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**REPORT
of the
PLANNING ADVISORY COUNCIL**

JANUARY, 1990

**Jon A. Lund, Chairman
Mathew H. Eddy
Mark A. Kearns
John M. Lord
Rebecca Warren Seel
Susan S. Thomas
Brenda York**

PLANNING ADVISORY COUNCIL

Members

January, 1990

Jon A. Lund, Chairman
Director, Natural Resources Council of Maine
21 Second Street
Hallowell, Maine 04347

Mathew H. Eddy
Director of Planning
Greater Portland Council of Governments
233 Oxford Street
Portland, Maine 04101

Mark A. Kearns
Real Estate Developer
P.O. Box 1528
Wells, Maine 04090

John M. Lord
Planning Officer
City of Bangor
1361 State Street
Veazie, Maine 04401

Rebecca Warren Seel
Attorney
Maine Municipal Association
RFD #1 Box 502
Belgrade Maine 04917

Susan S. Thomas
Realtor
Thomas Agency
19 Main Street
Winthrop, Maine 04364

Brenda V. York
Farmer
RFD 2, Box 2260
Farmington, Maine 04938

EXECUTIVE SUMMARY
PLANNING ADVISORY COUNCIL ANNUAL REPORT
January, 1990

The Planning Advisory Council was established by the Comprehensive Planning and Land Use Regulation Act of 1988 [30-A M.R.S.A. §4301 et. seq.]. The Council's purpose is to advise the Office of Comprehensive Planning on the development of all rules, guidelines and reports for the implementation of the Act and to report annually by January 1 to the Governor and the Energy and Natural Resources Committee on any changes that may be required to accomplish the purposes of the Act.

In establishing the Act, the Legislature found that "the most effective land use planning can only occur at the local level of government and comprehensive plans and land use ordinances developed and implemented at the local level are the key in planning for Maine's future."

The Act created the Office of Comprehensive Planning in the Department of Economic and Community Development to administer financial, technical assistance, and training programs supporting the development and successful implementation of local growth management programs in all of Maine's 493 municipalities.

The Act also established deadlines for all municipalities to develop local growth management programs that are consistent with the Act's goals and guidelines, and requires State agencies to support local planning efforts by providing data and assistance.

The Planning Advisory Council carefully reviewed the present and future municipal, regional, and state agency needs for successfully implementing the Act. The Council believes that the following recommendations are minimally necessary to fulfill the program's legislated obligations, and require the immediate attention of Governor McKernan and the Legislature:

1. **PROVIDE \$1,300,000 FOR THE PLANNING GRANT PROGRAM FOR EACH OF THE NEXT FIVE YEARS. (See pages 1-4)**

This amount is necessary to support local planning efforts and to achieve the deadlines established in the Act for development of local comprehensive plans in all of Maine's 493 communities.

2. **PROVIDE \$570,000 FOR THE IMPLEMENTATION GRANT PROGRAM IN FY91 AND PROVIDE NECESSARY FUNDS IN SUBSEQUENT YEARS TO SUPPORT LOCAL IMPLEMENTATION OF COMPREHENSIVE PLANS DEVELOPED IN COMPLIANCE WITH STATUTORY DEADLINES. (See pages 4-6)**

The Act requires municipalities to implement their local comprehensive plans and requires the Office to provide funding and technical assistance.

3. **PROVIDE SUFFICIENT FUNDS IN FY91 TO SUPPORT FIVE ADDITIONAL PERMANENT STAFF IN THE OFFICE OF COMPREHENSIVE PLANNING. (See pages 6-8)**

These professional staff are necessary to carry out the Act's mandates for providing financial and technical assistance to municipalities developing local growth management programs.

4. **PROVIDE \$310,000 IN FY91 NECESSARY TO ADDRESS MINIMALLY GAPS IN NATURAL RESOURCES DATA REQUIRED FOR EFFECTIVE LOCAL PLANNING. (pp 8-10)**

The Act requires the Office to complete an inventory of the State's natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance. The Council believes it is essential to know the location of these resources, not only to promote local planning but also to help developers avoid acquisition, planning and permit application costs for sites that are unsuitable due to the presence of critical natural resources.

5. **PROVIDE NECESSARY FUNDS IN FY91 TO SUPPORT TWO ADDITIONAL FULL-TIME STAFF, ONE IN THE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE AND ONE IN THE DEPARTMENT OF CONSERVATION. (See pages 11-12)**

Timely response to local requests for growth management assistance is critical to effective local action and cannot be met presently by these Departments. This recommendation does not fully address the staff resource needs of these departments and others [most notably D.E.P.] but represents a vital initial step.

6. **AMEND RETROACTIVELY THE LAW'S PUBLIC NOTICE PROVISIONS TO CONFORM WITH PRACTICES CURRENTLY REQUIRED BY MAINE'S RIGHT TO KNOW LAW. (pp 15-16)**

The Council favors this change because it will assure adequate public notice of meetings without subjecting communities to new and unnecessary notice procedures.

REPORT
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January 1990

I. Municipal Planning Grants:

In 1988, \$1.0 million was appropriated for the Planning Grant Program. That amount was sufficient to make planning grant offers to 58 Tier I municipalities. The Planning Advisory Council recommended an increased appropriation in order to keep to the schedule in the law to have all municipalities develop a comprehensive plan by January 1, 1996. The Governor included this request in his budget and an additional \$380,000 was appropriated this fiscal year, and \$300,000 for our next (1991) fiscal year. The \$2.38m provided in the first 2 years of the Program was sufficient to allow offers to be made to the 145 Tier I towns. (See Appendix A for listing of Tier I towns) The issue at hand is the level of funding necessary to sustain the Planning Grant Program over the coming years.

There are three primary considerations which have bearing on the future annual levels of funding provided for the Planning Grant Program; one, the overall pace at which the growth management program proceeds to completion (i.e., the time by which all towns complete the local growth management program development process); two, the need for continued funding after all towns complete their initial growth management programs to support the required five-year program revisions; and three, the adequacy of the level of funding provided for each town.

Annual Funding Levels/Program Pace: Under the Growth Management Program, a municipality's deadlines for compliance and penalties for non-compliance are tied directly to the Act's deadlines for submission of the comprehensive plan. These statutory deadlines, however, are subject to the availability of state financial assistance for the development of a comprehensive plan, and are activated only by the offer of a Planning Grant. Hence, the pace at which the Program may proceed, and the achievement of the statutory schedule for completion of local growth management programs, is dependent upon the level of funding provided for planning grants over the coming years.

In order for the remaining 350 Tier II and III towns to complete their comprehensive plans by the final statutory deadline of January 1, 1996, \$1.625m would be required for each of the next four years to finance approximately 88 towns per year (per "Round"). At the current level of funding of \$1.3m and 70 towns per year (per "Round") over the next 5 years, the last Round of 50 to 70 towns would receive grant offers in July 1994, and would have a plan submission deadline of July 1996, 6 months after the legislated deadline of January, 1996. A reduction of the Planning Grant allocation to \$1.1m per year would extend the length of the Program to 6 years and would result in the last two Rounds of towns missing the deadline by 6 and 18 months respectively. It is the sense of the Council that missing the legislative deadline by this amount of time would undermine the Program's effectiveness and credibility, and would suggest a weakening state commitment to growth management.

In its recent report, the Commission on Maine's Future recommended that the Growth Management Program be accelerated so that all communities who wish to participate have been offered funding by January 1, 1992. Acceleration of the program may not be advisable and the Council does not support this recommendation at this time. While there would be no change to the total funding necessary for planning and implementation grants (funding would simply be unevenly distributed over the coming years), there would be a significant impact on the Program's institutional capacity (OCP, state agency and regional council staffing needs, as well as the private consultant industry which we feel is already being tested under present timetables) to manage the accelerated workload. Finally, the Council believes that there is some merit in allowing time for the growth management system to learn from early Round experience and improve program effectiveness for later Rounds.

Program Revisions: Municipalities must update and revise their comprehensive plans at least once every five years. The law does not make this revision contingent upon the availability of state financial assistance, but the program could benefit by having some money available to municipalities for those revisions. Tier I municipalities will begin the revision process in 1994 to meet their deadline of January 1, 1996, the same time during which the last Round of Tier III municipalities will be developing their initial comprehensive plans. If financial support to towns for Revisions proves to be necessary, then the Planning Grant appropriations budgeted for FY'95 and possibly FY'94 would need to be increased accordingly. A likely level of magnitude of funding for this purpose, assuming the same (current) levels of per/town grant amounts, could be in the \$400,000 to \$600,000 range. After FY'95, when all towns should have been funded for the initial comprehensive planning process, the Planning Grant allocation would decrease to a level to support revisions only.

While the Council recognizes that the Act's requirement for growth management program revisions may be viewed by Towns as an imposed burden, the Council also believes that local growth management is a beneficial process which municipalities should adopt as a part of its normal operating procedure. While the Council believes that there will be a continuing need for technical assistance to towns, and further believes that the question of the need for additional state allocations to fund revision efforts should be given careful consideration over the coming years, the Council is not prepared to recommend that the planning and implementation grant programs be extended for program revisions at this time. Revising comprehensive plans should not be as costly as the original development of the plan. Further, municipalities will have more time to prepare for the funding of the revisions than they had for the original imposition of the mandate to develop the plan.

Grant Amounts Per Town: The above considerations assume current rates of per/town grant amounts which range from a minimum of \$11,250 for towns of 500 population or less, to a maximum of \$60,000 for towns exceeding 21,000 population. These amounts, with the 25% local share, represent total towns planning costs ranging from \$15,000 to \$80,000. While these rates appear to be adequate for mid- and larger- sized towns, there are indications that they may need to be increased for smaller towns. However, it is the sense of the Council that consideration of this issue should be withheld until Round #1 town experience can be evaluated. This will occur in 1990, with results reflected in the FY'92 budget.

Conclusion: It is the sense of the Planning Advisory Council that the current level of funding of \$1.3m per year continued over the next 5 years is a prudent and adequate amount; and that in light of competing interests for limited funds, and the limited institutional (regional council, state agency, private consultants, etc.) capacity for accommodating the demands of the Program, the consequence of the last 50 to 70 towns missing the legislated deadline by 6 months or less is acceptable.

RECOMMENDATION: The Planning Advisory Council recommends that \$1,300,000 be provided for the Planning Grant Program for each of the next five years. That is the amount already allocated for Fiscal Year 1991.

II. Implementation Grants:

The Act requires the Office to develop and administer a matching grant program to provide direct financial and technical assistance to municipalities for the development and implementation of local growth management programs. The maximum municipal cost share may not exceed 25%. The grants may be expended for any purpose directly related to the preparation of policies, programs and land use ordinances implementing a comprehensive plan which is consistent with the Act.

Last year the Council requested full funding for the implementation program to be available for the 1991 fiscal year. The request was cut, so that the only money available is \$100,000 beginning July 1, 1990 for implementation grants. The issue at hand is the level of funding necessary to fulfill the mandates of the Act for the Implementation Program.

Implementation of comprehensive plans is critical to the success of this program. It would be a serious mistake to ignore the need for state funding of this program component. The Act requires each municipality to enact, at minimum, a zoning ordinance which designates growth and rural areas. The Council believes that the Implementation Grant should at least be enough to finance the development of the required zoning ordinance.

An estimated \$570,000 will be required in FY'91 to fund those Tier I towns which have already been committed to the Growth Management process (this represents a supplemental request of \$470,000 to the \$100,000 already budgeted). At the recom-

mended level of Planning Grant funding (\$1.3m for 70 towns per year), the Implementation Grant Program would require annual allocations ranging from \$700,000 in FY'92 to \$40,000 in FY'98. This would complete the program, at constant per/ town grant levels, for a total cost of \$3.7m over eight years.

Adjustments to the required level of funding for the Implementation Program could be realized in the 1992 and following fiscal years by modifying the level of Planning Grant funding. By accelerating the Planning Grant program from 5 to 4 years, the total Implementation Grant Program cost of \$3.7m would be distributed over 7 years with \$750,000 required in FY'92 and decreasing to \$52,000 in FY'97; lengthening the program to 6 years would distribute the same costs over 9 years with \$660,000 required in FY'92 and decreasing to \$35,000 in FY'1999.

		<u>Implementation Grant Level</u>									
		(in millions)									
		<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>TOTAL</u>
<u>Planning Grant</u>											
<u>Level</u>											
Decelerated Program:											
\$1.1m/year	.57	.66	.45	.435	.435	.435	.435	.27	.035		3.725
(58 towns/yr)											
Council Recommendation:											
\$1.3m/year	.57	.7	.54	.525	.525	.525	.3	.04			3.725
(70 towns/yr)											
Accelerated Program:											
\$1.625/yr	.57	.75	.66	.66	.66	.375	.05				3.725
(88 towns/yr)											

(Figures are rounded)

Assumptions: The above considerations assume an average grant per town of \$7,500 (\$10,000 total project cost with \$2,500 local share). Adjustments in funding levels may need to be considered with Program experience.

Also assumed is a 25% holdover rate in the first year of the program (i.e., 25% of the towns which are expected to have submitted their comprehensive plans and be eligible for an Implementation Grant will, due to delays and/or inconsistent plans, be held over for funding in the following year). The assumed holdover rate is reduced to 15% for the second and subsequent funding years.

RECOMMENDATION: The Council recommends that \$570,000 be provided for the Implementation Grant Program in Fiscal Year 1991, and further recommends that funding levels in future years be maintained sufficient to accommodate the pace generated by the recommended level of Planning Grant funding (\$1.3m/year).

III. Staff Needs:

It is the sense of the Council that the increasing demands of the Growth Management Program will require additional staff capacity for the Office of Comprehensive Planning. This assessment derives from two fundamental issues: one, the importance of providing an adequate level of direct technical assistance to towns in the development of local growth management programs; and two, the cumulative effects of successive Rounds of towns entering the growth management process.

Technical Assistance: The Council believes that staff guidance and assistance to municipalities are more important state functions than the regulatory aspects of product review for consistency with the Act. Moreover, while the Council recognizes the potential benefits of having an objective review capacity at OCP, the Council believes that using the same staff person to guide a town through each phase of the growth management program is more in keeping with the intent and spirit of the program. This approach, which allows staff to become familiar with the town's work as it progresses, will minimize staff needs for the review process; will minimize the occurrence of deficient products after state and local time and money have been expended; and will allow greater flexibility in staff arrangements.

Workload Accumulation: With the acceptance of a planning grant offer, each town begins a continuous 3 to 4 year process of local growth management program development, and soon after begins the process anew with the required 5-year revision. Each year, a new Round of towns is brought into the process through planning grant allocations, and total program workload accumulates correspondingly.

The Office is presently working with the 145 Tier I towns (Rounds #1 and #2) with minimal time and staff for technical assistance. In FY'91, Round #3 towns will begin the comprehensive planning process, adding an additional 70 towns to the workload; the 145 Round #1 and #2 towns will be submitting their plans for formal review; and Round #1 towns will begin to enter the implementation program phase of the process. The cumulative effect of successive Rounds of towns entering the growth management process will continue to increase the program workload to a projected peak in 1995 of some 425 towns simultaneously active in some phase of program development or revision.

Discussion: Of the 16 positions created to support the Office of Comprehensive Planning, 4 were clerical and 3 were management. Of the remaining 9, 4 are dedicated to other functions required by the Act such as the Code Enforcement Program, the Data/Natural Heritage Programs, and technical assistance mandates for manufactured homes, subdivision, and other related land use issues; and the remaining 5 are dedicated to program development (grant programs, review and certification, agency rules, manual, technical assistance, etc.) and program administration responsibilities including planning grant contract administration; formal plan review; implementation grant administration, formal implementation program review, certification review, and technical assistance and guidance to towns in conjunction with all of these tasks.

With various fractions of time dedicated by management as well as professional staff, the Office presently provides the equivalent of 5 full time staff for growth management administration only (excluding program development). This level of staffing is proving to be barely adequate to accommodate the comprehensive planning administration demands of the 145 Tier I towns with minimal capacity for direct technical assistance to towns. With the addition of successive Rounds to the workload, the Office's capacity to administer the program will be severely diminished.

Assumptions: Staff requirements in person/days/month are derived from conservative assumptions regarding the amounts of time necessary to devote to each town through each phase of the growth management program development process (see Appendix B, Staff Needs Assumptions), and reflect the cumulative effect of successive Rounds of towns entering the process (see Appendix C, Projected Work Load). With these assumptions, the recommended level of annual Planning Grant Funding of \$1.3m for five years would require an additional five professional staff in FY 1991.

Alternatives: As with Implementation Grants, staff needs for the Program are tied directly to the level of Planning Grant funding; i.e., the pace at which more towns accumulate to program activity. Following the range of options considered under **Municipal Planning Grants**, above, an acceleration of the Program to 4 years at \$1.6m distributed in two Rounds per year could be accommodated with five additional staff persons. Alternatively, the need for additional staff in FY'91 could be reduced to 3 with a corresponding decrease in the Planning Grant program to the 6-year @ \$1.1/yr level, distributed in two Rounds per year. This would result in the last four Rounds (116 towns) missing the legislated deadline by 6 months to 2 years.

RECOMMENDATION: The Planning Advisory Council recommends that sufficient funds be provided to support five additional professional staff members for the Office of Comprehensive Planning, for planning and implementation grant administration, plan and ordinance review, and certification review in order to work more closely with municipalities in conjunction with all these tasks.

IV. Planning and Land Use Data:

An important mandate of the Office is to develop and supply to all municipalities available natural resource and other planning information for use in the preparation of local growth management programs. To this end, the Office has completed and will maintain a master Directory of State Data Sources. All available data from state agencies has been compiled and distributed to all Tier I municipalities.

As regards future activities under this mandate, three issues are of primary concern: the required inventory of the state's critical natural resources; the role of the Natural Heritage Program in the Growth Management Program; and the development of a state Geographic Information System.

Natural Resources Inventory: The growth management law requires the Office to complete an inventory of the State's natural resources sufficient to ensure adequate identification and protection of critical natural resources of statewide significance. The level of effort necessary to accomplish this

task is estimated to be \$4.5m over 5 years with \$1,158,000 in FY'91; \$970,000 in FY'92; and \$790,000 in FYs'93-'95. This project will be an interdepartmental effort, with the Significant Wildlife Habitat inventory, to be performed by the Department of Inland Fisheries and Wildlife, accounting for \$900,000 (78%) in FY'91 and \$750,000 (95%) in FYs'92-'95. (See Appendix D, Preliminary Data Gap Assessment).

The Council believes that this level of effort is necessary to comply with the mandate of the law by providing information at a level of refinement necessary for local planning and regulatory purposes, and strongly supports adequate funding for the DIF&W and other participating agencies to complete the work in a timely manner. However, recognizing that full funding may not be immediately available, it is recommended that a preliminary Significant Wildlife Habitat data inventory would provide information sufficient for planning as opposed to regulatory purposes (i.e., to identify areas of potential concern rather than specifying precise locations of known concern). Combined with full funding for the remaining natural resource data gaps (excluding DEP's Wetlands Mapping), it is expected that this objective could be achieved for all towns over a 5-year period for a total cost of \$1.3m (\$310,000 in FY'91, decreasing to \$240,000 in FY'93-'95). The remaining \$3.2m of the full \$4.5m project cost, necessary for the completion of the Wildlife Habitat inventory, would remain outstanding.

The Council believes that this level of effort is the minimum necessary to allow towns to make basic planning decisions about where growth should and should not occur. Conflicts with the development community will be avoided by identifying sensitive or potentially sensitive areas before, rather than after, critical development decisions have been made.

Alternatives: Compared with the costs of full program implementation (\$4.5m over 5 years, with \$1.6 required in the first year), the recommended fall-back level of effort would require \$1.3m over 5 years with \$310,000 required in the first year.

An even further reduction in funds to \$240,000 with a 5-year total of \$1.2m would inventory only wildlife habitat and unique natural areas and endangered plants. These natural resource do require technical expertise to identify and inventory. This reduced level of effort is not advisable. Other critical natural resources such as wetlands, rivers, streams, great ponds, and scenic areas would be poorly addressed and would not achieve the planning and protection objectives of the law.

RECOMMENDATION: The Planning Advisory Council supports the full implementation of the Natural Resources Inventory mandate, and, in order to do that, recommends that \$310,000 be provided in the 1991 fiscal year to begin this process, with adequate mechanisms to ensure that this effort will address the needs of municipalities in a timely and effective manner.

Natural Heritage Program: In accordance with a Memorandum of Agreement (MOA) with the Maine Chapter of the Nature Conservancy, the Natural Heritage Program Data Base has been located in the Office of Comprehensive Planning. The NHP has proven to be extremely useful as a means to centralize and disseminate planning and land use data essential to the development of local growth management programs. Moreover, the Growth Management Program has come to rely heavily on the NHP's Director as a critical advisor to the growth management program with particularly effective guidance in matters of data inventory and analysis for natural resources.

In accordance with the MOA, the Office has considered and now strongly recommends that the Growth Management Program assume the funding of the Natural Heritage Program Director position at an estimated annual cost of \$50,000. The Council concurs in this recommendation and supports this initiative.

RECOMMENDATION: The Council supports and recommends the retention of the Natural Heritage Program Data Base at the Office of Comprehensive Planning; and recommends that every consideration be given to the assumption of the Natural Heritage Program Director's position under the Growth Management Program.

Geographic Information System (GIS): Many municipalities are considering an investment in a Geographic Information System, as are many regional councils. Portions of municipal planning grants are being used to contract for computer produced maps. At the same time, the State is investing in a GIS system that, at this time, cannot support local growth management efforts. Entering data into the state system that is at a large enough scale for local use and interpretation is a very expensive proposition.

The Council has been asked by the Energy and Natural Resources Committee to make a recommendation. In our response we recognized the potential of the GIS to further the law's goal of providing a coordinated mechanism for supplying state planning and land use data to municipalities, but also expressed concern that such an investment should be compared against all the other needs facing the growth management program.

The Council supports the present course charted by the Office of Information Services' current efforts to engage a consultant to develop a strategy that would use a GIS to meet town and regional comprehensive planning needs; and Governor McKernan's appointment of a GIS Steering Committee to advise the Department of Conservation on the implementation of the GIS system. The Office's Deputy Commissioner serves on that Committee and will strongly support the development of a system designed to assist local growth management activities.

RECOMMENDATION: The Council supports the efforts presently being made to assess the feasibility of developing a statewide GIS which would be useful to local growth management activities, and recommends that further consideration of the issue be held pending the outcomes of these efforts.

V. State Agency Needs:

Last year's report of the Planning Advisory Council focused heavily on the potential need for additional support to state agencies to help them perform the tasks required of them by the growth management law. Earlier this year the Council initiated a preliminary assessment of those needs, which included meetings by the staff of OCP with all affected agencies to discuss and clarify the role of each agency in the growth management program. We're excited about the commitment we hear and see from state agencies who are viewing this law as an opportunity to see their programs embraced locally. However, their enthusiasm for the program does not eliminate the need for additional support in some cases, most notably the Department of Conservation and the Department of Inland Fisheries and Wildlife.

The Council's preliminary assessment of staff needs included a possible position for the Department of Environmental Protection. That assessment has not been concluded and the Council is not prepared, at this time, to request that position.

Discussion: The primary state agency roles in the growth management program are to provide data and technical assistance to the Office and to towns in the development of their comprehensive plans; and for the review and comment on submitted plans and ordinances for technical considerations. Preliminary estimates of state agency needs for the performance of these tasks indicated a need for staff persons or equivalents in the range of 16 to 19 persons for the 12 agencies affected. Subsequent discussion, with the refinement and coordination of roles and expectations, has led to the conclusion that most state agencies may be able to and are prepared to attempt to, accommodate the demands of the program without additional resources at this time. The exceptions are the Departments of Conservation and Inland Fisheries and Wildlife for whom, due to their direct involvement in a number of key growth management concerns, the Council recommends additional resources equivalent to one full-time staff person for each of the two departments.

This assessment is based on conservative assumptions of specific program demands on state agencies, and the Council recommends that state agencies' experience with Round #1 towns should be carefully monitored and that the need for additional resources for state agencies be reconsidered next year.

Alternative: Without the requested person for each Department, and given the scope of growth management concerns in those departments, the Council believes that technical assistance to towns preparing their growth management programs will be extremely limited if available at all; and that plan review functions will be reduced to cursory regulatory exercises. These effects would be reflected most directly in matters of forest, wildlife and other natural resource protection efforts.

Recommendation: The Planning Advisory Council recommends that sufficient funding be provided to support a request for additional resources equivalent to one full-time staff person for the Departments of Conservation and Inland Fisheries and Wildlife beginning with the 1991 fiscal year.

VI. Code Enforcement Officer Training and Certification Program

A key component of the Growth Management Law is the requirement (30-A MRSA, §4451) that the Office develop and deliver a training and certification program for local code enforcement officers. All code enforcement officers have to be certified by January 1, 1993. It will be illegal for a municipality to

employ an uncertified CEO after that date, unless they are newly employed, in which case, they must become certified within 12 months. An exam must be given to determine competency for certification, and must be offered at least once a year.

It is the intent of the Office of Comprehensive Planning to begin offering segments of the training curriculum in January and to offer the first sitting for the examination by July, 1990.

The Law establishes two major activities with the CEO Program: the creation and delivery of certification and continuing education programs for CEOs; and administering a financial assistance program providing funding for educational expenses leading to certification and salary reimbursement while in training.

Program Development: The law directs the Office to work with the VTI System and the Department of Human Services in establishing a continuing education program for CEOs. This program shall provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification. The intent is to offer a concentrated course at least once a year and to offer it regionally over a several week period.

No money, other than the \$50,000 set aside in this year's budget, is available to pay instructors, to pay rent for physical space and to pay for the printing of course materials. At least \$50,000 annually is necessary for the next several years to establish the Program. Program cost estimates may need revision after the Program is in operation for one year and actual costs are known.

Financial Assistance Programs: There is currently no funding appropriated to cover CEO training expenses and salary reimbursements. To cover such expenses would require from \$65,000 to \$250,000 per year, depending on the number of CEO trainees.

The Council has carefully considered a number of alternatives for the reimbursement program, including:

- A. Providing 100% expense reimbursement as implied by the law. The Council does not believe this approach is practical, either financially or administratively. Nor is the Council aware of any precedent for such a reimbursement program for other professions in the state, where certification is also mandated by state law (egs. local law enforcement officers).

- B. Providing a uniform "per diem" payment to all trainees rather than covering actual salary or income lost. The uniform per diem would greatly simplify administrative procedures, but would not cover all the costs of a trainee. Besides not having sufficient funds to implement this option, the Council feels, similar to "A", above, that no precedent currently exists to cover training expenses in other professions.
- C. Similar to a legal provision for local law enforcement officers in Maine, the law could be changed to require that a community hiring an already certified CEO be required to reimburse the community which formerly employed the CEO and covered training expenses.

The alternative recommended by the Council at this time is to proceed with the development of a training program which is accessible and reasonably affordable to existing and potential CEOs. It is the sense of the Council that most communities will be prepared and willing to cover reasonable costs for training their CEO.

The \$50,000 per year to establish and conduct training is minimal, and course fees and material fees will have to be covered by trainees personally or their employers.

RECOMMENDATION: The Council recommends that the already budgeted \$50,000 for FY'91 be retained for CEO Training and Certification Program development; that the provisions for state-funded expense and salary reimbursement programs be left unfunded at this time and that further guidance be sought from the Legislature regarding the intent of that reimbursement mandate. In the meantime, the Council believes that the Office should investigate alternative means of mitigating financial burdens to towns and prospective CEOs through effective and accessible program delivery.

VII. Municipal Legal Defense Fund:

The Municipal Legal Defense Fund Program has been developed in accordance with the Act. Agency Rules are in place, application forms and procedures are established, and expressions of interest have been received (see Appendix E, MLDF Program Fact Sheet). At the present time \$100,000 remains available from FY'90 appropriation. An additional \$100,000 has already been requested for FY'91. The Council believes that this level of funding will be sufficient, subject to the results of program

experience over the coming year, and that no additional funds will need to be requested for the 1991 fiscal year. Future year needs will need to be considered in light of program experience over the coming year.

RECOMMENDATION: The Council recommends that the already budgeted \$100,000 for FY'91 be retained, and that future funding needs be considered in light of program experience over the coming year.

VIII. Public Awareness/Participation:

Public support and commitment for the growth management program must not waver, or by the time we reach Tier III municipalities it will take on the semblance of "just another state mandate".

The Office has taken on, as one of its roles not literally mandated by law, the responsibility for taking some of the burden off the shoulders of local planning committees for soliciting public involvement and support.

Public awareness and support for the Program requires continuing attention and staff resources, but should not need additional funds at this time.

Encouraging citizen participation in the development of local growth management programs is an important goal of both the law and the Office. The law does contain a specific requirement that the Council recommends be amended. That is a requirement to post prior notice of all the meetings of the local planning committee in one or more conspicuous places designed to provide public notice (30-A MRSA, §4324, sub-§4). This is a unique public notice provision that does not apply to any other municipal proceeding. The Council's fear is that the "consistency" of comprehensive plans with the Act is jeopardized if municipalities do not comply with this mandate. The Council is concerned that many of the 145 municipalities that have already begun their growth management activities are not aware of this special public notice provision. The Council recommends that this provision be amended to compare to the regular public notice provisions contained in the Freedom of Access Law (1 MRSA, § 406, sometimes referred to as the Right-to-Know Law).

RECOMMENDATION: The Council recommends that the public notice provisions of the law be amended to mirror the public notice provision contained in the Right-to-Know Law, and that the amendment be applied retroactively to protect the Tier I municipalities that have already begun the planning process.

IX. Program Evaluation:

The Council believes that an ongoing assessment of the Program, in its delivery as well as in the attainment of the Act's goals and objectives, is critically important to the success of the Program.

The Maine Development Foundation has received funding from the Harriman Foundation in New York City to review Maine's growth management program, and compare it to growth management programs in Vermont, New Jersey and Florida. They will subcontract with the Taubman Center at Harvard University for the actual review.

The Council supports efforts to evaluate the program, and further recommends that rigorous program evaluation should be an integral part of the Office's activities.

RECOMMENDATION: The Council recommends that a thorough ongoing program evaluation function be established within the Office to monitor and evaluate the effectiveness of the Program in achieving the goals and objectives of Growth Management in Maine.

X. Regional Councils:

\$600,000 is currently available to support the Office's Regional Council Assistance Program. According to the law, that program is intended to support regional education and training, regional policies to address state goals, regional assessments, and regional review of growth management programs. The \$600,000 is divided among 11 regional council districts. \$35,000 per region is guaranteed. The remaining \$215,000 is allocated based on the number of Tier I municipalities in the region (next year it will be allocated according to the number of Tier II municipalities in the region).

Our existing contracts do not emphasize any type of technical assistance beyond planning. As the program progresses, emphasis needs to be placed on implementation, the administration of land use regulations, and enforcement. Only a very minimum level of technical assistance is being provided by the Office in those areas. The Office administers a General Fund contract totalling \$194,000 with all 11 regional council districts which supports technical assistance to towns for state mandates and programs such as the Shoreland Zoning and Subdivision laws.

It is the sense of the Council that the present level of funding at \$600,000 per year should be sustained for Fiscal Year 1991. The Council also believes that regional council needs and performance should be carefully monitored over the coming year, and that adjustments to this level of funding may need to be considered in light of Tier I experience.

RECOMMENDATION: The Council recommends that the present level of funding for regional councils at \$600,000 per year be retained.

XI. Planning Advisory Council:

The 7-member Planning Advisory Council, created by the law to advise the Office of Comprehensive Planning on the implementation of the Growth Management Law, has played a critical role as policy advisors and supporters. This role has required a substantial commitment of time on the part of the Council members. Since the law's effective date of August, 1988, the Council has met nine times. Each meeting consumes the major portion of a working day.

The Council does not receive a per diem. They recommend that a per diem for the Planning Advisory Council be payed to recognize the importance of the Council's role to the success of the Growth Management Law and to partially compensate the members for the time they must commit to that role.

RECOMMENDATION: Members of the Planning Advisory Council should receive a per diem for attendance at meetings.

REPORT
of the
PLANNING ADVISORY COUNCIL

January, 1990

APPENDICES

- A Tier I Municipalities
- B Staff Needs Assumptions
- C Projected Work Load
- D Preliminary Data Gap Assessment
- E Municipal Legal Defense Fund Program Fact Sheet

GROWTH MANAGEMENT PROGRAM
January 1989 Planning Grants
Tier 1/Round 1
January 26, 1989

APPENDIX A

<u>Town</u>	<u>RC</u>	<u>State</u>	<u>Local</u>	<u>Total Project</u>
Acton	SMRPC	\$13,988	\$4,663	\$18,651
Albion	NKRPC	\$14,650	\$4,883	\$19,533
Baldwin	SMRPC	\$13,420	\$4,473	\$17,893
Benton	NKRPC	\$16,385	\$5,462	\$21,847
Berwick	SMRPC	\$24,168	\$8,056	\$32,224
Boothbay	LCPR	\$16,400	\$5,467	\$21,867
Bradford	PVCOG	\$12,593	\$4,198	\$16,791
Bridgton	GPCOG	\$20,250	\$6,750	\$27,000
Brownfield	SMRPC	\$12,225	\$4,075	\$16,300
Buxton	SMRPC	\$27,675	\$9,225	\$36,900
Carmel	PVCOG	\$14,945	\$4,982	\$19,927
Casco	GPCOG	\$17,360	\$5,787	\$23,147
Charleston	PVCOG	\$13,025	\$4,342	\$17,367
Clinton	NKRPC	\$18,100	\$6,033	\$24,133
Cornish	SMRPC	\$13,415	\$4,472	\$17,887
Cutler	WCRPC	\$11,895	\$3,965	\$15,860
Dedham	HCPC	\$12,593	\$4,198	\$16,791
Dresden	SKPDC	\$13,033	\$4,344	\$17,377
Edgecomb	LCPR	\$12,520	\$4,173	\$16,693
Eliot	SMRPC	\$25,165	\$8,388	\$33,553
Gray	GPCOG	\$24,253	\$8,084	\$32,337
Harrison	GPCOG	\$15,130	\$5,043	\$20,173
Hollis	SMRPC	\$19,225	\$6,408	\$25,633
Lebanon	SMRPC	\$20,888	\$6,963	\$27,851
Levant	PVCOG	\$13,283	\$4,428	\$17,711
Limerick	SMRPC	\$14,335	\$4,778	\$19,113
Limestone	NMRPC	\$36,080	\$12,027	\$48,107
Limington	SMRPC	\$17,145	\$5,715	\$22,860
Litchfield	SKPDC	\$15,830	\$5,277	\$21,107
Lyman	SMRPC	\$18,198	\$6,066	\$24,264
Naples	GPCOG	\$15,428	\$5,143	\$20,571
New Gloucester	GPCOG	\$20,328	\$6,776	\$27,104
Newcastle	LCPR	\$13,573	\$4,524	\$18,097
Newfield	SMRPC	\$12,160	\$4,053	\$16,213
North Yarmouth	GPCOG	\$15,635	\$5,212	\$20,847
North Berwick	SMRPC	\$19,610	\$6,537	\$26,147
Oakland	NKRPC	\$24,215	\$8,072	\$32,287
Otisfield	AVCOG	\$12,635	\$4,212	\$16,847
Oxford	AVCOG	\$19,178	\$6,393	\$25,571
Parsonfield	SMRPC	\$13,743	\$4,581	\$18,324
Perry	WCRPC	\$12,003	\$4,001	\$16,004
Raymond	GPCOG	\$17,320	\$5,773	\$23,093
Richmond	SKPDC	\$17,270	\$5,757	\$23,027
Sanford	SMRPC	\$60,000	\$20,000	\$80,000
Shapleigh	SMRPC	\$14,533	\$4,844	\$19,377
Sherman	NMRPC	\$12,605	\$4,202	\$16,807
South Berwick	SMRPC	\$22,420	\$7,473	\$29,893
Standish	GPCOG	\$27,830	\$9,277	\$37,107
Stetson	PVCOG	\$11,810	\$3,937	\$15,747
Surry	WCRPC	\$12,580	\$4,193	\$16,773
Warren	EMCPC	\$17,438	\$5,813	\$23,251
Washington	EMCPC	\$12,798	\$4,266	\$17,064
Waterboro	SMRPC	\$19,568	\$6,523	\$26,091
Wells	SMRPC	\$30,455	\$10,152	\$40,607
Whitefield	LCPR	\$14,443	\$4,814	\$19,257
Wiscasset	LCPR	\$18,670	\$6,223	\$24,893
Woolwich	SKPDC	\$15,970	\$5,323	\$21,293
York	SMRPC	\$35,675	\$11,892	\$47,567

GROWTH MANAGEMENT PROGRAM
 July 1989 Planning Grants
 Tier 1/Round 2
 February 14, 1989

<u>Town</u>	<u>Regional Council</u>	<u>State Share</u>	<u>Local Share</u>	<u>Total Share</u>
Alfred	SMRPC	\$15,995	\$5,332	\$21,327
Alna	LCRPO	\$11,260	\$3,753	\$15,013
Alton	PVCOG	\$11,300	\$3,767	\$15,067
Andover	AVCOG	\$12,398	\$4,133	\$16,531
Appleton	EMCPC	\$12,330	\$4,110	\$16,440
Arundel	SMRPC	\$16,235	\$5,412	\$21,647
Athens	NKRPC	\$12,213	\$4,071	\$16,284
Blue Hill	HCPC	\$14,770	\$4,923	\$19,693
Bowdoin	SMCCOG	\$15,005	\$5,002	\$20,007
Cambridge	NKRPC	\$11,258	\$3,753	\$15,011
China	NKRPC	\$18,833	\$6,278	\$25,111
Cornith	PVCOG	\$14,970	\$4,990	\$19,960
Damariscotta	LCPRO	\$14,335	\$4,778	\$19,113
Dayton	SMRPC	\$12,583	\$4,194	\$16,777
Denmark	SMRPC	\$11,868	\$3,956	\$15,824
Dixmont	PVCOG	\$12,345	\$4,115	\$16,460
Durham	AVCOG	\$15,990	\$5,330	\$21,320
Ellsworth	HCPC	\$24,993	\$8,331	\$33,324
Etna	PVCOG	\$12,175	\$4,058	\$16,233
Eustis	AVCOG	\$11,603	\$3,868	\$15,471
Exeter	PVCOG	\$12,295	\$4,098	\$16,393
Fayette	SKPDC	\$12,340	\$4,113	\$16,453
Frankfort	PVCOG	\$12,188	\$4,063	\$16,251
Freedom	NKRPC	\$11,318	\$3,773	\$15,091
Freeport	GPCOG	\$26,215	\$8,738	\$34,953
Garland	PVCOG	\$12,015	\$4,005	\$16,020
Glenburn	PVCOG	\$16,753	\$5,584	\$22,337
Gorham	GPCOG	\$40,168	\$13,389	\$53,557
Greene	AVCOG	\$18,365	\$6,122	\$24,487
Greenbush	PVCOG	\$12,953	\$4,318	\$17,271
Hartland	NKRPC	\$14,603	\$4,868	\$19,471
Hebron	AVCOG	\$11,870	\$3,957	\$15,827
Hiram	SMRPC	\$13,045	\$4,348	\$17,393
Hope	EMCPC	\$12,070	\$4,023	\$16,093
Hudson	PVCOG	\$12,385	\$4,128	\$16,513
Kenduskeag	PVCOG	\$13,548	\$4,516	\$18,064
Kennebunk	SMRPC	\$28,453	\$9,484	\$37,937
Knox	EMCPC	\$11,535	\$3,845	\$15,380
Leeds	AVCOG	\$14,135	\$4,712	\$18,847
Lisbon	AVCOG	\$35,598	\$11,866	\$47,464
Lovell	SMRPC	\$12,115	\$4,038	\$16,153
Manchester	SKPDC	\$15,508	\$5,169	\$20,677

<u>Town</u>	<u>Regional Council</u>	<u>State Share</u>	<u>Local Share</u>	<u>Total Share</u>
Monmouth	SKPDC	\$18,445	\$6,148	\$24,593
Montville	EMCPC	\$11,740	\$3,913	\$15,653
Morrill	EMCPC	\$11,415	\$3,805	\$15,220
Mount Vernon	SKPDC	\$12,888	\$4,296	\$17,184
New Sharon	AVCOG	\$12,670	\$4,223	\$16,893
New Vineyard	AVCOG	\$11,700	\$3,900	\$15,600
Newburgh	PVCOG	\$13,415	\$4,472	\$17,887
Northport	EMCPC	\$12,650	\$4,217	\$16,867
Norway	AVCOG	\$21,268	\$7,089	\$28,357
Ogunquit	SMRPC	\$14,255	\$4,752	\$19,007
Palermo	NKRPC	\$12,098	\$4,033	\$16,131
Palmyra	NKRPC	\$14,153	\$4,718	\$18,871
Phippsburg	SMCCOG	\$14,223	\$4,741	\$18,964
Plymouth	PVCOG	\$12,323	\$4,108	\$16,431
Poland	AVCOG	\$20,340	\$6,780	\$27,120
Porter	SMRPC	\$13,378	\$4,459	\$17,837
Pownal	GPCOG	\$13,568	\$4,523	\$18,091
Sabattus	AVCOG	\$19,028	\$6,343	\$25,371
Sebago	GPCOG	\$12,880	\$4,293	\$17,173
Sidney	NKRPC	\$15,890	\$5,297	\$21,187
South Bristol	LCPRO	\$12,200	\$4,067	\$16,267
Stonington	HCPC	\$13,540	\$4,513	\$18,053
Swanville	EMCPC	\$12,455	\$4,152	\$16,607
Thomaston	EMCPC	\$18,038	\$6,013	\$24,051
Throndiike	NKRPC	\$11,745	\$3,915	\$15,660
Topsham	SMCCOG	\$30,442	\$10,148	\$40,590
Trenton	HCPC	\$12,040	\$4,013	\$16,053
Troy	NKRPC	\$11,943	\$3,981	\$15,924
Turner	AVCOG	\$20,173	\$6,724	\$26,897
Union	EMCPC	\$14,558	\$4,853	\$19,411
Vassalborough	NKRPC	\$19,593	\$6,531	\$26,124
Wales	AVCOG	\$12,455	\$4,152	\$16,607
Waterford	AVCOG	\$12,978	\$4,326	\$17,304
Wayne	SKPDC	\$11,978	\$3,993	\$15,971
West Bath	SMCCOG	\$13,663	\$4,554	\$18,217
West Gardiner	SKPDC	\$16,015	\$5,338	\$21,353
Westport	LCPRO	\$11,285	\$3,762	\$15,047
Windham	GPCOG	\$42,743	\$14,248	\$56,991
Windsor	SKPDC	\$14,775	\$4,925	\$19,700
Winter Harbor	HCPC	\$13,380	\$4,460	\$17,840
Yarmouth	GPCOG	\$29,293	\$9,764	\$39,057

Staff Needs Assumptions

<u>Activity</u>	<u>Person Days per Town</u>
* Planning Grant Contract Preparation	.5
* Planning Grant Contract Adminstration & Technical Assistance	1 per month (.5 day for Rds. #1 & #2 through 6/90)
* Plan Review	3(1.5 for initial review; 1.5 for review of comments & preparation of findings)
* Implementation Grant Contract Preparation	.5
* Implementation Grant Contract Administration & Technical Assistance	.5
* Implementation Program Review	2 (1 initial; 1 with comments & findings)
* Certification Review	2 (1 and 1)
* Comprehensive Plan Revisions Technical Assistance	.5 per month
* Revised Plan Review	2 (1 and 1)
* Revised Implementation Program Technical Assistance	.25 per month
* Revised Implementation Program Review	1 (.5 and .5)
* Revised Certification Review	1 (.5 and .5)
* Assume that, on average, the submission of products (plans, zoning ordinances, growth management programs) will be evenly distributed over a 6 month period (some towns will need only 18 months to complete and submit comprehensive plans), rather than all towns submitting in the final deadline month.	
* All towns complete a growth management program; only 75% Towns apply for Certification.	

Fiscal year -->		July 89 1990				1991				1992				1993				1994				1995				1996				1997				1998				1999				2000				2001				2002				2003									
Quarter -->		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4														
Comprehensive Planning	Rounds	#1	29	29	29	29	38	8										First Revision:	20	29	29	29	19	4									Second Revision:	20	29	29	29	19	4																								
	#2	24	44	44	44	87	87	59	16									R:	30	44	44	44	30	8									RR:	30	44	44	44	30	8																								
	#3					20	68	70	70	70	70	46	11																	R:	27	35	35	35	23	5									RR:	27	35	35	35	23	5												
	#4									20	68	70	70	70	70	46	11													R:	27	35	35	35	23	5									RR:	27	35	35	35	23	5												
	#5													20	68	70	70	70	70	46	11									R:	27	35	35	35	23	5									RR:	27	35																
	#6																	20	68	70	70	70	70	46	11									R:	27	35	35	35	23	5																							
	#7																	20	68	70	70	70	70	46	11									R:	27	35	35	35	23	5																							
Plan Review	#1								20	29	9																			R:	13	19	6					RR:	13	19	6																						
	#2											28	44	16														R:	19	29	10					RR:	19	29	10																								
	#3														24	35	11											R:	16	23	7					RR:	16	23	7																								
	#4																	24	35	11									R:	16	23	7					RR:	16	23																								
	#5																				24	35	11					R:	16	23	7																																
	#6																							24	35	11					R:	16	23	7																													
	#7																										24	35	11					R:	16	23	7																										

DRAFT

PRELIMINARY DATA GAP ASSESSMENT

October 6, 1989

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SUMMARY

	Cost to Acquire (annual)	Time to Acquire (Years)
Fresh and Coastal Wetlands	\$ 150,000	2
Aquifers	-	-
Sand Dunes and Barriers	-	-
Fragile Mtn Areas	-	-
Sig. Wildlife Habitat	900,000	5
Plant/Unique Nat'l Areas	40,000	5
Rivers and Streams	37,900	1
Great Ponds	15,000	1-2
Heritage Coastal Areas	-	-
Scenic Areas	15,000	1-2
Total First Year Cost	\$1,157,900	

The information herein reflects the specific opinions and calculations of the agency responsible for each specific data type. For each category, however, we have included a brief comment reflecting OCP's views regarding the overall priority for filling data gaps, and in some instances, an alternative funding suggestion. More detailed narratives will follow in final Data Gap Assessment report.

FRESHWATER and COASTAL WETLANDS

Products: Updated and revised National Wetland Inventory Maps at 1:2,000 scale (i.e. 7.5' USGS Quad) for all organized towns.

Agency: DEP/MGS/USFWS

Time to Complete: Two years

Funds Required: \$ 300,000

Comment: MGS received \$146 K in last legislative session to begin update of National Wetland Inventory, which will complete "some" coastal towns. Apparently, neither DEP nor DOC/MGS intend to request in 1990 the additional \$300 K necessary to complete the update of all organized towns. A high priority data type. OCP should encourage DEP and/or DOC to request needed funds.

SAND AND GRAVEL AND BEDROCK AQUIFERS

Products: Updated and revised "Significant Aquifer Maps" for all organized towns.

Agency: MGS

Time to Complete: Ongoing effort

Funds Required: In-hand

Comment: Sand and gravel aquifer maps exist for most towns. MGS is currently refining existing data through their "Significant Aquifer" mapping project. Aquifer boundaries will be drawn at either 1:24,000 or 1:62,500 scale, but published at 1:50,000 scale. MGS has all necessary funds for this project; boundaries will be digitized for GIS. Whereas these maps will locate aquifers, quality of groundwater is not addressed. Quality of groundwater remains a data gap. A DEP staff person suggests a cost of \$300,000 for a pilot project to test 5% of private wells, but no formal agency proposal exists to address this gap.

COASTAL SAND DUNES/ BARRIER SYSTEMS

Products: Mapped sand dune systems for all of coastal towns.

Agency: MGS

Time to Complete: 1 year

Funds Required: In-hand

Comment: Sand dune systems have been mapped in Casco Bay area. Specific Barrier systems are identified for protection in 38 MRSA Section 1904. MGS has staff and resources to complete sand dune mapping for coastal towns.

FRAGILE MOUNTAIN AREAS

Products: Digitized maps of all land areas above 2,700' elevation.

Agency: MGS

Time to Complete: 1 year

Funds Required: In-hand

SIGNIFICANT WILDLIFE HABITAT

Products: Mapped boundaries of significant wildlife habitats for all organized towns; technical assistance to interpret data; ongoing maintenance and updating of data.

Agency: IF&W

Time to Complete: 5+ years to acquire data, then ongoing.

Funds Required: \$ 900,000 start up annual cost. Annual maintenance cost will run about \$750 K.

Comment: See ANALYSIS on Page 6.

ENDANGERED PLANT HABITATS AND UNIQUE NATURAL AREAS

Products: Completed rare plant and unique natural area surveys in each Regional Planning Council; Technical assistance to towns; ongoing maintenance and updates of data.

Agency: OCP/Natural Heritage Program; SPO/CAP

Time to Complete: 5 years, then ongoing

Funds Required: \$40,000 annual cost (one staff plus all other) for start up and maintenance.

Comment: Approximately 40% of organized towns have apparently never been searched for endangered plants. Only 17 of 41 sensitive natural community types have been inventoried, and most of these surveys have been preliminary in nature. Staff and funds to address endangered plants and natural habitats do not exist. Endangered plant and sensitive natural community types can pose major impediments to development, just as can eagle nests. It is a high priority to determine sensitive habitats "up front", so towns can plan around them.

RIVERS AND STREAMS

Products: Automated water quality data system: technical assistance; updated printings of key maps, reports.

Agency: DEP

Time to Complete: 1 year

Funds Required: \$ 30,200 (one-time cost for Cons. Aides)
 7,700 (printing)
 \$ 37,900

Comment: Maine Rivers Study addresses significant river segments. Water quality data exist for all towns according to DEP. Primary gap is ability of DEP to retrieve and interpret data to towns. Funding request is for automation of data base to facilitate data retrieval.

GREAT PONDS

Products: Updated "Gem Lakes" report for all lakes in organized towns.

Agency: SPO/DEP

Time to Complete: 1-2 years

Funds Required: \$ 15,000 annually

Comment: Water quality data exist for ponds, but as with rivers, primary gap is ability to retrieve and interpret data. SPO's significant lake study does not address all ponds.

HERITAGE COASTAL AREAS

Products: Designated Heritage Coastal Areas

Agency: SPO

Time to Complete: Ongoing

Funds Required: In-hand

Comment: A lower priority need.

SCENIC AREAS

Products: Inventory of scenic areas in defined geographic regions (not necessarily on town by town basis), and guidelines for methods to inventory scenic resources at town level.

Agency: SPO

Time to Complete: 1-2 years

Funds Required: \$15,000 annually

Comment: A lower priority need.

ALTERNATIVE OCP RECOMMENDATIONS

Alternative A:

Encourage DEP and MDIFW to seek full funding for data acquisition efforts (\$300K and \$900K, respectively); request a minimum level of funding (\$200,000 -- SEE ANALYSIS: Significant Wildlife Habitats) to provide preliminary data to augment MDIFW's long-term data efforts; seek funds as noted for in assessment for remaining critical natural resource types.

COST OF ALTERNATIVE A:	\$200,000	Wildlife Habitats
	40,000	Nat'l Areas/Plants
	37,900	Rivers and Streams
	15,000	Great Ponds
	15,000	Scenic Areas
	<hr/>	
TOTAL	\$307,900	

Alternative B:

Same as Alternative A, but seek funds only for those data types described in assessment as being higher priority, ie. Significant Wildlife Habitat, and Unique Natural Areas and Endangered Plants. This Alternative does not include DEP wetland mapping needs.

COST OF ALTERNATIVE B:	\$200,000	Wildlife Habitats
	40,000	Nat'l Areas/Plants
	<hr/>	
TOTAL	\$240,000	

ANALYSIS : Significant Wildlife Habitat Data Gaps

The \$900,000 requested by MDIFW breaks down thusly:

Biologists for Regions A, B, C	\$ 175,000
Habitat Protection Coordinator	60,000
Coastal Biologist and equip.	93,000
Administrative Support Statewide	133,000
Complete Regional and Assessment Staffing	<u>433,000</u>
TOTAL	\$ 894,000

This includes start-up capitol costs. Subsequent annual cost would be around \$750,000. This staffing level is considered adequate to gather all significant wildlife habitat data for organized towns, provide technical assistance and review, and maintain and update the sig. wildl. habitat data base.

The data gaps within the Significant Wildlife Habitat category are as follows:

Deer Wintering Areas: Virtually no data exists in organized towns. Some towns have "historical" data that has been gathered at random or opportunistically. MDIFW would prefer to provide to towns the same level of DWA data they provide for LURC. That is, at least two years' data collected within the last ten year period, consisting of a minimum of one aerial overflight and one ground survey. This is the standard MDIFW will use to map DWAs for the Natural Resource Protection Act mapping requirement.

The minimum level of data MDIFW would be comfortable providing to towns is a map based on an aerial overflight and subsequent aerial photo analysis. These data could be acquired in one winter (provided adequate snow cover), and would enable data to flow to towns at an accelerated rate.

Wetlands: Data exist for those wetlands identified by MDIFW as having high and moderate value for waterfowl, which were identified during the MDIFW wetland survey in the 1960-70s. Ideally, all these wetlands should be revisited to determine the presence or absence of other important resource values such as endangered or threatened species, wading birds and other important non-game habitats. This additional effort, however, is not included in MDIFW's current methods to provide high and moderate value wetland data to towns.

Endangered and Threatened Species Habitats: "Charismatic mega-vertebrates", such as bald eagles and peregrine falcons are adequately addressed (except with respect to MDIFW's apparent inability recently to provide data to towns to prevent development conflicts). Other endangered species, such as passerine birds, reptiles and amphibians are currently considered low priority by MDIFW for inventory and management efforts.

Shorebird Habitats: Data exist for essentially all of the coast, and OCP and MDIFW are currently working on criteria and guidelines for towns to use to incorporate these areas into comprehensive plans.

Critical Sea-run Salmon Habitats: The Sea-run Salmon commission has sketchy data at best regarding the location of critical spawning, nursery, habitats. Good data exist for some sections of some rivers, and no data exist for most sections of most rivers.

Discussion

Whereas preliminary data suitable for planning purposes may be acquired at less cost than IFW's proposal, we strongly argue that additional staff resources at MDIFW are indeed necessary subsequently to refine data for regulatory purposes, provide interpretive and technical assistance, and to provide for long term data maintenance and updates.

We are suggesting that data acquisition may occur independently of any significant program expansion at MDIFW.

Our considered opinion is that given current staffing levels at MDIFW, minimum data necessary to identify areas of potential concern (ie, data at a level of refinement useful for planning as opposed to zoning or regulation) could be acquired using additional all-other moneys to hire short term project people; data acquisition could be completed for all towns in five years (provided adequate snow conditions for DWA work):

DWA and Wetlands	\$ 100,000 annually
Endangered Species	50,000 "
Shorebird Habitats	-
Salmon Habitats	15,000 "

Total Annual Cost \$ 165,000

Total 5 Year Cost: \$ 825,000

MUNICIPAL LEGAL DEFENSE FUND GRANTS

1

The Municipal Legal Defense Fund grant program is a matching grant program established by the Legislature as part of the Comprehensive Planning and Land Use Regulation Act. The program is intended to assist Maine municipalities pursue legal actions that raise significant issues regarding the enforcement and defense of municipal land use ordinances. The Office of Comprehensive Planning, within the Department of Economic and Community Development, is responsible for administering the program.

Eligible Legal Actions

Municipal Legal Defense Fund grants are available only to municipalities. The grants may be used only to assist a municipality pursue a legal action related to the enforcement or defense of its land use ordinances. The grants are awarded only if such legal action raises one or more legal issues of statewide significance.

A legal action raises an issue of statewide significance if the courts' final judgment on the legal action is likely to depend on a decision that will establish, reaffirm, overturn, or modify a legal precedent affecting the current or future land use management activities of other Maine municipalities. For example, a legal action that is likely to be decided solely from resolution of a dispute about the facts of the case, rather than resolution of an issue of law, does not raise an issue of statewide significance; nor does a legal action that is likely to center on a legal issue on which the courts have already firmly established a position.

Municipal Match of Grant

The Office may award Municipal Legal Defense Fund grants in amounts up to 75% of the total amount of eligible legal expenses, up to a maximum of \$20,000. The actual amount of a grant may be less than 75% of the total amount of eligible legal expenses, and depends on the significance of the legal action and the extent of the municipality's financial need. In any case, the applicant municipality must "match" a Municipal Legal Defense Fund grant by demonstrating that it is paying for at least 25% of the total amount of eligible legal expenses.

Eligible Legal Expenses

Expenses incurred by the applicant municipality are eligible for payment from a grant or as part of the requisite 25% municipal match of a grant only to the extent that the municipality can demonstrate that they constitute court costs, deposition expenses, costs of transcripts, reasonable attorney fees and expenses, or expert or other witness fees. The salaries of municipal employees and legal expenses incurred by the municipality before the initial filing of the legal action in court are not eligible legal expenses.

Grant Applications

Applications for Municipal Legal Defense Fund grant are available from the Office of Comprehensive Planning (see address and phone number listed on page 3). A municipality may apply for a grant any time between the initial filing of the legal action in court and 90 days after entry of final judgment or other conclusion of the legal action. If the municipality applies for a grant while the legal action is pending, any grant awarded the municipality will be based on the application's statements of anticipated future legal expenses, contributions, and reimbursements.

Application Review Process

On receiving an application for a Municipal Legal Defense Fund grant, the Office will review it for completeness. If any required information is missing or incomplete, the Office will immediately notify the municipality's designated contact person of the deficiencies.

On determining that a submitted application is complete, the Office will review it to determine whether the described legal action and legal expenses are eligible for the grant. The Office will refer the application to the Planning Advisory Council (a lay board appointed by the Governor) for its advice, and may also refer the application to the Office of the Attorney General for advice.

On completing its review of the application, the Office will a) approve the application and award a grant for the requested amount, or b) approve the application and award a grant for an amount less than that requested, or c) deny the application. In any case, the Office will immediately notify the municipality's contact person of its decision. If the Office denied the application or approved a lesser grant amount than requested, the notice will state the reasons why.

The application review process will take approximately 45-60 days from the Office's receipt of a complete application to notice of the Office's decision.

Grant Contract and Fund Encumbrance

If the Office approves a municipality's application for a Municipal Legal Defense Fund grant, it will prepare a grant contract and send 4 copies of the contract to the municipality's contact person, who should have the copies signed by duly authorized municipal officials and sent back to the Office.

[Note: Under Maine law, a municipality cannot enter into a contract to accept a Municipal Legal Defense Fund grant, nor appropriate any received grant funding, until the municipality's legislative body (the town meeting or the town or city council) has specifically authorized such action. For a town meeting municipality, this requires the town meeting adoption of a warrant article specifically authorizing municipal officials (i.e., the selectmen) to accept a Municipal Legal Defense Fund grant and enter into a grant contract with the Office, and to appropriate the grant and the requisite municipal match for payment of eligible legal expenses referred to in the contract. To avoid the need for a special town meeting, a municipality may wish to vote on such a warrant article at its annual town meeting.]

On receiving the signed contract copies, the Deputy Commissioner of the Office will sign the contracts and have them sent to the State Bureau of Accounts and Control, which will encumber the Municipal Legal Defense Fund for the grant amount. The fund encumbrance process will take approximately 10-15 business days, after which the Office will send a copy of the executed and encumbered grant contract to the municipality's contact person.

Grant Payments

When the Office sends the municipality the grant contract for signing, it will also send the municipality Request for Payment forms. To obtain a payment from the grant, the municipality must complete a Request for Payment form, attach copies of itemized legal expense bills to be paid by the grant or applied to the municipal match, and send the form and bills to the Office for approval.

The Office will review the form and bills to determine the extent to which the submitted expenses are eligible legal expenses. On approving the submitted expenses as eligible legal expenses, the Office will send the Request for Payment form to the State Bureau of Accounts and Control, which will deposit the approved payment amount directly into the bank account designated by the municipality in the grant contract (If no bank account is designated, a check for the approved payment amount will be sent to the municipality.).

The grant payment process will take approximately 15-20 business days. A municipality may submit one payment request when it has compiled all of its legal expenses, or it may submit periodic payment requests during and after the legal action, whenever its legal expenses have accumulated to the point where a grant payment is needed.

Supplemental Grants and Grant Rebates

If a municipality applies for a Municipal Legal Defense Fund grant while the legal action is still pending and it turns out that the application has underestimated the municipality's future legal expenses and/or overestimated future contributions and reimbursements, the municipality may apply for a supplemental grant to extend the originally approved grant share to the municipality's additional net expenses.

On the other hand, if it turns out that the application has overestimated the municipality's future legal expenses and/or underestimated future contributions and reimbursements, the municipality must rebate to the Office the amount by which the grant exceeds the amount derived from application of the originally approved grant share to the actual amount of legal expenses. For example, if the Office awards a municipality a grant for \$6,500, representing 65% of the application's anticipated total net legal expenses of \$10,000, but net legal expenses actually total up to only \$8,000, the municipality must rebate \$1,300 to the Office (i.e., $\$6,500 - 65\% \times \$8,000$).

To obtain Municipal Legal Defense Fund grant applications or additional information about the Municipal Legal Defense Fund program, contact:

Stephen Sizemore
Office of Comprehensive Planning
Department of Economic and Community Development
State House Station 130
Augusta, ME 04333

(207) 289-6800