A number of existing state grant and investment programs were proposed during the study process as potential incentives.

When initially enacted, the Comprehensive Planning and Land Use Regulation Act provided a wide range of technical and financial assistance and incentives to encourage and facilitate the adoption and implementation of local growth management programs. The original Act provided planning assistance grants, technical assistance, implementation grants, regional council assistance and enforcement assistance and training for code enforcement officers. The Act also established a municipal legal defense fund to assist municipalities with legal expenses related to the enforcement and defense of land use ordinances adopted as part of a certified local growth management program. In addition, the Act directly linked municipal authority for the use of impact fees and municipal eligibility for a multitude of state grants and other forms of assistance to the timelines and requirements of the comprehensive planning process (former Title 30-A, §4960-F). That broad range of incentives, coupled with a potential loss of eligibility for existing authority, grants and assistance, were perceived as strong motivators for municipal planning.

Current law does establish a limited preference mechanism for a small number of state grant and investment programs. The preference itself is relatively narrowly drawn. The preference only applies to

municipalities that receive a certificate of consistency over municipalities that received a planning or implementation assistance grant but did not receive a certificate of consistency within 4 years after receiving the grant. Although limited resources continue to be provided to municipalities through planning grants and implementation grants, all resources and supporting statutory language pertaining to the other incentives have been repealed by the Legislature since 1991.

The committee is supportive of the general intent of existing law to link programs "intended to ... accommodate or encourage additional growth and development" to participation in the Growth Management program. Such a linkage serves both the need to establish a rational relationship between planning for economic development and capital investment as well as the purpose of providing an incentive to participate in the Growth Management program. However, in some cases, state investment programs deal most directly with existing problems that need attention regardless of the planning status of the town in question. In other cases, the relationship between the state program and land use concerns is simply not strong. The committee, thus, considered each possible incentive on its individual merits. The committee also considered separately the creation of a Municipal Capital Investment Trust Fund (see section B of this chapter).

Findings: *The committee finds that the existing preference mechanism in the Growth Management law is too narrowly drawn and is being largely ignored. In addition, it does not create suitable incentives to encourage broader participation in the Growth Management program.*

The committee further finds that the existing preference mechanism should be triggered by the offering of a growth management assistance grant, rather the receipt of the grant. The grant programs to which these preferences should apply include the Community Development Block Grants and programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities.

The committee further finds that there is a rational relationship between local growth management programs and the efficient use of taxpayer dollars in certain public capital investments including those investments in expanded transportation and wastewater treatment capacity.

The committee further finds that local authority to establish impact fees should be tied to a rational capital investment strategy that is locally developed as part of a growth management program.

Recommendations: *The committee recommends that Title 30-A, section 4349 be amended to link the existing preference mechanism to the offering of a growth management assistance grant, rather than to the receipt of a grant.*

The committee further recommends that the Land and Water Resources Council, working in conjunction with the Office of Community Development, develop a means of coordinating the state's investments in expanded transportation and wastewater treatment capacity with the land use decisions made by towns with certified growth management programs. The intent of this effort is to give greater weight and earlier effect to these local decisions consistent with the goals of the Growth Management law. These actions should be designed to give weight to the existing requirements under Title 30-A, section 4349, subsection 2, paragraph C. The Council should submit this proposal to the Joint Standing Committee on Energy and Natural Resources on or before January 15, 1995 together with any necessary implementing legislation. (See Chapter 5 recommendations on LWRC for specific language)

The committee recommends that the statutory authority for local impact fees should be conditioned upon the adoption of a certified local growth management program within a reasonable period of time after receiving an offer of state assistance.

B. Municipal Infrastructure Investment Trust Fund.

Municipalities play a key role in Maine's economic development efforts; they build and maintain most of the supporting local infrastructure, primarily water supply, wastewater treatment, and solid waste disposal. Local government is also a major contributor to the "quality of life" aspects of doing business in Maine including police, fire, libraries, schools, and other public works. The increasing burden of local property taxes, together with the deleterious impact of those taxes on private-sector investment and job growth, argue strongly for both supplementing and broadening the base of resources from which municipalities draw to finance infrastructure investments.

Findings: *The committee finds that many municipalities, despite their best efforts, are often unable to make investments in public service infrastructure that are necessary to accommodate existing growth pressures or to encourage desirable economic development. The committee further finds that the local tax revenues derived from development frequently do not cover the additional public service costs required by the development. This situation is made worse by the current education funding formula which has the effect of reducing state aid to towns experiencing growth in their valuation.*

In addition, the committee finds that a source of financial assistance should be made available to support essential local infrastructure and public works investments that are based on certified local growth management programs.

Recommendations: *The committee recommends that the Legislature establish a Municipal Infrastructure Investment Trust Fund to support local efforts to plan for and anticipate future growth and economic development through grants and loans. The committee further recommends that a general revenue bond issue be sent to the State's voters in the amount of $10 million dollars to capitalize the fund initially. Eligibility for access to the fund should be based on a town's adoption of a certified local growth management program. The committee further recommends that the fund be used to leverage access to other sources of municipal infrastructure assistance including portions of federal assistance for transportation, wastewater treatment and safe drinking water supply.*

The committee recommends that the fund be structured to provide incentives to those municipalities with certified local growth management programs that have engaged in interlocal capital investment planning.

The committee further recommends that the Maine Municipal Bond Bank administer and manage all financial aspects of the fund and that the Department of Community and Economic Development be charged with determinations of eligibility and administration of the grant or loan application process.

C. Locating new school construction in growth areas.

Current Department of Education rules regarding the school construction program require maximum and minimum sizes for land parcels on which school facilities will be built. The minimum size requirement in particular has been applied in a manner that has precluded the use of otherwise suitable sites in the developed portions of towns. "Out-of-town" development frequently leads to higher transportation costs and the need for sewer and water line extensions which in turn stimulate development in rural portions of the town. This has been a source of frustration for towns that have developed local growth management programs calling for neighborhood schools and which seek to limit infrastructure investments such as water and sewer to the developed portions of the town.

Findings: *The committee finds that minimum size requirements for school construction projects can have the effect of promoting development outside the areas identified by local community as suitable for development. The committee finds that the legitimate objective of providing adequate space for a school can be achieved through the coordinated use of several sites thus allowing the siting of new school facilities in the developed portions of towns. The committee finds that this would result in the simultaneous achievement of educational objectives and the goals of the Growth Management Act for orderly growth and development and efficient use of public capital investment.*

Recommendations: *The committee recommends that the Department of Education be required to modify its rules governing the school construction program to direct construction projects for new schools to those areas identified by towns though the growth management program as suitable for development wherever possible. The committee recommends that the Department not impose minimum contiguous parcel size requirements that would frustrate this objective.*

D. Coordination between local land use management programs and sewer/water districts

During the course of the study, the committee received testimony that there was a lack of coordination between the general objectives of sound local planning (conducted by towns) and the expansion of sewer and drinking water systems (usually operated by separate private or quasi-municipal districts). The problem, as it was presented to the committee, was that 1) sewer and water districts frequently did not participate in the local planning process and 2) a town does not have the authority to stop the extension of sewer and water lines into areas that the town has zoned for low density development or rural uses.

It was further suggested to the committee that a mechanism should be created to allow for extensions of sewer and water capacity into locally-identified growth areas in anticipation of future development.

Findings: *Upon investigation of the statutory basis for municipal authority over sewer and water line extension, the committee found that, while not sufficiently clear, present law requires that sewer and water districts comply with the requirements of local zoning. In the case of water supply districts, this requirement is subject to review by the state Public Utilities Commission (PUC). The committee thus finds that a clarification of existing law is warranted to encourage better cooperation among municipal governments and these service districts as early as possible in the local planning process.*

In the case of line extensions undertaken in anticipation of or to encourage economic development, the committee finds that there is no obstacle in existing law for the state or local governments to invest in such expansions. However, the committee finds that, for a variety of reasons, the costs of such projects should not be assessed to the existing rate payers of the district in question.

For a more detailed discussion of this subject, see Appendix G.

Recommendations: *With regard to fostering early cooperation between towns and service districts during the planning process, the committee recommends that the Legislature enact a provision that explicitly states that water and sewer districts shall cooperate in municipal plan development. This would merely get service providers and municipalities talking to each other, with the result, hopefully, of better coordination of decision making.*

The committee further recommends the Legislature enact the following changes:

i) Clarify and modify the current law so that sewer and water service providers must in all cases obtain from the municipality written authorization that the development, lot or unit to be served is in accordance with municipal plans.

ii) Further require water and sewer service providers to obtain authorization from the municipality that the line extension itself is consistent with municipal plans.

iii) Amend the current law authorizing the PUC to exempt water utilities from zoning ordinances. This amendment would require the PUC, when determining whether an exemption is "reasonably necessary for public welfare and convenience", to consider the long-term goals of the zoning and the potential adverse rate payer impacts of overriding local planning ordinances.

V. Increasing the accountability and coordination

In addition to its local component, the Growth Management program provides a comprehensive framework for coordination among the state agencies with responsibility for various aspects of land use and natural resource management. The Growth Management Act itself calls generally for all state agencies to conduct their programs in a manner consistent with the goals of the Act. Along with this call for greater coordination comes the need for accountability and evaluation.

The committee's recommendations in this chapter speak to the need to increase the level of coordination among the state agencies. In addition, the committee has included recommendations to create a focal point for evaluation and accountability for state agency performance in the Growth Management program that is currently lacking.

A. Land & Water Resources Council

The coordination of state and local activities regarding land use and natural resource management is an issue of long standing concern in Maine. As discussed elsewhere in this report, there have been significant efforts in the past to integrate state agency programs in a manner that would result in more efficient management and more streamlined regulatory procedures. Examples include the creation of the Departments of Environmental Protection and Conservation, establishment of the Land and Water Resources Council (by executive order), the enactment of the Natural Resources Protection Act and, most recently, the enactment of the Comprehensive Planning and Land Use Regulation (Growth Management) Act.

Passage of the Growth Management Act in 1988 was seen as necessary to better integrate state and local efforts to plan for and manage land development. The primary emphasis of the Act was on supporting local comprehensive land use planning and management. Substantial technical and financial resources have been devoted to this effort. At the same time, the Act clearly envisioned a coordinated and parallel effort among state agencies to achieve the 10 goals of the Act. This was seen by the Legislature at the time as imperative in order to avoid undermining local land management efforts through uncoordinated state regulatory actions and capital investment decisions.

Unfortunately, the Act did not provide sufficiently strong and clear procedures and mechanisms for this interagency cooperation. While there was, judging from the testimony provided by towns, good coordination on the delivery of technical information to town planning efforts, broader cooperation between agencies to harmonize the objectives of their programs with the goals of the Growth Management Act has not occurred. The budget crisis starting in 1991 and continuing today has seriously hampered efforts to integrate

the various programs undertaken by state agencies that affect land use development patterns and natural resource management. Most agencies have concentrated on carrying out their core responsibilities that predated the Growth Management Act.

It should be noted that this is primarily a failure of institutions and not of individuals. Throughout the study process the committee has heard a broad consensus on the need for better interagency cooperation and agreement on the value of the growth management goals as a general framework to guide that cooperation.

Findings: *The committee finds that it is imperative to create an effective mechanism for better interagency cooperation and integration of state agency programs affecting land use and natural resource management. The committee further finds that such a mechanism would also serve as a focal point in state government to improve accountability for state decisions affecting these issues.*

The committee further finds that, in this period of intense budgetary limits, it is not feasible or necessarily desirable to suggest the creation of new state agencies with line responsibilities for land use management. Rather, a mechanism to exercise better coordination of existing programs is likely to be more effective.

Recommendations: *The committee recommends that the Legislature enact provisions to make permanent the Land and Water Resources Council, previously created by executive order, and to include in its charge responsibilities related to the Growth Management Act. The committee recommends that the Council become the mechanism through which are coordinated the activities of state agencies that affect land use and natural resource management.*

The Committee recommends that a full-time Senior Policy Analyst position be created and funded by the Legislature to provide staff resources to the Council.

B. Evaluation process for the Growth Management Program

During the committee's discussions of land use regulatory reform, it became clear, as discussed elsewhere in this report, that the growth management program is expected to play a critical role in providing a sound foundation for local, regional and state land use decisions, both public and private. It is equally apparent, as best demonstrated by the changes experienced in the state's economic climate since the enactment of the Growth Management Act, that periodic evaluation and, if necessary, adjustment of the program will be necessary. Prior to the severe budget cuts of 1991, the Planning Advisory Council somewhat served this function. The Council has been repealed.

As the program moves beyond the initial implementation stages that have largely occupied it thus far, evaluation should be expanded to examine the results of local and state efforts to better integrate planning, land use management and related capital investment.

Findings: *The committee finds that evaluation of the Growth Management Program is necessary to ensure that it achieves its objectives and to support a process of continuous improvement within the program.*

Recommendations: *The committee recommends that the Office of Community Development, in conjunction with the Land and Water Resources Council, organize and implement an ongoing evaluation process to assess the effectiveness of the Growth Management Program in achieving the statutory goals established under 30-A MRSA §4312. The evaluation should result in periodic reports to the Legislature along with recommendations for any necessary changes.*

The committee further recommends that the Office be directed to employ objective and where possible, quantitative measures of results and that the evaluation include elements of both input (staff, financial aid, training, etc.) and output (development patterns, public services infrastructure, etc.). The qualitative evaluations provided by citizens, local officials and others would also be valuable. In developing evaluation criteria, the committee recommends that the Office focus on the first statutory goal of "promoting orderly growth and development" and that the Office develop from the other state goals criteria that relate these issues to the first goal (30-A MRSA §4312, sub-§3, ¶A).

The committee further recommends that the Office immediately establish a baseline of current conditions against which to measure future results and that, in future evaluations, the Office compare the conditions in towns or regions that have entered the growth management program with those that have chosen not to participate.

The Committee further recommends that the two positions previously recommended under Chapter 3, section B, also be charged with responsibility for this evaluation.

C. Coordination of state and local regulation in growth areas

The Committee received several proposals to streamline environmental permitting processes and improve coordination between state and local governments by eliminating state review of applications, or portions of an application, in those instances where existing review procedures are duplicative. The specifics of those proposals generally involved exempting developments in growth

areas of towns with certified growth management plans from traffic, infrastructure and other standards under the Site Location of Development Act. Arguments in favor of those proposals were based upon the premise that Site Law review of traffic and infrastructure impacts is inflexible and too narrowly focused on traditional engineered solutions and encouraged sprawl by making development in built-up areas too expensive. Proponents also argued that the transportation and capital facilities inventory and analysis provisions of the growth management law adequately addressed the transportation and infrastructure issues raised by development in built-up areas. Proponents viewed noise issues as being of local concern and thus not generally warranting state review.

Opponents to those proposals argued that, unlike the Site Law, the growth management program is not a regulatory program and does not provide a mechanism for assessing the local or regional impact of any specific development proposal. Concerns were also raised that if such a proposal became law, a development would go forward without any site specific review of transportation or infrastructure impact unless the town had the resources and ordinances in place to allow that review to occur at the local level. Concerns were also expressed that the ability to mitigate impacts that cross municipal boundaries presently available under Site Law (albeit on a limited basis) would be greatly reduced or entirely lost if the responsibility for assessing those impacts fell entirely upon the town.

Findings: *The committee finds that the provisions of the Growth Management Act provide a basis for local analysis and resolution of traffic, infrastructure, flood plain, and noise issues within areas designated as growth areas sufficient to justify exempting developments in those areas from the related standards in the Site Location of Development Act.*

The committee further finds that, where significant impacts of development fall beyond the boundaries of a single town, these impacts require attention in a regional or state-level forum.

Recommendations: *The committee recommends that developments in areas designated as growth areas in towns having certified growth management programs be exempt from the traffic, infrastructure, flood plain, and noise standards of the Site Location of Development Act.*

The committee further recommends that where a development project will have significant impacts on traffic, infrastructure or noise beyond the boundaries of the town in which the project is located, the opportunity be afforded for the Department of Environmental Protection to reassert jurisdiction over these issues on its on motion or upon petition by any affected municipality or a sufficient number of citizens within an affected municipality.

D. Administration of the Natural Resources Protection Act in the unorganized territories.

The Natural Resources Protection Act and the Land Use Regulation Act technically overlap in the protection of some resources across Maine's 10 million acres of unorganized territory. In practice, the Department of Environmental Protection generally leaves project reviews in the hands of the Land Use Regulation Commission.

In response to a legislative mandate, the Land Use Regulation Commission began in 1991 to study the differences and similarities between the administration of Land Use Regulation Commission standards and the Natural Resources Protection Act standards, with the goal of eventually developing consistent standards so the Land Use Regulation Commission could formally assume Natural Resources Protection Act responsibilities. In March 1993 the Land Use Regulation Commission issued a report on its findings to date (see Appendix I). It found "most of the natural resources regulated under the Natural Resources Protection Act are afforded substantially equivalent or greater protection under the Commission's land use program..." However, it also found several areas less stringently regulated or not within the commission's scope. During the first session of the 116th Legislature, in an effort to accelerate assumption of Natural Resources Protection Act responsibilities by the Land Use Regulation Commission, the legislature approved funding of a Land Use Regulation Commission position to work full time on the task. Part of this effort during the past year has included a wetlands mapping project.

Findings: *The committee finds that the formal assumption of Natural Resources Protection Act responsibilities by the Land Use Regulation Commission would help to ensure efficient regulatory administration in the unorganized territories. In addition, it is an important step in eliminating any perception in the minds of applicants that unnecessary overlap or duplication exists between the Natural Resources Protection Act and the Land Use Regulation Commission.*

The committee finds that in assuming responsibilities, the Land Use Regulation Commission standards must offer at least the same level of resource protection provided by the Natural Resources Protection Act.

Recommendations: *The committee supports the Land Use Regulation Commission's current effort to identify differences and similarities between resource protection under Land Use Regulation Commission standards and resource protection under Natural Resources Protection Act standards. The committee also supports development of a proposal for the Land Use Regulation Commission to formally assume Natural Resources Protection Act responsibilities in the state's unorganized territories, recognizing that additional resources will be required for complete implementation.*

The committee recommends the transition to full Commission administration of the NRPA be phased in and that the Land Use Regulation Commission and the Department of Environmental Protection develop by February 15, 1994 a legislative proposal for the Land Use Regulation Commission to assume responsibility for high mountain areas, water crossings, deer yards and any other protected natural resources for which jurisdiction could be appropriately transferred.

At that time, the Joint Standing Committee on Energy and Natural Resources should review the overall effort and consider what additional steps may be appropriate.

E. Regional approaches to natural resource and land use management

State and local land use laws generally provide for the examination and permitting of individual development projects, but they provide no ongoing mechanism to consider the cumulative impacts of individual developments upon important natural resources or upon the capital infrastructure of a region.

At the same time, a local development project can serve as a catalyst for increased development pressure in communities and neighborhoods beyond a local area. Maine communities typically address planning and development issues at the local level with little coordination among neighboring towns to address how individual local actions affect a larger area.

In addition, state agencies involved in regulating development generally review proposals on a reactive, project-by-project basis. This also contributes to a limited perspective concerning the impacts of development beyond a local setting. In addition, the project-by-project process requires extensive review of many proposals and can consume large amounts of private and public administrative time and resources.

The Committee recognized that regional entities such as regional planning commissions and councils of government can play an important role in resolving planning and land use management issues that have regional impact if their participation is endorsed and strongly supported by the residents and local governments within the region. The regional advisory committees formed by the Department of Transportation under the Sensible Transportation Policy Act may also prove valuable if local support and participation is strong. Regional efforts that are not derived from strong local interest and support do not work and should not be supported by State government.

In general, the committee strongly encourages locally initiated regional efforts to address a wide range of issues that are of concern to land use and natural resource management policy. These issues include the development of the necessary infrastructure to support sustainable growth and development as well as the protection and management of regionally significant natural resources.

The Committee endorses two specific proposals for regional efforts discussed during this study: a watershed-based approach to natural resource management and a targeted, integration of state and local regulatory and investment programs in areas of expected or desired high growth.

Watershed planning. In the first instance, the committee received testimony from people extolling the key role that regional planning could play in addressing the larger impacts of ongoing individual development decisions. Examples exist in Maine of individual projects and programs that seek to involve municipalities and local organizations in watershed-level evaluations and planning. These include the DEP's work with communities to reduce phosphorous loading from watersheds into lakes, the federally funded estuary projects in Casco Bay and the Damariscotta River, the Cobbosseecontee Lake Watershed District and the Saco River Corridor Commission. In addition, provisions exist in Maine law for municipalities and residents of unorganized territories to form lake watershed or coastal watershed districts.[1] (38 MRSA chapters 23 and 23-A)

However, the committee also heard from people who explained why regional planning efforts are not more successful. Current law respects the preference of local residents to decide the shape of their communities. Residents frequently oppose delegation of any local decision-making authority to regional entities.

Several state agencies presented a joint proposal to the committee to develop a collaborative planning process among municipalities, state agencies, regional entities and interested organizations. The agencies were the Departments of Economic and Community Development, Environmental Protection, Inland Fisheries and Wildlife, Marine Resources and Transportation, and the State Planning Office.

The proposal anticipates several pilot projects throughout the state. Participants would develop regionally-oriented plans based upon watershed or other appropriate resource or ecological boundaries. The effort would have three purposes: 1) To provide encouragement and incentives for municipalities to implement the watershed district approach in current law; 2) To position Maine to benefit from anticipated amendments to the Federal Clean Water Act that would provide federal funding for watershed management; and 3) To explore development of an approach comparable to the watershed approach that would be based on other resources. (For complete explanation of proposal see Appendix H.)

Findings: *The committee finds that planning on a regional basis could offer significant advantages for local communities and the state. Municipalities would benefit because locally important resources are impacted by activities beyond local boundaries. Participation in regional efforts could greatly assist in advancing local interests. The state would realize the advantages of more effective and efficient resource protection through evaluation and planning across the breadth of a resource.*

The committee also finds that a collaborative process is best adapted to the desires of municipalities to leave in local hands the decision of whether to participate in regional planning.

Recommendations: *The committee endorses a proposal to initiate pilot projects to encourage local governments and state agencies joining together to conduct regional planning based upon watersheds or common resources. The committee recommends the state agencies involved in these projects review results and determine if any changes in current law are desirable and whether the state could benefit from a comprehensive program to address planning and natural resource protection on regional levels. The committee further recommends that the Joint Standing Committee on Energy and Natural Resources consider amending the lake and coastal watershed district enabling statutes along the lines suggested by the Department of Environmental Protection (see Appendix J).*

State/local regulatory and investment coordination. In the course of the committee's review of land use issues, it received testimony from people who sought a method of coordinating the land use decisions of neighboring communities, making state agency decisions with the benefit of an area-wide perspective and expediting state environmental permitting.

Upon examination, the committee found several reasons for the current approach to planning, review and permitting. To begin with, Maine's strong tradition of local control and the general reluctance of communities to engage in regional planning and land use management efforts has kept the perspective of land use decisions firmly local. Second, Maine's state environmental laws serve important individual purposes, and to meet the law agencies must often conduct detailed reviews of individual projects. Finally, regional efforts that have worked in Maine have been based on strong, local support.

Findings: *The committee agrees in principle that communities, individuals and the state as a whole would benefit from greater land use coordination among towns and a broader perspective from state agencies. In addition, the committee encourages steps to bring any additional efficiencies to the state permitting process.*

However, the committee prefers to not legislate these changes. Committee members support Maine's tradition of local-level decision making and locally-initiated regional efforts. In addition, the committee finds state permitting agencies have made substantial gains in making the environmental permitting process more efficient.

Given limited state resources, the committee finds the best approach to continued progress is to embrace the voluntary pilot project proposal put forward by the state departments of Economic and Community Development, Environmental Protection, Inland Fisheries and Wildlife, Marine Resources, and Transportation, and the State Planning Office and the Town of Topsham. The proposed project would develop a "master plan" for the area affected by the Brunswick/Topsham Bypass Project. The project's purpose would be to plan development locations and capacities, target needed investments and to eliminate or reduce the need for individual project permits. (For a more detailed discussion of the proposal, see Appendix H).

Recommendation: *The committee endorses the proposal to conduct a voluntary pilot project in the Topsham/Brunswick area aimed at coordinating state permitting and local comprehensive planning on an area-wide basis. The state agencies involved in the project should report to the legislature by January 1, 1995 on the feasibility of this approach and, if it proves successful, recommend appropriate statutory language to enable and encourage its statewide application.*

VI. Ensuring Reliable Natural Resource Information.

The substance of the Committee's discussions pertaining to natural resource information involved:

- The mapping of significant wildlife habitat, including habitat for endangered or threatened species; and
- The role of the Office of Geographic Information Systems (GIS) as a centralized location for the maintenance and operation of appropriate natural resource data bases.

The Committee received proposals during the study to relocate the Natural Areas Program and the Biological Conservation Database from the Department of Economic and Community Development to the Department of Inland Fisheries and Wildlife. That proposal also envisioned internal reorganizations within the Department of Inland Fisheries and Wildlife that were intended to better the collection and use of natural resource data and to expedite the mapping of significant wildlife habitat, including habitat for endangered or threatened species.

During the course of the study, the Committee reviewed the status of actions taken by the Department of Inland Fisheries and Wildlife to adopt criteria and map significant wildlife habitat for protection under the Natural Resources Protection Act and steps taken by that department to map essential habitat of endangered or threatened species under the Maine Endangered Species Act. Natural resource data collection efforts by the Department of Inland Fisheries and Wildlife and the Department of Economic and Community Development that are critical to the protection of significant wildlife habitat and habitat for endangered or threatened species were also reviewed. The Committee also visited the Office of Geographic Information Systems for an overview of the data currently in the system, a discussion on funding for the system and a demonstration of the system's capabilities.

A. Mapping of Significant Wildlife Habitat under the Natural Resources Protection Act.

The Natural Resources Protection Act was enacted by Public Laws of 1987, chapter 809. Certain resources were identified in that Act as "protected resources", including significant wildlife habitat mapped by the Department of Inland Fisheries and Wildlife. The definition of significant wildlife habitat reads:

"**10. Significant Wildlife Habitat.** "Significant Wildlife habitat" means the following areas to the extent that they have been mapped by the Department of Inland Fisheries and Wildlife or are within any other protected natural resource: habitat, as defined by the Department of Inland Fisheries and Wildlife, for species appearing on the official state or federal lists of endangered or threatened species;

high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staffing areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife." (38 MRSA, §480-A, sub-§10)

The effect of this subsection, and other provisions in the Natural Resources Protection Act, is that habitat that exists outside of another protected resource is not "significant wildlife habitat" for the purposes of the Natural Resources Protection Act until that habitat is defined and mapped by the IF&W and those maps are adopted by the BEP. As interpreted by the IF&W, habitat that exists within another protected resource is not considered "significant wildlife habitat" until that habitat is "defined" by the IF&W. The IF&W has interpreted the term "defined" to mean that criteria defining the habitat must be adopted by IF&W by rule. This interpretation was not evident to the DEP at the time it prepared its memo on data gaps for the study committee (see Appendix H). The parties agreed that the issue of significant wildlife habitat protection within other protected resources should be discussed further and that the Legislature should review the relevant statutory language and enact clarifications if necessary.

Appendix K contains a time line showing the IF&W's plans for "defining" and "mapping" significant wildlife habitat under the Natural Resources Protection Act. This appendix also includes a list of planned and adopted essential habitat under the Endangered Species Program. The Department of Inland Fisheries and Wildlife intends to use revenues from sales of environmental license plates to fund one Biologist I position in the Endangered and Threatened Species Group for mapping of both essential and significant habitats and to provide "All other" funds for endangered and non-game species programs.

Finding: *Although the Department of Inland Fisheries and Wildlife has not yet mapped any significant wildlife habitat for the purpose of protecting that resource under the Natural Resources Protection Act, the Committee finds that the department's schedule for defining and mapping certain types of significant wildlife habitat during the next year is acceptable, given available resources.*

Recommendations:

A. The Committee endorses the department's plans to:

- *Define and map, by February of 1994, seabird nesting islands;*
- *Define, by February of 1994, moderate and high value deer wintering areas;*

- *Define, by February of 1994, high and moderate value waterfowl and wading bird habitats;*

- *Map, by the summer of 1994, high and moderate value waterfowl and wading bird habitats in non-tidal areas of south-central Maine; and*

- *Map, by the end of 1994, high and moderate value waterfowl and wading bird habitats in all tidal areas.*

B. *The committee recommends that the Department of Inland Fisheries and Wildlife should work diligently to map all remaining significant wildlife habitat in the State.*

C. *The Committee supports the expressed intention of the Department of Inland Fisheries and Wildlife to utilize a portion of revenues realized from the sale of environmental license plates to support those mapping efforts.*

B. Natural Resource Data and the State Geographic Information System

The state's natural resource data is presently collected and stored in a number of databases. The Biological and Conservation Data System (BCD) is centrally operated and maintained by DECD with workstations at SPO, IF&W, DEP. The BCD is the principal database for vertebrate and invertebrate fauna, plants, and other important natural resources. Other data bases containing wildlife habitat data are maintained by the IF&W.

Progress is being made on digitizing some of that data and preparing it for entry into the GIS. DECD is using EPA grants funds to digitize and prepare sensitive wetland data on the BCD for entry into the GIS. The vertebrate and invertebrate fauna information on that database is being digitized by IF&W. In addition, the IF&W is working with GIS to digitize the Coastal Island Registry, coastal marine wildlife areas and shorebird areas, essential habitat for bald eagles and roseate terns, seal haul-outs, deer wintering habitats and water bird habitats.

Finding: *The committee finds that the Geographic Information System (GIS) is an important component of the State's natural resource data management system. The inclusion of appropriate data and the sensitive use of that data enhances the State's ability to understand and manage its environmental resources and enhances the potential of the GIS to fulfill an important and meaningful service to the public and private sector. Given the broad value of this program, the committee finds that it warrants a level of basic core support from general revenues.*

Recommendations: *The committee recommends that:*

A. *The Legislature establish and fund 2 full-time General Fund positions at the GIS and provide sufficient resources for core support for system development, marketing and system maintenance;*

B. *The Department of Economic and Community Development and the Department of Inland Fisheries and Wildlife should continue to digitize and transfer all appropriate natural resource data to the GIS, as resources permit; and*

C. *State agencies engaged in the collection of natural resource data should collect, develop and maintain that data at an accuracy level and in a format that meets the GIS data standards.*

APPENDIX A

Council-authorization Mandate for Study

STATE OF MAINE

ONE HUNDRED AND SIXTEENTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

May 22, 1993

Representative Dan A. Gwadosky
Chair, Legislative Council
State House
Augusta, Maine 04333

Dear Representative Gwadosky:

On behalf of the Joint Standing Committee on Energy and Natural Resources, we respectfully request that the Legislative Council authorize an interim study committee to work on L.D. 1487, An Act to Improve Environmental Protection and Support Economic Development under the State's Land Use Laws. As we know you and the other members of the Legislative Council are aware, this bill is the product of many people's efforts over the past interim. The concept at its heart has garnered broad support, including the support of the Economic Growth Council. We feel that this proposal holds great promise for improvement in the state's management of land use issues and it's protection of many key natural resources. In addition, we would expect improvement in the partnership between state and local land use management efforts.

However, the late introduction of this bill, the need to answer many critical questions about how and what it would take for the new system to work properly, and the press of many other important pieces of legislation have all combined to deny us the opportunity to give L.D. 1487 the attention it requires. Moreover, we believe the normal press of business in the second regular session will preclude our giving the bill the time and effort it needs if it is to become good law.

We recommend that a 7 member subcommittee be formed consisting of the following people: Rep. Coles (chair), Rep. Constantine, Rep. Gould, Rep. Marsh, Rep. Michaud, Sen. Ludwig and Sen. Pingree. You will have noted that membership on the study subcommittee includes a member of the Appropriations Committee and the Housing & Economic Development Committee. Representation from these committees is important because of the broad nature of the bill and the complexity of implementing such a proposal. All suggested members have agreed to serve if appointed.

The objective of the study committee would be to develop and propose for consideration final legislation for adoption and implementation of a major overhaul of the way we regulate development and land use. We expect that the subcommittee would meet approximately eight times. This would require a budget of approximately $6300.

We understand that the Council may be generally reluctant to grant study requests this year for budgetary reasons. We would, however, point out that the concepts embodied in this bill offer great promise for restructuring the state's land use regulation and natural resource protection programs in ways that should result in a more effective and efficient regulatory process. Close legislative involvement in the development of the final bill is imperative at this point to resolve key issues and to garner the broad base of support that will be needed to pass this landmark legislation.

Thank you for your support of our efforts this session. We appreciate the Council's careful consideration of this request.

Sincerely,

Senator Mark W. Lawrence
Senate Chair

Representative Paul F. Jacques
House Chair

cc: Members, Legislative Council
Sally Tubbesing, Executive Director

4592NRG

APPENDIX B

Summary of findings and proposed legislation

CHAPTER III: Actions to strengthen the local role in land use management.

A. Increased flexibility for local implementation of growth management goals.

Finding: The committee finds that it would be both practical and desirable to provide some additional flexibility to municipalities that choose to undertake local growth management programs. The committee further finds that, based on the testimony and evidence reviewed, certain historical and physical conditions exist in some towns that make it very difficult to locate areas within which residential development can be successfully encouraged.

Recommendation: The committee recommends that the Legislature enact statutory changes to permit greater local flexibility in the identification of growth and rural areas. This flexibility should be based, in the first case, on limitations imposed by natural resource conditions or the lack of basic public services and, in the second case, on historical and projected low residential growth rates within a town.

Sec. A-2. 30-A MRSA, §4326, sub-§3, ¶A, sub-¶(3) is enacted to read:

(3) A municipality is not required to identify growth areas for residential growth if it demonstrates that:

(a) it is not possible to accommodate future residential growth in these areas because of severe physical limitations including without limitation the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources; or

(b) the municipality has experienced minimal or no residential development over the past decade and that this condition is expected to continue over the 10 year planning period.

A municipality exercising the discretion afforded by this subparagraph shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4327.

B. Simplification and increased flexibility within the growth management program.

Finding: The committee finds that the priority listing developed pursuant to the original growth management laws for the disbursement of planning and implementation grants is no longer relevant. Further, a more flexible means of applying available state support is needed.

Recommendation: The committee recommends repeal of those provisions in Title 30-A, section 4346 that require the Office of Community Development to use the municipal priority list when awarding grants.

Sec. A-5. 30-A MRSA, §4346, 2nd¶ is amended to read:

The office may enter into ~~planning or implementation~~ financial assistance grants only to the extent that funds are available. ~~In awarding the grants, the office shall use the municipal priority list and funding levels developed under the former section 4344~~ In making grants, the office shall consider the need for planning in a municipality, the proximity of the municipality to other towns that are conducting or have completed the planning process and the economic and geographic role of the municipality within a regional context. The office may consider other criteria in making grants, provided that the criteria support the goal of encouraging and facilitating the adoption and implementation of a local growth management program consistent with the provisions of this article.

Finding: The committee finds that planning grants and implementation grants should be combined into one grant program to provide more flexibility during the planning process.

Recommendation: The committee recommends repeal of Title 30-A, section 4346, subsection 1 and 2 and enactment of new statutory language creating a single "financial assistance grant" that may be used for both purposes.

Sec. A-4. 30-A MRSA, §4345, 1st ¶, is amended to read:

§4345. Purpose; office to administer program

Under the provisions of this article, a municipality may request financial or technical assistance from the Office of Community Development, referred to in this article as the office, for the purpose of planning ~~or~~ and implementing a local growth

management program. A municipality that requests and receives ~~financial assistance from the office in the form of a planning assistance grant or an implementation assistance~~ a financial assistance grant shall develop and implement its growth management program in cooperation with the office and in a manner consistent with the provisions ~~under the provisions~~ of this article.

Sec. A-6. 30-A MRSA, §4346, sub-§§1 and 2 are repealed.

Sec. A-7. 30-A, MRSA, §4346, sub-§§2-A and 2-B are enacted to read:

2-A. financial assistance grants. A contract for a financial assistance grant must:

A. Provide for the payment of a specific amount for the purposes of planning and preparing a comprehensive plan;

B. Provide for the payment of a specific amount for the purposes of implementing that plan; and

C. Include specific timetables governing the preparation and submission of products by the municipality.

The office may not require a municipality to provide matching funds in excess of 25% of the value of that municipality's financial assistance contract.

2-B. Use of funds. A municipality may expend financial assistance grants for:

A. The conduct of surveys, inventories and other data-gathering activities;

B. The hiring of planning and other technical staff;

C. The retention of planning consultants;

D. Contracts with regional councils for planning and related services;

E. Assistance in the development of ordinances;

F. Retention of technical and legal expertise for permitting activities;

G. The updating of growth management programs or components of a program; and

H. Any other purpose agreed to by the office and the municipality that is directly related to the preparation of a comprehensive plan or the preparation of policies, programs and land use ordinances to implement that plan.

Finding: The committee finds that technical assistance is an integral part of the comprehensive planning process and should be provided by the Department of Economic and Community Development.

Recommendation: The committee recommends that the Legislature create one full-time Senior Planner position and one full-time Planner II position to provide technical assistance to municipalities and to assist the office in the evaluation of the program.

Sec. E-1. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT OF	1994-95
OFFICE OF COMMUNITY DEVELOPMENT	
Positions	(2.0)
Personal Services	$73,757
All Other	$10,000
Capital	$5,000
Total	$88,757

Provides funds for a Senior Planner position and Planner II position for municipal technical assistance and evaluation of the

Growth Management Program, general operating costs and one-time capital for computers.

Finding: The committee finds that towns should follow the same procedures when amending a comprehensive plan as they did when they adopted that plan.

Recommendation: The committee recommends that the original intent of the Legislature be clarified to reaffirm that towns use the same procedures for citizen participation, public notice and public hearing when amending a comprehensive plan as they used when they adopted the plan.

Sec. A-1. 30-A MRSA, §4324, sub-§10 is enacted to read:

10. Amendments to an adopted plan. When amending an adopted comprehensive plan, a municipality shall follow the same procedures for citizen participation, public notice and public hearing used by that municipality in the adoption of its plan.

Finding: The committee finds that current language in the growth management law could be interpreted to limit revisions to adopted growth management plans to those revisions necessitated by changes caused by "growth and development".

Recommendation: The committee recommends a clarification to indicate that periodic revisions of a growth management plans should be undertaken by a town to account for any significant changes to the community, not just to account for changes caused by growth and development.

Sec. A-3. 30-A MRSA, §4327 is amended to read:

§4327. Monitoring and revision

A municipality shall periodically review and revise its local growth management program in a timely manner to account for changes, including changes caused by growth and development. A municipality ~~should~~ shall update its program at least once every 5 years in accordance with this section.

C. Integration of mandatory shoreland zoning and growth management.

Findings: The committee finds that, though both the Shoreland Zoning Act and Growth Management Act seek to protect the quality of certain natural resources, the actual implementation of these programs can work at cross-purposes.

The committee further finds that the land use management tools available to a town under the Growth Management Act and Home Rule should provide opportunities to attain the objectives of the Shoreland Zoning Act without requiring strict and literal compliance with the provisions of the existing shoreland zoning model ordinance.

The committee finds that better integration of these two programs would reduce the potential for inequitable treatment of shoreland and near-shoreland zone property owners, simplify a town's implementation and administration of its land use laws, and result in equal or superior natural resource management.

Recommendation: The committee recommends that the Department of Economic and Community Development and the Department of Environmental Protection jointly develop a legislative proposal to integrate the goals and requirements of the Shoreland Zoning Act with the Growth Management Act. The two agencies should present their proposal to the Joint Standing Committee of Energy and Natural Resources by January 15, 1995.

No statutory language.

The purpose of this integration would be to provide greater flexibility and authority to municipalities with certified growth management programs, while ensuring accomplishment of the Shoreland Zoning Act's policy objectives. The integration would exempt certified municipalities from the requirement they adopt a shoreland ordinance strictly based on the state's model ordinance.

D. State agency compliance with local zoning.

Finding: The committee finds that where a municipality has invested the time and effort to adopt and implement a certified growth management program, a local zoning ordinance adopted as part of the program should be binding on the types of state activities discussed above, absent an over-riding state interest.

Recommendation: The committee recommends the enactment of statutory changes to require that state agencies comply with local zoning provisions adopted as part of a certified local growth management program absent a demonstrable, overriding state interest. The agency activities in question should include any development activity in which the state holds or will hold a direct ownership interest. Recognizing the difficulty of achieving an appropriate balance between state and local interests on a wide range of possible developments, the committee offers the attached statutory language as a starting point for further discussions to implement this recommendation.

Sec. A-8. 30-A MRSA §4352, sub-§6 is amended to read:

6. Effect on state. ~~Any~~ A zoning ordinance not part of a certified local growth management program is advisory with respect to the State. A state agency shall comply with a zoning ordinance that is part of a certified local growth management program when seeking to develop any building, road, parking facility or other publicly owned structure. After public notice and opportunity for public comment, the governor or the governor's designee may waive any or all of the local zoning requirements upon finding that:

A. The proposed use is not allowed anywhere in the municipality;

B. There are no reasonable alternative sites for or configurations of the project within the municipality that would comply with the requirements;

C. There are no reasonable alternatives to the project, including sites in other municipalities, that would achieve the necessary public purposes;

D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and

E. The project is necessary to protect public health, welfare or the environment.

A decision to waive any or all of the local zoning requirements may be appealed by the municipality or any aggrieved party to Superior Court.

CHAPTER IV. Integrating state and local planning land use regulation and capital investment.

A. Incentives to participation in the Growth Management Program.

Findings: The committee finds that the existing preference mechanism in the Growth Management law is too narrowly drawn and is being largely ignored. In addition, it does not create suitable incentives to encourage broader participation in the Growth Management program.

The committee further finds that the existing preference mechanism should be triggered by the offering of a growth management assistance grant, rather the receipt of the grant. The grant programs to which these preferences should apply include the Community Development Block Grants and programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities.

The committee further finds that there is a rational relationship between local growth management programs and the efficient use of taxpayer dollars in certain public capital investments including those investments in expanded transportation and wastewater treatment capacity.

The committee further finds that local authority to establish impact fees should be tied to a rational capital investment strategy that is locally developed as part of a growth management program.

Recommendations: The committee recommends that Title 30-A, section 4349 be amended to link the existing preference mechanism to the offering of a growth management assistance grant, rather than to the receipt of a grant.

The committee further recommends that the Land and Water Resources Council, working in conjunction with the Office of Community Development, develop a means of coordinating the

Sec. B-2. 30-A MRSA, §4349 is amended to read:

§4349. . Eligibility for other state aid, grants and assistance

2. Preference. When awarding grants or assistance under any of the following programs, state agencies shall give preference to a municipality that receives a certificate of consistency under section 4348 over a municipality that has

state's investments in expanded transportation and wastewater treatment capacity with the land use decisions made by towns with certified growth management programs. The intent of this effort is to give greater weight and earlier effect to these local decisions consistent with the goals of the Growth Management law. These actions should be designed to give weight to the existing requirements under Title 30-A, section 4349, subsection 2, paragraph C. The Council should submit this proposal to the Joint Standing Committee on Energy and Natural Resources on or before January 15, 1995 together with any necessary implementing legislation. (See Chapter 5 recommendations on LWRC for specific language)

The committee recommends that the statutory authority for local impact fees should be conditioned upon the adoption of a certified local growth management program within a reasonable period of time after receiving an offer of state assistance.

~~received~~ been offered a grant under section 4346 ~~a planning or implementation assistance grant~~ but has not received certification within 4 years after accepting such a grant:

A. Programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353;

B. Community development block grants; and

C. Programs intended to:

(1) Accommodate or encourage additional growth and development;

(2) Improve, expand or construct public facilities;

(3) Acquire land for conservation, recreation or resource protection; or

(4) Assist in planning or managing specific economic and natural resource concerns.

This subsection does not apply to state aid, grants or other assistance for sewage treatment facilities, public health programs or education.

Sec. B-3. 30-A MRSA, §4354, sub-§3 is enacted to read:

3. Authority conditioned. A municipality that has received an offer of financial assistance under section 4346 may not adopt or enforce an impact fee ordinance four years after receiving the offer or January 1, 1998, whichever is later, unless it has adopted a local growth management program certified under section 4348.

B. Municipal Infrastructure Investment Trust Fund.

Findings: The committee finds that many municipalities, despite their best efforts, are often unable to make investments in public service infrastructure that are necessary to accommodate existing growth pressures or to encourage desirable economic development. The committee further finds that the local tax revenues derived from development frequently do not cover the additional public service costs required by the development. This situation is made worse by the current education funding formula which has the effect of reducing state aid to towns experiencing growth in their valuation.

In addition, the committee finds that a source of financial assistance should be made available to support essential local infrastructure and public works investments that are based on certified local growth management programs.

Recommendations: The committee recommends that the Legislature establish a Municipal Infrastructure Investment Trust Fund to support local efforts to plan for and anticipate future growth and economic development through grants and loans. The committee further recommends that a general revenue bond issue be sent to the State's voters in the amount of $10 million dollars to capitalize the fund initially. Eligibility for access to the fund should be based on a town's adoption of a certified local growth management program. The committee further recommends that the fund be used to leverage access to other sources of municipal infrastructure assistance including portions of federal assistance for transportation, wastewater treatment and safe drinking water supply.

The committee recommends that the fund be structured to provide incentives to those municipalities with certified local growth management programs that have engaged in interlocal capital investment planning.

The committee further recommends that the Maine Municipal Bond Bank administer and manage all financial aspects of the fund and that the Department of Community and Economic

5 MRSA §12004, sub-§10, ¶A, sub-¶(5-B) is enacted to read:

(5-B)	Economic Development	Municipal Capital Investment Advisory Commission	None	30-A MRSA §4359-C

30-A MRSA §5903, sub-§8-A is enacted to read:

A. "Public service infrastructure" means those facilities which are essential for public health, welfare and safety. Such facilities include, without limitation, sewage treatment facilities, municipal water supply and treatment facilities, solid waste facilities, fire protection facilities, roads, traffic control devices, other transportation facilities, parks and other open space or recreational areas, public access to coastal and inland waters, and any other public facility which benefits the public.

Development be charged with determinations of eligibility and administration of the grant or loan application process.

30A MRSA § 5953-C is enacted to read:

§ 5953-C. Assistance from Municipal Infrastructure Investment Trust Fund

1. Application. In addition to the other forms of financial assistance available under section 6006-C, an eligible municipality or group of municipalities may apply for a grant or loan from the Municipal Infrastructure Investment Trust Fund, in this section called the "fund," the proceeds of which must be used to acquire, design, plan, construct, enlarge, repair, protect or improve public service infrastructure owned by the applicant.

The bank, in conjunction with the Department of Economic and Community Development, may prescribe an application form or procedure for an eligible municipality or group of municipalities to apply for a grant or loan under this section. The application must include all information necessary for the purpose of implementing this section and section 6006-C.

2. Loan; loan agreements. Loans from the fund are subject to this subsection.

A. The bank may make loans from the fund to an eligible municipality or group of municipalities for one or more of the purposes set forth in subsection 1. Each of the loans is subject to the following conditions.

(1) The total amount of loans outstanding at any one time from the fund may not exceed the balance of the fund, provided that the proceeds of bonds or notes of the bank deposited in the fund, revenues from other sources deposited in the fund and binding financial commitments of the United States to deposit money in the fund are included in determining the fund balance.

(2) The loan must be evidenced by a municipal bond or other debt instrument, payable by the municipality over a term not to exceed 40 years with annual principal or interest payments commencing not later than one year after the project being financed is completed.

(3) The rate of interest charged for the loans must be at or below market interest rates.

(4) Subject to the limitations of subparagraph (3), the rate of interest charged for the loans made to municipalities under this section or the manner of determining the rate of interest must be established from time to time by direction of the bank, taking into consideration the current average rate on outstanding marketable obligations.

B. Loans made to a municipality by the bank under this section must be evidenced by and made in accordance with the terms and conditions specified in a loan agreement to be executed by the bank and the municipality. The loan agreement must specify the terms and conditions of disbursement of loan proceeds. The loan agreement must state the term and interest rate of the loan, the scheduling of loan repayments and any other terms and conditions determined necessary or desirable by the bank.

3. Eligibility certification. The bank may not make a grant or loan to a municipality or group of municipalities under this section until:

A. The applicant certifies to the bank that it has secured all permits, licenses and approvals necessary to construct the improvements to be financed by the grant or loan;

B. In the case of a loan, the applicant demonstrates to the bank that it has established a rate, charge or assessment schedule that generates annually sufficient revenue to pay, or has otherwise provided sufficient assurances that it pays, the principal of and interest on the municipal bond or

other debt instrument that evidences the loan made by the bank to the municipality pursuant to the loan agreement under this section and to pay reasonably anticipated costs of operating and maintaining the financed project and the system of which it is a part; and

C. In the case of a loan, the applicant certifies to the bank that it has created a dedicated source of revenue that may constitute general revenues of the applicant through a general obligation pledge of the applicant for repayment of the loan.

D. The Department of Economic and Community Development affirms that the applicant has adopted a local growth management program certified under section 4348 that includes a capital improvement program comprised of the following elements:

(1) An assessment of all public facilities and services, such as, but not limited to, roads and other transportation facilities, sewers, schools, parks and open space, fire and police;

(2) An annually-reviewed five year plan for the replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet expected growth and economic development. The plan shall include projections of when and where such facilities will be required; and

(3) An assessment of the anticipated costs for replacement, expansion, or construction of public facilities, an identification of revenue sources available to meet these costs, and recommendations for meeting costs required to implement the plan.

A group of municipalities that each meet the requirements of this paragraph are eligible to receive loans or grants under this section as a joint applicant.

4. Criteria; conditions. The Department of Economic and Community Development, in conjunction with the bank, shall develop criteria and conditions for the award of loans and grants to eligible municipalities after consultation with the Municipal Capital Investment Advisory Commission and subject to the requirements of this section.

A. The department shall give priority to those municipalities which are experiencing rapid growth and which possess a public service infrastructure inadequate to accommodate such growth.

B. The department shall establish a preference for those municipalities with higher local property tax burdens. The comparative local property tax burden shall be determined under the provisions of Title 30-A, section 5681.

C. The department shall establish a preference for capital investment projects undertaken jointly by two or more municipalities or which provide substantial regional benefits.

D. The department shall adopt other criteria as it determines necessary to ensure that loans and grants made under this article maximize the ability of municipalities to accommodate planned growth and economic development.

E. The department shall condition any loans and grants under this article on consistency with the municipality's local growth management program.

5. Coordination. The bank shall coordinate the loans and grants made under this article with all other community assistance loans and grants administered by the Department of Economic and Community Development and with other state assistance programs designed to accomplish similar objectives, including those administered by the Department of Education, the Department of Transportation and the Department of Environmental Protection.

6. Municipal Capital Investment Advisory Commission. There is established a Municipal Capital Investment Advisory Commission to provide expert assistance and input to the office on the development of loans and grants criteria under this article. The commission is composed of five members who shall serve staggered four year terms except that the terms of the initial members shall be as follows: one member for two years; two members for three years; and two members for four years. The governor shall appoint the members who shall each have expertise and experience in municipal government or locally-supported regional associations. The commission shall meet at least twice annually and shall review the loans and grants criteria annually.

7. Report to the Legislature. The bank shall report to the joint standing committee of the Legislature with jurisdiction over natural resource matters no later than January 1, 1995 and biennially thereafter on the loans and grants program. The bank may make any recommendations it finds necessary to more effectively achieve the purposes of this article, including the appropriation of any necessary additional funds.

30-A MRSA §5959, sub-§1, ¶A is amended to read:

A. Implement sections 5953-A, 5953-B, 5953-C, 6006-A, ~~and~~ 6006-B and 6006-C to ensure the self-sustaining nature of the funds created under sections 6006-A and 6006-B and that portion of the fund under 6006-C determined to be self-sustaining; and

30A MRSA § 6006-C is enacted to read:

§ 6006-C. Municipal Infrastructure Investment Trust Fund

1. Establishment; administration. The Municipal Infrastructure Investment Trust Fund is established as provided in this section.

A. There is established in the custody of the bank a special fund to be known as the Municipal Infrastructure Investment Trust Fund to provide financial assistance under subsection 2 for the acquisition, design, planning, construction, enlargement, repair, protection or improvement of public service infrastructure.

B. The bank shall administer the fund. The fund must be invested in the same manner as permitted for investment of funds belonging to the State or held in the State Treasury. The fund must be established and held separate from any other funds or money of the State or the bank and used and administered exclusively for the purpose of this section and section 5953-C. The fund consists of the following:

(1) Sums that are appropriated by the Legislature or transferred to the fund from time to time by the Treasurer of State;

(2) Principal and interest received from the repayment of loans made from the fund;

(3) Capitalization grants and awards made to the State or an instrumentality of the State by the Federal Government for any of the purposes for which the fund has been established. These amounts must be paid directly into the fund without need for appropriation by the State;

(4) Interest earned from the investment of fund balances;

(5) Private gifts, bequests and donations made to the State for any of the purposes for which the fund is established;

(6) The proceeds of notes or bonds issued by the State for the purpose of deposit in the fund;

(7) The proceeds of notes or bonds issued by the bank for the purpose of deposit in the fund; and

(8) Other funds from any public or private source received for use for any of the purposes for which the fund has been established.

2. Uses. The fund may be used for one or more of the following purposes:

A. To make grants and loans to municipalities under this section and section 5953-C;

B. To guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by a municipality for the purpose of financing the construction of any capital improvement described in section 5953-C, subsection 1;

C. To guarantee or insure, directly or indirectly, funds established by municipalities for the purpose of financing construction of any capital improvement described in section 5953-C, subsection 1;

D. To invest available fund balances and to credit the net interest income on those balances to the revolving loan fund;

E. To invest as a source of revenue or security for the payment of principal and interest on general or special obligations of the bank if the proceeds of the sale of the obligations have been deposited in the fund or loaned to eligible participants in the programs financed with the fund, or as a source of revenue to subsidize municipal loan payment obligations; and

F. To pay the costs of the bank associated with the administration of the revolving loan fund and projects financed by it provided that no more than 2% of the aggregate of the highest fund balance in any fiscal year.

3. Establishment of accounts. The bank may establish accounts and subaccounts within the fund as it determines desirable to effectuate the purposes of this section, including, but not limited to, accounts to segregate a portion or portions of the fund for grants and as security for bonds issued by the bank for deposit in the fund and to be invested for the benefit of specified projects receiving financial assistance from the fund.

Preamble. Two thirds of both Houses of the Legislature deeming it necessary in accordance with the Constitution of Maine, Article IX, Section 14, to authorize the issuance of bonds on behalf of the State of Maine to provide funds for loans and grants to municipalities which have adopted certified growth management programs for the purpose of capital investment in municipal public service infrastructure.

Sec. 1. Authorization of bonds to provide for loans and grants for public service infrastructure. The Treasurer of State is authorized, under the direction of the Governor, to issue from time to time registered bonds in the name and behalf of the State in an amount not exceeding $10,000,000 for the purpose of raising funds to create a loans and grants program for municipal capital investments as authorized by section 9. The bonds shall be deemed a pledge of the full faith and credit of the State. The bonds shall not run for a period longer than 20 years from the date of the original issue of the bonds. Any issuance of bonds may contain a call feature at the discretion of the Treasurer of State with the approval of the Governor.

Sec. 2. Records of bonds issued to be kept by the State Auditor and Treasurer of State. The State Auditor shall keep an account of the bonds, showing the number and amount of each, the date when payable and the date of delivery of the bonds to the Treasurer of State who shall keep an account of each bond showing the number of the bond, the name of the successful bidder to whom sold, the amount received for the same, the date of sale and the date when payable.

Sec. 3. Sale; how negotiated; proceeds appropriated. The Treasurer of State may negotiate the sale of the bonds by direction of the Governor, but no such bond may be loaned, pledged or hypothecated on behalf of the State. The proceeds of the sale of the bonds, which shall be held by the Treasurer of State and paid by the treasurer upon warrants drawn by the State Controller, are appropriated to be used solely for the purposes set forth in this Act. Any unencumbered balances remaining at the completion of the project in section 9 shall lapse to the debt service account established for the retirement of these bonds.

Sec. 4. Taxable bond option. The Treasurer of State, at the direction of the Governor, shall covenant and consent that the interest on the bonds shall be includable, under the United States Internal Revenue Code, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The powers conferred by this section shall not be subject to any limitations or restrictions of any law which may limit the power to so covenant and consent.

Sec. 5. Interest and debt retirement. Interest due or accruing upon any bonds issued under this Act and all sums coming due for payment of bonds at maturity shall be paid by the Treasurer of State.

Sec. 6. Disbursement of bond proceeds. The proceeds of the bonds set out in section 9 shall be expended under the direction and supervision of the office of Economic and Community Development.

Sec. 7. Allocations from General Fund bond issue. The proceeds of the sale of bonds shall be expended as follows.

ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF 1994-95

Municipal Growth Management and Capital Investment Trust Fund

All Other $10,000,000

These funds will be used to create a fund which will provide loans and grants to municipalities experiencing high growth rates for the development of necessary public service infrastructure.

Sec. 8. Contingent upon ratification of bond issue. Sections 1 to 9, shall not become effective unless and until the people of the State have ratified the issuance of bonds as set forth in this Act.

Sec. 9. Appropriation balances at year end. At the end of each fiscal year, all unencumbered appropriation balances representing state money shall carry forward from year to year. Bond proceeds which have not been expended within 10 years after the date of the sale of the bonds shall lapse to General Fund debt service.

Sec. 10. Bonds authorized but not issued. Any bonds authorized but not issued, or for which bond anticipation notes have not been issued within 5 years of ratification of this Act, shall be deauthorized and may not be issued, provided that the Legislature may, within 2 years after the expiration of that 5-year period, extend the period for issuing any remaining unissued bonds or bond anticipation notes for an additional amount of time not to exceed 5 years.

Sec. 11. Statutory referendum procedure; submission at general election; form of question; effective date. This Act shall be submitted to the legal voters of the State of Maine at the next general election in the month of November following passage of this Act. The city aldermen, town selectmen and

plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

> "Do you favor a $10,000,000 bond issue for the establishment of a Municipal Infrastructure Investment Trust Fund to assist eligible municipalities in the building of public facilities necessary to accommodate growth and economic development ?"

The legal voters of each city, town and plantation shall vote by ballot on this question and shall designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal voters are in favor of the Act, the Governor shall proclaim that fact without delay, and the Act shall become effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

C. Locating new school construction in growth areas.

Findings: The committee finds that minimum size requirements for school construction projects can have the effect of promoting development outside the areas identified by local community as suitable for development. The committee finds that the legitimate objective of providing adequate space for a school can be achieved through the coordinated use of several sites thus allowing the siting of new school facilities in the developed portions of towns. The committee finds that this would result in the simultaneous achievement of educational objectives and the goals of the Growth Management Act for orderly growth and development and efficient use of public capital investment.

Recommendations: The committee recommends that the Department of Education be required to modify its rules governing the school construction program to direct construction projects for new schools to those areas identified by towns though the growth management program as suitable for development wherever possible. The committee recommends that the Department not impose minimum contiguous parcel size requirements that would frustrate this objective.

Sec. B-1. 20-A MRSA §15908, sub-§4 is enacted to read:

4. Consistent siting. The board shall adopt criteria governing applications under this chapter to direct construction projects for new schools to areas deemed suitable under the provisions of Title 30-A chapter 187, subchapter II by the municipality within which the project will be located. The board may approve the construction of a project outside such an area only upon a finding that no reasonable alternative for location within a municipally-identified area exists. The board may not require a minimum contiguous parcel size for the project as a condition of approval.

D. Coordination between local land use management programs and sewer/water districts.

Findings: Upon investigation of the statutory basis for municipal authority over sewer and water line extension, the committee found that, while not sufficiently clear, present law requires that sewer and water districts comply with the requirements of local zoning. In the case of water supply districts, this requirement is subject to review by the state Public Utilities Commission (PUC). The committee thus finds that a clarification of existing law is warranted to encourage better cooperation among municipal governments and these service districts as early as possible in the local planning process.

In the case of line extensions undertaken in anticipation of or to encourage economic development, the committee finds that there is no obstacle in existing law for the state or local governments to invest in such expansions. However, the committee finds that, for a variety of reasons, the costs of such projects should not be assessed to the existing ratepayers of the district in question.

For a more detailed discussion of this subject, see Appendix G.

Recommendations: With regard to fostering early cooperation between towns and service districts during the planning process, the committee recommends that the Legislature enact a provision that explicitly states that water and sewer districts shall cooperate in municipal plan development. This would merely get service providers and municipalities talking to each other, with the result, hopefully, of better coordination of decision making.

The committee further recommends the Legislature enact the following changes:

Sec. B-4. 30-A MRSA §4406, sub-§3 is repealed.

Sec. B-5. 35-A MRSA §6106, sub-§5 is enacted to read:

5. Consistency with municipal plans. Nothing in this section relieves a consumer-owned water utility from complying with the provisions of 6106-B.

Sec. B-6. 35-A MRSA §6106-A and §6106-B are amended to read:

§6106-A. Coordination with municipal planning.

i) Clarify and modify the current law so that sewer and water service providers must in all cases obtain from the municipality written authorization that the development, lot or unit to be served is in accordance with municipal plans.

ii) Further require water and sewer service providers to obtain authorization from the municipality that the line extension itself is consistent with municipal plans.

iii) Amend the current law authorizing the PUC to exempt water utilities from zoning ordinances. This amendment would require the PUC, when determining whether an exemption is "reasonably necessary for public welfare and convenience", to consider the long-term goals of the zoning and the potential adverse ratepayer impacts of overriding local planning ordinances.

The governing body of a water utility shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances in order to facilitate coordination between municipal planning and water main extension planning.

§ 6106-B. Municipal authorization of line extensions.

No water utility make construct any water main extension unless:

1. Authorization. The water utility acquires from any municipality through which the water main extension will pass written authorization that

A. Any development, lot or unit intended to be served by the water main extension is in conformity with any adopted municipal plans and ordinances regulating land use; and

B. The water main extension is consistent with adopted municipal plans and ordinances regulating land use.

Upon petition, and after public hearing, the commission may grant an exemption from the requirement of subsection 1, paragraph B to a water utility which has been refused authorization pursuant to subsection 1, paragraph B. In reviewing any petition under this section, the commission shall review any zoning ordinances of the municipality which prohibit the construction or affect the location of a water main extension. The commission shall consider the purposes of relevant municipal plans and ordinances and the potential short- and long-term impacts on rate payers of granting an exemption pursuant to this section. An exemption granted by the commission pursuant to this section shall include any exemptions to municipal ordinances which the commission determines should be granted pursuant to Title 30-A, section 4352, subsection 4. No exemption may be issued under this section unless the commission determines that the exemption is reasonably necessary for the public welfare and convenience.

Sec. B-7. 38 MRSA §1163 is repealed and replaced with the following:

§1163. Sewer extensions

A sanitary district may not construct any sewer extension unless:

A. The sanitary district acquires from any municipality through which the sewer extension will pass written authorization that:

i. Any development, lot or unit intended to be served by the sewer extension is in conformity with any adopted municipal plans and ordinances regulating land use; and

ii. The sewer extension is consistent with adopted municipal plans and ordinances regulating land use.

B. The trustees of the district publish notice of the proposed extension in a newspaper not less than 7 days prior to the meeting of the trustees at which they will take final action on whether to proceed with the extension.

Sec. B-8. 38 MRSA §1163-A is enacted to read:

§1163-A. Coordination with municipal planning.

The trustees of a sanitary district shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances in order to facilitate coordination between municipal planning and sewer extension planning.

Sec. B-9. 38 MRSA §1252, sub-§7 is repealed and replaced with the following:

7. Sewer extensions. No sewer district may construct any sewer extension unless:

A. The sewer district acquires from any municipality through which the sewer extension will pass written authorization that

i. Any development, lot or unit intended to be served by the sewer extension is in conformity with any adopted municipal plans and ordinances regulating land use; and

ii. The sewer extension is consistent with adopted municipal plans and ordinances regulating land use.

B. The trustees of the district publish notice of the proposed extension in a newspaper not less than 7 days prior to the meeting of the trustees at which they will take final action on whether to proceed with the extension.

Sec. B-10. 38 §1252, sub-§9 is enacted to read:

9.Coordination with municipal planning. The trustees of a sewer district shall cooperate with municipal officials in the development of municipal growth management and other land use plans and ordinances in order to facilitate coordination between municipal planning and sewer extension planning.

CHAPTER V. Increasing the accountability and coordination.

A. Land and Water Resources Council.

Findings: The committee finds that it is imperative to create an effective mechanism for better interagency cooperation and integration of state agency programs affecting land use and natural resource management. The committee further finds that such a mechanism would also serve as a focal point in state government to improve accountability for state decisions affecting these issues.

The committee further finds that, in this period of intense budgetary limits, it is not feasible or necessarily desirable to suggest the creation of new state agencies with line responsibilities for land use management. Rather, a mechanism to exercise better coordination of existing programs is likely to be more effective.

Recommendations: The committee recommends that the Legislature enact provisions to make permanent the Land and Water Resources Council, previously created by executive order, and to include in its charge responsibilities related to the Growth Management Act. The committee recommends that the Council become the mechanism through which are coordinated the activities of state agencies that affect land use and natural resource management.

The Committee recommends that a full-time Senior Policy Analyst position be created and funded by the Legislature to provide staff resources to the Council.

Sec. D-1. 5 MRSA, chapter 314 is enacted to read:

CHAPTER 314

COORDINATION OF LAND USE AND NATURAL RESOURCE MANAGEMENT

§3330 Land and Water Resources Council

1. Council established; membership. In order to facilitate more effective interagency coordination of the state's activities regarding natural resource and land use management, the Land and Water Resources Council is established. The chair of the Council is appointed by and serves at the pleasure of the Governor. The membership of the Council is:

A. The Commission of the Department of Agriculture Food & Rural Resources;

B. The Commissioner of the Department of Conservation;

C. The Commissioner of the Department of Environmental Protection;

D. The Commissioner of the Department of Human Services;

E. The Commissioner of the Department of Inland Fisheries and Wildlife;

F. The Commissioner of the Department of Marine Resources;

G. The Commissioner of the Department of Transportation;

H. The Commissioner of the Department of Economic and Community Development; and

I. The Director of the State Planning Office

2. **Purposes; responsibilities.** The purpose of the Council is to advise the Governor, the Legislature, and State agencies in the formulation of policies for management of Maine's land and water resources to achieve State environmental, economic, and social goals as those goals are articulated under Title 30-A, section 4312. Any State, Federal, regional, or local agency, or private organization, is invited to interact and cooperate with the Council in fulfilling this mission.

Specifically, the Council shall:

A. Recommend coordinated State policy regarding major programs or proposals that affect the natural environment of the State and land use management issues and that involve the concerns of more than one State agency.

B. Support the full implementation of an integrated program to provide a substantially improved land and water resources information base for planning purposes.

C. Provide direction to the State's land and water use planning and management programs and encourage coordination of these efforts through review and comment on agency program plans, specific projects, and legislative proposals that involve interagency concerns.

D. Periodically evaluate, in consultation with affected interests, Maine's environmental regulatory system and growth management program, including legislation, regulations and procedures, and recommend appropriate action, if any is needed to improve service to applicants and municipalities.

E. Study specific land and water resources management issues and problems of State level significance in order to develop sound, coordinated policies.

F. Seek cooperation from Federal agencies with responsibilities for land and water resources management to ensure that their programs and projects serve the best interests of the State of Maine.

3. 1994 tasks. During the calendar year 1994, the Council shall undertake the following tasks. The Council shall report on its progress together with any necessary implementing recommendations as part of its January, 1995 annual report.

A. In order to improve the coordination of land use programs that contain both state and locally administered elements, the Council shall consider the desirability and feasibility of consolidating into a single administrative unit the Growth Management program, the Shoreland Zoning program, the Wellhead Protection program, the Nonpoint Source Water Quality program, and the Subsurface Wastewater Disposal program. The Council may consider incorporating other related programs into the proposed unit. The Council may include in its recommendations any statutory changes necessary to accomplish this objective.

B. The Council shall design and implement a system for coordinating the programs of its member agencies with the goals under Title 30-A, section 4312. The Council shall evaluate and improve the ability of state capital investment programs to support and reinforce the primary goal of encouraging orderly and sound growth and development, in particular, those investment programs designed to increase the capacity of existing transportation and wastewater treatment systems. The proposed system must be designed to give highest priority to investments in the those municipalities or regions of the state that have undertaken comprehensive planning and management efforts consistent with the goals under Title 30-A, section 4312.

4. Quarterly meetings; annual report. The Council shall meet at least quarterly. In addition, the Council shall prepare a work program for each year establishing priorities among its efforts. By January 15 of each year, the Council shall prepare and submit to the Governor and to the joint standing committee of the Legislature having jurisdiction over natural resource matters an annual report describing its activities during the previous calendar year and an outline of anticipated activities for the current calendar year. The State Planning Office and Council member agencies shall provide funding for activities of the council. Member agencies shall provide staff support.

Sec. E-1. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

EXECUTIVE DEPARTMENT	1994-95
LAND AND WATER RESOURCES COUNCIL	
Positions	(1.0)
Personal Services	$45,309
All Other	$8,000
Capital	$2,500
Total	$55,809

Provides funds for a Senior Policy Analyst position to assist the Land and Water Resources Council fulfill its 1994 tasks and to develop work plans for 1995 and later, general operating expenses and one-time capital for computers.

B. Evaluation process for the Growth Management Program.

Findings: The committee finds that evaluation of the Growth Management Program is necessary to ensure that it achieves its objectives and to support a process of continuous improvement within the program.

Recommendations: The committee recommends that the Office of Community Development, in conjunction with the Land and Water Resources Council, organize and implement an ongoing evaluation process to assess the effectiveness of the Growth Management Program in achieving the statutory goals established under 30-A MRSA §4312. The evaluation should result in periodic reports to the Legislature along with recommendations for any necessary changes.

The committee further recommends that the Office be directed to employ objective and where possible, quantitative measures of results and that the evaluation include elements of both input (staff, financial aid, training, etc.) and output (development patterns, public services infrastructure, etc.). The qualitative evaluations provided by citizens, local officials and others would also be valuable. In developing evaluation criteria, the committee recommends that the Office focus on the first statutory goal of "promoting orderly growth and development" and that the Office develop from the other state goals criteria that relate these issues to the first goal (30-A MRSA §4312, sub-§3, ¶A).

The committee further recommends that the Office immediately establish a baseline of current conditions against which to measure future results and that, in future evaluations, the Office compare the conditions in towns or regions that have entered the growth management program with those that have chosen not to participate.

Sec. D-2. 30-A MRSA chapter 187, subchapter II, article 2-A is enacted to read:

Article 2-A
Evaluation

§4331 Evaluation

The Office shall conduct an ongoing evaluation process to determine the effectiveness of state and local efforts under this chapter to achieve the purposes and goals of this chapter. Working through the Land and Water Resources Council, the Office shall seek the assistance of other state agencies. If requested, all state agencies shall render assistance to office in this effort.

1. Criteria. In conducting the evaluation, the office shall develop criteria based on the goals of this chapters. The criteria must be objective, verifiable and, to the extent practical, quantifyable.

2. Baseline conditions. The office shall establish a baseline of land use conditions at a level of detail sufficient to permit general comparison of state and regional trends in future land use development patterns.

3. Public input. The office shall incorporate opportunities for public input and comment on the program into the evaluation process.

The Committee further recommends that the two positions previously recommended under Chapter 3, section B, also be charged with responsibility for this evaluation.

4. Level of analysis. The office shall evaluate the program generally at a regional and state-wide level. To illustrate the impact of the program, the office shall compare land use development trends and patterns in a sample of towns that have participated in the program with a matched sample of towns that have not participated.

5. Periodic reports. Beginning on January 1, 1995, the office shall report in writing on the results of its evaluation process every four years and more frequently if necessary. The office shall submit its report to the joint standing committee of the Legislature having jurisdiction over natural resource matters.

C. Coordination of state and local regulation in growth areas.

Findings: The committee finds that the provisions of the Growth Management Act provide a basis for local analysis and resolution of traffic, infrastructure, flood plain, and noise issues within areas designated as growth areas sufficient to justify exempting developments in those areas from the related standards in the Site Location of Development Act.

The committee further finds that, where significant impacts of development fall beyond the boundaries of a single town, these impacts require attention in a regional or state-level forum.

Recommendations: The committee recommends that developments in areas designated as growth areas in towns having certified growth management programs be exempt from the traffic, infrastructure, flood plain, and noise standards of the Site Location of Development Act.

The committee further recommends that where a development project will have significant impacts on traffic, infrastructure or noise beyond the boundaries of the town in which the project is located, the opportunity be afforded for the Department of Environmental Protection to reassert jurisdiction over these issues on its on motion or upon petition by any affected municipality or a sufficient number of citizens within an affected municipality.

Sec. D-3. 38 MRSA, §488, sub-§14 is enacted to read:

14. Developments within designated growth areas. A development is exempt from review under the traffic movement, flood plain, noise and infrastructure standards of section 484 if that development is located entirely within:

A. A municipality that has adopted a local growth management program that the Department of Economic and Community Development has certified under Title 30-A, section 4348; and

B. An area designated in that municipality's local growth management program as a growth area.

The commissioner may require the application of the traffic movement, noise, flood plains, or infrastructure standards to the proposed development if there is a reasonable likelihood that the development will have significant and unreasonable impacts on traffic movement, flood plains, infrastructure or noise beyond the boundaries of the municipality within which the development is to be located. The commissioner may also require the application of the traffic movement, noise, flood plains, or infrastructure standards to the proposed development if petitioned to do so by either a municipality so affected or by 150 persons registered to vote in a municipality so affected.

[Note: Provisions regarding the exemption from flood plain standards may also require revision of the "flooding" standard under section 484]

D. Administration of the Natural Resources Protection Act in the unorganized territories.

Findings: The committee finds that the formal assumption of Natural Resources Protection Act responsibilities by the Land Use Regulation Commission would help to ensure efficient regulatory administration in the unorganized territories. In addition, it is an important step in eliminating any perception in the minds of applicants that unnecessary overlap or duplication exists between the Natural Resources Protection Act and the Land Use Regulation Commission.

The committee finds that in assuming responsibilities, the Land Use Regulation Commission standards must offer at least the same level of resource protection provided by the Natural Resources Protection Act.

Recommendations: The committee supports the Land Use Regulation Commission's current effort to identify differences and similarities between resource protection under Land Use Regulation Commission standards and resource protection under Natural Resources Protection Act standards. The committee also

No statutory language.

supports development of a proposal for the Land Use Regulation Commission to formally assume Natural Resources Protection Act responsibilities in the state's unorganized territories, recognizing that additional resources will be required for complete implementation.

The committee recommends the transition to full Commission administration of the NRPA be phased in and that the Land Use Regulation Commission and the Department of Environmental Protection develop by February 15, 1994 a legislative proposal for the Land Use Regulation Commission to assume responsibility for high mountain areas, water crossings, deer yards and any other protected natural resources for which jurisdiction could be appropriately transferred.

At that time, the Joint Standing Committee on Energy and Natural Resources should review the overall effort and consider what additional steps may be appropriate.

E. Regional approached to natural resource and land use management.

Findings: The committee finds that planning on a regional basis could offer significant advantages for local communities and the state. Municipalities would benefit because locally important resources are impacted by activities beyond local boundaries. Participation in regional efforts could greatly assist in advancing local interests. The state would realize the advantages of more effective and efficient resource protection through evaluation and planning across the breadth of a resource.

The committee also finds that a collaborative process is best adapted to the desires of municipalities to leave in local hands the decision of whether to participate in regional planning.

Recommendations: The committee endorses a proposal to initiate pilot projects to encourage local governments and state agencies joining together to conduct regional planning based upon watersheds or common resources. The committee recommends the state agencies involved in these projects review results and determine if any changes in current law are desirable and whether the state could benefit from a comprehensive program to address planning and natural resource protection on regional levels. The committee further recommends that the Joint Standing Committee on Energy and Natural Resources consider amending the lake and coastal watershed district enabling statutes along the lines suggested by the Department of Environmental Protection (see Appendix J).

No statutory language.

Findings: The committee agrees in principle that communities, individuals and the state as a whole would benefit from greater land use coordination among towns and a broader perspective from state agencies. In addition, the committee encourages steps to bring any additional efficiencies to the state permitting process.

However, the committee prefers to not legislate these changes. Committee members support Maine's tradition of local-level decision making and locally-initiated regional efforts. In addition, the committee finds state permitting agencies have made substantial gains in making the environmental permitting process more efficient.

Given limited state resources, the committee finds the best approach to continued progress is to embrace the voluntary pilot project proposal put forward by the state departments of Economic and Community Development, Environmental Protection, Inland Fisheries and Wildlife, Marine Resources, and Transportation, and the State Planning Office and the Town of Topsham. The proposed project would develop a "master plan" for the area affected by the Brunswick/Topsham Bypass Project. The project's purpose would be to plan development locations and capacities, target needed investments and to eliminate or reduce the need for individual project permits. (For a more detailed discussion of the proposal, see Appendix H).

Recommendation: The committee endorses the proposal to conduct a voluntary pilot project in the Topsham/Brunswick area aimed at coordinating state permitting and local comprehensive planning on an area-wide basis. The state agencies involved in the project should report to the legislature by January 1, 1995 on the feasibility of this approach and, if it proves successful, recommend appropriate statutory language to enable and encourage its statewide application.

No statutory language.

CHAPTER VI. Ensuring reliable natural resource information.

A. Mapping of significant wildlife habitat under the Natural Resources Protection Act.

Finding: Although the Department of Inland Fisheries and Wildlife has not yet mapped any significant wildlife habitat for the purpose of protecting that resource under the Natural Resources Protection Act, the Committee finds that the department's schedule for defining and mapping certain types of significant wildlife habitat during the next year is acceptable, given available resources.

Recommendations:

No statutory language.

A. The Committee endorses the department's plans to:

- Define and map, by February of 1994, seabird nesting islands;
- Define, by February of 1994, moderate and high value deer wintering areas;
- Define, by February of 1994, high and moderate value waterfowl and wading bird habitats;
- Map, by the summer of 1994, high and moderate value waterfowl and wading bird habitats in non-tidal areas of south-central Maine; and

- Map, by the end of 1994, high and moderate value waterfowl and wading bird habitats in all tidal areas.

B. The committee recommends that the Department of Inland Fisheries and Wildlife should work diligently to map all remaining significant wildlife habitat in the State.

C. The Committee supports the expressed intention of the Department of Inland Fisheries and Wildlife to utilize a portion of revenues realized from the sale of environmental license plates to support those mapping efforts.

B. Natural resource data and the state Geographic Information System.

Finding: The committee finds that the Geographic Information System (GIS) is an important component of the State's natural resource data management system. The inclusion of appropriate data and the sensitive use of that data enhances the State's ability to understand and manage its environmental resources and enhances the potential of the GIS to fulfill an important and meaningful service to the public and private sector. Given the broad value of this program, the committee finds that it warrants a level of basic core support from general revenues.

Recommendations: The committee recommends that:

A. The Legislature establish and fund 2 full-time General Fund positions at the GIS and provide sufficient resources for core support for system development, marketing and system maintenance;

Sec. E-1. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF	1994-95
Division of Data Processing	
Positions	(2.0)
Personal Services	$102,020
All Other	$66,500
Total	$168,520

	Provides funds for a GIS Administrator position and a Senior Information Support Specialist position and general operating costs for rent, electricity, telephone and computer and software maintenance.
B. The Department of Economic and Community Development and the Department of Inland Fisheries and Wildlife should continue to digitize and transfer all appropriate natural resource data to the GIS, as resources permit; and	No statutory language.
C. State agencies engaged in the collection of natural resource data should collect, develop and maintain that data at an accuracy level and in a format that meets the GIS data standards.	No statutory language.

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APPENDIX C

Summary of major Maine laws affecting land use

Background Materials

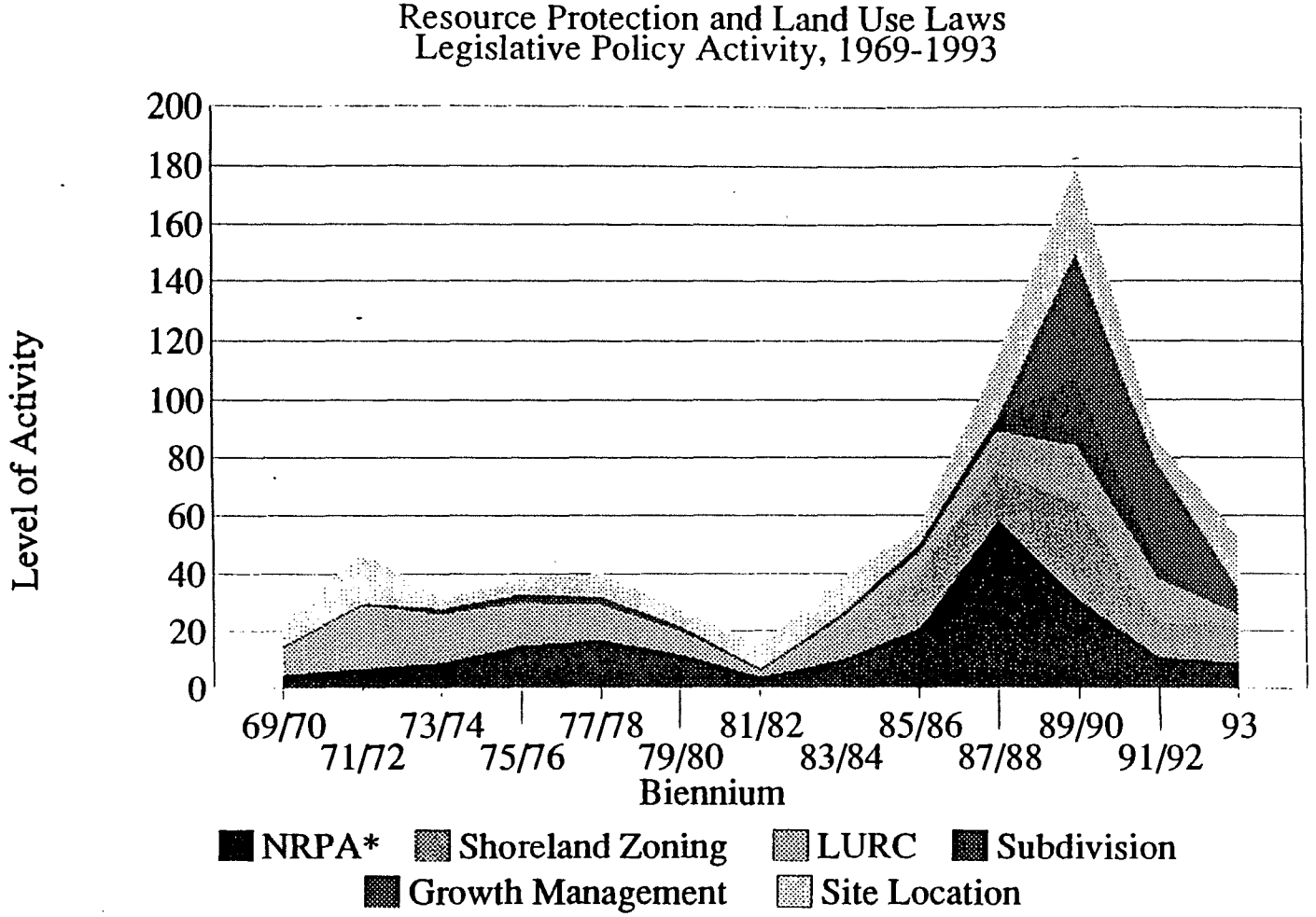
Land Use Regulation Study Committee
(September 15, 1993)

Table of Contents

Major laws affecting land use in Maine: An Overview

	Natural Resources Protection Act 1989 MRSA Title 38, sec. 480	Site Location of Development Law 1969 MRSA Title 38, Secs. 481-490	Mandatory Shoreland Zoning Act 1971 MRSA Title 38, secs. 435-447	Land Use Regulation Law 1969 MRSA Title 12, secs. 681-689	Growth Management Act 1989 MRSA Title 30A, secs. 4301 - 4359	Subdivision Law 1973 MRSA Title 30A, secs. 4401 - 4407
Purpose	To establish a comprehensive scheme for regulating development in environmentally sensitive areas throughout the state. (Includes coastal sand dunes and wetlands, freshwater wetlands, significant wildlife habitat, fragile mountain areas, rivers, brooks and streams)	To ensure that large developments will be located in a manner that will minimally affect the environment and protect the public's health, safety and welfare.	To protect Maine waters from the impact of development along the shores of the waters and to protect natural, historic, economic, recreational and archeological resources in the shoreland area.	To encourage well-planned and well-managed multiple use of land and resources in Maine's unorganized territories and to encourage appropriate recreational use of the land and resources.	To achieve state goals related to economic development and natural resource protection through a consistent and comprehensive system of municipal planning and land use regulation.	To provide municipal review of subdivisions to ensure a subdivision will not unreasonably impact municipal services or the environment.
Implementing Authority	Department of Environmental Protection.	Department of Environmental Protection.	Municipalities. Shoreland zoning ordinances must meet DEP standards.	Land Use Regulation Commission, in the Department of Conservation	Municipalities.	Municipalities.
Processing combined w/ other laws?	YES: When NRPA and Site Law jurisdiction overlap, both laws are reviewed as part of Site Law process. One permit covering both laws is issued.	YES: When Site Law and NRPA jurisdiction overlap, both laws are reviewed as part of Site Law process. One permit covering both laws is issued.	NO: Shoreland Zoning review is conducted independent of other laws, although it may be incorporated into general municipal zoning ordinances.	NO: LURC may assume jurisdiction over NRPA in the unorganized territories. Current relationship between NRPA and LURC requirements is ambiguous.	NO: A municipality's review is independent of other laws.	NO: Review is independent of other laws, although it may be incorporated into general municipal ordinances.
Voluntary or mandatory?	Mandatory	Mandatory	Mandatory	Mandatory	Voluntary	Mandatory

NOTE: Land use is also affected by the minimum lot size law (20,000 square feet if septic system used) and the state plumbing code (provisions concerning septic systems affect land development).



Notes:

The level of analysis for this graph is the statutory section. Any statutory section in the Natural Resource Protection Act, the Mandatory Shoreland Zoning Act, the Land Use Regulation Laws, the Subdivision Laws, the Growth Management Act or the Site Location of Development Act that was enacted, repealed or amended by any Public Law was counted as a policy activity.

NATURAL RESOURCES PROTECTION ACT

Overview of Current Law

What is the purpose of the Natural Resources Protection Act?

The purpose of the Natural Resources Protection Act (NRPA) is to establish a comprehensive scheme for regulating development in environmentally sensitive areas throughout the state.

What are the general provisions of NRPA?

- Certain activities require a permit issued by the Board of Environmental Protection.
- The Department may delegate NRPA permitting authority to eligible municipalities;
- The Department of Environmental Protection receives and reviews NRPA permit applications;
- Activities determined by the Board of Environmental Protection to have no significant impact upon the environment are eligible for "permit by rule", a process that allows those activities to commence without an individual permit if they are conducted according to standards of design, construction and use adopted by the Board. Activities that currently qualify for "permit by rule" include:

    - Disturbance of soil material adjacent to a wetland or water body;
    - Placement of intake and outfall pipes, water monitoring devices, and riprap;
    - Maintenance, repair and replacement of structures, wastewater disposal systems and state transportation facilities;
    - Movement of rocks or vegetation by hand;
    - Construction of minor river or stream crossings including certain utility lines, bridges and culverts;
    - Piers, wharfs, pilings, public boat ramps and restoration of natural areas; and
    - Habitat creation or enhancement and water quality improvement projects.

What activities require a NRPA permit?

Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials; draining or otherwise dewatering; filling; and any construction, repair or alteration (excluding maintenance and minor repair) of a permanent structure in the following areas:

- Coastal sand dune systems;
- Coastal wetlands;
- Significant wildlife habitat that is mapped or that is within another protected natural resource;

- Fragile mountain areas;
- Freshwater wetlands (10 or more contiguous acres or when in conjunction with adjoining wetland areas that total more than 10 acres);
- Great ponds;
- Rivers, streams or brooks; and

Lands adjacent to fresh water or coastal wetlands, great ponds, rivers, streams or brooks are also subject to review and permitting under the Natural Resources Protection Act. The term "adjacent" is not defined in statute, but has a meaning under the BEP permit by rule standards as lands within 100 feet of the resource.

What activities do not require a NRPA permit?

- Activities allowed under "permit by rule" do not require individual permits;
- Installation of utility cables for single-family homes in areas affecting great ponds;
- Placement of water lines for serving single-family homes in areas affecting great ponds;
- Draining wetlands for agricultural production;
- Forest management activities that meet certain standards;
- Hydro-power projects regulated under 38:§630 et seq.;
- Emergency repair or normal maintenance and repair of existing public works affecting a protected natural resource, provided adequate erosion and fish passage measures are taken;
- Boring to evaluate soil conditions in or adjacent to a great pond, river, stream, brook, coastal or fresh water wetland or sand dune;
- Maintenance and minor repair of structures above the high water line or in fragile mountain areas, which cause no additional intrusion into protected water areas;
- Maintenance of private bridges, if proper erosion and fish crossing measures are taken;
- Repair, maintenance and replacement of existing road culverts, under certain circumstances;
- Peat mining (subject to site location law provisions);
- Interstate pipelines (subject to site location law provisions);
- Gold panning;
- Aquaculture activities (although activities like building or altering docks or filling of wetlands are not exempt);
- Normal maintenance, repair or reconstruction of existing access areas in freshwater or coastal wetlands to residential dwellings, subject to certain conditions
- Placement of a mooring;
- Lawful harvesting of marine organisms or vegetation in coastal wetlands; and
- Installation, repair or removal of a subsurface disposal system, providing it meets certain DHS standards.

What are the standards for obtaining a NRPA permit?

The DEP "shall" grant a permit when applicant demonstrates the project will not unreasonably:

- Interfere with existing scenic, aesthetic, recreational or navigational uses;
- Cause erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil into a water environment;
- Harm any significant wildlife, fresh water wetland plant or aquatic habitat; or any fresh water, estuarine or marine fisheries or other aquatic life, travel corridors, threatened or endangered plant habitat - with all of the above taking into consideration mitigation measures;
- Interfere with the natural flow of water;
- Violate any state water quality law;
- Cause or increase flooding in the area;
- Interfere with the natural supply or movement of sand in a sand dune system, or unreasonably increase erosion hazard to the sand dune system;
- If the activity involves crossing an outstanding river segment (as defined in section 480-P), applicant must prove that no reasonable alternative exists; and
- Transfer of dredging spoils will minimize impacts on fishing industry, and disposal site is geologically suitable.

Who enforces NRPA permits?

A large majority of violations of NRPA are resolved through voluntary compliance. Violations that are not resolved through voluntary compliance are resolved by the Department of Environmental Protection through the consent agreement process or through civil action by Department staff using the "Rule 80K" procedures. The Attorney General's Office may take an enforcement action through a consent decree or civil or criminal prosecution. Municipal code enforcement officers, game wardens, marine patrol officers and other state officials may also enforce the statutory provisions of NRPA and the conditions in a NRPA permit issued by the Department.

Miscellaneous provisions:

- A home rule provision in NRPA allows towns to adopt ordinances that are stricter than NRPA rules.

- Federal government regulates wetland alterations through Section 404 permits, under the Clean Water Act.

Timeline of Major Policy Actions: Natural Resources Protection Act

69/70 — Coastal wetland becomes a defined term under coastal wetland statutes administered by the Wetlands Control Board. The construction, maintenance, and repair of public utility installations and facilities are added as activities that are exempt from municipal and board notification requirements. Maximum fine for violations established at $100.

71/72 — Established permits as valid for 3 years and blocked issuance by municipality unless approved by the Wetlands Control Board. Maximum fines for violations increased to $500. Governmental reorganization creates the DEP and BEP. Regulatory authority consolidated into BEP includes review of wetland and great ponds permits, classification of waters and regulation of mining and land rehab activities. BEP is granted rulemaking authority.

73/74 — Municipalities authorized to charge a fee for coastal wetland permits. Rivers, streams and brooks established as a protected resource and a permit is required from conservation commissioner for activities that affect those resources. Exemptions include public works projects affecting fewer than 100 feet in each mile of resource and private crossing or dams affecting fewer than 300 feet per mile of resource. BEP required to classify great ponds.

75/76 — Department of Conservation 's regulation of rivers, streams and brooks is limited to waters "above tidewater". New "Alteration of Coastal Wetlands" article enacted in Title 38 establishing the BEP, rather than municipalities, as the issuing agency for coastal wetland permits, although municipalities may apply to the board for authority to issue those permits.

77/78 — Consolidation of BEP's regulatory authority for great pond classification and permitting. Language enacted requiring the board to streamline permitting procedures and allowing board to exempt activities that have minimal impact.

79/80 — Administration and permitting for alterations of rivers, streams and brooks "above head of tide" moved from Conservation to the new Department of Inland Fisheries and Wildlife. Coastal sand dunes systems added as protected resources under DEP's coastal wetlands statutes. Adds a requirement for a "sand dunes" permit in addition to a "coastal wetlands" permit, and allows a "single permit" for activities that affect both resources.

81/82 — Applicants allowed to submit evidence on economic benefits and impacts on energy resources in application for river, stream and brook permits, site permits and LURC permits.

83/84 — BEP no longer required to issue wetland permits within 30 days of application, but leaves requirement intact for towns. Strikes similar BEP requirements for small hydropower project applications. Outstanding river resources laws enacted affecting 720 miles of outstanding river segments . Adds requirement that applicant demonstrate "no reasonable alternative" for alterations. Exempts LURC great ponds from DEP jurisdiction. Permit by Rule statutes enacted.

85/86 — Permitting of alterations on rivers, steams and brooks transferred from IF&W to DEP. Freshwater wetlands added as a protected resource. Great Ponds law amended to include exemptions for certain utility cables and for water lines serving single family homes. DEP is required to charge "actual direct cost" of permit.

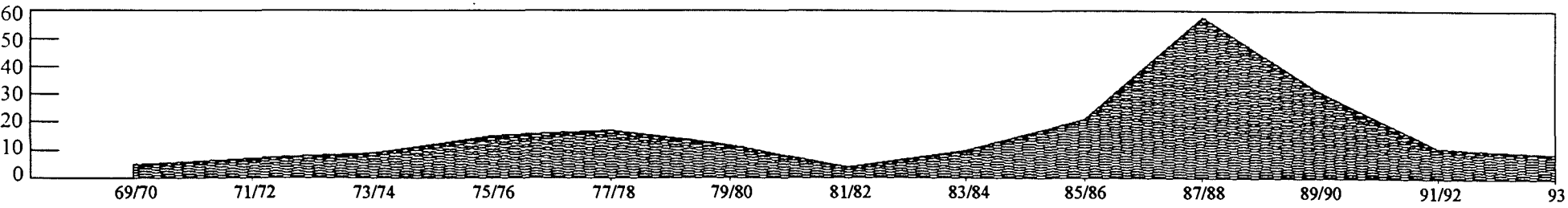
87/88 — Comprehensive overhaul of resource protection statutes. Laws governing great ponds, rivers, streams, brooks, sand dune systems, freshwater wetlands and coastal wetlands statutes are repealed and re-enacted into a consolidated Natural Resources Protection Act. Protected resource status is extended to fragile mountain areas and to significant wildlife habitat mapped by IF&W.

89/90 — Aquaculture activities regulated by the DMR exempted from NRPA. Resource protection laws extended to freshwater wetlands of less than 10 contiguous acres adjacent to surface water . Clarifies that NRPA applies "statewide". Enacts dredge spoils permitting requirements. BEP is required to adopt performance and use standards for DOT projects that do not affect coastal wetlands or dune systems and exempts certain DOT projects from NRPA permitting requirements

91/92 — Exemptions enacted for activities with minor impact. Culvert exemption expanded. Threatened and endangered plant habitats added as areas that may not be unreasonably harmed by the licensed activity. Significant wildlife habitat definition amended to state that a significant wildlife habitat area is a protected resource if it is mapped by IF&W or if it is in another protected natural resource.

93 — Exemptions enacted for cranberry cultivation, the repair, replacement and maintenance of existing road culverts and the repair and maintenance of existing access ways in wetlands to residential dwellings. Definition of significant wildlife habitat amended to include areas entered into the state geographic information system. DEP is allowed to use sensitive area data in mapping significant wildlife habitat.

Policy Activity - Natural Resources Protection Act



THE LAND USE REGULATION LAW

Overview of existing law

What is the purpose of LURC?

The Land Use Regulation Commission was established to encourage well-planned and well-managed multiple use of land and resources in the unorganized territories and to encourage the appropriate use of those lands by the residents and visitors in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating hiking and camping.

What activities are regulated by the Land Use Regulation Commission?

Development activities in Maine's approximately 10 million acres of unorganized land areas is regulated by the Land Use Regulation Commission (LURC). LURC has adopted a comprehensive plan, devised land use standards and has zoned the unorganized territories into protection districts, management districts and development districts.

The following activities require a permit from LURC:

- Erection, conversion, alteration or enlargement in structure or use (other than normal maintenance or repair) of any structure);
- Development or construction on any lot within a subdivision:
- Selling or offering to sell any interest in a lot within a subdivision; and
- Construction or operation of a development.

Under LURC laws, the term "subdivision" means a division of land into three or more lots within any five-year period or the creation of three or more dwelling units on a single parcel in a five-year period. A division created by gift to a relative does not create a subdivided lot, unless the gift was intended to evade the law. Parcels of land that are 40 acres or larger do not constitute subdivision lots within LURC, unless any part of the divided land extends into a shoreland area or if the divided land has been subdivided into more than 10 lots in five years.

What are the standards for obtaining a LURC permit?

To obtain a permit from LURC, an applicant must show that the proposed activity:

- Is supported by technical and financial capacity sufficient to comply with Maine's environmental and land use laws;
- Adequately provides for air, land or water traffic;
- Fits harmoniously into the existing natural environment;
- Meets standards of the current soil suitability guide and not cause unreasonable soil erosion;

- Otherwise conforms to the law regulating land use in the unorganized territories; and
- If an activity involves construction in a subdivision, the subdivision must have received approval from the commission.

Who enforces LURC permits?

Minor violations of permits issued by LURC are usually resolved through voluntary compliance. Violations not resolved through voluntary compliance may be resolved by LURC through a consent agreement process of through civil action by LURC staff through the "Rule 80K" procedures. The Attorney General's Office may take enforcement actions against violators. Forest Rangers may also enforce the conditions of a LURC permit.

Timeline of Major Policy Actions: Land Use Regulation Commission

69/70 — LURC created to prepare and administer land use plan for unorganized areas. LURC is empowered to adopt zoning requirements and/or subdivision control ordinances for those areas, establish height, width, area and bulk limitations on structures and to regulate the use of outboard motors on lakes or ponds greater than 640 acres. The goals of LURC include "preventing substandard development, pollution of lakes, rivers and streams and protection of the forest resources."

71/72 — LURC required to map areas according to four land use districts: protection, management, holding and development. LURC must adopt standards governing acceptable uses in each district. LURC control is expanded for "lakes, ponds and public roads" to "water and roads". Hearings may be waived for those receiving approval for development under site law from EIC.

73/74 — LURC incorporated into the newly created DOC. Definition of "structure" amended to include structures "in" as well as "on", the ground. Maximum fines of $500 established. Flood plains added as a protected resource. Jurisdiction expanded to include all public and private lands. LURC membership amended twice during same session.

75/76 — Newly organized towns remain under LURC until comprehensive plans, maps and zoning ordinances are approved. Commissioner of Conservation removed from LURC. Appointments to LURC must be approved by Legislature. Executive Director position created. LURC prohibited from establishing deer wintering boundaries without IF&W and landowner agreement or IF&W substantiation. LURC interim zoning provisions extended from 36 to 48 months.

77/78 — LURC permitting "supports, but does not require" findings from other regulatory body that project meets site law, lot size, wetlands, great ponds and stream alteration laws. LURC is required to coordinate permitting procedures with other state agencies. Development approval criteria under LURC and DEP amended to ensure compliance with air and water pollution laws, and other environmental laws. Commissioner of Conservation required to do "biennial" budget for LURC. A $10 minimum application fee established.

79/80 — Membership criteria amended to require Governor to consider persons residing in or near unorganized areas. Definition of structure amended to exempt wharfs, fish piers and traps licensed by BEP.

81/82 — Applicants allowed to submit evidence on economic benefits and impact on energy resources in permit applications.

83/84 — Provisions enacted governing LURC's re-establishment of jurisdiction over previously unincorporated towns. LURC services to unorganized areas must be charged to the unorganized territory Educational and Services Tax, services to towns and cities paid from the General Fund.

85/86 — Logging roads with an area less than 3 acres exempted from permitting requirement if constructed to standards. One member of LURC is required to reside within LURC's jurisdiction.

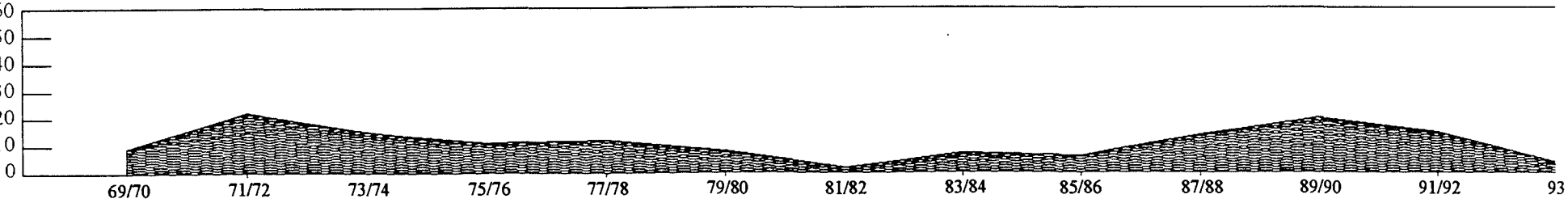
87/88 — Fines increased from $500 to not more than $10,000 per day of violation. Definition of subdivision amended to include lots larger than 40 acres and located within 250 ft of a lake or pond. In 1988, subdivision definition repealed and replaced with LURC subdivision review of all lots smaller than 500 acres when lot is "wholly or partly" within shoreland zone. Later in 1988, subdivision amended again to include the division of a new structure/s into 3 or more dwelling units.

89/90 — Subdivision definition amended again. Divisions accomplished by gift do not create a lot unless intent is to avoid the objectives of the subdivision law. Clarification of laws pertaining to creation of 3 or more dwelling units. 500 acre lot subdivision exemption is repealed and replaced allowing for up to 10 lots of at least 40 acres to be created without LURC subdivision review. LURC required to process subdivision applications w/i 60 days. Permit processing priority given to structures being replaced after destruction. Sphagetti lots prohibited. Clarifies that NRPA applies statewide.

91/92 — Exemption for certain culverting activities enacted. Governor required to consider coastal island residents for LURC appointments. Subdivision defintition amended: lots greater than 40 that are at least 1/4 mile from waterbodies are exempted from LURC review. LURC assessments to unorganized territory tax may not exceed 10% of LURC general fund approp. Recording of land division plans required. Repeals requirement that LURC report to legislative committee on number of 40 acre lots created. LURC staff authorized to prosecute civil enforcement action under Rule 80-k. Fees increased.

93 — Spaghetti lot prohibition clarified to apply to any division of land. Fees increased.

Policy Activity - Land Use Regulation Commission



MANDATORY SHORELAND ZONING ACT

Overview of Existing law

What is the purpose of the Mandatory Shoreland Zoning Act?

The purpose of the Mandatory Shoreland Zoning Act is to control development along shorefronts in order to protect water quality, wildlife habitat, wetlands, archaeological sites, historic resources, and commercial fishing and maritime industries, and to conserve shore cover, public access, natural beauty and open space.

What are the general provisions of the Shoreland Zoning Act?

The Mandatory Shoreland Zoning Act requires municipalities to adopt, administer and enforce shoreland zoning ordinances by July 1, 1992 that are at least as stringent as the model shoreland zoning ordinance adopted by the Board of Environmental Protection. If a municipality does not enact an ordinance, or adopts ordinances that contain provisions inconsistent with the model ordinance, the BEP may impose an ordinance, or sections of an ordinance, on that municipality. Ordinances imposed by the BEP have the force of law within that municipality and must be enforced by local enforcement authorities. District Attorney's and the Attorney General may also enforce the mandatory shoreland zoning laws.

What is required by the Mandatory Shoreland Zoning Act?

Municipalities must adopt, administer and enforce ordinances that regulate land use activities within shoreland zones. A shoreland zone includes all lands:

- Within 250 feet of great ponds, rivers, freshwater or coastal wetlands, and tidal waters; and
- Within 75 feet of the high-water line of a stream.

Six categories of land use districts determine what type of development may occur within the shoreland zone. Resource Protection Districts (RPD's) and Stream Protection Districts (SPD's) are areas in which development would adversely affect water quality, productive habitat, biological ecosystems or scenic or natural values. Residential and commercial development is permitted within the shoreland zone in areas zoned as Limited Residential Districts (LRD's), Limited Commercial Districts (LCD's) and General Development Districts (GDD's). Functionally water dependent uses are permitted within the shoreland zone in areas designated as Commercial Fisheries and Maritime Activities District (CFMA).

What standards must be met by a municipality under shoreland zoning?

A municipality's shoreland zoning ordinance must be consistent with, and at least as stringent as, the Model Shoreland Zoning Ordinance adopted by the Board of Environmental Protection.

Timeline of Major Policy Actions: Shoreland Zoning

71/72

Mandatory zoning and subdivision controls for shoreland zones enacted. Purposes to maintain safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish, aquatic life, and other wildlife habitat, control building sites, placement of structures, conserve shore cover, visual and actual points of access to waters and natural beauty. Towns given until 6/30/73 to adopt zoning and subdivision control ordinances. EIC and LURC may adopt ordinance for towns if they fail to act.

73/74

Definitions of "pond" and "river" enacted. Towns must appoint appropriate municipal body to prepare ordinances by 7/1/73. By 7/1/74, towns must prepare comprehensive plans and adopt shoreland zoning ordinances consistent with that plan. DEP and LURC must adopt minimum guidelines for shoreland zones by 12/15/73.

75/76

Provisions enacted pertaining to flood plain development and federal flood insurance requirements. Any ordinance requiring soil suitability analyses require testing be prepared and signed by persons certified by Department of Health and Welfare.

77/78

No substantive activity.

79/80

No substantive activity.

81/82

No substantive activity.

83/84

Penalty provisions revised. DAs, the AG and towns may enforce civil fines from $100 to $1000 per violation. Certain river segments given special treatment under shoreland zoning ordinances. Towns must certify to DEP that shoreland zoning ordinances already adopted meet new significant river segment requirements by 12/15/84. Timber harvesting prohibited within 50 ft of water bodies, except that an opening of 30 ft for each 100 ft of shoreline is permitted (provided that no opening exceed 60 ft.)

85/86

Comprehensive repeal, amendment and reenactment of shoreland zoning laws from Title 12 to Title 38. Zoning Boards of Appeal may grant variances from setback. Shoreland Zones may include structures on, over or abutting docks, wharfs, or piers. Areas in shoreland zone within the 100 yr flood plain established as resource protection district as are areas within the "velocity zone" of tidal waters. Towns may adopt ordinances regulating access to shorelines.

Timber harvesting prohibited within 250 ft of great ponds. Comprehensive re-writing of shoreland zoning laws. Resource protection districts extended to 250 ft around coastal and freshwater wetlands. Municipal ordinances must be approved by DEP prior t o adoption by towns. Variances must be submitted to DEP. BEP must adopt schedule for municipal compliance.

87/88

BEP may adopt more restrictive ordinances for special water quality considerations around great ponds not in LURC jurisdiction. BEP may impose minimum guidelines where ever provisions in municipal ordinances are less stringent. Towns may establish commercial fisheries and maritime activity zones. Reforestation within 2 years of harvesting required in resource protection districts around great ponds. Timber harvesting exempted from shoreland zoning restrictions around forested wetlands.

89/90

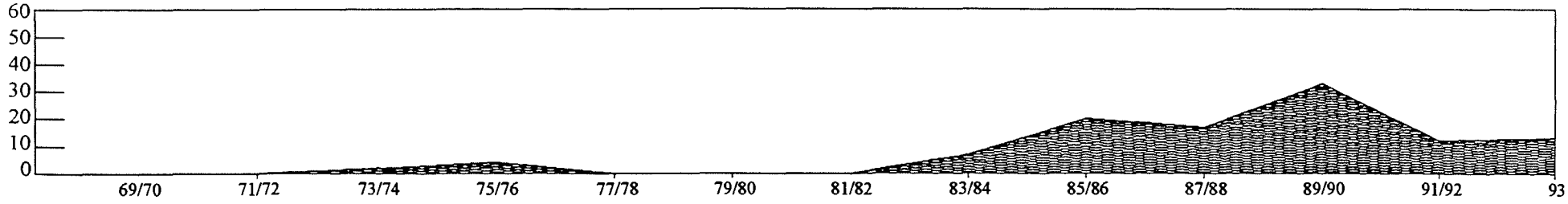
Certain culverting activities exempted from shoreland zoning restrictions. Clarification that forested wetlands are exempted from shoreland zoning. Timber harvesting requirements amended to allow up to 40% harvesting within shoreland zones if a forest management plan is completed. Provisions pertaining to nonconforming lots clarified. Towns are required to adopt shoreland zoning ordinances by 7/1/92. For activities around great ponds, permit must be posted on site.

91/92

Towns may reduce shoreland zone around low-value freshwater wetlands to 75 ft, provided the town zones outlets from great ponds as stream protection districts. Culverts exemption expanded. Special exception enacted permitting single family residential structure on lot in resource protection district under specific circumstances. Buildings over water may be regulated under shoreland zoning ordinances.

93

Policy Activity - Shoreland Zoning



SITE LOCATION OF DEVELOPMENT ACT

Overview of Existing Law

What is the purpose of the Site Location of Development Act?

The purpose of the Site Location of Development Act ("Site Law") is to control the location of developments that substantially affect the environment in order to protect the public's health, safety and welfare and to ensure that those developments have minimal adverse impacts on the natural environment.

What is regulated under Site Law?

The Site Location of Development Act regulates developments that:

- Occupy a land or water area in excess of 20 acres;
- Contemplate drilling for or excavating natural resources where the affected area is in excess of 60,000 square feet;
- Involve mining (applicant must provide for safety and reclamation of the land);
- Involve certain types of utility transmission lines;
- Involve the construction of a "structure", defined as buildings, parking lots, roads and wharves, paved areas, and areas not to be revegetated that cause a total project to exceed 3 acres); or
- Are "subdivisions". The term "subdivision" is generally defined under Site Law as a division of a parcel of land into five or more lots for sale or lease to the general public during any five-year period, if the lots, together with roads, common and easement areas, occupy an aggregate area in excess of 20 acres.

What is not regulated by Site Law?

- Developments in existence or under construction, or in possession of applicable state of local licenses to operate as of January 1, 1970;
- Developments specifically authorized by the Legislature prior to May 9, 1970; the installation of certain public service transmission lines;
- Renewal or revision of certain licenses.
- Rebuilding or reconstruction of natural gas pipelines or.transmission lines within the same right-of-way.
- A development located entirely within the unorganized territories, with the exception of metalic mineral mining operations or advanced exploration activity.
- Low density subdivisions that meet the ten criteria set out in Title 38, section 488, subsection 5;
- Expansions at existing manufacturing facilities that do not exceed 30,000 square feet in ground area in a calendar year or 60,000 square feet total ground area;

- Storage facilities of particular dimensions, which meet certain criteria;
- Roads and railroad tracks;
- Farm and fire ponds, less than 10 acres;
- Structures within permitted commercial and industrial subdivisions;
- Research and aquaculture leases regulated by the Department of Marine Resources;
- Borrow pits smaller than 5 acres. Internally drained borrow pits from 5 to 30 acres are not required to be licensed under Site Law if the pit is operated in compliance with statutory performance standards;
- Divisions of land that do not meet the definition of "subdivision" are not regulated under Site Law. Certain types of land divisions and the creation of certain types of lots do not fall within the definition of "subdivision" and are therefor not regulated under Site Law. Those divisions of land or creation of lots that are not regulated under Site Law include:
    - Lots which are between 40 and 500 acres are not counted as lots, unless the subdivision extends into a shoreland zone;
    - Lots of more than 500 acres;
    - If the subdivider establishes a single-family residence on a lot and actively uses the lot for that purpose during a five-year period, that lot is not counted as a lot at the end of the five-year period;
    - If the lots are sold or leased to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer, or if the sale or lease is a personal non-profit transaction such as a gift or devise, the lots must be held as such for a five-year period. The lots are not considered to have been sold or leased unless the transaction was intended to circumvent the law;
    - The sale or lease of a common lot, which was created with a conservation easement under Title 33, section 476, but is a lot when later offered for sale or leased without a conservation easement;
    - Transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision, provided the land was not owned by the permit holder at the time the department approved the subdivision.

- Subdivisions are exempt if the:
    - Average density of the subdivision is not higher than one lot for every five acres of developable land in the parcel;
    - Developable land totals 200 acres or less and 50% of the land is set aside through conservation easements;
    - Non preserved developable land is not in the shoreland zone or is not a lake classified under Title 38, section 465-A;
    - Other miscellaneous provisions are met to ensure the integrity of the subdivided land.

- Subdivisions with less than 30 lots are exempt if:
  - The lots are served by a municipal sewer system;
  - The parcel is in a town with a state-approved comprehensive plan and ordinance; and
  - All lots are restricted to residential use for 10 years, after which they may be converted to a different use if permitted by municipal ordinance.

- A residential subdivision of 15 or fewer lots is exempt if:
  - The parcel is in a municipality with a state-approved comprehensive plan and ordinance;
  - The municipal ordinance is as stringent as those in the Site Law rules;
  - All lots are restricted to residential use for 10 years, after which they may be converted to a different use if permitted by municipal ordinance.

What are the standards for obtaining a Site Law permit?

The BEP "shall" approve a development proposal if the following criteria are met:

- Applicant has adequate financial capacity and technical ability to develop the project properly;
- Adequate provision has been made for traffic movement on and off site. A detailed traffic study may be required;
- Development will harmonize with existing environment and not adversely affect existing uses and environmental qualities in the surrounding area. Noise generated by the development (once in place) may be considered;
- Soil types in the area are suitable for the development proposed and will not cause unreasonable erosion of soil or inhibit the natural transfer of soil.
- There will be no unreasonable risk of discharge into ground water;
- The development adequately provides for infrastructure, such as utilities, waste disposal and roads, and open space;
- The development will not cause an unreasonable increase in flooding in the area;
- If on or adjacent to a sand dune, it will not adversely affect the sand dune system.

Miscellaneous provisions.

- BEP has authority to review an application.

- BEP may authorize certain municipalities to review and approve certain subdivisions and structures, and sand, fill or gravel pit mining operations with five or more acres.

Timeline of Major Policy Actions: Site Location of Development Act

Site law enacted to provide review and permitting of large commercial and industrial developments that may substantially affect the environment. Administered by EIC.

Minor changes .

Changes made to procedures and financial responsibilities in the cases of certain electric transmission lines and gas pipelines.

Adds provisions prohibiting siting on sand and gravel formations of developments that discharge into groundwater. Adds "hazardous activity" to developments covered.

Expands exemption of certain municipal and private roads to include all roads and ways under LURC jurisdiction. Requires hearings be held in accordance with APA.

Repeals and re-enacts Site review exemptions, including certain subdivisions and manufacturing expansions. Adds wood supply plan requirement for certain projects. Expands municipal review.

Makes numerous changes to definitions and criteria . Exempts roads and certain borrow pits from review. Expands subdivision exemptions. Adds "federal" to developments covered. Enacts provisions concerning medium-size borrow pits.

69/70 — 71/72 — 73/74 — 75/76 — 77/78 — 79/80 — 81/82 — 83/84 — 85/86 — 87/88 — 89/90 — 91/92 — 93

Expands covered developments to include state, municipal, quasi-municipal, educational and charitiable projects and subdivisions. Also requires ability to meet air and water standards. BEP is created and assumes responsibility.

Eliminates requirement that developments needing BEP licenses undergo Site Law review. Allows municipalities to apply for Site review authority. Adds "structure" to developments covered.

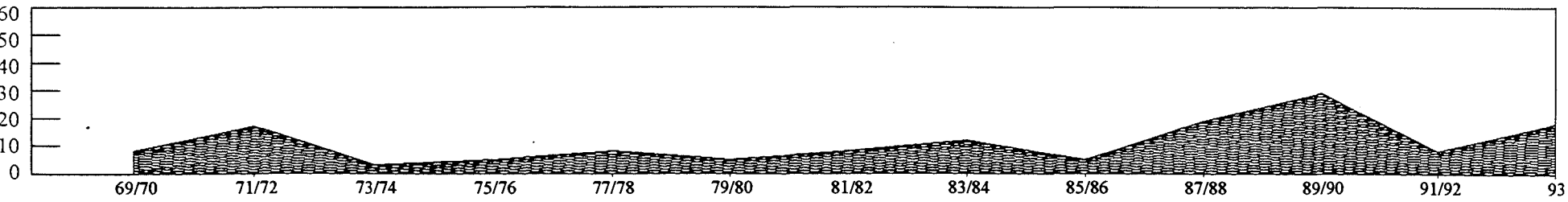
Adds "mining activity" to developments covered under Site Law and enacts provisions concerning the impact of mining on the environment.

Exempts from Site review subdivisions and borrow pits within the jurisdiction of the Land Use Regulation Commission.

Alters definitions of "development" and "subdivisions", including changes to 40-acre exemption. Adds other defs. Expands review criteria to include sand supply, infrastructure, erosion and flooding. Adds regulation of noise.

Adds Site review exemption for certain storage facilities. Expands municipal review to include certain borrow pits. Requires municipalities only have "adequate resources" for review, not professional planning staff.

Policy Activity - Site Location of Development Law



GROWTH MANAGEMENT ACT

Overview of Existing Law

What is the purpose of the Growth Management Act?

The purpose of the Growth Management Act is to achieve state goals related to economic development and natural resource protection through a consistent and comprehensive system of municipal planning and land use regulation.

What is regulated under Growth Management?

The Growth Management laws set forth a process governing the voluntary adoption of comprehensive plans and zoning ordinances by municipalities. The law does not mandate that towns adopt a growth management plan, but does provide planning and implementation grants for town that choose to adopt plans which comply with minimum standards established in the law. The provisions of the Growth Management Act do not apply to lands regulated by the Land Use Regulation Commission.

How does Growth Management work?

The act sets out minimum standards that a municipal plan or ordinance must meet, even though adoption is voluntary. The law establishes a grant program within the Office of Community Development in the Department of Economic and Community Development to assist municipalities in the cost of developing comprehensive plans. A municipality that utilizes a grant must submit its plan and ordinance to the office for review to ensure the plan and ordinance are consistent with state goals. State agencies must conduct their activities in a manner consistent with the Growth Management Act goals.

What deadlines does the law contain?

Although participation in growth management is a voluntary activity, those municipalities engaging in land use regulation must meet the following deadlines:

- For a municipality that received a planning assistance grant and implementation grant before 12/31/91, its land use ordinances are void as of 1/1/98 if not consistent with a state-approved comprehensive plan.
- For all other municipalities, land use ordinances are void as of 1/1/2003 if not consistent with comprehensive plans that meet state standards.
- A municipality's zoning ordinances must be made consistent with a comprehensive plan within 24 months of the adoption of the plan, or by July 1, 1994, whichever comes later.

Timeline of Major Policy Actions: Growth Management Act

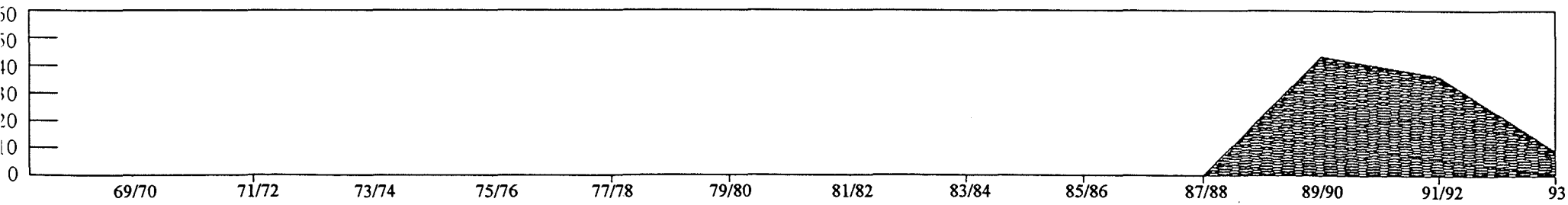
Makes adoption of local growth management programs voluntary instead of mandatory. Eliminates state office and state review of local programs. Retains guidelines and goals for those municipalities that choose to adopt programs. Enacts a reduced financial and technical assistance program. Requires state review of programs developed with state financial assistance. Enacts provision giving preference in the awarding of certain state aid to municipalities with programs reviewed and certified by the state. Adds procedure for voluntary review and certification of local programs by the state. For a community that chooses to adopt local plan, sets deadline for making land use ordinances consistent with a comprehensive plan.

89/90 — 91/92 — 93

Enacts Growth Management Act with three essential parts. First, mandates local growth management programs with comprehensive plans and ordinances consistent with state guidelines and goals. Requires state review of local programs. Sets adoption deadlines. Second, establishes state office to provide assistance and information to municipalities and review local programs. Third, establishes a program of technical and financial assistance to help municipalities develop comprehensive plans.

Provides extension for municipalities with zoning ordiances to bring those ordinances in compliance with comprehensive plans. Makes miscellaneous minor changes to growth management laws.

Policy Activity - Growth Management Act



SUBDIVISION LAW

Overview of Existing Law

What is required under the subdivision laws?

The subdivision laws require that subdivisions within a municipality be reviewed by that municipality's planning board, agency or office, or if none, by the municipal officers.

What is regulated by the subdivision laws?

The definition of "subdivision" is complex and different than that used in Site Law, but generally includes any division of a track or parcel of land into three or more lots of less than 40 acres each, within any five year period beginning on or after September 23, 1971. The division may be accomplished by sale, lease, development, building or otherwise. The definition also includes the construction of three or more dwelling units on a parcel of land within a five-year period and the division of an existing commercial or industrial structure into three or more dwelling units within a five-year period.

What are the standards for municipal review of a subdivision?

A municipality must review subdivisions to ensure that the subdivision:

- Will not result in undue air or water pollution;
- Has sufficient water for reasonable foreseeable needs;
- Will not cause an unreasonable burden on an existing municipal water supply;
- Will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;
- Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;
- Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;
- Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- Conforms with a subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any;

- Has adequate financial and technical capacity to meet the standards of this section;
- Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. Also, there are special provisions concerning frontage on outstanding river segments;
- Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
- If the subdivision, or any part of it, is in a flood-prone area, the proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;
- Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;
- Will provide for adequate storm water management;
- If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1; and
- The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

Who enforces the subdivision law?

Municipal officers.

Timeline of Major Policy Actions: Subdivision Law

Law exists providing municipalities authority to voluntarily review land subdivisions, defined as 3 or more lots in urban, 4 or more in rural; certain agricultural exemptions.

Changes subdivision definition to 3 or more lots in any 5-year period; exempts 40-acre plus lots. Repeals two approval criteria: sewage disposal and muni services impact.

Adds "develop" and "build upon" to those things prohibited in a non-approved subdivision. Adds requirement for one permanent marker on a sold lot.

No applicable laws.

Adds to review criteria "no adverse impact on public rights to physical or visual shoreline access". Also requires evaluation of flood hazards.

Adds to sub. def. construction of 3 or more dwelling units on single parcel. Prohibits "spaghetti lots." Adds storm water measures and impact on wetlands, rivers, streams and brooks to criteria.

Makes minor amendment.

69/70 — 71/72 — 73/74 — 75/76 — 77/78 — 79/80 — 81/82 — 83/84 — 85/86 — 87/88 — 89/90 — 91/92 — 93

Makes municipal subdivision review mandatory. Changes definition to any parcel divided into three or more lots. Adds 12 criteria for subdivision review.

Adds language stating that when property is divided into two lots and then later divided again, later division is considered a third lot; municipal review therefore applies.

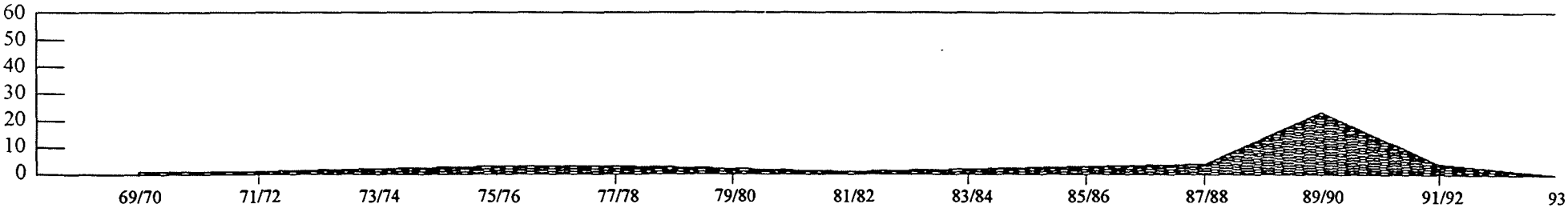
Adds impact on ground water to review criteria. Authorizes municipalities to choose "access to direct sunlight" as a review criterion.

Adds special provisions for shorelands along outstanding river segments.

Clarifies municipalities may enact broader subdivision definition. Adds division of structures to sub. definition. Requires municipal review of 40-acre + lots in shoreland zone and, optionally, in other areas when covered by municipal ordinance.

Adds impact on lake phosphorous concentration to review criteria.

Policy Activity - Subdivision Law



APPENDIX D

Historical overview of major Maine laws affecting land use

Historical Overview of Resource Protection and Land Use Regulation Laws in Maine

Land Use Regulation Study Committee
(September 23, 1993)

Table of Contents

The Natural Resources Protection Act
Historical Overview

104th Legislature (1969-1970)

Coastal wetlands becomes a defined term under coastal wetland statutes administered by the Wetlands Control Board. The construction, maintenance and repair of public utility installations and facilities are added as activities that are exempt from municipal and board notification requirements. Maximum fine for violations established at $100.

105th Legislature (1971-1972)

"Prior written notification" standard repealed. Application to the municipality for a permits required prior to alterations within a coastal wetland. Established permits as valid for 3 years and may not be issued by municipality unless approved by the Wetlands Control Board. Repeals exemption for private roads associated with agricultural, lumber and logging activities and repeals exemption for construction of utility installations and facilities. Maximum fine for violations increased to $500.

Major governmental reorganization creates the Department of Environmental Protection (DEP) and the Board of Environmental Protection (BEP). BEP assumes authority over certain resource protection statutes formerly administered by the Commissioner of Forestry, the Maine Mining Commission, the Environmental Improvement Commission and the Wetlands Control Board. Regulatory authority consolidated into the BEP includes review of municipal coastal wetland permits, permitting activities affecting great ponds, classification of fresh, tidal and marine waters and the regulation of mining and land rehabilitation activities. Repeals authority of Commissioner of Forestry for issuance of permits for alterations affecting great ponds on state lands and repeals the Wetland Control Board. The BEP is granted authority to "adopt, amend or repeal orders regulating, restricting or prohibiting alterations of coastal wetlands."

106th Legislature (1973-1974)

Municipalities authorized to charge a fee for issuance of coastal wetland permits. Rivers, streams and brooks established as a protected resource. A permit is required from Conservation Commissioner for activities that affect those resources, including wharfs, docks or permanent structures in, on or over the resource. Exemptions include public works projects affecting fewer than 100 feet in each mile of resource and private crossing or dams affecting fewer than 300 feet per mile of resource. BEP required to classify great ponds.

107th Legislature (1975-1976)

Department of Conservation's regulation of rivers, streams and brooks is limited to waters "above tidewater". Activities adjacent to rivers, streams and brooks that may result in material being washed into such waters are added as regulated activities.

New "Alteration of Coastal Wetlands" article enacted in Title 38 establishing the BEP, rather than municipalities, as the issuing agency for coastal wetland permits, although municipalities may apply to the board for authority to issue those permits. Exemptions to coastal wetland permit requirements include activities involving less than 1 cubic yard of material and the normal maintenance and repair of utility installations and facilities.

108th Legislature (1977-1978)

Consolidation of BEP's regulatory authority for great pond classification and permitting. Language enacted requiring the board to streamline permitting procedures and allowing board to exempt activities that have minimal impact.

109th Legislature (1979-1980)

Administration and permitting for alterations of rivers, streams and brooks "above head of tide" moved from Conservation to the new Department of Inland Fisheries and Wildlife.

Coastal sand dunes systems added as protected resources under the DEP's coastal wetlands statutes. Adds a requirement for a "sand dunes" permit in addition to a "coastal wetlands" permit, and allows a "single permit" for activities that affect both resources.

110th Legislature (1981-1982)

Applicants allowed to submit evidence on economic benefits and impact on energy resources in applications for river, stream and brook permits, site law permits and LURC permits.

111th Legislature (1983-1984)

Strikes requirement that BEP issue wetland permits within 30 days of application, but leaves that requirement applicable to wetland permits issued by the towns. Also strikes similar BEP requirement for small hydropower project applications.

Outstanding river resources laws enacted including 720 miles of outstanding river segments subject to special protection under IF&W's rivers, streams and brooks statutes. Adds requirement that applicant demonstrate "no reasonable alternative" for alterations affecting significant river segments and repeals exemption on those segments for public works projects and private crossings.

Extends Great Ponds protection to great ponds owned by one person or firm and limits the great ponds exemption for maintenance and minor repair only to activities occurring above the high water line. Exempts LURC great ponds from DEP jurisdiction.

112th Legislature (1985-1986)

Administration and permitting of alterations on rivers, streams and brook laws transferred from IF&W to DEP and consolidated with outstanding river segment statutes.

Freshwater wetlands added as a protected resource. Alterations of freshwater wetlands is prohibited without a permit from the board, except for agricultural activities, peat mining, hydropower projects and interstate pipelines.

Sand dune law amended to allow construction of sea walls in specific areas along the Scarborough River. Great Ponds law amended to include exemptions for certain utility cables and for water lines serving single family homes, and. DEP is required to charge applicant the "actual direct cost" of the permit. River, streams and brooks statutes amended to exempt gold panning when no power equipment is used.

113th Legislature (1987-1988)

Comprehensive overhaul of resource protection statutes. Laws governing great ponds, rivers, streams, brooks, sand dune systems, freshwater wetlands and coastal wetlands statutes are repealed and re-enacted into a consolidated Natural Resources Protection Act. Protected resource status is extended to fragile mountain areas and to significant wildlife habitat mapped by the IF&W.

114th Legislature (1989-1990)

Aquaculture activities regulated by the DMR exempted from NRPA. Resource protection laws extended to freshwater wetlands of less than 10 contiguous acres that are adjacent to a surface water body when the combined surface area exceeds 10 acres. Clarifies that NRPA applies "statewide". Enacts a soils evaluation boring exemption and a conditional exemption for maintenance and repair of private crossings of rivers, stream and brooks. Enacts dredge spoils permitting requirements.

The BEP is required to adopt performance and use standards for Department of Transportation projects that do not affect coastal wetlands or coastal sand dune systems and exempts certain DOT projects from NRPA permitting requirements until those rules are adopted.

Conditional exemption enacted for forest management activities in or adjacent to forested wetlands.

115th Legislature (1991-1992)

Exemptions enacted for cranberry cultivation, the repair, replacement and maintenance of existing road culverts and the repair and maintenance of existing access ways in wetlands to residential dwellings.

Definition of significant wildlife habitat amended to include areas entered into the state geographic information system. DEP is allowed to use sensitive area data in mapping significant wildlife habitat.

116th Legislature (1993-First Regular Session only)

Exemptions enacted for boat moorings, subsurface wastewater systems that comply with DHS rules, alterations in back dunes of coastal sand dune systems and for persons lawfully harvesting marine organisms in coastal wetlands. Culvert exemption expanded. Threatened and endangered plant habitats added as areas that may not be unreasonably harmed by the granting of a permit. Significant wildlife habitat definition amended to state that a significant wildlife habitat area is a protected resource if it is mapped by IF&W or if it is in another protected natural resource.

Land Use Regulation Commission
Historical Overview

104th Legislature (1969-1970)

The Land use Regulation Commission (LURC) created to prepare and administer a comprehensive land use plan for unorganized and deorganized areas of the State and plantations. LURC is empowered to adopt zoning requirements and/or subdivision control ordinances for those areas, to establish heigth, width, area and bulk limitations on structures and to regulate the use of outboard motors on lakes or ponds greater than 640 acres. The goals of LURC include "preventing substandard development, pollution of lakes rivers and streams and protection of the forest resources."

105th Legislature (1971-1972)

Permits are explicitly required from LURC for development review and approval. LURC is required to map areas according to four land use districts: protection, management, holding and development. LURC must adopt standards governing acceptable uses in each district. LURC control is expanded for "lakes, ponds and public roads" to "water and roads". Enhancement of outdoor recreation is added to LURC purpose statement.

LURC is required to adopt a comprehensive land use guidance plan by 7/1/72 and is given the authority to adopt rules and acquire conservation easements.

LURC hearing procedures amended to require findings of fact, conclusions and transcripts of hearing procedures. Hearings may be waived for persons who have received approval under site law for developments from the Environmental Improvement Commission.

Provisions required notice of hearings by certified mail are repealed. Individual notices required only to persons "directly" affected. Transcript requirement repealed and replaced with a requirement that hearings be recorded.

106th Legislature (1973-1974)

72/73

LURC incorporated into the newly created Department of Conservation. Commissioner of DOC established as chair of LURC and is given authority to approve the LURC budget.

Definition of "structure" is amended to include structures "in", as well as on, the ground. LURC is allowed to exclude specific types of structures from the definition. Provisions requiring a 5 year periodic review of district boundaries is repealed and provisions enacted that require LURC to publish the source and amount of contributions.

Adoption dates for comprehensive plan and district boundaries is moved forward to 7/1/75. Maximum fines of $500 per violation established. LURC staff allowed to investigate complaints. LURC appeals procedure is slightly modified.

Flood plains added as a protected resource. "Holding district" designation is repealed. Provisions enacted requiring unorganized areas to adopt comprehensive plans and development standards prior to incorporating.

Jurisdiction expanded to included all public and private lands, including coastal islands, and to address all resources. LURC membership amended twice during same session. First, the number of public members is increased from one to two, and the number of industry representatives is decreased from two to one. Then, total membership is increased by requiring 6 public members. Meetings are required to be held monthly, rather than 5 times a year. A $25 per diem authorized for members.

107th Legislature (1975-1976)

Procedure governing newly organized towns clarified. Newly organized towns remain under LURC until comprehensive plans, maps and zoning ordinances are approved by LURC. Conservation easement language is repealed.

Commissioner of Conservation removed from LURC. Appointments to LURC must be reviewed by legislative committee and approved by the Legislature. Executive Director position created with Commissioner as appointee. Term of Executive Director co-terminus with Commissioner's. LURC prohibited from establishing deer wintering boundaries without IF&W and landowner agreement or without IF&W substantiation. LURC interim zoning provisions extended from 36 to 48 months.

108th Legislature (1977-1978)

Relationship between LURC permits and BEP permits addressed. LURC permitting "supports, but does not require" finding from other regulatory body that project meets site law, minimum lot size, wetlands, great ponds and stream alteration laws. Similar language enacted under BEP's statutes, "supporting, but not requiring" a finding from LURC that the project meets its requirements. LURC is required to coordinate its permitting procedures with other agencies of the state. Criteria for development approval, under both LURC and DEP, amended to require that adequate provisions are made to ensure compliance with air and water pollution laws and other environmental laws, including site law, great ponds, wetland, stream protection and solid waste disposal.

Commissioner of Conservation required to do "biennial" budget for LURC. Per diem increased from $25 to $40 and a $10 minimum application fee established. Procedural changes and clarifications enacted governing areas that intend to incorporate.

109th Legislature (1979-1980)

Membership criteria amended to require Governor to consider persons residing in or near unorganized areas. Definition of structure amended to exempt wharfs, fish piers and traps licensed by BEP.

110th Legislature (1981-1982)

Applicants allowed to submit evidence on economic benefits and impact on energy resources in permit applications.

111th Legislature (1983-1984)

Provisions enacted governing LURC's re-establishment of jurisdiction over previously unincorporated towns. Compensation for members set a legislative per diem. LURC services to unorganized areas must be charged to the unorganized territory educational and Services Tax, services to towns and cities paid from the General Fund. LURC is required to regulate motor vehicles on ice bound inland waters.

112th Legislature (1985-1986)

Logging roads with an area less than 3 acres exempted from permitting requirement if completed to standards. One member of LURC is required to reside within LURC's jurisdiction.

113th Legislature (1987-1988)

Provisions enacted governing the transition of expired members. Two members of LURC must reside within LURC jurisdiction. Repeals LURC discretion to hire "whomever is deemed necessary". Fines increased from $500 to not more than $10,000 per day of violation, courts are allowed to order restoration to "prior conditions." and forest rangers are authorized to enforce LURC laws. LURC field offices established in Greenland and Ashland.

In 1987, the definition of subdivision was amended to include lots larger than 40 acres if the lot has a depth to shorefront ratio greater than 5 to 1 and is located within 250 feet of a lake or pond that is either larger than 10 acres or that drains an area larger than 50 square miles. Early in 1988, the subdivision definition was repealed and replaced with language requiring LURC subdivision review of all lots smaller than 500 acres when the subdivision is "wholly or partly" within the shoreland zone. LURC is required to report to the legislature annually on the number of subdivisions occurring outside the shoreland zone that are exempted from its review. Later in 1988, the definition of subdivision is amended again to include the division of a new structure or structures into 3 or more dwelling units.

114th Legislature (1989-1990)

Subdivision definition amended again. Divisions accomplished by gift do not create a lot unless intent is to avoid the objectives of the subdivision laws. Clarification of laws pertaining to creation of 3 or more dwelling units. 500 acre lot subdivision exemption is repealed and replaced with language allowing for up to 10 lots of at least 40 acres to be created without LURC subdivision review. LURC is required to process subdivision applications within 60 days. Permit processing priority given to structures being replaced after destruction. Spaghetti lots are prohibited. Wood supply plans required for developments requiring more than 150,000 tons per year of wood. Clarifies that NRPA applies statewide and that LURC must ensure adequate compliance prior to permitting. LURC may adopt a moratorium on the issuance of development permits.

115th Legislature (1991-1992)

Exemption for certain culverting activities enacted. Governor is required to consider persons residing on coastal islands when making LURC appointments. Subdivision definition amended: lots greater than 40 that are at least 1/4 mile from waterbodies are exempted from LURC review. Plans creating such exempt lots must be certified by LURC prior to filing with registry of deeds. LURC assessments to unorganized territory tax may not exceed 10% of LURC general fund appropriations. Recording of land division plans required. Repeals requirement that LURC report to legislative committee on number of 40 acre lots created within its jurisdiction. Exempts LURC zoning petitions from advance placement on regulatory agenda. LURC staff authorized to prosecute civil enforcement action using Rule 80-K. Fees increased.

116th Legislature (1993-First Regular Session only)

Spaghetti lot prohibition clarified to apply to any division of land. Fees increased.

Mandatory Shoreland Zoning Act
Historical Overview

105th Legislature (1971-1972)

Mandatory zoning and subdivision controls for shoreland zones enacted. Any land area within 250 feet of normal high water of any navigable pond, lake, river or salt water body is subject to zoning and subdivision controls. Purposes were to maintain safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish, aquatic life, bird and other wildlife habitat, control building sites, placement of structure and land uses, conserve shore cover, visual and actual points of access to waters and natural beauty. Towns given until 6/30/73 to adopt zoning and subdivision control ordinances. Environmental Improvement Commission and LURC may adopt ordinance for towns if they fail to act.

106th Legislature (1973-1974)

Definitions of "pond" and "river" enacted. Pond means any natural water body with a surface area greater than 10 acres. River means any flowing water that drains an area greater than 25 square miles. The term "navigable" is struck, extending the application of the zoning and subdivision controls. State Planning Office required to prepare a list of applicable rivers for towns by 1/1/73.

New schedule adopted for towns. Towns must appoint appropriate municipal body to prepare ordinances by 7/1/73. By 7/1/74, towns must prepare comprehensive plans and adopt shoreland zoning ordinances consistent with that plan. DEP and LURC must adopt minimum guidelines for shoreland zones by 12/15/73. Towns may comply with law by incorporating minimum guidelines. Attorney General may seek order to force towns to enforce shoreland zoning ordinances imposed by state.

107th Legislature (1975-1976)

Provisions enacted pertaining to flood plain development and federal flood insurance requirements. Any ordinance requiring soil suitability analyses must require that testing be prepared and signed by persons certified by Department of Health and Welfare.

108th Legislature (1977-1978)

No substantive activity.

109th Legislature (1979-1980)

No substantive activity.

110th Legislature (1981-1982)

No substantive activity.

111th Legislature (1983-1984)

Penalty provisions revised. District Attorneys, Attorney General and towns may enforce civil fines from $100 to $1000 per violation. New and expanded definitions section enacted. Significant river segments identified with special treatment under shoreland zoning ordinances. Utility hook-ups to buildings in shoreland zones prohibited. Towns must certify to the DEP that shoreland zoning ordinances already adopted meet new significant river segment requirements by 12/15/84. Appointment of code enforcement officers required. CEO's may enforce shoreland zoning ordinances. Definitions of "structure" and "timber harvesting" enacted. Timber harvesting prohibited within 50 feet of water bodies, except that an opening of 30 feet for each 100 feet of shoreline is permitted (provided that no opening exceed 60 feet).

112th Legislature (1985-1986)

Comprehensive repeal, amendment and reenactment of shoreland zoning laws from Title 12 to Title 38. Definition of structure is amended. Zoning Boards of Appeal may grant variances from setback. Shoreland Zones may include structures on, over or abutting docks, wharfs or piers. Clarifies that the shoreland zone may not extend beyond 250 feet from normal high water. Functionally dependent water uses given preference in shoreland zone permitting. Areas in shoreland zone that within the 100 year floodplain established as resource protection district as are areas within the "velocity zone" of tidal waters. Towns may adopt ordinances regulating access to shorelines.

113th Legislature (1987-1988)

Legislature ratifies all shoreland zoning ordinances "adopted and in effect", regardless as to whether or not they comply to minimum guidelines. Timber harvesting prohibited within 250 feet of great ponds.

Comprehensive re-writing of shoreland zoning laws. Resource protection districts extended to 250 feet around coastal and freshwater wetlands. Municipal ordinances must be approved by DEP prior to adoption by towns. Variances must be submitted to DEP. BEP must adopt schedule for municipal compliance.

114th Legislature (1989-1990)

BEP may adopt more restrictive ordinances for special water quality considerations around great ponds not in LURC jurisdiction. Great ponds definition expanded. BEP may impose minimum guidelines where ever provisions in municipal ordinances are less stringent or that do not conform to minimum guidelines. Towns may establish commercial fisheries and maritime activity zones within shoreland zone. Water utilities may sue for injunctive relief against shoreland zone violators. Reforestation within 2 years of harvesting required in resource protection districts around great ponds. Timber harvesting exempted from shoreland zoning restrictions around forested wetlands.

115th Legislature (1991-1992)

Certain culverting activities exempted from shoreland zoning restrictions. Clarification that forested wetlands are exempted from shoreland zoning. Timber harvesting requirements amended to allow up to 40% harvesting within shoreland zones if a forest management plan is completed. Provisions pertaining to nonconforming lots clarified. Towns are required to adopt shoreland zoning ordinances by 7/1/92. For activities around great ponds, permit must be posted on site.

116th Legislature (1993-First Regular Session only)

Towns may reduce shoreland zone around low-value freshwater wetlands to 75 feet, provided the town zones outlets from great ponds as stream protection districts. Culvert exemption expanded. Special exception enacted permitting single family residential structure on lot in resource protection district under specific circumstances. Buildings over water may be regulated under shoreland zoning ordinances.

The Site Location of Development Act
Historical Overview of Key Definitions

"Development which may substantially affect the environment"

104th Legislature (1969-1970)

Original law included any commercial or industrial development that:

- Required a license from the Environmental Improvement Commission;
- Occupied a land area in excess of 20 acres;
- Contemplated drilling for or excavating natural resources; or
- Occupied on a single parcel a structure or structures in excess of 60,000 square feet in ground area.

The law excluded borrow pits for sand or gravel less than five acres in size or borrow pits regulated by the state highway commission.

105th Legislature (1971-1972)

Added "state, municipal, quasi-municipal, educational, charitable" developments to those developments covered under the law.

Added "subdivision" to what was meant by "development" and defined "subdivision" in separate entry.

Added developments occupying a water area in excess of 20 acres.

Added the drilling for or excavating of natural resources under water.

Excluded from definition state highways and state aid highways.

106th Legislature (1973-1974)

Minor technical language change.

107th Legislature (1975-1976)

Struck language applying site review to developments that required a license from the BEP.

Applied "drilling for or excavating natural resources, on land or under water" only to projects in excess of 60,000 square feet.

Struck size description of what was meant by a "structure". However, "structure" was added to definition of development and "structure" was defined in a separate entry.

108th Legislature (1977-1978)

No changes.

109th Legislature (1979-1980)

Added "mining activity" to definition.

110th Legislature (1981-1982)

Added "hazardous activity" to definition.

111th Legislature (1983-1984)

Exempted borrow pits located in the jurisdiction of the Land Use Regulation Commission from definition.

112th Legislature (1985-1986)

Exempted from definition research and aquaculture leases regulated by the Department of Marine Resources.

113th Legislature (1987-1988)

Added "conversion of an existing structure that meets the definition of structure" and "multi-unit housing development as defined in this section located wholly or in part within the shoreland zone".

114th Legislature (1989-1990)

No changes.

115th Legislature (1991-1992)

No changes.

116th Legislature (1993-First Regular Session only)

Added "federal" and "advanced exploration" mining activity" to those developments covered by Site Law.

Struck from definition "hazardous activity", "conversion of an existing structure", and "multi-unit housing development...located wholly or in part within the shoreland zone".

Struck exemptions for state highways, state aid highways, borrow pits less than 5 acres, DOT borrow pits, borrow pits located in LURC jurisdiction, and research and aquaculture leases regulated by DMR. (Note: exemptions enacted elsewhere for all roads, all developments in LURC jurisdiction - except for mining and advanced exploration activity - and research and aquaculture leases regulated by DMR.)

105th Legislature (1971-1972)

Enacted definition that a subdivision required to undergo Site Law review include the following characteristics:

- A division of a parcel of land into five or more lots where:
    - One or more of the lots is less than 10 acres in size;
    - Aggregate land area of lots is 20 acres or more; and
    - The lots are to be offered for sale or lease during any five-year period.

106th Legislature (1973-1974)

No change.

107th Legislature (1975-1976)

Repealed and replaced definition. Effect of change was to add three exemptions:

- Not included in definition were subdivisions where all lots were at least five acres in size, where the municipality in which land was located had adopted certain subdivision regulations, and where lots less than 10 acres were of a certain dimension.
- Also not included were subdivisions where all lots are at least five acres in size but did not total 100 acres in area, and lots less than 10 acres were of a certain dimension.
- Also not included were subdivisions where all lots were at least 10 acres in size.

108th Legislature (1977-1978)

No change.

109th Legislature (1979-1980)

No change.

110th Legislature (1981-1982)

Added two exemptions to what are considered lots:

- Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer.
- Personal, nonprofit transactions, such as the transfer of lots by gift or device.

111th Legislature (1983-1984)

Added two exemptions that apply to subdivisions where one or both of the following exempted circumstances would otherwise cause Site Review:

- Sale or lease of mainland lots of 1/2 acre or less in size that served as parking lots and points of access to the water by boats for island property owners.
- Sale or lease of common lots created with a conservation restriction.

112th Legislature (1985-1986)

Added two exemptions to subdivision definition:

- Lots of 40 or more acres not be counted as lots.
- Five years after a subdivider establishes a single-family residence for his own use on a lot and actually uses the lot for that purpose during that period, that lot shall not be counted as a lot.

Added a clarification of what is meant by a parcel of land.

Parcel of land means all contiguous land is same ownership. Not counted is land divided by a road, unless owner established that road before January 1, 1970.

113th Legislature (1987-1988)

Altered the exemption for subdivisions where lots are 10 acres or greater in size. Added a 100-acre limit to such exempt subdivisions.

Consolidated the two exemptions for subdivisions where all lots are at least five acres in size. (See 1975/76 entry.) Under new version, 100-acre subdivision limit applies in all cases with this exemption, as does requirement that land be in a municipal with subdivision regulations.

Incorporated several measures concerning shoreland protection.

- Amended exemption of lots 40 acres or greater to apply to lots between 40 and 500 acres in size, except where those lots are located wholly or in part in the shoreland area.

- In those subdivisions otherwise exempted from Site Review, the review applied when those subdivision are in the shoreland area.

- Added language to exempt lots greater than 500 acres in size from being counted as lots, regardless of where located.

- Struck one exemption that applied to subdivisions where the circumstance embraced by the exemption would cause Site Review:

- Sale or lease of mainland lots of 1/2 acre or less in size that served as parking lots and points of access to the water by boats for island property owners.

114th Legislature (1989-1990)

Eliminated the exemption for subdivisions where lots are 10 acres in size and make up a total area of 100 acres or less.

Made substantial changes to exemption for subdivisions with all lots five acres or greater.

The five-acre requirement was replaced with requirement that "average density" be one lot for every 5 acres of developable land.

Expanded size limit of subdivision from 100 to 200 acres. However, it required at least 50% of developable land be preserved through conservation easements in units no smaller than 10 acres. Also required that all significant wildlife habitat on property be included in preserved area. (NOTE: Result was no development with more than 100 acres in lots, as with old exemption.)

Prohibited development activity on slopes in excess of 30%.

Required long-term measures to control phosphorous transport when developable land not held in conservation easement lies within a watershed of a lake or pond classified GPA.

Required control of soil erosion and sedimentation during construction according to a municipal.- or conservation district-approved plan.

115th Legislature (1991-1992)

No change.

116th Legislature (1993-First Regular Session only)

Added exemption for transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision, provided the land was not owned by the permit holder at the time the department approved the subdivision. Required Site Review for any further division of the transferred land.

Created new exemption for residential subdivisions with fewer than 30 lots of any size if:

- Lots are served by municipal sewer system.
- Parcel is located in municipality with a comprehensive plan and land use ordinances.
- All lots are residential or open space.

Created new exemption for residential subdivision with 15 or fewer lots of any size if:

- Parcel is located in municipality with comprehensive plan and land use ordinances.
- Municipal groundwater protection is as strong as state regulations.
- All lots are residential or open space.

History of the term "Structure"

104th Legislature (1969-1970)

Defined in "development which..." as occupying on a single parcel a ground area in excess of 60,000 square feet.

105th and 106th Legislatures (1971-1974)

No changes

107th Legislature (1975-1976)

Created separate definition for "structure." Defines as:

- A building or buildings with ground area in excess of 60,000 square feet on a single parcel constructed alone or attached to something; or
- Parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated causing a total project's ground area to exceed three acres.

113th Legislature (1987-1988)

Added to "building or buildings" part of definition an alternative Site review applicability where floor area totals 100,000 square feet or more.

116th Legislature (1993-First Regular Session only)

Eliminated the 60,000- and 100,000-square foot aspects of the "building or buildings" and made threshold three acres of ground area. "Structure" now defined as buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated causing a total project's ground area to exceed three acres.

History of Exemptions under Site Law

104th Legislature (1969-1970)

Exempted from Site review:

- Borrow pits less than five acres.
- Borrow pits for sand, fill or gravel regulated by State Highway Commission.
- Public service transmission lines.
- Developments with appropriate licenses under construction on January 1, 1970.
- Legislature-approved development prior to May 9, 1970.

105th Legislature (1971-1972)

Amended exemption of public service transmission line to those less than 125 kilovolts.

Added exemption from Site review renewal or revision of leases or parcels of land upon which a structure or structures have been located.

Added exemption from Site review state highways and state aid highways.

106th Legislature (1973-1974)

Amends 1971/72 exemption for renewal or revision of leases, stating that structure or structures must have been located as of March 15, 1972.

107th Legislature (1975-1976)

Added exemption from Site review subdivisions where lots are at least 10 acres in size.

Added exemption from Site review subdivisions where all lots are at least five acres in size, where the municipality in which land is located has adopted certain subdivision regulations, and where lots less than 10 acres are of a certain dimension.

Added exemption from Site review subdivisions where all lots are at least five acres in size but do not total 100 acres in area, and lots less than 10 acres are of a certain dimension.

108th Legislature (1977-1978)

Amended the public service transmission line exemption in 1971/72 to 100 kilovolts.

Added exemption from Site review rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

109th Legislature (1979-1980)

Added exemption from Site review municipality and private roads in organized and LURC jurisdictions under certain circumstances.

110th Legislature (1981-1982)

Added two exemptions to what is considered a lot in a subdivision (lots being what qualifies subdivision for Site review):

- Sale or lease of lots to an abutting owner or to a spouse, child, parent, grandparent or sibling of the developer;
- Personal, nonprofit transactions, such as the transfer of lots by gift or device.

111th Legislature (1983-1984)

Added two exemptions to what is considered a lot in a subdivision where one or both of the following now-exempted circumstances would otherwise cause Site review:

- Sale or leased of mainland lots of 1/2 acre or less in size that served as parking lots and points of access to the water by boats for island property owners.

- Sale or lease of common lots created with a conservation restriction.

Added exemption from Site review borrow pits located entirely within LURC jurisdiction.

Added exemption from Site review subdivisions located entirely within LURC jurisdiction.

112th Legislature (1985-1986)

Amended 1979/80 exemption for roads and ways in LURC jurisdiction by applying the exemption to all roads and ways under LURC jurisdiction.

Added exemption from Site review research and aquaculture leases administered by DMR.

Added exemption from Site review subdivision lots of 40 or more acres.

113th Legislature (1987-1988)

Added exemption from Site review for new construction at an existing manufacturing facility where the construction is not a "development which..." and where disturbed area not to be revegetated does not exceed 30,000 square feet in a calendar year.

Amended 1985/86 exemption for lots of 40 acres or more by setting an upper limit of 500 acres and requiring that if all or part of the subdivision is in the shoreland zone Site review must apply.

Added exemption to Site review lots more than 500 acres in size.

114th Legislature (1989-1990)

Repealed the exemption for subdivisions where lots are 10 acres in size and make up a total area of 100 acres or less.

Made substantial changes to exemption for subdivisions with all lots five acres or greater:

- The five-acre requirement was replaced with requirement that "average density" be one lot for every 5 acres of developable land.

- Expanded size limit of subdivision from 100 to 200 acres. However, it requires at least 50% of developable land be preserved through conservation easements in units no smaller than 10 acres. Also requires that all significant wildlife habitat on property be included in preserved area. (NOTE: Result is not development with more than 100 acres in lots, as with old exemption.)

- Prohibited development activity on slopes in excess of 30%.

- Required long-term measures to control phosphorous transport when developable land not held in conservation easement lies within a watershed of a lake or pond classified GPA.

- Required control of soil erosion and sedimentation during construction according to a municipal.- or conservation district-approved plan.

Added exemption from Site review multi-unit housing under LURC jurisdiction.

115th Legislature (1991-1992)

Added exemption from Site review storage facilities that meet certain criteria.

116th Legislature (1993-First Regular Session only)

Added exemption from Site review medium size borrow pits (5-30 acres, as defined in new article 7).

Adds exemption from Site review transfer of contiguous land by a permit holder to the owner of a lot within a permitted subdivision, provided the land was not owned by the permit holder at the time the department approved the subdivision. Required Site Review for any further division of the transferred land.

Created new exemption for residential subdivisions with fewer than 30 lots of any size if:

- Lots are served by municipal sewer system;
- Parcel is located in municipality with comprehensive plan and land use ordinances;
- All lots are residential or open space.

Created new exemption for residential subdivision with 15 or fewer lots of any size if:

- Parcel is located in municipality with comprehensive plan and land use ordinances;
- Municipal groundwater protection is as strong as state regulations.
- All lots are residential or open space.

Amended municipal and private roads and ways exemption from 1979/80 to simply exclude from Site review structures that are only roads.

Added exemption for railroad tracks other than tracks within yards or stations.

Added exemption for certain farm and fire ponds with total surface areas of less than 10 acres.

Subdivision Laws
History of the definition of "Subdivision"

The term "subdivision" was defined in 1954 as 3 or more lots in any size urban area or 4 or more lots of any size in any rural area. Certain agricultural uses were exempted from that definition. Although that definition was subsequently amended several times, it was essentially the same definition that was in effect at the start of the 104th Legislature in 1969.

104th Legislature (1969-1970)

No change.

105th Legislature (1971-1972)

Repeals and replaces definition with one meaning division of any piece of land into three or more lots for the purpose of sale, development or building.

106th Legislature (1973-1974)

Repealed and replaced with definition meaning division into three or more lots within any 5-year period, except when division accomplished by inheritance, order of court or gift to a relative.

Exempts from inclusion as a lot land retained by subdivider for own use for at lease five years.

Exempts from inclusion as a lot a lot 40 acres or greater in size.

Exempts from inclusion as a lot transfer of an interest in land to an abutting landowner, however accomplished.

107th Legislature (1975-1976)

Repealed and replaced definition. Effect is to amend 1973/74 definition by meaning three or more lots within any 5-year period with the period beginning after Sept. 22, 1971.

108th Legislature (1977-1978)

No change.

109th Legislature (1979-1980)

No change.

110th Legislature (1981-1982)

No change.

111th Legislature (1983-1984)

No change.

112th Legislature (1985-1986)

No change.

113th Legislature (1987-1988)

Amends 40-acre lot exemption by allowing municipal review where land is in shoreland area.

Amends 40-acre lot exemption by requiring filing of a plan with registry of deeds and municipal reviewing authority for subdivisions with three or more lots that are 40 acres of greater in size.

Amends 40-acre exemption by allowing municipal review where land is outside shoreland area and municipal has elected to review lots 40 acres or greater in size.

Amends definition to include division of a new structure or structures into three or more dwelling units within a 5-year period, and the division of a commercial or industrial structure into three or more dwelling units within a 5-year period.

Clarifies that subdivision law does not prevent municipalities from enacting more expansive definitions of "subdivision".

114th Legislature (1989-1990)

Amends definition by adding "the construction or placement of three or more dwelling units on a single tract or parcel of land."

115th and 116th Legislatures (1991-1993)

No changes

Growth Management Act
Historical Overview

114th Legislature (1989-1990)

Legislature enacts the Growth Management Act, setting up a mandatory and comprehensive system of land use planning for all Maine municipalities. The act mandates that municipalities adopt local growth management programs with comprehensive plans and ordinances that are consistent with state guidelines and goals. It sets deadlines for adoption of plans and ordinances and it requires state review of local programs. In addition, the act establishes a state office to provide assistance and information to municipalities and to review local programs. It also establishes a technical and financial assistance program to help municipalities develop comprehensive plans.

115th Legislature (1991-1992)

Act is amended to make the adoption of local growth management programs voluntary instead of mandatory. For those municipalities that choose to adopt programs, the amendments retain the requirement that the programs meet certain state goals and guidelines. The amendments also abolish the state information and assistance office and they eliminate the requirement for state review of local programs. A reduced financial and technical assistance program is adopted; it requires state review of local growth management programs that are developed with state financial assistance. For communities that choose to adopt comprehensive plans, the amendments set a deadline for making municipal zoning ordinances consistent with comprehensive plans.

The amendments add a procedure for voluntary state review and certification of local growth management programs. They also enact provisions to give preference in the awarding of certain state aid to municipalities with state-certified growth management programs.

116th Legislature (1993-First Regular Session only)

Extends the deadline for municipalities with zoning ordinances to bring those ordinances in compliance with comprehensive plans. In addition, miscellaneous minor changes are made to growth management laws.

APPENDIX E

Bibliography

BIBLIOGRAPHY

American Farmland Trust. 1986. Density-related public costs. American Farmland Trust.

Arbuckle, Jane. 1987. The cumulative impacts of development in Maine: a study of habitat changes in five coastal towns. Maine State Planning Office.

Audirac, Ivonne, Anne H. Shermyen and Marc T. Smith. 1990. Ideal urban form and visions of the good life: Florida's growth management dilemma. Journal of the American Planning Association, Autumn: 470-482.

Befort, W.A., A.E. Luloff and M. Morrone. 1988. Rural land use and demographic change in a rapidly urbanizing environment. Landscape and Urban Planning, 16, 345-356.

Bollens, Scott A. 1993. Restructuring land use governance. Journal of Planning Literature, 17, February: 211-226.

Burchell, Robert W., et al. 1992. Impact assessment of the New Jersey interim state development and redevelopment plan: Executive Summary. Rutgers University Center for Urban Policy Research.

Chinitz, Benjamin. 1990. Growth Management: Good for the town, bad for the nation? Journal of the American Planning Association, Winter: 3-8.

DeGrove, John M., and Deborah A. Miness. 1992. The new frontier for land policy: Planning and growth management in the states. Lincoln Institute of Land Policy.

deHaven-Smith, Lance. 1984. Regulatory theory and state land-use regulation: Implications from Florida's experience with growth management. Public Administration Review, 44, September/October: 413-420.

Fischel, William A. 1991. Growth management reconsidered: Good for the town, bad for the nation? A comment. Journal of the American Planning Association, Summer: 341-344.

Frank, James E. 1989. The costs of alternative development patterns: A review of the literature. The Urban Land Institute.

Freedgood, Julia. 1992. Does farmland protection pay? The cost of community services in three Massachusetts towns. American Farmland Trust.

Gale, Dennis E. 1992. Eight state-sponsored growth management programs: A comparative analysis. Journal of the American Planning Association, 58, Autumn: 425-439.

Gale, Dennis E, and Charles S. Colgan. 1991. The Maine growth management program: A survey of comprehensive plan committee chairpersons. Edmund S. Muskie Institute of Public Affairs, University of Southern Maine.

Gale, Dennis E., and Suzzane Hart. 1992. Public support for local comprehensive planning under statewide growth management: Insights from Maine. Journal of Planning Education and Research, 11, Spring: 192-205.

Howitt, Arnold M., and James Damicis. 1993. Growth Management in Maine. John F. Kennedy School of Government, Harvard University.

Kayden, Jerold S. 1992. Market-based regulatory approaches: A comparative discussion of environmental and land use techniques in the United States. Boston College Environmental Affairs Law Review 19, Spring: 565-580.

Ladd, Helen F. 1992. Population growth, density and the costs of providing public services. Urban Studies 29, 2: 273-295.

Lawlor, James. 1992. State of the Statutes. Planning, 58, 12: 10-14.

Lincoln Institute of Land Policy. 1986. Perspectives on Florida's growth management act of 1985. Lincoln Institute of Land Policy.

Lowe, Marcia D. 1992. Alternatives to sprawl: Shaping tomorrow's cities. The Futurist 26, 4: 28-34.

Maine Municipal Association. 1993. An overview of municipal fiscal conditions in Maine. Maine Municipal Association.

McKeon, Thomas R. 1991. State regulation of subdivisions: Defining the boundary between state and local land use jurisdiction in Vermont, Maine and Florida. Boston College Environmental Affairs Law Review, 19, Fall/Winter: 385-430.

Peiser, Richard B. 1989. Density and urban sprawl. Land Economics 65, 3: 193-204.

Peterson, Iver. New Jersey adopts guide to control future sprawl. The New York Times, June 13, 1989, p. 28.

Porter, Douglas R. 1991. Do state growth management acts make a difference? Local growth management measures under different state growth policies. Loyola of Los Angeles Law Review, 24, June: 1015-1033.

Rand, Kay. 1992. Evolution of a growth management program in Maine. Environmental and Urban Issues, 19, Summer: 2-7.

Reilly, Michael F. 1989. Transformation at work: The effect of environmental law on land use control. 24 Real Property, Probate and Trust Journal, Spring: 33-74.

Spain, Daphne. 1993. Been-heres versus come-heres: Negotiating conflicting community identities. Journal of the American Planning Association 65, 2: 156-169.

Stewart, Richard B. 1988. Controlling environmental risks through economic incentives. Columbia Journal of Environmental Law, 13, 153-169.

Stokes, Samuel N., and Elizabeth Watson. 1989. Saving America's countryside: A guide to rural conservation. National Trust for Historic Preservation.

Turner Select Committee. 1992. The purchase of development rights: Analysis and recommendations.

#266STUDY

APPENDIX F

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APPENDIX G

Legal analysis of zoning issues affecting Water and Sewer Districts

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December 8, 1993

To: Tim Glidden, Principal Analyst

From: Jon Clark, Legal Analyst

Subj: Issues and Proposals: Planning Coordination Between Water and Sewer Service Providers and Municipalities

The issue, as I understand it, which the Land Use Study Committee has raised is this: How can decisions to undertake water and sewer line extensions and municipal land use planning decisions be coordinated?

You have indicated that the committee has tentatively concluded that increased coordination should be encouraged, but that municipalities should not merely be provided authority to direct all decisions of service providers.

There are two implementation components which must be reviewed:

1) Means of increasing contact and coordination between municipalities and water/sewer providers in cases where municipalities desire low growth (no line extensions).

2) Means of encouraging proactive measures by water/sewer service providers to facilitate municipal plans for growth areas (build line extensions on speculation).

OPTIONS

1) Means of increasing coordination between municipalities and water/sewer providers in cases where municipalities desire low growth.

Option #1. (Get them talking)

- Current law

  Current law does not require that sewer and water service providers become involved in the development of municipal planning.

- Proposal

  Insert into law a provision which explicitly states that water and sewer providers shall cooperate in municipal plan development.

- Comments

  This would merely get service providers and municipalities talking to each other, with the result, hopefully, of better coordination of decision making.

Option #2 (Require approval by town of extension)

- Current law

  I. Requires that sewer service providers assure municipalities that municipal plans have been complied with before extensions are undertaken. 38 MRSA §§1163 and 1252(7).

  II. Requires sewer and water service providers to obtain written authorization from the municipality attesting to the validity and currency of local permits prior to installing service to a lot or unit in a subdivision. 30-A MRSA §4406(3).

  III. Allows consumer-owned water utilities to require potential customers to pay cost of line extensions. 35-A MRSA §6106.

- Proposals

  i) Clarify and modify the current law (I and II, above) so that sewer and water service providers must obtain in all cases (sub-division or not) from the municipality written authorization that the development, lot or unit to be served is in accordance with municipal plans. This would entail repealing current provisions (I and II, above) and enacting a new provision to accomplish this proposal.

  ii) Extend (i) so that the water and sewer service providers are also required to obtain authorization from the municipality that the line extension itself is consistent with municipal plans. Again, a repeal of both of the current provisions would be accompanied by the enactment of a new provision to accomplish this proposal.

    a) Cross-reference provision which allows PUC to grant exemptions from zoning ordinances for public service corporations (sewer service providers are not covered) "when reasonably necessary for public welfare and convenience". 30-A MRSA §4352(4).

    b) Create a parallel provision which permits the DEP to grant exemptions for sewer districts when reasonably necessary for public welfare and convenience.

    c) Place cross-reference in current law allowing consumer-owned water utilities to require potential customers to pay costs of line extension (III, above) so that it is clear that the line extension must be consistent with municipal ordinances or exempted from them by the PUC.

- Comment

  This option should be considered in tandem with options 3 below.

Option #3 (Modify PUC exemption authority)

- Current law

  Grants PUC authority to exempt public service corporations from zoning ordinances when "reasonably necessary for public welfare and convenience." 30-A MRSA §4352(4). The PUC understands this not to apply to sewer service providers because these are not regulated utilities.

- Proposal

  i) Insert into the law a requirement that the PUC, when determining whether an exemption is "reasonably necessary for public welfare and convenience", consider the long-term goals of the zoning and the potential adverse ratepayer impacts of overriding local planning ordinances.

  ii) Create a parallel provision for the DEP to apply to sewer service providers but include consideration of environmental factors.

- Comments

  Preserving the authority of the PUC (and creating an authority in the DEP) to override local decisions is advisable since the interests of ratepayers and of the State may not always coincide with those of the municipality.

2) Means of encouraging proactive measures by water/sewer service providers to facilitate municipal plans for growth areas.

Option #4 (Allow towns to direct and fund extensions)

- Current law

  Nothing in current law prohibits a municipality from offering to fund the full cost of line extensions. With a possible exception in the case of consumer-owned water utilities (35-A MRSA §6106), there would appear to be no means by which a town could require a water or sewer service provider to undertake an expansion merely because the town proposed to finance it.

- Proposal

  Create parallel provisions for water (amend 35-A MRSA §6106) and for sewer (create new section) service providers which explicitly requires each type of service provider to build extensions in accordance with town growth plans, when a town agrees to finance all costs (as determined by the service provider). Provide PUC, in the case of water utilities, and DEP, in the case of sewer service providers, authority to exempt service provider, on appeal, from the requirement in cases where there are capacity or other restraints which make line extension imprudent.

Comment

Since there appears to be nothing in law to stop this sort of coordination from occurring now, it is at least an issue whether giving towns this sort of upper hand is necessary or advisable.

Option #5 (Permit service provider to fund expansions through rates)

- Current law

  Limits the types of items for which a sewer or water provider may charge ratepayers. It is at least arguable that current law does not permit the collection of fees to fund extensions for the purposes of encouraging future growth. The PUC, under its authority to regulate water utilities, clearly would have a dim view of this type expenditure and would likely disallow it.

- Proposal

  Expand purposes for which consumer-owned water utilities are allowed to collect funds for system development (35-A MRSA §6107): Allow collections from ratepayers for expansion plans consistent with local zoning ordinances. Permit similar collections by investor-owned water companies and sewer service providers.

- Comment

  The fundamental issue raised by this proposal is whether the costs associated with using water and sewer services to promote (not merely comply with) growth management plans should be borne by

current ratepayers or taxpayers. It must be kept in mind that PUC regulatory tradition has been to attempt to assure inter-generational equity in rates, that is, that customers aren't charged for benefits to be received by some future ratepayer. In addition, water and sewer service providers often have service territories which extend beyond a single municipal boundary: Is it fair to have ratepayers in one town fund expansions to achieve growth plans of another town?

APPENDIX H

Interagency submissions on watershed planning and natural resource information issues

MEMORANDUM

TO: The Land Use Regulatory Reform Committee

FR: Departments of Economic and Community Development/Office of Comprehensive Planning; Environmental Protection; Inland Fisheries and Wildlife; Marine Resources; Transportation; State Planning Office

RE: Recommendations for Reforming Maine's Land Use System

DT: November 18, 1993

****

Attached are proposals for improving Maine's land use system offered for your consideration. They are guided by a desire to get us closer to the following objectives:

1) Balance the state land use goals. There is, and there always will be, a natural tension amoung the ten goals of the Growth Management Act, as well as among the purposes of the other state land use laws. What is needed is a process to manage these often competing objectives that enables their resolution.

2) Improve coordination among the state land use programs.

3) Integrate planning and permitting at the state and local levels.

4) Encourage interlocal cooperation.

We are putting forth proposals that we believe are feasible in light of budgetary constraints. We also tried to find solutions that would not dismantle existing programs and run the risk of losing these programs' strengths. The proposals are:

1) a pilot project to integrate planning and permitting between State agencies and local governments

2) a watershed planning approach

3) an amendment to the Site Location of Development Law to address traffic in a certified "growth area" (DEP, DOT and DECD) and

4) a series of amendments to the Growth Management Program (under separate cover from DECD).

1. Pilot proposal to coordinate planning and permitting.

With the agreement of the town, identify an area such as a proposed by-pass that is likely to experience development pressure, and develop a process to coordinate comprehensive planning and environmental permitting. Through this process, the town or towns affected and the state agencies (DEP. DECD, DOT, IF&W, SPO) would work in partnership to develop a "master plan" for the area. The objective would be to identify and plan the area upfront, thereby eliminating or greatly reducing the need for individual permits if the plan is complied with. The plan would include:

Natural resource mapping: State agencies would identify and map natural resources, including wetlands, ground water aquifers, significant wildlife areas, archaeological and historic sites. Towns identify natural areas of local concern, such as scenic areas and open space. Mapping takes into account the information contained in the comprehensive plan. Information is digitized for GIS.

Build-out capacity: MDOT, DEP, and towns decide on overall buildout capacity (for traffic, storm water, phosphorus, cumulative impacts), based on an agreed-upon level of technology.

Management standards. DEP, in consultation with other state agencies, develops standards and management practices that meet the standards of the Site Law and NRPA to apply to activities in the area (e.g., setbacks, erosion control, storm water management). General permits could also be used where appropriate. If there are particular activities that are deemed by the Town or the State to need individual review because of their uniqueness or degree of impact, these would be clearly identified in the plan.

Public review and comment. There would be opportunity for public review and comment on the plan before it was made final.

Enforceability. There needs to be a mechanism to ensure compliance with the plan. The plan could take the form of an area-wide general permit, whereby future developers would file a notice of intent to comply with the State and/or the Town, or an area-wide delegation to the Town, or another device that ensures compliance. Joint DEP/town enforcement authority over the plan is another possibility.

Monitoring and assessment. The plan would call for ongoing monitoring by the Town and/or the State.

Evaluation/adjustment: opportunity to change plan with new information.

Report to the Legislature. By January 1, 1995, the State agencies would report to the legislature on this approach, which would address: does it work as a

mechanism for coordinating planning and permitting; anticipated costs, including alternative funding mechanisms; recommended statutory changes to enable it; data needs; state/municipal roles.

2. Watershed Management Approach

PROPOSAL TO ENCOURAGE COORDINATED STATE/LOCAL NATURAL RESOURCES PLANNING AND PROTECTION

By: DEP, DECD, DMR, SPO, IF&W

STATEMENT OF PURPOSE: Under the current land use system, individual permits are usually issued--both at the state and local levels--without the ability to examine the cumulative impacts of a series of individual projects within a given time frame on a particular resource, such as a lake or estuary. An important step toward addressing cumulative impact concerns would be to establish a collaborative state/local process for managing a natural resource or resources within a specified geographic area and to create an appropriate regional context for making state and local decisions about land and water uses that impact such resources.

Background: Maine does not have a comprehensive program that addresses natural resources planning/protection in a watershed or other appropriate regional context. There are, however, examples of programs and projects around the state that are offering technical guidance and financial assistance to municipalities and other local groups to work on interlocal watershed oriented projects. Most notable is DEP's efforts to work with communities on controlling phosphorus loading into lakes from surrounding watersheds. Other federally funded projects include the Casco Bay and Damariscotta River Estuary Projects.

Additionally, under Title 38, municipalities and residents of unorganized territories may apply to the Board of Environmental Protection to form a lake watershed district (Chapter 23) or a coastal watershed district (Chapter 23-A). The purpose of such a district is to protect, restore, and maintain water quality of the designated water bodies and to manage and conserve the land and water resources of watersheds within the jurisdiction of the district. To date, however, there has been very limited use of the Title 38 provisions.

Proposal:

The purpose of this proposal is to:

o create a collaborative process between municipalities and state agencies, regional entities and other interested groups that builds on local comprehensive planning and the use of state natural resource data to develop and implement plans for watersheds as well as for other resources or ecological areas.

o provide direction, encouragement, and incentives to municipalities to implement the watershed district concept in Title 38 or a comparable approach; and

o to position us for anticipated amendments to the Federal Clean Water Act that would create a new federally funded watershed management program that would allow states or local entities to designate watershed areas, develop watershed plans, and have flexibility in issuing permits for point source discharges in locations with enforceable plans.

Steps in a watershed/resource planning process:

--identify priority watersheds/resources on a regional basis around the state;
--select a number of "pilot" project areas to begin the planning process (the number selected would depend on available funding);
--establish watershed/resource teams that involve major stakeholderes in the planning process to guide project decisions; and
--assess existing information and formulate strategies related to management of land and water uses for the area.

Some possible management options for watershed strategies include the following:

-- Create a watershed or special management area district. To help facilitate this process, Title 38, Chapters 23 and 23A could be revised to apply to any watershed area as well as to special management areas defined in ways other than by watershed boundaries (i.e. ecological communities). With the creation of such a district, the municipality or municipalities involved could request full or partial delegation of regulatory responsibilities under the Natural Resources Protection Act. Under this scenario, criteria would need to be developed to determine whether a watershed plan prepared by a district would provide an adequate level of protection. Alternatively, the DEP could be petitioned by the district to adopt rules unique to the district (i.e. performance standards or best management practices), where such standards are determined to be necessary by the district and DEP to protect the quality of the protected resource;
-- Create an interlocal agreement specifying steps that municipalities could take to protect a resource (i.e. adopting consistent land use standards for

development activities that may occur within the watershed of a shared water body);

-- Municipalities in the watershed or resource area could implement actions individually, but in a consistent manner.

Staff and Financial Resource Needs: If this proposal is to be implemented, even in a modest form, additional state agency staff and resources will be needed. Our experience with existing watershed projects indicates that at least one full-time staff person would be needed to carry out an effective program for each pilot project area. Funds will also be needed to support data collection and analysis (will vary from place to place), mapping (using GIS capabilities), team meetings and workshops, public education and outreach, and other administrative functions.

3. Amend the Site Law and regulations regarding traffic reviews

Exempt a development from the requirement to meet the traffic standard in the site law where:

1) the development is proposed to be located in a certified growth area;

2) the traffic attributable to the proposed development would not extend beyond the boundaries of the proposed municipality; and

3) the municipality has adopted a traffic management plan, with provisions for implementation and funding, which has been approved by DOT.

4. Amendments to the Growth Management Program (separate cover)

SUMMARY OF NATURAL RESOURCES DATA AND INFORMATION FOR LAND USE PLANNING AND PERMITTING

Prepared by the State Natural Resource Agencies
for the Land Use Study Committee
October 20, 1993

There is a vast amount of data on natural resources that has been collected over time for a wide array of purposes. Most of it has been generated for natural resource protection and management, rather than for land use regulation. This summary attempts to provide a general overview of what information we have for planning and permitting purposes, where the major gaps are, and what is needed to improve land use management.

I. ELEMENTS OF NATURAL RESOURCES DATA

For land use purposes, the major elements of natural resources information are: 1) location, 2) quality or health, and 3) value.

A. Location: Information on the location of natural resources is critical for land use planning purposes. The quality,completeness and availability of the data on where resources are located varies depending on the resource. However, overall our information on the location of natural resources is good.

- Ocean, lakes, rivers
  Mapped to 1:24,000 scale. Being digitized for GIS.
- Streams and brooks
  Mapped to 1:24,00 scale. Some small, intermittent streams regulated by NRPA do not show up, and site-specific analysis is sometimes needed. Being digitized for GIS if mapped on USGS topo maps.
- Wetlands (coastal, freshwater, forested): Mapped by US Fish and Wildlife (National Wetlands Inventory), 1:24,000 scale. Mapping for Maine nearly complete, some northern areas remain. Evaluations of NWI by DEP and LURC have shown them to be accurate; somewhat conservative. Forested wetlands are a problem because natural features are difficult to identify: they are defined by soils. NWI maps are in process of being digitized for GIS; coastal areas are currently being digitized through federal funding. There are also older, MGS wetlands maps at a scale of 1:50,000, which identify non-forested wetlands but assign no relative value. Delineation of the precise boundary of a specific wetland is needed on a case-by-case basis. Federal Wetlands Delineation Manual describes how to do this, but it takes experience.

- **Aquifers:** MGS has been mapping significant sand and gravel aquifers, mapping not yet complete over entire state. All mapped areas are digitized.
- **Sand Dunes.** Mapped by MGS, but this is a changing and fluctuating resource. Maps will need to be revised with new data from MGS's Shoreline Erosion Study currently underway.
- **Significant Wildlife Habitat.** IF&W has developed criteria for the definition and mapping of waterfowl and wading bird habitat, seabird nesting islands, and deer wintering areas. See "Attachment" for further detail on the status of IF&W's process for identifying and mapping significant wildlife habitat.
- **Natural areas (includes natural heritage and critical areas).** There are 654 critical areas covering significant botanical, geological, scenic, and hydrological sites. These have been identified through issue-oriented surveys and registered with the voluntary cooperation of the landowners. Data on these sites has been integrated into the Biological Conservation Database (BCD) of the Natural Heritage Program. The BCD contains information (locational, life history and status) for endangered, threatened, or rare plant species, natural communities, and rare animals. Animal data maintained by IF&W; other data maintained by Natural Areas Program.
- **Rare and endangered species habitat.** IF&W identifies and maps habitats for federally-listed and state-listed endangered and threatened animals. Natural Areas Program identifies and maps habitats for federally-listed and state-listed rare, threatened and endangered plants. Habitat information is electronically maintained in the BCD.
- **Fragile mountain areas.** Defined in NRPA to mean areas above 2,700 feet in elevation from mean sea level. The November 1975 Critical Areas Program report *Mountain Areas in Maine* identified fragile mountain tops.
- **Drainage divides.** Minor drainage divides separating drainage basins have been compiled statewide and have been digitized.
- **Critical marine areas.** As part of the SPO Maine Coastal Program effort to develop a marine policy for Maine, there is an effort to develop a marine habitat classification system. The Oil Spill Commission is also identifying critical marine areas.
- **Surficial geology maps.** These describe the types and thicknesses of materials below the souls and above the "ledge." The entire state is digitized at 1:250,000 scale. Most of the state has been mapped at a more detailed scale (1:62,500 or 1:24,000) but only a small portion of these have been digitized.
- **Floodplains.** FEMA has published maps of flood zones in most incorporated towns within the State.
- **Soils.** Mapped by Soil Conservation Service (USDA) by County. Map scale 1:20,000.

-- **Land use/land cover.** This refers to overall landscape patterns (forest, wetlands, uplands, etc.) The lack of good information reflects the tendency to look at natural resources individually rather than as part of a larger ecosystem, but this information is needed for land use planning.
-- **Scenic areas.** No statewide inventory.

B. Monitoring Resource Health. Resource quality is another element of natural resources information that is critical to land use planning and permitting. For example, the existing health of a lake is an important consideration in deciding what types and patterns of land use activities should be permitted to occur around it. There are numerous reports, studies and sources of monitoring data on the health of our natural resources, especially for surface waters. There are also many targeted data-gathering efforts underway, such as the Casco Bay Estuary Project, Damariscotta River Project, the Gulf of Maine project, and numerous others. Identified below are some of the major sources of information commonly used for land use planning and permitting.

-- **Surface water in general:**
    -- State Biennial Report to Congress (Section 305(b) of the Federal Water Pollution Control Act) reports on the existing quality of Maine's surface and ground water, the major factors affecting the use of those waters, and evaluates trends in water quality. Sources of information are a compilation of existing data, and some monitoring. Report's strength is the identification of attainment/nonattainment of designated uses. Report's weakness is that a small percentage of waterbodies are monitored, therefore trend analysis is difficult.
    -- Biological impact: About 200 river and stream sites have been evaluated for biological integrity, using quantitative criteria. In an electronic database; software will be available. Used for water quality permitting.
    -- Nonpoint Source Assessment Report (latest final is 1988).
-- **Lakes.** Water quality data on about 750 lakes; electronic database. Critical phosphorus loading values are estimated for all lakes. Available in TOWNPACK (a computer database created to assist towns in Comprehensive Planning) with percent watershed area calculated for each town in a lake. LURC's 1987 Wildlands Lake Assessment surveyed 1,511 lakes over 10 acres in size and the 1989 Critical Areas Program Maine Lakes Study looked at 987 lakes over 10 acres in size in the organized towns. Both of the inventories used 7 parameters to rate the lakes: fisheries, wildlife, scenic, shore character, botanic, cultural, and geologic. The data is held by the respective agencies.
-- **Shellfish bed closures** hand-mapped by DMR. Intend to get this into GIS.

-- **Wetlands.** Limited information on wetlands acreage loss. USF&W report estimates historical loss at 20%. However, this figure is not substantiated by strong data.

-- **Ground water.** MGS sand and gravel aquifer maps group aquifers on the basis of yield quantity. Limited water quality data. NO3 studies in progress related to agricultural impact, hazardous waste, LUST, saltpiles and landfills digitized on GIS for 4 counties; entire State complete in 1 year.

-- **Sources of impact.** An important piece of information on resource health is the location of sources that may impact it.
-- Surface waters. Major discharges have been mapped. Location of CSOs mapped by towns, not statewide. OBDs not mapped. Locations of NRPA and Site-licensed activities have never been mapped, except for a GIS poiot project nearing completion in Wells.
-- Ground water. Landfills, underground storage tanks, hazardous waste sites mapped, being digitized.

C. Resource Value. This gets to the issue of whether a resource is "significant," and can have major implications in a land use management system, for a resource's "significance" may be the driving factor in whether it is regulated at the federal, state or local level, or indeed regulated at all. Evaluation of a resource's significance involves not only scientific assessment, but sometimes consideration of social values as well. The Comparative Risk Project currently underway may provide further information on both the scientific risk, and a sense of a particular natural resource's value to the public.

-- **Surface water.** All marine and fresh waters have been classified by designated uses legislatively. Classifications have been digitized. In addition, some surface waters have been legislatively identified as "outstanding natural resource waters" or "outstanding river segments."

-- **Wetlands.** Wetlands have been classified by DEP regulation into Class I, II or III, which assigns a "value" with respect to the functions – such as flood storage, wildlife habitat, groundwater recharge – it provides. This classification has been done for the purposes of NRPA permitting, and thus has a direct bearing on regulatory requirements. Classifications are not mapped. Regarding non-tidal wetlands, NRPA limits the State's regulatory authority to wetlands that are at least 10 acres in size, thus implying that small (<10-acre) isolated wetlands are of lesser "value." Also, IF&W has an old inventory for wetlands which has ratings (high, moderate, and low) applied for the value of the wetland to waterfowl. These values determine where resource protection districts mut be applied around wetlands (Shoreland Zoning). The inventory is dated (1972-3) and the ratings are subjective.

-- **Ground water.** All ground water legislatively classified at GW-A, but many areas are not attaining.

II. DATA USES

A. Current Uses in Planning and Permitting

1. Comprehensive Planning: DECD provides the following information on natural resources to cities and towns when they begin their planning program:

a. Sand and gravel aquifer locations (from MGS)
b. Significant wildlife habitat, (e.g., deer wintering areas, high and moderate value wetlands (from IF&W)
c. Natural areas and rare/endangered species habitat (from Natural Areas Program at DECD)
d. Fisheries information, shellfish closures (from DMR)
e. Soil information: directly from Soil Conservation Service
f. Lake phosphorus control program information (DEP)
g. Location of underground storage tanks (DEP)

2. NRPA jurisdiction and standards for review

Jurisdiction. NRPA jurisdiction is based on proximity to a protected natural resource (wetland, great pond, river, stream, brook, coastal sand dune, fragile mountain area, significant wildlife habitat). *For all natural resources except significant wildlife habitat, the statutory definitions, not maps, control jurisdiction.* Significant wildlife habitat must be mapped in order to trigger NRPA jurisdiction.

Standards. One of the standards of review is that a project "will not unreasonably harm significant wildlife habitat." This is a site-specific review by IF&W; significant wildlife habitat, if in another protected resource such as a coastal wetland, does not need to be mapped in order to be the basis for condition or denial of an NRPA permit. Wetlands classification provides the basis for wetlands regulation. Outstanding river segments get special protection (there must be no reasonable alternative that would have less adverse effect).

3. Shoreland Zoning. Requires municipalities to establish land use controls for all land areas within 250 feet of ponds and 10-acre non-forested freshwater wetlands, rivers with watersheds of at least 25 square miles in drainage area, coastal wetlands, tidal waters, and within 75 feet of USGS-mapped streams. Use of NWI or MGS wetlands maps are acceptable to identify wetlands needing shoreland zones. 250' resource protection districts required around wetlands rated as moderate or high

value for waterfowl habitat based on 1970's inventory by IF&W. DEP has provided this data to towns on MGS wetlands maps.

4. **Site Law review.** Site review is triggered by the size of the proposed development, not by natural resource impact or proximity. Primarily Site review relies on site-specific analyses. However, the following are general sources of information regarding natural resources used during a site review:
-- Water quality information, particularly phosphorus loadings for lakes.
-- Natural heritage data base, (from DECD) for occurrences of rare plants, registered criticial areas (areas of unusual, natural, secnic, scientific or historic significance), and other natural features of special concern. If something is identified, it serves as a "red flag" that futher review is needed.
-- Significant wildlife habitat (from IF&W). Does not need to be mapped.

B. General Program Uses for Natural Resources Data: Current and Prospective

1. **Predictability in planning and permitting.** Good information on the location and quality of natural resources can provide greater predictability in the permit process, enable planning, and provide incentives to locate away from protected resources.

2. **Base state jurisdiction on impact.** It is hoped that eventually, better information on natural resources will enable permitting jurisdiction to be based on impact, rather than size thresholds, thus making jurisdiction more precise.

3. **Status and trends.** Are our resources healthy and self-sustaining?

4. **Program evaluation/environmental indicators.** Natural resources data is needed to evaluate whether public and private efforts to protect natural resources are working. Environmental indicators are pieces of information selected because they serve as good "indicators" of a resource's health, and thus can be used to measure environmental trends and conditions. Administrative or process measures, such as the number of permits issued, are generally not good indicators, although they are far more common as a means to evaluate programs. A good indicator should address three questions: 1) what is happening to the environment, what are the changes and trends? 2) what are the causes of this change, what are the "stresses"? 3) what is being done about it, what is the management response? This kind of approach helps to ensure that public and private resources are being targeted to where they will be the most effective. SPO

has developed a set of environmental indicators and is using it to develop a state of the environment report.

III. GAPS, NEEDS and COSTS

A. Major Gaps:

1. Groundwater classification
2. Mapped significant wildlife habitat

B. Needs

1. A single, accessible repository for data. There is much information already existing regarding natural resources that does not get used because it is not accessible or in a compatible format, and often has not been kept current. Future information-gathering should be made GIS-compatible where appropriate. However, GIS is a tool and is only as good as the data going into it. Need good QA/QC, and to make sure information is kept up-to-date. Also, there is much information at the town level that could be useful if is is put on a statewide database.

2. Data analysis and guidance. Raw data will always need analysis and judgment in applying information to land use management decisions.

3. Mapping resources is critical, but cannot be a complete substitute for site-specific analysis. Mapping of natural resources can go a long way toward providing greater predictability and natural resource protection. However, land use management for the protection of natural resources is more than a simple process of pinpointing a resource on a map and drawing a band around it. Many activities may be allowable close to resources as long as they are done right, which is one area where a site-specific analysis would be needed. An ecosystem involves complex relationships of natural features and human activities, which a simple identification will not adequately manage.

4. Gathering information is a shared responsibility between the public and private sectors. Good, high quality data is needed by government, the regulated community, and the public. Responsibility for gathering data is a shared responsibility; the State cannot do it all. Site-specific data will still be needed in many cases, and it should be the individual's responsibility to provide it. There may be ways to facilitate data collected by individuals, such as wetlands delineation and ambient water quality

information, to be loaded into GIS to make it generally available and to add to our information base.

C. **Costs.** The State agencies have not done an analysis of the cost of meeting data needs. LURC conducted a feasibility analysis of taking over NRPA (mapping and zoning etc.), which provides a good model for a cost analysis of gathering necessary information.

ATTACHMENT:

Status of IF&W's Significant Wildlife Habitat Mapping and Identification

IF&W has developed criteria for the definition and mapping of waterfowl and wading bird habitat, seabird nesting islands, and deer wintering areas. IF&W is in the process of developing criteria for defining shorebird nesting, feeding and staging areas. Definitions of habitat of endangered and threatened species will be handled on a case-by-case basis and wait until specific needs are identified that cannot be handled with Endangered Species Act essential habitat designation. IF&W has provided maps of candidate significant wildlife habitats to 280 towns developing comprehensive plans.

- Seabird nesting island definitions will be adopted in rules promulgated by the Commissioner of IF&W under Title 12 authority by this winter. Digitizing of seabird islands is nearly complete and will be available in time for adoption of maps by regulation beginning this winter.

- Definitions of high and moderate value waterfowl and wading bird habitats in non tidal areas will be adopted in rules promulgated by the Commissioner of IF&W by this winter. Digitizing of these habitats for south-central Maine (IF&W Region B and adjacent towns) will be completed this winter. Plans for additional digitizing are not final.

- Definitions of high and moderate value waterfowl and wading bird habitat in tidal waters have been drafted but the data is being checked and corrected. When field data is corrected, the draft criteria will be tested and finalized. Definitions will be adopted in rules promulgated by the Commissioner of IF&W by the spring of 1994. Boundaries of areas to be rated in tidal waters have been digitized but need to be error checked. Maps should be available in digital format by the winter of 1994.

- Definitions of high and moderate value deer wintering areas have been drafted and are being applied to map candidate areas for comprehensive planning. Definitions for significant habitat will not be adopted until the Department has determined whether statewide application is warranted. Digitizing of these habitats for south-central Maine (region B and adjacent towns will be completed this winter. Plans for additional digitizing in organized towns are not

final. Deer wintering areas in LURC jurisdiction have been mapped on 7.5' maps and are being error checked. They will be digitized by the spring of 1994.

- Definitions of shorebird nesting, feeding, and staging areas are being drafted and additional field data is being collected. Known shorebird areas have been digitized and error checking will be completed by the winter of 1994.

- Endangered and threatened species habitat designated as essential habitat under the Maine Endangered Species Act have been mapped and digitized except for a few eagle nest updates from 1993. Eagle nest sites and roseate tern nesting areas have been have been adopted. Habitats of other species will be adopted as the essential habitat is identified. The next essential habitats will be for piping plovers and least terns. No definitions for endangered and threatened habitat as significant habitat are planned until a specific need not addressed by essential habitat designation is identified. Information on other endangered and threatened species and habitats are provided to towns as part of comprehensive planning.

- Information on observations and habitat of endangered and threatened species and candidates for this designation are stored in the BCD database maintained by IF&W. Data sets from the old Heritage program and IF&W database have been merged in the BCD and overlaps will be cleared up by December, 1993. From 150 to 200 new element occurrence records will be added and point locations of all records in the BCD will be in entered in the State GIS by December, also. At that time, all records on will be available from the BCD with maps.

APPENDIX I

Synopsis of report from the Land Use Regulation Commission regarding development of standards to administer the Natural Resources Protection Act

John R. McKernan, Jr.
Governor

C. Edwin Meadows, Jr.
Commissioner

DEPARTMENT OF CONSERVATION
Telephone (207) 287-2631
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March 26, 1993

Senator Mark W. Lawrence, Chair
Representative Paul F. Jacques, Chair
Joint Standing Committee
on Energy and Natural Resources
State House Station #2
Room 120, State Office Building
Augusta, Maine 04333-0002

RE: Process Report on Developing Standards to Administer the Review Activities under Natural Resources Protection Act

Dear Senator Lawrence and Representative Jacques:

Please find attached a status report by the Commission on the procedures and related issues for developing consistent standards to administer the review activities of the Natural Resources Protection Act (NRPA) in the unorganized areas of Maine. This report is submitted to fulfill the Commission's reporting obligations under P.L. 1991, c.804.

As specified in Chapter 804, the Commission initiated an assessment of the feasibility of the Commission administering the review functions of the NRPA in the unorganized townships and plantations, in lieu of the Department of Environmental Protection, which currently is responsible for administering the program state-wide. The law also required the Commission to begin mapping freshwater wetlands; that mapping is now underway.

This assessment explored the similarities and notable differences between the Commission's land use program and the NRPA program, resulting in identification of certain difficulties and opportunities, including some policy issues that really require further consideration of the Legislature. Mapping of freshwater wetlands, including forested wetlands, in a cost-effective and reliable manner emerged as a central issue in this assessment because the Commission's programs are based in large measure upon advance mapping of sensitive or other protected resources. This mapping is a necessary planning consideration for landowners who manage or develop the resources as well as to the Commission which oversees those activities. The assessment suggests the most cost-effective way to reliably map wetland areas is through infrared aerial photography, utilizing U.S. National Wetlands Inventory maps recently completed for Maine, supplemented by ground surveys to verify accuracy of photo interpretation. The Commission executed an agreement that will provide for ground surveys of 1/3 of its jurisdiction this summer. We are cautiously optimistic that the results will be favorable.

As discussed in detail in the report, the Commission is recommending that no change in administration of the NRPA with respect to the Commission be made at this time, in order to allow full opportunity to assess the reliability of the mapping approach on a large scale and consider some policy issues relating to wetlands regulation and administration.

In the meantime, if you have any questions, or suggestions that would increase the value and relevancy of this assessment to the Committee, please do not hesitate to let me know.

Sincerely,

David E. Boulter

David E. Boulter
Director
Maine Land Use Regulation Commission

DEB/je

Attachment

xc: File

ADDENDA

During the study, David Boulter, executive director of the Land Use Regulation Commission, presented a case study of the Commission's efforts to map forested wetlands for an eventual assumption of Natural Resource's Protection Act jurisdiction. This was essentially an update of the effort described previously in this Appendix. The emphasis of the effort is on accuracy and precision necessarily offset by cost. Accuracy is highest on the open water wetlands (down to 1-3 acres in size) and lowest on forested wetlands (these may be underestimated by 15-20%). The cost of mapping and digitizing of this data (for the GIS) through a combination of aerial photography, field work and landowner review is estimated at $250,000 for the 10 million acre LURC jurisdiction (~2.5¢/acre). Mr. Boulter suggested that this data collection effort raised several policy questions with which the Commission and perhaps the Legislature may have to deal. These include:

- Whether regulation should focus on smaller, higher value wetlands and relax control on lower value wetlands.
- The end use of the data has a critical impact of the method of data collection (planning needs less accuracy; regulation needs higher accuracy).
- Natural resource inventory work is a long term effort that is essential but is too easy to delay. Sustained legislative and executive support is critical.

APPENDIX J

Proposed amendments to Coastal and Lake Watershed District statutes submitted by the Department of Environmental Protection

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To Tim Glidden	From DEC-15-'93 14:44 R
Co. Leg Pol & Legal Analysis	Co. DEP
Dept.	Phone # 287-2111
Fax # 7-1275	Fax # 7-7826

STATE OF MAINE
DEPARTMENT OF EN

JOHN R. McKERNAN, JR.
GOVERNOR

DEBRAH RICHARD
DEPUTY COMMISSIONER

To: Tim Glidden, Legislative Policy & Legal Analysis
From: Don Witherill, DEP DTW
Subject: **PROPOSED REVISIONS TO TITLE 38 M.R.S.A., CHAPTER 23, LAKE WATERSHED DISTRICTS AND CHAPTER 23-A, COASTAL WATERSHED DISTRICTS**
Date: December 15, 1993

At the December 2nd meeting of the Land Use Study Committee during the discussion of watershed management options, the Committee asked State agencies to provide any recommended modifications to existing laws. In particular, we were asked to provide recommendations on revisions to the Chapter 23, Lake Watershed Districts, and Chapter 23-A, Coastal Watershed Districts.

To date, neither Chapter 23, nor Chapter 23-A has been successfully used (a lake watershed district was considered, but voted down in Naples). Towns have gotten together to participate in watershed projects in several instances, but have not gotten to the point of setting up a governing body with a budget to manage watershed activities on an on-going basis. This is, however, an important option for towns considering long term options for managing their resources.

After reviewing the contents of Chapters 23 and 23-A, we have concluded that the overall approach is still valid, but some changes are needed to make this body of law more useful. The changes we recommend are as follows:

1. The applicability of the law needs to be broadened to allow for the formation of watershed districts to protect rivers, streams and freshwater wetlands, in addition to lakes and coastal waters. It would be simplest to consolidate the existing two chapters into one chapter that is written broadly enough to addresses all of the resources.

2. The purpose of the law should be broadened to allow the districts to manage other functions of the resources, besides water quality, such as flood control, ground water recharge and discharge, erosion control, fisheries and wildlife habitat.

3. The laws set up a process whereby the Board of Environmental Protection (BEP) must conduct a public hearing and then determine whether or not a watershed district is warranted (§2002, par. 3-5). This process

memo to Tim Glidden
12/15/93

seems unnecessarily complex, and should be replaced with a provision for DEP to affirm the creation of a watershed district provided it is properly organized under the statute. This process could be set up similarly to the section on municipal delegation of NRPA under 38 M.R.S.A. §480-F.

4. The law should contain a provision which allows a watershed district to develop a Statement of Intent, subject to voter approval, which may include responsibilities beyond those listed in §2007.3, or may restrict the district's activities to less than those listed in §2007.3. This is important since one of the arguments against authorization of a watershed district has been that it will be another layer of government that could grow into something bigger (by amending its charter) than initially conceived. With adoption of a Statement of Intent, voters would have to authorize any additional activities to be undertaken by the district.

5. Much of Chapters 23 and 23-A delves into the details of organizing the district. While pretty dry, this information does serve a useful purpose by setting up a framework for the parties involved in the process to follow, thereby saving them from having to reinvent it. Therefore, beyond simplifying the BEP's approval process discussed above, there is not good reason to cut out the organization details. It may be useful, however, to allow the organizing parties to vary some of the provisions to meet the needs of a specific circumstance. This could be done by adding an umbrella statement that requires the organization to include all of the provisions contained in the law, but with an allowance for variations in details, provided a rationale for changing them exists.

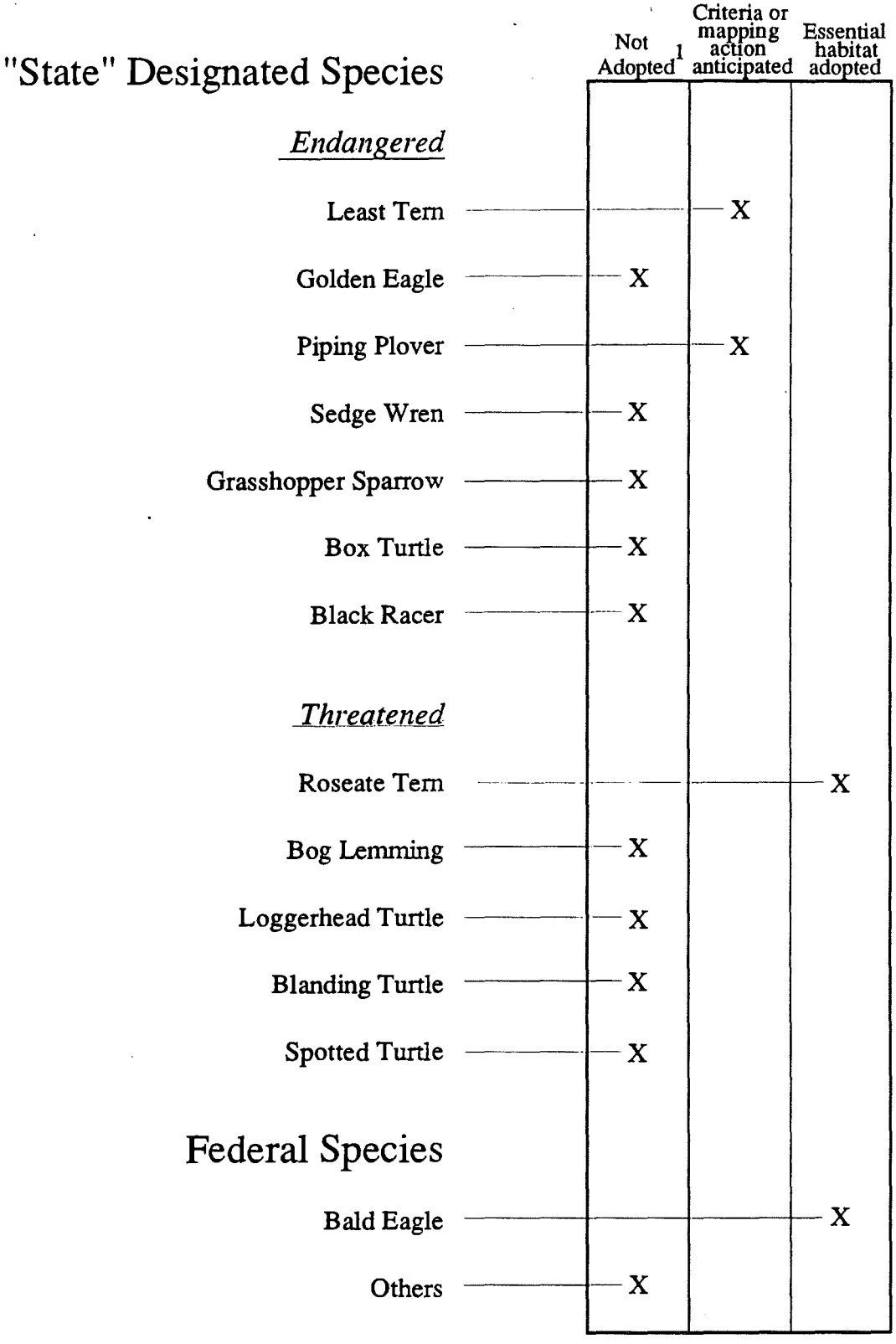
6. While detailed on the steps for organizing a district, Chapters 23 and 23-A do not provide "how to" guidance for actually putting together a watershed management plan. Past experience has shown that there is a strong need for this kind of assistance. DEP, in collaboration with other state agencies, is interested in providing such guidance. Language in the law actually is not required for us to do so. However, it would be helpful to have the legislature's endorsement of this activity through the addition of appropriate language in the law.

With the above changes, we believe the law authorizing watershed districts will be more useful to communities that are looking for ways to manage their water resources. We would be happy to put together recommendations for specific language changes if the Land Use Study Committee is interested.

APPENDIX K

Status of significant wildlife and endangered species habitat mapping

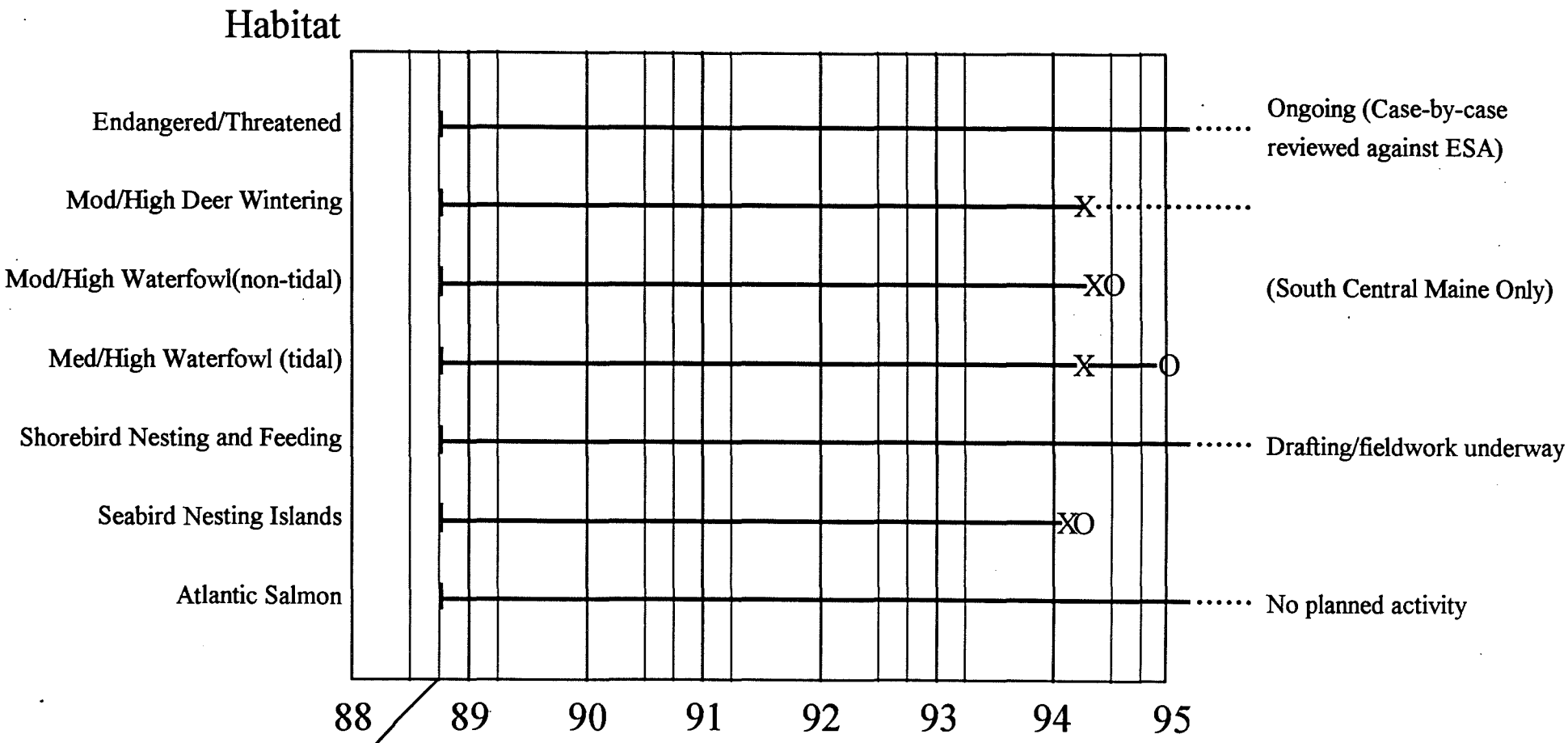
Essential Habitat Mapping under the Maine Endangered Species Act* by the Department of Inland Fisheries and Wildlife



* Essential habitat provisions of Endangered Species Act enacted by 87 PL c. 800, on 8/4/88

[1] IF&W may be engaged in evaluations of individual "not adopted" species.

Status of Significant Wildlife Habitat Mapping for the purposes of the Natural Resources Protection Act* by the Department of Inland Fisheries and Wildlife



* *Adoption of NRPA on 8/4/88 (87 PL c.809)*

Key

X = Criteria adopted

O = Maps (Once adopted by DEP, habitat is afforded full NRPA protection)