

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

CONTINUING CHALLENGES AND GROWING OPPORTUNITIES

Report to the
Joint Standing Committee on Natural Resources
on
Implementing Maine's Growth Management Program

Maine State Planning Office
Community Planning and Investment Program
Augusta, ME
February 2, 1999



ANGUS S. KING, JR.
GOVERNOR

STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE
38 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0038

EVAN D. RICHERT, AICP
DIRECTOR

February 3, 1999

The Honorable Sharon Anglin Treat, Senate Chair
And Members of the Joint Standing Committee on Natural Resources
3 State House
Augusta, Maine

Dear Senator Treat:

I am pleased to submit this Office's evaluation (copy attached) of the effectiveness of State and local efforts to achieve the purposes and goals of Maine's Comprehensive Planning and Land Use Regulation Act.

Our evaluation points out considerable progress and success in managing growth since the Act was passed in 1988, and highlights several areas where more work needs to be done. In some cases it is still too early to accurately measure successful local efforts to direct and guide growth.

Much to the credit of all who worked to establish the Act, it has stood the test of time well, and is recognized both throughout New England and nationally. Revised and improved over time, the Act continues to provide a solid framework based on sound local planning and state recognition and incentives. Work by this Office and other agencies to analyze the costs and factors contributing to sprawl in Maine is intended to support and complement the goals of this Act.

I would be pleased to meet with you and the Committee to review this evaluation in more detail. Please feel free to call me if I can be of further assistance.

Sincerely,

Evan D. Richert, AICP

Attachments: 15 copies of Evaluation
5 copies of Evaluation Appendix



PRINTED ON RECYCLED PAPER



ANGUS S. KING, JR.
GOVERNOR

STATE OF MAINE
EXECUTIVE DEPARTMENT
STATE PLANNING OFFICE
38 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0038

EVAN D. RICHERT, AICP
DIRECTOR

February 3, 1999

The Honorable John L. Martin, House Chair
And Members of the Joint Standing Committee on Natural Resources
2 State House
Augusta, Maine

Dear Representative Martin:

I am pleased to submit this Office's evaluation (copy attached) of the effectiveness of State and local efforts to achieve the purposes and goals of Maine's Comprehensive Planning and Land Use Regulation Act.

Our evaluation points out considerable progress and success in managing growth since the Act was passed in 1988, and highlights several areas where more work needs to be done. In some cases it is still too early to accurately measure successful local efforts to direct and guide growth.

Much to the credit of all who worked to establish the Act, it has stood the test of time well, and is recognized both throughout New England and nationally. Revised and improved over time, the Act continues to provide a solid framework based on sound local planning and state recognition and incentives. Work by this Office and other agencies to analyze the costs and factors contributing to sprawl in Maine is intended to support and complement the goals of this Act.

I would be pleased to meet with you and the Committee to review this evaluation in more detail. Please feel free to call me if I can be of further assistance.

Sincerely,

Evan D. Richert, AICP

Attachments: 15 copies of Evaluation
5 copies of Evaluation Appendix



PRINTED ON RECYCLED PAPER

“There is no finer creation than the New England village. It is testament to the livable community — a community of neighborhoods, churches, shops and town hall. It is testament, too, to the countryside that surrounds it. The contrast between village and countryside in Maine is as crisp as a fresh apple, picked on a fine fall day. We savor both.”

Angus S. King, Jr., 1997

Economic development 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.

Integrating Land Use and Natural Resource Management — Final Report of the Land Use Regulatory Reform Committee, Office of Policy and Legal Analysis, Maine Legislature, 1994

Distribution and Acknowledgment

The State Planning Office shared an early draft of this evaluation with a number of organizations. We would like to thank the following people, agencies, and organizations for their comments and other assistance as we prepared this final report. The ideas and suggestions we received were invaluable and we look forward to continuing to work with these and other groups in the future. While we tried to respond to most of the comments we received, this acknowledgment is, in no way, intended to suggest approval or endorsement of the content of this report by the following groups or individuals.

State Departments -

Attorney General	Housing Authority
Agriculture, Food, and Rural Resources	Human Services
Conservation	Inland Fisheries and Wildlife
Economic and Community Development	Marine Resources
Environmental Protection	Transportation
Historic Preservation Commission	

Regional Councils -

Androscoggin Valley Council of Governments	Mid Coast Council of Governments
Greater Portland Council of Governments	Northern Maine Development Commission
Hancock County Planning Commission	Penobscot Valley Council of Governments
Kennebec Valley Council of Governments	So. Maine Regional Planning Commission
Merrymeeting Council of Governments	Washington Cty Regional Plng Commission

Other Organizations -

Audubon Society of Maine	Maine Preservation
ECO/ECO Civic Forum	Maine Real Estate and Development Assoc.
Maine Coast Heritage Trust	Natural Resources Council of Maine
Maine Municipal Association	

Towns -

Brewer	Hodgdon	Rockland
Carrabasset Valley	Houlton	Newport
Farmington	Mechanic Falls	Skowhegan

Private Sector Planners -

Holly Dominie	Mary Ann Hayes	Kent Associates
Bob Faunce	Gwen Hilton	Planning Decisions

State Planning Office Interns -

Paul Harrison	Sara Skehan	Mia Works
---------------	-------------	-----------

CONTENTS

	Page
I. EXECUTIVE SUMMARY	
A. Background	1
B. Key Findings	1
C. Key Recommendations	2
II. FINDINGS AND RECOMMENDATIONS	
A. Local Planning and Implementation of the Act	3
B. Regional Planning and Implementation of the Act	5
C. State Planning and Implementation of the Act	7
III. PROGRAM UPDATE	
A. History of Program	9
B. Program Status	11
C. Local Financial Assistance	12
D. Statutory Changes	13
E. Recommendations	14
IV. EVALUATION OF GOALS	
A. Development Sprawl and Public Facilities	15
B. Economic Development	19
C. Affordable Housing	22
D. Water Resources	24
E. Critical Natural Resources	25
F. Marine Resources	29
G. Agricultural and Forest Resources	30
H. Historic and Archaeological Resources	35
I. Recreation and Public Access	37
J. Capital Investment Strategy	39
K. Regional Coordination	40
V. STATE AGENCY COORDINATION	
A. Revise State Policies That Work at Cross Purposes to the Act	44
B. Reward Local Planning Efforts	44
C. Provide Good Planning Data to Communities	45
D. Review of Local Comprehensive Plans and Ordinances	45
VI. FUTURE EVALUATIONS	47

APPENDICES

A. Regional Planning Commission Interviews	A.A
B. Private Planners' Interviews	A.B
C. Code Officer Training and Certification Program	A.C
D. Housing Analysis	A.D
E. Cost of Sprawl Study	A.E
F. Paradox of Sprawl	A.F
G. Report of Service Center Task Force	A.G
H. Livable Communities Forums	A.H
I. Municipal Capacity Determinations and Strategy	A.I
J. Mapping of Growth	A.J
K. A Response to Sprawl: Designing Communities to Protect Wildlife Habitat and Accommodate Development	A.K

I. EXECUTIVE SUMMARY

A. BACKGROUND

The 1994 amendment of the Community Planning and Land Use Regulation Act [30-A MRSA § 4301 et seq] (hereinafter referred to as the Act) confirmed the state's commitment to and recognition of the importance of good, locally driven planning and management of growth. In support of those efforts, the Legislature directed the Growth Management Program (now known as the Community Planning and Investment Program, hereinafter referred to as the Program) to evaluate its effectiveness in achieving the goals of the Act and to support ongoing improvement of the Program. To that end the State Planning Office (Office) submits this first evaluation of the Program.

The Act calls for an objective and quantitative, where possible, focus on the Act's primary goal — "promoting orderly growth and development" and the other goals as they relate to it. The Office is establishing a baseline of current conditions against which to measure future progress and will continue to establish this baseline for use in future evaluations. Where possible in this evaluation, the Office compared towns or regions that have participated in the Program with those that have not.

B. KEY FINDINGS

Four key findings emerge from this evaluation:

- Local growth management has achieved some notable successes. The voluntary approach to municipal participation has achieved positive results and should continue.
- Nevertheless, local planning efforts alone are insufficient to protect natural resources and get the greatest return from public investment in infrastructure. In particular, by itself local growth management will not achieve the statutory objective of "orderly growth" as long as:
 - state fiscal and investment policies work against it,
 - state agencies fail to fully embrace the Program,
 - regional planning and cooperation are relegated to afterthoughts, and
 - local governments discourage traditional, compact forms of development within their borders.
- State support of local growth management needs to continue in order to reach those communities and regions most at risk from the effects of unplanned growth.
- In order to measure the effectiveness of investment in growth management, the State must devise and fund a cost-effective, coordinated development tracking system.

C. KEY RECOMMENDATIONS

The recommendations of the Legislative Task Force on Service Center Communities (1998) and the compilation of actions identified in the “Livable Communities” forums held in conjunction with the ECO/ECO Forum in the fall 1998 highlight the importance of the goals of the Act. Broadly, these recommendations do not seek new regulation but rather address:

- the reform of state fiscal policies that encourage development sprawl,
- the health and well-being of both rural towns and service centers,
- state investment in local infrastructure in support of locally designated growth areas, and
- market strategies for traditional, compact neighborhood development.

In addition, other recommendations for consideration include:

- increased flexibility in assisting slow growing and service center communities in establishing growth and rural areas,
- grants and other tools to help support sustainable natural resource-based economies as a defense against sprawl,
- a tracking system that identifies the location of growth,
- meaningful incentives and rewards for communities with consistent growth management programs,
- increased funding to support local planning and implementation grants to meet a new statutory deadline,
- ecological characterizations that are not limited by municipal boundaries to support wider regional protection of wildlife and fisheries habitat and strategies that go beyond traditional regulatory approaches to address habitat fragmentation,
- development of public policy in support of locally-owned natural resource-based industries including modification of state tax policy,
- encouragement of greater use of shared facilities and services,
- amendment of the Act to clarify ambiguities and protect municipalities from certain consequences of the law.

II. FINDINGS AND RECOMMENDATIONS

The general findings and recommendations of this evaluation are described in the following three sections:

- local planning and implementation of the Act,
- regional coordination and implementation of the Act,
- state planning and implementation of the Act.

A. LOCAL PLANNING AND IMPLEMENTATION OF THE ACT

Since the Program's inception in 1988, 317 communities have received planning grants and 162 have produced plans found consistent with the Act. Of these, 22 towns are certified or potentially eligible for certification. The plans have achieved some notable successes:

- preserving natural resources — towns in the Damariscotta River watershed are working cooperatively to protect the river and its resources;
- identifying areas suitable for economic development, including industrial parks and downtowns — Unity's evaluation of its infrastructure and development of a community vision helped secure a Community Development Block Grant and Lewiston's recent designation as an "Enterprise Community" by the United States Department of Agriculture implements its comprehensive plan;
- improving code enforcement — Maine now has 464 trained and certified code officers;
- preserving highway capacity — measures to control strip development along Route 1 in Caribou, Route 3 in Belfast and Route 1A in Holden were initiated with their plans;
- expanding waterfront access — planning efforts in Addison, Brunswick, Machiasport, and York lead to town acquisition and improvements in access for commercial fishing and recreation; and
- reducing the threat of natural hazards — both Milford's and Dexter's plans steer development away from the floodplain where past losses have occurred.

In general, the Program has been successful in helping communities frame issues for discussion and, without it, many communities would be dependent on 20 year old comprehensive plans to defend challenges to regulatory decisions. The Program has spawned a wide range of local, "grass roots" planning activities and working groups to implement various strategies in comprehensive plans.

However, despite these positive results, this evaluation leads to four particularly important conclusions. First, the number one goal of the Act — orderly development, prevention of development sprawl, and efficient extension of public facilities — has been elusive. Growth continues to occur, at often alarming rates, outside the established growth areas in many towns. After careful analysis, comprehensive planning committees often call for strong action to implement future land use plans, but implementation frequently does not occur.

Second, land use regulation, at the municipal or state level, cannot be the only method for achieving the goals of the Act. Regulatory strategies alone are insufficient given the complexity and nature of growth management issues, the desire for local control, and the difficult choices that communities must make.

Third, the need for local planning and implementation in Maine's 495 municipalities continues to be strong. The demand for planning and implementation grants exceeds available funds. Currently, there are approximately two dozen towns interested in a planning grant and about a dozen towns interested in an implementation grant; more than we expect we can fund in FY 1999. At current funding levels, the Program will be unable to offer all towns a planning and implementation grant until 2031.

And fourth, the wide variety of communities in Maine — small and large, rural and urban, slow and fast growing — calls for flexibility in applying the statutory guidelines for comprehensive plans.

To support more effective local planning and implementation of the Act, the Office recommends the following:

Offer strategies for traditional, compact neighborhood development.

- Maine towns that wish to grow also want to maintain their character and quality of life. The state should continue to identify and promote traditional, compact development using market research where appropriate, alternative design strategies, demonstration projects like the New Neighbors Program, and technical assistance.

Increase Program funding so all municipalities have the financial and technical assistance necessary to prepare comprehensive plans and ordinances by an extended deadline or alternatively extend the 2003 deadline for those towns that have not been offered a planning and implementation grant because of budget constraints.

- Given current funding, it is not possible to provide planning and implementation grants to all municipalities by the 2003 deadline in the Act. Although when the date was set, it was understood that not all communities would receive funding in time to meet the deadline, the Office recommends that all towns receive an offer of financial assistance prior to being held to the deadline for compliance with the Act. The Office recommends that annual Program funding for local financial assistance, appropriate staffing, and technical assistance be increased and the statutory deadline extended. Alternatively, the 2003 deadline should be extended for those towns that have not been offered a planning and implementation grant because of budget constraints.

Amend the Act to clarify ambiguities and protect municipalities from certain consequences of the law.

- The state should amend the Act to clarify ambiguities related to deadlines and definitions and to protect municipalities from undeserved negative consequences of the law by adding a severability clause to protect valid sections of ordinances, creating an exception to the 2003 deadline for towns not offered state financial assistance, providing more zoning flexibility for slow growing communities (see next recommendation), and requiring state compliance with all consistent land use ordinances.

Increase flexibility in establishing growth and rural areas in slow growing communities and service centers.

- The Office should continue to use funding priorities and discretion in review of growth and rural areas in slow growing communities and service centers in support of the existing exemption in the Act and to allow greater opportunity for infill development and efficient use of municipal services.
- The state should amend the Act to exempt the requirement for designation of a growth area for commercial and industrial development in slow growing towns. This would be similar to the exemption that already exists for residential uses.

Continue efforts to establish a tracking system to identify the location of growth.

- Convene an interagency and interdisciplinary resource team to develop an efficient, integrated system that tracks the location of growth, helps evaluate the Program's success in meeting the goals of the Act, and serves the needs of assessors, code enforcement officers, emergency service providers, planners and others at the local, regional, and state levels. The team should develop a proposal that is supported by the major stakeholders, calculate system costs and benefits and prepare a funding plan to present to the Legislature in 2000.

B. REGIONAL COORDINATION AND IMPLEMENTATION OF THE ACT

The Office recognizes that the Program's town-by-town focus has limited its success in achieving the orderly growth and regional coordination goals of the Act. Growth patterns and their impacts often occur and must be addressed on a regional basis because:

- strategies to protect wildlife and fisheries habitat and natural resources that cross municipal boundaries may conflict or be ineffective on a town-by-town basis;
- public investment in major infrastructure (roads, public water and sewer, industrial parks, etc.) should consider its positive and negative impacts on regional growth patterns;

- some facilities and services (emergency services, dispatch, geographic information systems, school systems, etc.) are generally more cost-effective when provided on a regional or intermunicipal basis; and
- public education and technical assistance is usually most effective when it is delivered regionally rather than from a single, central location.

Lack of involvement of regional organizations in planning for protection of habitat and other resources, expansion and maintenance of infrastructure, and significant reduction in financial support of the Regional Councils have severely limited the Program's effectiveness in planning for growth and protection of resources that cross municipal boundaries and in encouraging and supporting the development and use of intermunicipal and regional facilities and services. In addition, funding cutbacks have severely restricted the Regional Councils' ability to provide the continuing education which is necessary to implement the goals of the Act.

The state should explore nonregulatory strategies and approaches that involve multiple towns and regional organizations in planning for the protection or use of habitat and natural resources that cross municipal boundaries.

- The Office should continue to work with a broad coalition of environmental and natural resource agencies and nongovernmental organizations¹ to develop regional strategies to protect habitat and address fragmentation that go beyond regulatory approaches.

The state should consider the regional implications of major investments in infrastructure and involve regional organizations in planning for them.

- The Office should continue to work with state agencies and regional organizations that oversee major infrastructure investments² to assure that they consider the regional impact of these investment decisions.

The state should encourage more shared facilities and services.

- The Office should continue to work with municipalities, regional organizations, and state agencies to encourage greater use of shared facilities and services, where appropriate, to reduce municipal and state costs of providing services and take advantage of economies of scale.

¹ Including the Departments of Agriculture, Food, and Rural Resources (DAFRR), Conservation's Natural areas Program (NAP), Environmental Protection (DEP), Human Services (DHS), Inland Fisheries and Wildlife (IFW), Marine Resources (DMR), Maine Audubon, ECO/ECO Forum, and Regional Councils, among others.

² Departments of Education (DOE), Economic and Community Development (DECD), Transportation (MDOT), the Finance Authority of Maine (FAME), Bureau of General Services (BGS), Court System, Maine Housing Authority (MSHA), Maine Turnpike Authority (MTA), and Regional Councils, among others.

C. STATE AND FEDERAL PLANNING AND IMPLEMENTATION OF THE ACT

While some progress has been made, state agencies need to more fully embrace and support the goals of the Act. This can be accomplished by continuing efforts to eliminate current incentives to sprawl, establishing incentives that reward the work towns have done to establish local growth management programs consistent with the goals of the Act, planning for and investing in service centers and designated growth areas, and planning for and investing appropriately in rural areas to support natural resource-based industries and protect important natural areas.

Continue to identify and eliminate hidden subsidies of sprawl.

- The Office should continue to work with appropriate state and federal agencies³ to create greater awareness of the unintended impacts of their policies and investments and modify them accordingly. This could be accomplished in part by requiring review of all proposed major investments in facilities and infrastructure by the Land and Water Resources Council, or by limiting such investments to locally-designated growth areas.

Recognize and reward local efforts to manage growth consistent with the Act.

- The state should amend the Act to offer meaningful incentives and rewards and expand preferential award of grants and loans for projects supporting communities with consistent growth management programs, including projects that expand public sewer and water.
- The Office should actively seek federal moneys to help implement local and multitown efforts that support consistent growth management programs.

Plan for and invest appropriately in service centers and designated growth areas.

- The state should implement the recommendations of the Service Center Task Force.
- The state should fund the Municipal Infrastructure Trust Fund which was authorized but not appropriated monies in 1994. This funding need, and incentive, remains critical to encourage compact development and reward communities that plan for growth. One of the uses of this fund would be to support needed infrastructure in service centers and designated growth areas of towns with consistent growth management programs.
- The Office should continue to work with state agencies and regional organizations that oversee major infrastructure investments⁴ to direct state funds to service centers and designated growth areas of towns with consistent growth management programs, considering impacts on regional growth patterns and sprawl.

³ DOE, DECD, MDOT, FAME, Municipal Bond Bank, Public Utilities Commission (PUC), BGS, Court System, MSHA, MTA, and US Environmental Protection Agency (EPA), Economic Development Administration (EDA), and Departments of Housing and Urban Development (HUD), Education, Transportation, among others.

⁴ DOE, DECD, MDOT, FAME, Maine Municipal Bond Bank, BGS, Court System, MSHA, MTA, and Regional Councils, among others.

Plan for and invest appropriately in rural areas.

- Build upon interagency working relationships begun in 1998 to identify strategies for the productive use of rural lands and prevention of development sprawl and make recommendations to the second session of the Legislature. To achieve this goal, state efforts must not rely solely on the Program's financial and technical assistance to communities. Priority areas include tax policy, land use planning, and business planning/marketing assistance for natural resource-based industries.

Provide tools to municipalities to assist in supporting productive rural landscapes.

- The Office, working with the natural resource production and economic development agencies⁵, should continue to develop and provide tools for municipalities to help manage and preserve productive rural landscapes. Among these are model "right to farm" ordinances, model buffer standards, sample wood lot harvesting contracts, guidance on how to prepare an inventory of local industries and changing patterns of their use, and a directory of local initiatives in support of natural resource-based industries. Regional Councils should be available to help tailor models to specific community situations and needs.

Offer Rural Initiatives Grants to support sustainable rural economies.

- Relevant state agencies should seek to pool existing resources to offer Rural Initiatives Grants to support natural resource-based industries in communities with consistent growth management programs in the belief that owners of healthy industries will be less likely to sell their land for development. Regional projects should be encouraged.

⁵ DAFRR, Maine Forest Service (MFS), and DECD, among others.

II. PROGRAM UPDATE

A. HISTORY OF THE PROGRAM

The Program has gone through many changes since its inception in 1988. The focus of the 1980s was on a mandated town-by-town response to growth, easing of traffic congestion, preserving rural character, and land use regulation. This has evolved, both programmatically and legislatively in the 1990s to recognize key issues such as regional and state influences on growth patterns, the importance of stimulating sustainable local economies including natural resource-based industries, and encouraging more interlocal cooperation. Nevertheless, the framework of the Act remains largely intact.

Today, Maine's Community Planning and Land Use Regulation Act (Act) is administered by the State Planning Office. Just over four staff positions make up the Community Planning and Investment Program that administers grants to municipalities to develop and implement local growth management programs. Staff also provide planning technical assistance to towns and work with Maine's ten Regional Councils who also provide assistance to communities with financial support from the Office.

Current Program funding and staffing is far less than at the Program's inception when planning was mandatory and rolling deadlines were established for every community in the state to complete its plan and ordinances. These rolling deadlines were replaced in 1991 with the current 2003 deadline by which any community choosing to regulate land uses beyond shoreland zoning and subdivision must do so in accordance with a local comprehensive plan and ordinances adopted consistent with the Act. Local interest in planning has remained fairly steady over the past ten years and demand for planning assistance grants continues to exceed resources available.

In 1994, the Land Use Regulatory Reform Committee (in response to LD 1487) recommended the Act be amended to provide for expanded interagency coordination¹ and strong commitment to the establishment and strengthening of a Geographic Information System (GIS) to enhance agency coordination. In response to these recommendations, the Legislature made significant changes to the Act (Public Law Chapter 721) to increase flexibility in meeting statutory goals and offered incentives for involvement in the Program. New provisions allowed towns the option of not delineating residential growth areas in their comprehensive plans [30-A MRSA §4326 (3)(A)] if they faced little or no population growth or natural features prevented appropriate subsurface wastewater treatment or adequate water supply. Another provision required towns with great ponds to protect them [30-A MRSA 4326(3)(J)] and their water quality from the effects of phosphorous loading [30-A MRSA 4326 (3)(C)]. These amendments were important in providing flexibility for communities that embrace planning and land use

¹ Departments of Agriculture, Food, and Rural Resources (DAFRR), Conservation (DOC), Environmental Protection (DEP), Transportation (MDOT), Economic and Community Development (DECD), Inland Fisheries and Wildlife (IFW), Marine Resources (DMR), State Planning Office (Office), Housing Authority (MSHA), and Historic Preservation Commission (MHPC).

management but for whom demographic or natural resource constraints discourage compact patterns of development. While towns were still not mandated to develop plans under the Program, those that chose to regulate land use continued to be required to meet the goals of the Act.

In 1995, a concerted effort in the Program began to explore nonregulatory means to achieve the goals established in the Act. Also, the Office began working closely with other state agencies to understand better the forces behind development patterns in Maine. The Program focus shifted to examine the relationship between traditional New England village development and natural resource-based industries and how those relationships have changed in recent times. The Program adjusted its perspective to focus on the goal that requires plans to encourage “efficient use of municipal services while avoiding development sprawl.”

Together with changes that broadly expanded the range of skills of staff (from economics to historic preservation to local planning experience), the Program has in the past several years seen an infusion of energy supporting the premise that strategies to address development sprawl require a larger focus than just zoning; that public investment (state, municipal, and federal) should more carefully support planned growth as reflected in local, regional, and state plans rather than simply respond to the impacts of growth and development.

Recognizing that current resources of the Program are inadequate to provide grants to all towns in time to meet the 2003 deadline, the Office has, over the past couple years, explored alternatives to the existing grant program, including regional initiatives. Over the past two years, the Program has targeted most funds to help communities implement adopted consistent plans, focusing on service centers and fast growing communities. But even with these efforts, there will be inadequate resources to meet the demand for assistance to meet the upcoming deadline.

Better coordination of state agencies and the creation of incentives called for by the Act must happen if the goals of the Act are to be achieved. Two recent initiatives are the Governor’s request that the Land and Water Resources Council (LWRC), made up of commissioners from nine natural resource and development agencies, evaluate the consistency of departmental policy with the Act and modification of the Site Location of Development Law to shift oversight of mid-sized development proposals from the state to communities that the Department of Environmental Protection (DEP) has identified as having municipal capacity, in part defined by meeting certain elements of the Act.

Relation of Program to the Cost of Sprawl and Regional Service Center Initiatives

Recently, the Office published The Cost of Sprawl (Appendix E of this report), summarizing the effect of sprawl on the state and its communities. Sprawl has and will continue to impact state and municipal budgets since it is a largely hidden cost of individual decisions about the location of development. For example, while there are 27,000 fewer students in our public schools today than in 1970, the state over that same period committed \$727 million for new and expanded schools. In part, this was a result of families leaving service center communities for outlying communities.

The impact on service centers like Brewer and Portland has been that there is under-used school capacity and a shrinking tax base with which to support school budgets. On the other hand, towns like Standish and Hampden, are seeing an increase in students that is overburdening existing facilities and budgets. In turn, new state-of-the-art schools in fast growing suburbs entice more residents to leave centers with aging school facilities and higher tax rates necessary to address school needs.

The objective of The Cost of Sprawl was to identify these hidden costs of a sprawling pattern of development and to ask to what degree state policies supporting sprawl need to change. By identifying 95 communities that serve as either service or specialty centers and the approximately 260 growth communities, the report helped focus attention not only on the costs associated with sprawl, but also on the Program as a method of dealing with sprawl.

B. PROGRAM STATUS

As of November 1998, 317 municipalities have received planning grants. Of those, 162 towns have adopted comprehensive plans that are consistent with the Act and 106 of those towns have prepared and adopted ordinances that are consistent with their plan or are in the process of preparing them. Of the towns that prepared plans that were found inconsistent with the Act, 37 adopted their plans. There are 35 towns currently in the process of drafting a plan or revising an existing one and 7 towns in the process of revising ordinances.

Currently, five Aroostook County towns have Certified Growth Management Programs. One community in Cumberland County is in the process of applying for certification and one other community was not certified because of an inconsistent land use ordinance. Another 15 communities are eligible for certification, but have not applied to be certified. The Office believes that more communities will seek certification as more state programs provide recognition and incentives.

The Office has been working with other state agencies to increase incentives and to expand consistency between the goals of the Act and their policies and grant programs. Community Development Block Grant, municipal capacity, nonpoint source, drinking water, historic and archaeological survey and planning, school construction, and Land For Maine's Future efforts have all worked to make linkages with the Program over the past year; however, progress generally has been slow and difficult to achieve.

The most significant barriers to compliance with the goals of the Act are:

- failure of state agencies to fully embrace the goals of the Act and incorporate them into their programs;
- lack of clear and significant rewards for communities that have adopted plans, ordinances, and programs in support of the goals of the Act;
- inadequate funding to meet the need for local planning and implementation; and

- lack of staff to administer grants, provide technical assistance, and undertake necessary research and policy development.

C. LOCAL FINANCIAL ASSISTANCE

1. Summary of FY 1998 and 1999 Grant Programs

The Office currently provides three types of grants to municipalities: Planning Grants to develop comprehensive plans consistent with the Act, Implementation Grants to implement comprehensive plans that are consistent with the Act, and Rural Initiative Grants supporting local and regional rural natural resource-based industries.

Over the past two fiscal years, the Office provided two pilot grant projects to create incentives and rewards for local efforts that are consistent with the Act.

- Regional Infrastructure Grants for municipal and regional initiatives to help plan and develop infrastructure supporting growth in service centers. Over the two years of the pilot, a total of \$214,000 was awarded for 14 projects.
- Rural Initiatives Grants to help support natural resource-based industries, with the intent that these lands are less likely to be sold for development if the industries are healthy.

Community Planning and Investment Program Grant Budget Summary of FY 1998 and 1999

GRANT CATEGORY	1998	1999
Planning grants to centers and fast growing communities	\$ 50,000	\$ 50,000
Implementation grants to communities with consistent plans ²	\$ 100,000	\$140,000
Regional infrastructure grants	\$ 100,000	—
Rural initiative grants	—	\$ 60,000
TOTAL	\$ 250,000	\$250,000

2. Future Funding Needs

At current funding levels, all towns will not be offered a planning and implementation grant until 2031 and there is more demand for grants than the Program can provide.³ In response to this limitation and to suggestions made by the Regional Councils and private sector planners in 1996,

² With the following order of funding priority: service centers, fast growing towns, slow growing towns.

³ There are approximately two dozen towns currently interested in a planning grant and about a dozen that have expressed an interest in implementation; more than we expect to be able to fund in FY 1999.

the Program prioritized local grants for the past two years to coordinate with the Office's Patterns of Development work.

The Office identified planning grants for service centers that have not previously been offered a grant as its first priority. Second priority is implementation grants for fast growing communities. These priorities were established because plans and ordinances in these towns are most likely to be challenged.⁴ In 1999, limited funds were made available to implement plans in slow growing communities with consistent comprehensive plans.

**Future Potential Local Financial Assistance Need
In Dollars**

Type of Community	Planning Grants	# of Towns	Implementation Grants	# of Towns	Total Funds Needed
Service Centers	\$180,899	7	\$375,000	40	\$555,899
Other Urban Places	0	0	\$46,875	5	\$46,875
Fast Growing Towns	\$281,421	20	\$1,115,625	119	\$1,397,046
Slow Growing Towns	\$1,583,327	113	\$1,434,375	153	\$3,017,702
Total Projected Need	\$2,045,647	140 ⁵	\$2,971,875	317	\$5,017,522

D. STATUTORY CHANGES

In 1998 the Office reviewed the Act to identify the need for clarification or revision. Program staff, working closely with members of the Maine Municipal Association's (MMA) Legal Services Division⁶ and the Attorney General's Office, identified numerous ambiguities, particularly in the language of the Transition and Savings Clause (30-A MRSA § 4314). In addition, the Office identified four areas that should be revised to protect municipalities from undeserved, negative consequences of the Act.

The Office was going to propose modification of the Act in the first session of the 119th Legislature, but decided to delay submission to allow time for more thoughtful discussion and input from interested parties, including MMA's Legislative Policy Committee. It is the Office's intention to prepare a set of proposed amendments for consideration in the Legislature's Second Session. Likely areas for proposed amendment include:

⁴ Of the approximately 178 towns that have not received a planning grant, approximately 30 have local land use regulations.

⁵ Since 1994, the Program has not offered the approximately 38 unorganized townships and plantations financial assistance.

⁶ This is not MMA's policy arm, but the attorneys who assist members with interpretation of legal issues.

- clarification of existing ambiguous language — clarifying the definition of “land use ordinance” and intent of the “savings clause” provisions are two examples where it is felt provisions of the Act should be clarified.
- severability — adding a provision so that only inconsistent parts of an ordinance, rather than the entire ordinance, would be void by the statutory deadline.
- exception to the 2003 deadline for communities not offered grants — relaxing this deadline for communities that are not offered grants because of budget constraints.
- expanded flexibility in designating growth and rural areas in slow growing communities — extending exemption of the requirement to designate growth areas for nonresidential development in communities where these growth pressures are low or natural resource constraints discourage compact development. A similar exemption currently exists for residential growth area designation.
- State compliance with consistent local programs — amending Section 4352(6) to make it clear that state agencies shall comply with all local land use ordinances, not just zoning ordinances, in communities with consistent plans and ordinances. The Office would not suggest changing the existing exception provision to this Section.

E. RECOMMENDATIONS

- The Office should continue to use funding priorities and discretion in review of growth and rural areas in slow growing communities and service centers in support of the existing exemption in the Act and to allow greater opportunity for infill development and efficient use of municipal services.
- The state should increase Program funding so that all municipalities have an opportunity to prepare comprehensive plans and ordinances, or alternatively, that the 2003 deadline be extended for those towns that have not been offered a planning and implementation grant because of budget constraints.
- The Office should submit proposed amendments of the Act to the second session of the 119th Legislature after consultation with municipalities, Regional Councils, the Maine Municipal Association, the Attorney General’s Office, and other interested parties.

III. EVALUATION OF GOALS

A. DEVELOPMENT SPRAWL AND PUBLIC FACILITIES

Goal [30-A MRSA §4312 (3)(A) and (B)]: *To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;*

To plan for, finance, and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

Strategy [30-A MRSA §4326 (3)(A)]: *Identify and designate at least 2 basic types of geographic areas:*

(1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:

- (a) Establish standards for these developments;*
- (b) Establish timely permitting procedures;*
- (c) Ensure that needed public services are available within the growth area; and*
- (d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and*

(2) Rural areas, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards.

A municipality is not required to identify growth areas for residential growth if it demonstrates that 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 it demonstrates that the municipality has experienced minimal or no residential development over the past decade and this condition is expected to continue over the 10-year planning period. A municipality exercising the discretion afforded by this paragraph shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4327;

The Community Planning and Land Use Regulation Act (Act) was passed to establish a broad framework for more effective land use and natural resource management at both the state and

local levels.¹ It was meant to promote “orderly growth and development while providing proper management of natural resources.”² When the Legislative study committee reexamined the relevancy of the goals of the Act in 1994, it found that:

Economic development 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.³

To measure progress toward achieving the goal of orderly growth, the Office reviewed elementary school construction, new roads accepted by municipalities, and the location of new development.

New School Construction

The issue of new school construction is an important one, since the location of schools can set into motion a whole range of changes: residential development may be spurred on close to schools so children can walk to them; more far flung residential development will be reflected in longer school bus rides, loss of participation in after school activities; subsequent impact on other municipal infrastructure including the need to expand public sewer and water; net loss of agricultural land to development of new facilities; redundant school capacity within a region.

As a result of several instances when existing facilities were abandoned rather than renovated or expanded, the Office, working with the Department of Education (DOE), assisted in the passage of LD 2252, which created a Revolving Renovation Fund to improve the condition of existing school buildings, many of which are located in service centers. The legislation also requires school districts to commit to maintenance and capital improvement programs for all school buildings. Twenty million dollars was appropriated as the first phase of capitalization of the Fund. One of the most important provisions of the legislation is that it changed tuition policy to allow reimbursement from the sending school/community unit to the receiving unit to factor in capital as well as instructional cost.⁴ Unfortunately, several school construction plans were in the works prior to passage of this bill, so in upcoming years the state will still fund new schools that may not be in line with municipal growth area determinations. One example is the new school in Poland, which is outside the growth area of both Poland and Mechanic Falls and, in effect, may create a new unplanned and unsewered growth area.

¹ Office of Policy and Legal Analysis, Maine Legislature. “Integrating Land Use and Natural Resource Management - Final Report of the Land Use Regulatory Reform Committee” January 1994, page 4.

² Ibid, page 13.

³ Ibid, page 17.

⁴ Report of the Task Force on Regional Service Center Communities. “Reviving Service Centers” 1998, page 19.

New Public Road Miles

As new roads are built and accepted by a municipality, the cost of servicing those roads becomes an expense in the municipal budget. Ideally most new roads should be located within growth areas where municipal services are nearby. If housing is close to schools, students can walk to school or spend less time on buses that travel fewer miles. Similarly, if subdivisions are more compact, school bus stops can be combined, again reducing travel times and distances. By contrast, new municipal roads in rural areas ensure that development is spread over greater distances, at greater expense for the community to maintain and serve.

To explore municipal development patterns, the Office commissioned the Maine Department of Transportation (MDOT) to identify where new roads have been built in a sample of towns that have and have not participated in the program. As the table below shows, the towns that demonstrate the highest percent increase in road miles are fast growing communities, while those with a loss in road miles are primarily slow growing communities or service centers.

TOWN	DESIGNATION	1986	1997	86-97	% CHANGE
AURORA	Slow Growing	17.28	15.92	-1.36	-7.87
BRUNSWICK	Service Center	133.52	147.40	13.88	10.40
EDDINGTON	Slow Growing	27.26	25.58	-1.68	-6.16
FRANKLIN	Slow Growing	33.47	31.19	-2.28	-6.81
GRAY	Fast Growing	78.22	99.48	21.26	27.18
KENNEBUNK	Service Center	89.09	103.53	14.44	16.21
MILLINOCKET	Service Center	32.95	40.95	8.00	24.28
SCARBOROUGH	Fast Growing	122.88	144.52	21.64	17.61
TOPSHAM	Fast Growing	67.55	75.97	8.42	12.46
WINDHAM	Fast Growing	107.95	141.63	33.68	31.20

It should be noted that legislation was passed in 1997 requiring towns to assess the roads that had been accepted but never built, so-called "paper streets," and either revert title back to the abutters or accept the roads. This may explain the reduction in mileage in some towns like Eddington and Franklin. It also should be noted that Madawaska, during its comprehensive planning process, identified and abandoned 19 miles of these roads, avoiding the cost of maintenance and upgrading to serve future development. The Town Manager, who also served as the Road Commissioner, convinced the comprehensive planning committee that it was in the Town's best interest to abandon these roads to discourage residential development in its rural area.

In the case of service centers, the increase in road miles is to be expected and even encouraged. Development in centers can be more readily served with existing facilities than in neighboring rural communities that may be poorly equipped and less able to bear the financial burden of providing such support.

Tracking Residential, Commercial, and Industrial Development

Generally, the Office has viewed the orderly location of residential, commercial, and industrial development as one of the most important and, often, most difficult elements in review of a local

comprehensive plan for consistency with the Act. However, building permit data that is submitted to the state does not identify the location of development within a community. This could be remedied with the use of a reporting form that includes a check off box to identify whether the permit was issued for a property located in a designated growth or rural area as specified in the town plan or by noting the parcel or map and lot number and tying that to the E-911 map, assessor's map, GIS, or other type of mapping system. It is our belief that while many towns currently don't track this kind of development, it would be a useful tool to monitor the effectiveness of their growth management efforts, as well as for state and regional agencies to better focus technical assistance. The development data does not currently exist in a format that allows tracking on a regional or state level.

RECOMMENDATIONS

- Continue working with DOE to direct state funds toward renovation and expansion of existing schools in service centers and designated growth areas and to site new schools consistent with local comprehensive plans with consideration of impacts on regional growth patterns and sprawl.
- Amend the Act to offer meaningful incentives and rewards for communities with certified growth management programs and expand preferential award of grants for expansion of sewer and water facilities consistent with a local comprehensive plan.
- Convene an interagency and interdisciplinary resource team to develop an efficient, integrated system to track development, help evaluate the Program's success in meeting this and other goals of the Act, and serves the needs of assessors, code enforcement officers, emergency service providers, planners and others at the local, regional, and state levels. The team should develop a proposal that is supported by the major stakeholders, calculate system costs and benefits, and prepare a funding plan to present to the Legislature in 2000.
- Continue working with the MDOT to eliminate policies that penalize service centers or threaten rural natural resource-based economies.
- Support MDOT's Urban Compact and Rural Road Initiatives.
- Support MDOT's efforts to establish access management policies and regimes at the state, regional, and local level.
- Build upon interagency working relationships begun in 1998 to identify strategies for mutually reinforcing the productive use of rural lands and deterring development sprawl. Priority areas include tax policy, land use planning, and business planning/marketing assistance for natural resource-based industries.

B. ECONOMIC DEVELOPMENT

Goal [30-A MRSA §4312 (3)(C)]: *To promote an economic climate which increases job opportunities and overall economic well-being;*

Strategy [30-A MRSA §4326 (3)(A)]: *Identify and designate at least 2 basic types of geographic areas:*

(1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:

- (a) Establish standards for these developments;*
- (b) Establish timely permitting procedures;*
- (c) Ensure that needed public services are available within the growth area; and*
- (d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and*

(2) Rural areas, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards...

Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development.

From its beginning, one of the key goals of the Program has been to support economic development while at the same time protecting community character and natural resources. One of the greatest challenges to achieving this goal is to make the link between development and planning. The approach to making this link and achieving this goal involves each community:

- identifying the most suitable locations to encourage commercial and industrial development;
- identifying public services needed to support desired growth and including them in the community's capital improvement program;
- reviewing existing local regulations to make sure they support development in designated areas; and
- gaining a better understanding of regional economic influences, trends, and activities to support more effective local and multitown development efforts.

The Office conducted two informal, in-house surveys to see how comprehensive planning efforts support economic development. One survey in 1993 found that a number of local planning efforts directly supported successful local economic development initiatives and indicated that in many more communities the planning processes were not far enough along to have results. In

1998 the Office conducted an informal telephone survey of nine communities. The results of this survey are summarized below.

Summary of Interviews

A sample of regionally representative communities was chosen for the phone survey. The communities surveyed were: Mechanic Falls, Houlton, Farmington, Rockland, Skowhegan, Brewer, Newport, Carrabasset Valley and Hodgdon. Local economic development directors or town or city managers were asked questions covering four issues. The first issue was whether comprehensive plans streamlined the permit process and/or increased economic activity, especially in downtowns. The second issue focused on the types of development that are occurring. The third issue determined the extent to which planning and permit streamlining influenced receipt of grants or loans that allowed or facilitated development. The final issue was the degree to which the planning process influenced a town's capital spending.

Permit Streamlining. All the towns surveyed, with the exception of one, indicated that their planning efforts had resulted in streamlining of the permit process. The one respondent felt that the planning process was evolutionary and that they were still in the middle of it.

Types of development. Most of the towns considered industrial parks a major development. Many towns had recently filled a park or were in the process trying to do so. A few towns had worked on revitalizing their downtowns. One town noted a flurry of activity including a new Rite Aid and Wal-Mart.

Influence on grants and loans. Most respondents believed that planning and permit streamlining did have an impact on their ability to get grants and/or loans to make development happen. It appeared that planning helped towns focus on areas in need of improvement, and thus facilitated the project's moving forward. The process also helped create a vision of the town's future. This vision, expressed and supported in the goals and policies of the comprehensive plan, gave private investors greater confidence about investing in the community. Local planning was important to federal grantors since public participation and community input are required elements of most application processes. When a town has a plan, the information necessary for grant applications is more readily at hand. Time is money to business. When rules are clearly laid out so the permitting process is more reliable, therefore easier and more likely to be successful, businesses are more apt to invest. At the same time, planning reduces many of the "NIMBY" (Not In My Back Yard) issues that are often raised at the eleventh hour.

Feedback on the value of capital investment planning was inconclusive. Most respondents thought it too soon to determine how much influence it will have. A couple towns noted that sewer systems had been upgraded and expanded. One town mentioned that categorization of roads in their plan had helped them develop a strategy to upgrade them. A local capital improvement program allows towns to plan for the future rather than only looking at current issues and budgets. One town felt it was a real eye opener to plan for improvements five years down the road rather than focusing only on what needs to be done immediately. Capital investment planning also helps towns prioritize improvements. The towns that commented on

this issue felt that planning was very helpful in encouraging them to think about important local investment issues. Overall, the towns felt that the process generates greater predictability.

RECOMMENDATIONS

- State agencies should establish common policies and grant award practices to recognize and reward local economic development initiatives that are supported by and integrated with consistent growth management programs.
- The Office should continue to offer technical assistance to towns on capital improvement planning to implement investments outlined in their comprehensive plans.
- The Office and Department of Economic and Community Development (DECD) should work together to provide municipal technical assistance to integrate community planning and economic development.
- The DECD should target a portion of its Community Development Block Grants for downtowns in service centers and designated growth areas of communities with consistent growth management programs.
- The DECD should establish a set aside for grants to service centers to address stagnant or declining populations, high proportion of low income and dependent populations, aged housing stock, and other symptoms of long term economic and social stress similar to that recognized by federally designated entitlement communities.
- The Office should continue to work with the Finance Authority of Maine (FAME), Maine State Housing Authority (MSHA), and DECD to ensure that service centers and designated growth areas are “ready to serve” potential new and redevelopment projects that might be inclined to locate in non-center communities and rural areas if they perceive there are no acceptable areas in existing downtowns.

C. AFFORDABLE HOUSING⁵

Goal [30-A MRSA §4312 (3)(D)]: *To encourage and promote affordable, decent housing opportunities for all Maine citizens;*

Strategy [30-A MRSA §4326 (3)(G)]: *Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of Section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality shall seek to achieve a level of 10% of new residential development, based on a 5-year historical average of residential development in the municipality, meeting the definition of affordable housing. Municipalities are encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster zoning, reducing minimum lot and frontage sizes, increasing densities and use of municipally owned land;*

Affordable housing now receives considerably more attention in local comprehensive plans than it did before enactment of the Act. Affordable housing census data is available to communities through their Regional Council or the Office, as is data on incomes for the community and the region.

Local policies and strategies to support affordable housing are diverse. The following are a few examples:

- Camden's plan and zoning ordinance, developed in 1985 prior to the Program, provide areas where two-family, clustered residential development, community living, and elderly congregate housing uses are allowed.
- Kennebunk has adopted a number of measures to increase affordability, including reducing pavement width requirements for new streets, increasing allowable densities in residential growth areas, and offering density bonuses for projects meeting affordability guidelines. At the same time, Kennebunk allows accessory apartments in single family houses in all districts and eliminated the former limit of four units in multifamily structures.
- Mars Hill revised its plan under the Program and addressed the affordable housing goal by relaxing previous restrictions in two ways: multifamily housing is now allowed in the R-1 downtown district and elderly housing is allowed throughout the Town wherever necessary services are available.

⁵ Editor's note: In the summer of 1995, Martin Womer wrote a report about implementation of affordable housing strategies described in municipal comprehensive plans. He used plans and ordinances that had been funded by the Program between 1989 and 1991 and then again 1992 to the present. His research was directed by Matthew Eddy of the Maine State Housing Authority (MSHA), as part of an internal review of effectiveness in meeting the state goal of 10% of all new housing being affordable. Specifically, Mr. Womer's task was to assess the effectiveness of the Program's goals "as they relate to the creation of a continuum of affordable housing options." These findings draw heavily on that research, the full text of which is included in the appendix.

- Mechanic Falls identified the need to work with existing housing authorities to increase affordable housing opportunities. Two authorities offer affordable housing assistance in the Mechanic Falls area: Auburn Housing Authority and Community Concepts in South Paris and Auburn.
- Wells adopted a density bonus system for units meeting the definition of affordable to low and moderate income households. Its plan contains a strategy to explore the feasibility of a nonprofit organization for construction of additional subsidized rental housing as well as for self-help volunteer efforts to construct and rehabilitate housing for low and moderate income households.

One recent state initiative is MSHA's "New Neighbors" Pilot Program which offers promise in encouraging and improving affordable housing opportunities in service centers. MSHA currently offers an attractive financial package for purchase and occupancy of up to a four-unit apartment building in the Munjoy Hill neighborhood in Portland. The success of this Program suggests the value of extending it to other service centers.

Many Maine communities are too small to implement meaningful affordable housing initiatives on their own. For this reason, most affordable housing strategies in local plans include a combination of strategies that seek to relax restrictions in residential growth areas in order to encourage affordable housing opportunities and also seek to join in a multitown effort or with an existing affordable housing organization. There appears to be a significant reliance on mobile homes as the solution to affordable housing in rural Maine towns.

The Program has worked hard to open up consideration of other tools such as reduced lot sizes in designated growth areas and density bonuses as ways to broaden affordability options with limited success. Many communities continue to discourage traditional, compact forms of development within their borders. Unfortunately, this rejection often throws open the door to an expensive, sprawling, land consumptive pattern of development.

RECOMMENDATIONS

- The Office should continue to work with MSHA to expand the availability of its New Neighbors Program to other service centers.
- The Office and MSHA should work together to establish a linkage between the state's affordable housing grant and loan programs and consistent local growth management strategies.
- The Office should continue to identify and promote traditional, compact development using market research where appropriate, alternative design strategies, demonstration projects, and technical assistance.

D. WATER RESOURCES

Goal [30-A MRSA §4312 (3)(E)]: *To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;*

Strategy [30-A MRSA §4326 (3)(C) and (J)]: *Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-1 and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds;*

Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within a municipality's jurisdiction.

The Act was amended in 1994 to include a goal of using phosphorus controls and other measures to protect lake water quality. As of December 1998, 162 towns have adopted comprehensive plans that address water quality issues with phosphorous protection, site plan review, or requirement for no adverse impact to water quality and no net increase in the rate of runoff.

In 1997, the Department of Environmental Protection's (DEP) Water Bureau measured phosphorous export for a variety of uses to determine how effective the new Stormwater Law has been in reducing the production or release of phosphorous into selected lake watersheds. This research identifies a concentration of threatened or non-attainment lakes in a region that includes eastern York and Cumberland, eastern Androscoggin, southern Somerset, Piscataquis, Penobscot, and Waldo counties because of the nature of soils, depth of the lakes, flushing rate,⁶ and level and type of development pressure within the watershed. With a few significant exceptions, northern Maine lakes are generally cold, deep, and not experiencing heavy development pressures such that phosphorous is not as immediate an issue as in southern and central parts of the State.

This research examined the impacts of single family, subdivision, and commercial development and found that in heavily developed watersheds phosphorous loading was more often a function of pre-1987 (and hence, pre-growth management) development and remains unaffected by the requirements of the Stormwater Law.

During the last 10 years, the Program helped 17 communities take advantage of reduced flood insurance premiums. Since 1987, the number of insurance policies has risen 25%, from 286 policies in 1989 to 357 in 1998. More significant, however, are the 259 local floodplain management ordinances that have been updated since 1988.

One example is the Town of Milford which suffered significant and repetitive losses from flooding along the Penobscot River. The comprehensive planning process helped the Town establish the connection between local growth management policy and flooding and, as a result,

⁶ The removal of water from a lake either as a function of it being exchanged or passing out of the water body.

the Town adopted a new management program that established a two foot base flood elevation. This amendment resulted in a reduction in the cost of local flood insurance premiums by as much as 50%.

RECOMMENDATIONS

- The Office should continue to offer technical assistance to communities and state agencies and focus on the undeniable connection between water quality and land use throughout the watershed. The state should continue to provide and expand the use of preferences for communities with consistent growth management programs in the award of watershed and water quality grants.
- The Office and DEP should continue to study the watersheds of sensitive water bodies and develop protocols for their protection including using regional models of watershed protection.
- The state should attempt to map development that falls below current Stormwater Law review thresholds in selected lake watersheds to help identify opportunities for regional management of impacts on the water body. If the state identifies a higher rate of development than anticipated, it should alert towns in the watershed to the need for action to manage water quality impacts of development in watersheds of sensitive water bodies.
- The Office, and other state agencies that seek to protect water quality or whose activities impact it, should continue to support efforts to coordinate watershed wide management and protection efforts using the China and Damariscotta Lake Watershed Associations as models.
- The Office and other state agencies should continue to encourage municipalities to incorporate aquifer and watershed protections in local ordinances to minimize the negative impacts of development on community and district drinking water sources.

E. CRITICAL NATURAL RESOURCES

Goal [30-A MRS §4312 (3)(F)]: *To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;*

Strategy [30-A MRS §4326 (3)(D)]: *Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;*

The Act requires plans to identify and develop policies and strategies to protect critical natural resources. Data on the general location of rare and endangered animal and plant species is provided by the Department of Conservation's Natural Areas Program (NAP). The Department

of Inland Fisheries and Wildlife (IFW) provides information about wildlife and fisheries habitat. The ability of both NAP and IFW to provide local assistance in the planning process has diminished greatly in recent years due to funding constraints.

The Regional Biologist from the Gray Office of IFW observed that “We’ve seen a distinct difference in the time and effort spent on and the areas protected in the eastern and western parts of the region, when we review plans. Those in the east have seen land developed at a rapid rate and are more aware of the need to conserve remaining open spaces, while western towns are not as developed and are less apt to have a concerted effort to protect open spaces.”

The Central Maine Office of IFW indicated that several towns have gone beyond what was expected. They note that Monroe used its information to target areas for conservation easements and that Benton’s plan initially prohibited any timber harvesting within a mapped deer wintering yard.

The Program has facilitated IFW and NAP involvement in review of local development projects and in offering key data on natural resources as the local planning committee considers local growth and rural area strategies. Most towns seem to have incorporated IFW’s information into the process. A few towns, including Readfield and Manchester, seek IFW input in development reviews.

One measure of success might be the number of local shoreland zoning ordinances that go beyond state mandated minimums, especially in increasing the size of resource protection districts in order to protect wildlife habitat. However, the state does not track this information other than anecdotally. IFW identifies at least four towns that go beyond the minimums — Rangeley, Sydney, Monroe, and Portage.

One issue that has emerged from agency efforts is recognition that as development, particularly lot-by-lot development, becomes more widespread, critical habitat for larger species shrinks dramatically. The very thing that drives people to live in more rural areas of Maine is killing the thing they are seeking — the sight of deer, songbirds, and nesting areas on a regular basis.

Another issue associated with habitat fragmentation is its impact on agricultural productivity. Wild honeybees are essential to pollination, and thus, to the survival of many wild plant species and our food supply.⁷ Honeybees require a large expanse of natural habitat.

It is clear that the preservation of large parcels is necessary to address habitat issues and the Act encourages the preservation of large areas of open space in rural areas of towns, but regulation alone cannot protect rural resources from incompatible development. Currently, IFW, NAP, and Maine Audubon are exploring regional solutions to the problem of habitat fragmentation — looking beyond the limited parcel-by-parcel approach.

⁷ The impact of reduced populations of pollinators has been documented at numerous locations in the US — from cranberry bogs where less than a third of as many as 20 million flowers per acre are pollinated and ripen into fruit to the near failure of the New York pumpkin crop in 1995. Each year a growing number of seed varieties are unavailable to agriculture and to the home gardener because of crop failure due to poor pollination.

While data about endangered species and habitat was provided to towns in the early years of the Program, the critical natural areas goal might have been better served if more technical assistance on habitat protection was available to Maine communities. The state has been criticized by local planners for not providing enough in the way of models and guidance in this area.

In response to the continuing problem of habitat fragmentation, IFW, NAP, and Maine Audubon are now exploring alternative approaches to this problem including identification of regionally significant blocks of habitat and exploration of alternative tools for their protection. As a result, IFW is shifting from a parcel-by-parcel method of delineating habitat to one based on a landscape model that encompasses a more regional analysis. Maine Audubon has undertaken a study of habitat fragmentation in southern Maine that is due out shortly.

In July 1997 the Maine Environmental Priorities Project (MEPP) issued a report, A Response to Sprawl: Designing Communities to Protect Wildlife Habitat and Accommodate Development (Appendix K of this report). The report concluded that:

Protection of wildlife habitat is one of a variety of values that depend on larger areas of open space and undeveloped land, values which have been traditionally embraced by Maine citizens. These include the appreciation of scenic vistas, farms, woodlots, clean water, hunting and fishing, hiking, snowmobiling and many others. With their common requirements for a relatively undisturbed landscape, it makes sense to integrate the protection of wildlife with other objectives of municipal and regional planning.

The report included a number of recommendations for action, designed and developed by a task force representing development, conservation and community interests. Appropriate recommendations are included below.

RECOMMENDATIONS

- Continue to work with a broad coalition of environmental and natural resource agencies and nongovernmental organizations, including the NAP, IFW, Department of Marine Resources (DMR), Maine Audubon, and ECO/ECO Forum, among others to develop regional strategies to protect habitat and address fragmentation that go beyond regulatory approaches. Help establish standards, regulatory and otherwise, to monitor and protect areas of state significance. Strategies and standards should address habitats in service centers as well as in rural and growth areas of fast growing and rural communities.

- Continue to implement the recommendations of the MEPP report on wildlife habitat protection quoted below:
 - Tools for Municipalities
 - Developing state funded incentives (such as technical assistance and planning grants) for municipalities and conservation and recreation interests to cooperatively develop multitown regional plans that provide for open space and wildlife protection;
 - Devising additional landowner incentives (such as property tax relief) or disincentives to encourage land to remain undeveloped;
 - Developing model performance standards to protect habitats of importance (through a cooperative effort of regional councils and the Maine DOC and IFW and the Office);
 - Initiating pilot projects that seek to demonstrate and test the efficacy of planning and management tools and techniques outlined in this report.

Institutional Changes

- Establishing MultiObjective Management (that encompasses habitat protection, but also groundwater and surface water protection, flood mitigation, recreation and open space, quality neighborhoods and community development, historic and archaeological preservation, forest land and agricultural land conservation) as the preferred method of planning for development and conservation by state agencies and municipalities;
- Favoring land acquisition programs in areas which have regional open space plans (as part of the Public Land Acquisition Advisory Committee guidelines);
- Amending Land for Maine Future Board criteria to include consideration of the value of wildlife corridors on property being considered for state purchase;
- Directing state policies and funds to revitalize city/village centers;
- Initiating a publicly funded bond issue to increase the amount of land in public ownership in Maine by 20%, with special emphasis on protection of natural reserves that would conserve outstanding examples of Maine's native plant and animal habitats.

F. MARINE RESOURCES

Goal [30-A MRSA §4312 (3)(G)]: *To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;*

Strategy [30-A MRSA §4326 (3)(E)]: *Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry;*

From the beginning of the Program, coastal communities have been very interested in using comprehensive planning to help protect their working waterfronts and marine resources like shell fisheries and to promote public access. As of December 1998, 47 coastal communities, about a third of the 144 coastal municipalities, have adopted comprehensive plans found consistent with the Act and 40 of those communities have either adopted land use or zoning measures to implement their plans or are in the process of doing so.

Planning is essential for ports and harbors. According to the Maine Department of Transportation (MDOT), there is a clear linkage between the economic success of a large port and its level of planning. For important marine public access activities, see SECTION I. RECREATION AND ACCESS.

The goals of the Act help coordinate the efforts of various state and federal agencies, including the Office, Department of Marine Resources (DMR), Department of Environmental Protection (DEP) and US Environmental Protection Agency (EPA) through estuary and watershed planning programs, shoreland zoning, and Section 319 Water Quality Grants to reduce contamination of coastal and marine waters and protect and expand productive fisheries. One example of this coordination was the establishment of the Casco Bay Estuary Program (CBEP), one of only 28 nationally funded programs. CBEP was established because of the estuary's degradation and linkage to the state's Program.

In 1993, as part of its responsibilities for overseeing shellfish resources, the DMR worked with the Maine Economic Growth Council to establish annual benchmarks for opening closed shellfish beds and waters. Their goal of reducing closed acreage from approximately 270,000 to 230,000 by the year 2000 was reached in 1997, fully 3 years ahead of schedule. Interviews with DMR staff confirmed that this success was the result of increased public awareness of the connection between uncontrolled development and the negative economic impact of bed closings.

Many coastal towns first noted the negative impact of development (overboard discharge, contaminated sediment, and degraded quality of stormwater) on resources like clam flats when they were preparing comprehensive plans funded by the Program.⁸ These plans often stimulated

⁸ Or the Maine Coastal Program, which funded many plans for coastal communities after the budget cuts of 1991.

increased local monitoring of beds and efforts to restore previously abundant flats. One example of this relationship is the Town of Harpswell. As the Town's planning process brought increased attention to clam flat restoration, local committee members worked with contiguous towns and a marine biologist to reopen the flats and support local reseeded efforts.

This linkage between planning and increased awareness has also been observed in a number of other coastal communities including Belfast, Brunswick, Camden, Hancock, Scarborough, and Wells. Comprehensive planning helped establish increased awareness of the importance of erosion and sedimentation control on the viability of commercial shellfish beds in these towns. Review of these towns growth management programs indicates that erosion and sedimentation controls called for in their plans were adopted in new or amended land use and zoning ordinances. In each community, developers must now control sediment released from construction sites.

RECOMMENDATIONS

- The Office should continue to help coastal communities use and adopt comprehensive plans and ordinances that are consistent with the Act. In addition, the Office should encourage them to use their growth management programs to protect working waterfronts, plan for necessary improvement and maintenance of port and harbor infrastructure, protect marine resources, and promote public access to the shore. (See also SECTION I. RECREATION AND PUBLIC ACCESS.)
- The Office should continue to work with state and federal agencies to improve awareness of the linkage between goals of the Act, coordinate programs and policies that support the Act's marine resources goal, create programs that address marine resources needs identified in local comprehensive plans, and provide grant preferences for communities with consistent growth management programs.

G. AGRICULTURAL AND FOREST RESOURCES

Goal [30-A MRSA §4312 (3)(H)]: *To safeguard the State's agricultural and forest resources from development which threatens those resources;*

Strategy [30-A MRSA §4326 (3)(F)]: *Ensure the protection of agricultural and forest resources. Each municipality shall discourage new development that is incompatible with uses related to the agricultural and forest industry;*

In evaluating whether the Program has protected agricultural and forest resources from inappropriate development, the Office examined trends in conversion of farmland to other uses. The results of this analysis suggest the trend of conversion has continued in spite of Program efforts.

Examples of inappropriate development includes the construction of residences immediately adjacent to working farms. This development often results in new residents complaining about odor when manure is spread on farm fields, noise of farm equipment in early morning hours, or use of pesticides. The farmer, in turn, often suffers the impacts of new neighbors' children or pets bothering livestock or disturbing crops. Conflict also arises when slow moving farm equipment and anxious commuters sharing the same rural roadway. These types of conflicts often result in long term frustration on the part of both parties.

Maine's recent experience with loss of agricultural lands is illustrated in the following Table. In 1982 Maine had 7003 farms. By 1992, the number of farms had fallen slightly more than 17.5% to 5,776. Over the same time, the average size of a farm stayed about the same, in spite of a loss of just under 15% of the farmland acreage.

However, a review of data for Aroostook and Franklin Counties offers quite a different picture. While the number of farms in Aroostook County dropped by nearly 30% over the same period and farm acreage declined by just under 13.5%, average farm size increased nearly 23%, probably due to consolidation of acreage. A similar, but somewhat less dramatic trend emerges in Franklin County where the number of farms and acreage declined just over 27% and nearly 24% respectively, while the average size of a farm increased approximately 5%.

Farmland Acreage in Maine

1982-1992⁹

(acres, unless otherwise noted)

State of Maine	1992	1987	1982
Number of farms	5,776	6,269	7,003
Land in farms	1,258,297	1,342,588	1,468,674
Average size	218	214	210
Approx. land area	19,753,294 ¹⁰	19,836,812	19,836,812
Percent in farmland	6.37%	6.77%	7.40%
Aroostook County			
Number of farms	884	1,012	1,253
Land in farms	334,040	329,971	385,828
Average size	378	326	308
Approx. land area	4,270,039	4,301,638	4,301,638
Percent in farms	8%	8%	9%
Franklin County			
Number of farms	210	N/A	288
Land in farms	38,853	N/A	51,000
Average size	185	N/A	177

Source: 1992 USDA Agricultural Census

⁹ Most recent year of data at time of publication.

¹⁰ As reported by the 1992 Census.

This information is corroborated by the Office's examination of the Census of Agriculture's zip code information for twelve towns — Albion, Auburn, Brunswick, Eddington, Falmouth, Fort Kent, Fort Fairfield, Livermore Falls,¹¹ Mechanic Falls, Mars Hill, Readfield, and Washburn. According to the Census, the number and size of farms has decreased in each of these communities, with the exception of Fort Kent, where the number of both small (1 to 49 acres) and large (49 to 999 acres) farms increased.

**Number of Farms in Twelve Maine Communities
1982 - 1992**

Town	1982	1992
Albion	63	51
Auburn	63	57
Brunswick	27	30
Eddington	—	11
Falmouth	14	10
Fort Kent	36	48
Fort Fairfield	77	62
Livermore Falls	48	40
Mars Hill	15	11
Mechanic Falls	26	22
Readfield	45	28
Washburn	26	21

Source: Census of Agriculture Zip Code Files, 1982 - 1992

As noted in The Cost of Sprawl, Maine's landscape can be thought of as land organized for production (food and fiber, timber, minerals, wildlife habitat, outdoor recreational uses, etc.) and land organized for consumption (residential, commercial and industrial development, highways and public facilities and services). Until most recent times, Maine communities have included a mix of land uses — the largest cities having productive farms, forest, and open spaces and many of the smallest farm and forestry towns having neighborhood and community centers. However, the redistribution of population that has been underway since the 1960s, has substantially accelerated since the 1980s.

While Northern Maine has suffered a steady decline in population in the past three decades, overall, most of its acreage remains in agriculture, forest land, and scattered residences. Commercial development typically is located along state arterials. As farmland was abandoned, the land returned to forest. In other parts of the State, productive land has been replaced with development — scattered house lots and commercial, industrial, and public uses — and conflicts abound between these new uses and the older, more traditional natural resource-based uses. Conversion of farm and forest land, with its attendant conflict of uses, is most pronounced in southern, coastal, and central Maine. Spreading of manure or biosolids brings land owners out in

¹¹ Zip code information for Livermore Falls includes part of Livermore.

force to challenge assertions regarding the importance or danger of this type of land use to neighboring land uses.

These losses continue the trend identified in a 1982 study of farmland conversion in Maine conducted by the Office and the University of Maine at Farmington. The study identified several conditions that lead to the loss of farmland as a direct result of development:

- loss of ownership of land by those who farm it - fully a third of the land currently being farmed is not owned by the farmer,
- breaking up of large parcels into smaller and smaller parcels as development occurs in traditionally agricultural regions, making it harder for farmers to farm efficiently¹²,
- conflicts with newcomers who lack understanding of the working landscape, and
- competition from development interests for the best soils in areas with good transportation networks and proximity to markets.

The appendix of the Cost of Sprawl notes that "Taken together, these circumstances create what has been termed the 'impermanence syndrome,' a gradual eroding away of the viability of farming and a gradual disinvestment in farming by the community, and ultimately, farmers themselves."¹³

It may be desirable to undertake a more detailed examination of actual withdrawals and disposition of land from the current use tax programs (farm, open space, and tree growth) and an inventory and assessment of the success of local initiatives to support natural resource-based industries since the start of the Program. However, it is important to note that the viability of agriculture may be more a function of operating costs, market for products, weather conditions, land values, real estate markets, and home buyer preferences than of local land use planning.

Recognizing this fact, the Office recently convened a Productive Land Tax Policy Group to evaluate the impact of state tax policy on productive rural lands and working waterfronts. The rising pressure on property taxes has fallen disproportionately on large landowners in rural communities and on lands traditionally held by fishermen in coastal communities. If these areas are to stay in traditional natural resource-based use, the state needs to take an aggressive positive stance in support of these industries to form a basis for favorable tax treatment.

This policy group will propose that an official study committee be formed in 1999 to fully explore options, including their cost and/or tax shifting implications, and make recommendations to the second session of the Legislature. Ideas it is exploring include reimbursing municipalities for revenue lost to current use taxation programs, removing sales tax on electricity purchased by farms, developing reduced valuation methods for farm buildings, and modifying penalties for withdrawal of land from current use tax programs to a graduated capital gains tax or impact fee paid by the developer of property. The last two elements may require a constitutional

¹² Benson, Joyce. The Cost of Sprawl Appendix. Maine State Planning Office, August 1998, publication pending.

¹³ Ibid.

amendment. These factors bear further examination and, where it is within the state's control, should be modified appropriately.

While it appears that the current use tax programs have been effective in reducing the rate of conversion of forest lands in some communities — nearly a third of the 11 million acres of forest land in organized municipalities is in Tree Growth — use of tax programs is inconsistent from town to town. It is important to determine which issues limit greater use of the tax programs. For example, the Farm and Open Space Law is applied differently throughout the state depending on relative market values and the discretion of local assessors. And in many areas, it is not readily available to owners of land that is farmed by others. Often this land is the most vulnerable to change in use. Additional training for local assessors and more aggressive marketing to landowners might help increase enrollment. Furthermore, transforming the penalty provisions for a change in use into a development or conversion fee so that the person who withdraws the land pays the penalty rather than the one who enrolls it, may encourage the enrollment of eligible lands. In addition, it might be prudent to modify real estate disclosure provisions to ensure that a prospective buyer of classified land is fully informed and prepared to pay back taxes and fees associated with development of the land.

The Farmland Adjacency Act recognizes the limits of local control, provides a mechanism for protection of registered farms from nuisance complaints, and provides for a setback requirement for conflicting uses, like homes and wells, on adjoining land; however, only one open window of registration was provided which restricts widespread use of the protections envisioned in the Law. Additional registration periods and maintenance of an active list of registered farms would help expand the utility of the Law. The Law would also be strengthened by an expanded setback requirement for conflicting uses and a real estate disclosure requirement for adjoining, and perhaps other, nearby land so prospective buyers are aware of farm properties and informed of the likely odors, noises, and other impacts of agricultural operations. In addition, linkages to taxation and zoning would make the Law more effective in preserving active farmland.

To understand fully the ramifications of the conversion or abandonment of agricultural or forest land, it is important to understand that, in many cases, farm land and wood lots are the owner's savings or retirement account. It may be that to sustain agriculture in Maine, we need to develop new tools to allow landowners to "cash out" without converting the land to another use.

Two such remedies may be purchase or transfer of development rights (PDR and TDR). These strategies allow land owners of qualified natural resource-based industries in rural or "sending" areas to sell or trade their properties development rights to allow development in one or more designated growth or "receiving" areas. Both techniques are being used successfully in other states. PDRs, the outright purchase of development rights, is the simpler of the two approaches, limited only by available funding and willing sellers. On the other hand a successful TDR system must be carefully designed and managed. While there has been much talk about TDRs over the decade of the Program, no community has actually enacted a TDR program. The most successful programs have operated on a statewide or regional basis. The state might want to consider a demonstration project to test the viability of such an approach in Maine.

RECOMMENDATIONS

- The Office should continue to work with a study committee in 1999 to fully explore options to support these natural resource-based industries and make recommendations to the second session of the Legislature. To achieve this goal, state efforts must not rely solely on the Program's financial and technical assistance to communities. Options to consider include:
 - funding reimbursement to municipalities for land classified in Farm and Open Space as it does for land in Tree Growth, estimated at \$283,000 annually. Maine Revenue Services staff should continue working with other departments, assessors, and landowners to make the current Farm and Open Space Tax Law more accessible and user-friendly.
 - annually opening registration for a strengthened Farmland Adjacency Law and establishing a list of registered farms at the Department of Agriculture, Food, and Rural Resources (DAFRR). In addition, the state should consider expanding current setback requirements for conflicting uses on adjoining land and adopting a new real estate disclosure requirement for adjoining, and perhaps other nearby land so prospective buyers are notified of adjacent farm properties and informed of the likely impacts of agricultural operations. The Office should continue to work with DAFRR to prepare a proposal linked to taxation and zoning, for consideration by appropriate policy makers.
- The Office, working with the Maine Forest Service (MFS), DAFRR, and the Department of Economic and Community Development (DECD), should continue to develop and provide tools to municipalities to help manage and preserve productive rural landscapes. Among these are model "right to farm" ordinances, model buffer standards, sample wood lot harvesting contracts, guidance on how to prepare an inventory of local industries and changing patterns of their use, and a directory of local initiatives in support of natural resource-based industries. Regional Councils should be available to help tailor models to specific community situations and needs.

H. HISTORIC AND ARCHAEOLOGICAL RESOURCES

Goal [30-A MRSA §4312 (3)(I)]: *To preserve the State's historic and archaeological resources;*

Strategy [30-A MRSA §4326 (3)(H)]: *Ensure that the value of historic and archaeological resources is recognized and that protection is afforded to those resources that merit it;*

Maine's Program has brought improvements in how thoroughly historic and archaeological resources are addressed in local planning in three ways:

- the Program provided consistent help and guidance to communities from both the Maine Historic Preservation Commission (MHPC) and Program staff on how best to plan for and protect these resources;
- the state provided a summary of all existing historic and archaeological resources data to communities as they began their planning process; and
- the state provided technical assistance to communities by reviewing their plans and offering guidance on improving their effectiveness in protecting these resources.

A significant investment has been made by the MHPC staff ever since the inception of Maine's Program not only to provide information to cities and towns doing comprehensive planning but also in reviewing and commenting on plans submitted for state review. MHPC staff have reviewed and commented on over 260 local plans — by far the best record of any state reviewing agency.

The data provided to communities by the MHPC typically consists of a map showing generalized locations for the prehistoric archaeological components (to protect the resource from vandalism), information about existing survey data, and a listing of all properties that are listed in the National Register of Historic Places. This information is incorporated into the communities comprehensive plan, including goals and strategies on how best to protect these resources. Many plans commonly cite the need to conduct additional surveys to locate these resources, and to seek outside funding to support such surveys. The typical MHPC review consists of a one page "yes/no" check list, evaluating the inventory, policy, and strategy sections of the plan and indicating whether the plan satisfactorily addresses protection of prehistoric and historic archaeological sites, and historic buildings, structures, and objects. While review comments and guidance on the plans are only advisory, the guidance is generally welcomed and incorporated into the plan.

A limiting factor in improving the protection of prehistoric and archaeological resources is a lack of knowledge of where these resources exist. Despite significant reductions in its funding level since 1990, the MHPC operates a limited historic and archaeological survey and planning grant program for the identification and protection of historic and archaeological resources. This competitive, matching grant program is open to any municipality that meets the application requirements set forth in the MHPC's Survey and Public Education Grants Manual. In addition to this source of funding, towns that have achieved the status of Certified Local Governments (which means their preservation ordinances have been approved by the National Park Service) are eligible to compete for a dedicated pool of funds that is equivalent to 10% of the MHPC's annual Federal grant.

The MHPC's system for rating grant applications is based on a number of resource related factors and does not give priority to towns that have consistent growth management programs that include preservation policies over towns that have no preservation policies and strategies. However, the MHPC indicates that it supports working with the Program to design a way to allocate new survey funds specifically for these towns.

RECOMMENDATIONS

Since the programs of both the Office and MHPC share common and complementary goals, they have agreed to coordinate their programs to the greatest extent possible. This coordination must respect both state Program and federal National Park Service policies. Areas where greater coordination are possible include:

- development of a model ordinance, consistent with the Act, to assist communities interested in achieving Certified Local Government (CLG) designation under National Park Service guidelines. The heart of the CLG program is in meeting federal standards for establishing the legal framework for preservation, as well as municipal capacity for effective ordinance review.
- coordinating award of MHPC grants supporting the development of local historic preservation ordinances with the Office's awarding of implementation grants. This coordination will allow a community to receive focused attention and assistance from the two agencies at the time the community is developing its ordinances.

I. RECREATION AND ACCESS

Goal [30-A MRSA §4312 (3)(J)]: *To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters;*

Strategy [30-A MRSA §4326 (3)(E) and (I)]: *Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality shall discourage new development that is incompatible with uses related to the marine resources industry;*

Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking; and encourage the creation of greenbelts, public parks, trails, and conservation easements. Each municipality shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection;

Comprehensive planning efforts have served to improve recreation and access opportunities in many communities. For example, the Department of Conservation (DOC) has assisted communities that are undertaking a comprehensive planning effort by providing guidelines on general recreation facility needs based on population size and data on local and regional parks and recreation resources useful in the local planning process. Until recently, DOC regularly reviewed and commented on the recreation sections of comprehensive plans and ordinances and offered suggestions for improvement when warranted. Unfortunately, DOC has been unable to continue reviewing and commenting on the plans and ordinances due to staff/budget constraints.

A key benefit of the Program is the encouragement of towns, in preparing their comprehensive plans, to identify carefully townwide recreation and access needs and to develop specific strategies to address the needs, including if appropriate, items in the capital investment program. The Program encourages towns to more fully explore recreation issues — such as snowmobile trails — that traditionally were not included in comprehensive plans. The result has been that municipalities have a more complete picture of recreation needs. Numerous projects have been implemented.

A reciprocal linkage has developed between comprehensive planning and many of the programs offered by other state agencies. Municipalities need the programs offered by these agencies to address the recreation and public access strategies identified in their comprehensive plans. At the same time, communities' comprehensive planning efforts help assure funding agencies that proposed projects have been thoroughly compared to competing projects and are of highest local priority. Two examples of programs and projects are described below.

Small Harbor Improvement Program (SHIP)

In 1994 the Office generated such an exciting and lengthy list of municipal waterfront projects that the Maine Department of Transportation (MDOT) agreed to include a \$2.5 million SHIP component as part of the transportation bond issue that was approved by Maine voters in November 1995. SHIP grants helped finance 42 waterfront projects providing public access in coastal communities. One such project is the boat landing called for in Addison's 1994 comprehensive plan.

Right-of Way Discovery Program

The Office established the Right-of-Way Discovery Program (ROW), funded by the Maine Coastal Program, to address the marine resources goal of the Act. This mini grant program helps communities research forgotten or overlooked rights-of-way to the shore and take action to assert and safeguard these public rights. The grant contract form specifically references the Act's goal of promoting access to the shore for commercial fishermen and the public.

One example of linkage to the Program is the Town of Machiasport. The Town's adopted consistent plan includes a strategy of expanding public access to tidal waters that helped support its successful application for a ROW grant to research ownership of a road to a beach used by local fishermen. The results of the research supported by the grant lead to the Town's decision to purchase property protecting fishermen's access to the beach.

Land and Water Conservation Fund

The Land and Water Conservation Fund program, administered by DOC, gave significant weight to communities with projects identified in a local comprehensive plan. This program has not been available for a number of years due to a lack of federal funds; however, future federal funds may be forthcoming. The Department plans to continue recognizing projects supported by comprehensive plans if the program is restarted in the future.

RECOMMENDATIONS

- The Office should continue to work with other agencies to expand resources, both financial and technical assistance, available to assist communities that seek to improve their recreation and access opportunities.
- The Office should continue to work with the Departments of Economic and Community Development (DECD), Conservation(DOC), Inland Fisheries and Wildlife (IFW), Marine Resources (DMR), and Transportation (MDOT) to ensure that programs and project funding for municipal projects are targeted to recreation and access needs identified as a high priority in communities with consistent growth management programs.

J. CAPITAL INVESTMENT STRATEGY

Goal [30-A MRSA §4312 (3)(B)]: *To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and development.*

Strategy [30-A MRSA §4326 (3)(A) and (B)]: *Identify and designate at least 2 basic types of geographic areas:*

(1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality shall:

- (a) Establish standards for these developments;*
- (b) Establish timely permitting procedures;*
- (c) Ensure that needed public services are available within the growth area; and*
- (d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and*

(2) Rural areas, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality shall adopt land use policies and ordinances to discourage incompatible development.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards...

Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

The Act directs local plans to identify the public facilities and infrastructure necessary to accommodate planned development in the community for the 10 year planning period. For many Maine communities — especially the smaller ones — developing a capital investment strategy as

part of their comprehensive plan was the first time such an effort was undertaken locally. The capital investment strategy in a local plan indicates which key public services or improvements are necessary to meet town needs over the next ten years and the anticipated costs, sources of funding, and general priority of each service.

Several issues have been raised over the years as communities address capital investments in local planning under the Act, including:

Insufficient funds to support necessary infrastructure investments

A perennial issue is that communities are continually strapped to meet current demands for services and public facilities — making it extremely difficult to afford new facilities to attract or accommodate growth in designated growth areas. Also, the option of a sewer district pre-installing sewers in a community's designated growth area is prohibited by Maine law.

The Maine Municipal Infrastructure Bond Program was established five years ago with the express purpose of providing low cost loans and grants to fund needed public facilities necessary to accommodate growth in communities that adopted consistent growth management programs. Unfortunately, this program has never been funded.

RECOMMENDATIONS

- The Municipal Infrastructure Bond Program should be funded to support local efforts to provide necessary infrastructure and services to attract and accommodate development in designated growth areas of communities with consistent growth management programs.
- State agencies should review and modify existing programs supporting local infrastructure investments to ensure that preference is given to communities whose projects are supported by consistent growth management programs.
- State agencies should encourage efforts to provide for infrastructure and public facilities needs that provide benefits on a regional or multitown basis as long as these efforts do not encourage development sprawl.

K. REGIONAL COORDINATION

Strategy [30-A MRSA §4326 (4)]: A regional coordination program must be developed with other municipalities to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities for these resources and facilities.

Coordination between communities is important in order to achieve success in reaching the planning goals established in the Act. Natural resources such as aquifers and lakes with

watersheds that extend into more than one community; wildlife corridors that cross municipal boundaries; rivers; highway corridors; and numerous other resources and facilities are most effectively planned and managed through efforts that are coordinated regionally.

The Act provides for local comprehensive plans to include, as one of its implementation strategies, a regional coordination program “to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others.” Every plan reviewed and found to be consistent with the Act includes a regional coordination strategy.

Typically, regional coordination strategies included in local comprehensive plans identify important lake watersheds, estuaries, and transportation corridors and either identify an ongoing regional planning effort or call for the creation of a multitown effort to address planning issues. While there are notable exceptions, attention to regional planning and cooperation is oftentimes superficial and most plans focus more on local planning issues and local means to implement solutions than regional approaches. Unfortunately, without grant funds or other incentives, the regional coordination efforts called for in plans are slow to be implemented.

Maine’s ten Regional Councils provide assistance to communities undertaking regional planning and coordination activities. Unfortunately, the ability of the Regional Councils to provide assistance is limited by available funding and state funding of the Councils was reduced dramatically in 1991. Along with the cut in state funding, most Regional Councils stopped commenting on local comprehensive plans and their treatment of regional issues and coordination.

To coordinate more effective state support of Regional Councils, the Office and the Departments of Transportation (MDOT), Environmental Protection (DEP), and Economic and Community Development (DECD) share a consolidated contract with each of the state’s Regional Councils. Over the past five years, state agencies also have coordinated their administration of Regional Council efforts. DEP created a Watershed Planning Division; the Office funded a Coastal Program volunteer coordinator, and MDOT established Regional Transportation Advisory Committees (RTACs). The establishment of the Maine Office of Information Services (MIS) and the availability of digitized information on a regional basis also supports regional planning efforts.

RECOMMENDATIONS

- State agencies need to provide significant incentives for communities to work together to address regional issues, both through grants and technical assistance, to address natural resource management and protection and transportation issues.
- State recognition and support for Regional Councils must be maintained and improved in order to provide Maine’s 495 municipalities with a reliable regional source of assistance in developing coordinated local strategies that address regional issues.

- The Office should continue to work with state agencies and regional organizations that oversee major infrastructure investments¹⁴ to ensure that they consider the regional impact of these investment decisions and that the state's investments continue to meet the overall policy objectives of the Act.
- The Office should continue to work with municipalities, regional organizations, and state agencies to encourage greater use of shared facilities and services, where appropriate, to reduce municipal and state costs of providing services and take advantage of economies of scale.

¹⁴ Departments of Education (DOE), Economic and Community Development (DECD), Transportation (MDOT), Finance Authority of Maine (FAME), Bureau of General Services (BGS), Court System, Maine Housing Authority (MSHA), Maine Turnpike Authority (MTA), and Regional Councils, among others.

V. STATE AGENCY COORDINATION

[30-A MRSA §4346 (5)]: State agencies with regulatory or other authority affecting the goals established in this subchapter shall conduct their respective activities in a manner consistent with the goals established under this subchapter. Without limiting the application of this section to other state agencies, the following agencies shall comply with this section:

- A. Department of Conservation;*
- B. Department of Economic and Community Development;*
- C. Department of Environmental Protection;*
- D. Department of Agriculture, Food and Rural Resources;*
- E. Department of Inland Fisheries and Wildlife;*
- F. Department of Marine Resources;*
- G. Department of Transportation;*
- H. Finance Authority of Maine; and*
- I. Maine State Housing Authority.*

[30-A MRSA §4349 (2)]: 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 does not obtain the certification within 4 years after receipt of the first installment of a financial assistance grant or rejection of an offer of financial assistance. This subsection applies to:

- A. Programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353;¹*
- 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.

The Act specifies that state agencies with regulatory or other authority affecting the goals of the Act shall conduct their respective activities consistent with the goals of the Act. This coordination can be accomplished in several ways:

¹ Section 6200 et seq.

A. REVIEW AND REVISE STATE POLICIES THAT WORK AT CROSS PURPOSES TO THE ACT

In recent years, a number of state programs and policies have been changed to better align with the goals of the Act. Examples include:

Revision of the Site Location of Development Act which relaxed:

- certain traffic review standards if a development proposal is located in a designated growth area and
- state review of certain development proposals in communities determined to have municipal capacity by the Department of Environmental Protection (DEP), in part defined by consistency with certain provisions of the Act.

Revision of the Department of Education's (DOE) school construction funding policy which now:

- allows capital costs associated with expansion needs to be included in school tuition costs,
- allows funds to be used for renovation of existing facilities, and
- includes the Office in providing technical assistance to communities that are considering the location of a new school facility.

Proposed restructuring and enhancement of the Maine Department of Transportation's (MDOT) Local Road Assistance Program.

The Office is studying other areas where state policy may be counter to local growth management efforts and may actually be encouraging a spreading out pattern of development of sprawl in Maine.

B. RECOGNIZE AND REWARD LOCAL PLANNING EFFORTS

Where adoption and implementation of a consistent local growth management program furthers the purposes of a specific state program, the state agency can and should recognize and reward such local planning efforts. Examples where such recognition is given by state agencies include:

- Department of Conservation's (DOC) Snowmobile Trail funding and Land and Water Conservation Fund (when funds were available),
- MDOT's Scenic Byways program, and
- the Program's Regional Infrastructure grants.

In addition, the Act requires state agencies to give preferences in the award of certain grants (Community Development Block Grants and Land For Maine's Future Grants, for example) to communities with certified growth management programs. This provision in the law does not

apply to state aid, grants or other assistance for sewage treatment facilities, public health programs or education.

While progress has been made, there is opportunity for much greater linkage between state programs and grants recognizing good local planning. As the benefits and importance of local planning are recognized and understood by state staff responsible for programs, it is expected that more linkage will occur.

C. PROVIDE GOOD PLANNING DATA TO COMMUNITIES

The Act directs state agencies to provide available planning data to communities undertaking a comprehensive planning effort. A number of agencies do provide data, but it is often in a form that is difficult to interpret and use for local planning purposes. Agencies are hindered in providing more useful information because of a lack of resources. The Office coordinates the collection of data for municipal planning purposes and relies on Regional Councils to assist communities in interpreting the data.

D. REVIEW OF LOCAL COMPREHENSIVE PLANS AND ORDINANCES

The Office provides state agencies an opportunity to review and comment on local comprehensive plans and ordinances that are submitted by communities. Currently, not all state agencies review plans and ordinances, citing a lack of staff resources to do so. Currently DEP, the Departments of Transportation (MDOT) and Inland Fisheries and Wildlife (IFW) and the Historic Preservation Commission (MHPC) routinely review and comment on local plans. This review and comment process provides an excellent opportunity for agencies to advise communities, the Office, and the Regional Councils about issues of specific state or regional concern. Unfortunately, opportunities to provide communities with training and technical assistance on issues state agencies would like to have addressed more effectively in local plans are limited because of resource constraints.

RECOMMENDATIONS

- Seek additional resources (Outdoor Heritage Grant funds, federal funds) to support state agency efforts to provide more training and technical assistance to municipalities in specific areas, such as wildlife habitat protection, groundwater protection, road access management, and flood hazard mitigation.
- Reduce the number of state programs and policies that work at cross purposes to the Act's goal of compact efficient development. The Office and the Land and Water Resources Council (LWRC) should continue analyzing the impacts of sprawl; the LWRC should analyze agency policies and programs and their effect on development patterns.

- Increase the number of state programs and policies that recognize and reward local planning efforts that are consistent with the Act by providing meaningful incentives for communities to do good planning.

VI. FUTURE EVALUATION

The 1994 amendment of the Act directed the Office, with the Land and Water Resources Council (LWRC), to organize and undertake an ongoing evaluation of the Program to assess its effectiveness in meeting the goals of the Act. The Office was instructed to:

- use objective and, where possible, quantitative measure of results;
- include elements of input (staff, financial aid, training, etc.) and output (development patterns, public services infrastructure, etc.);
- consider qualitative comments of citizens, local officials, and others; and
- focus on the first goal of “promoting orderly growth and development” and the other goals as they relate to the first.

The Office was also directed to establish a baseline of current conditions against which to measure future results.

Data Collection and Interpretation - Future Needs

To evaluate program effectiveness a wide variety of indicators should be reviewed. Some of these indicators are easy to track, others are elusive. Tracking the number of communities that adopt plans or consistent growth management programs is straightforward; tracking where new development is occurring in relation to a town’s future land use plan is more difficult. To track growth patterns on a regional level, we currently must rely on US Census Data, which at this date is nearly ten years old.

In 1998 the Office initiated a pilot project to track growth in a number of communities. The pilot identified a number of challenges that must be considered when preparing a methodology to guide collection and reporting of this data. The Office also developed some new approaches to assess local and regional costs of growth that have since been used by several communities to gain a better understanding of their costs. To evaluate the Program better, more work needs to be done.

Key measurements include:

- an assessment of progress in achieving the Act’s development and conservation goals;
- a sense of efficiencies and cost savings for municipalities and the state from better planning for growth;
- an estimate of the amount of critical habitat that has been protected;
- a tool to determine whether new development is occurring in designated growth or rural areas.

The Office will continue to work with state agencies, Regional Councils, municipalities, and other appropriate groups to design simple and effective means to collect and display information relative to these measurements. Examples include tracking state and municipal costs to provide

services to new development in rural, urban, and suburbanizing areas; monitoring losses of prime habitats, farm and forest lands; and evaluating trends in state investment in rural, urban, and suburbanizing areas.

By collecting and interpreting these data, the Office will be better able to serve municipal constituents, engage state agencies in the Program, and evaluate the Program's effectiveness in meeting the goals of the Act.