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STATE OF MAINE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.
GOVERNOR

EDWARD O. SULLIVAN
COMMISSIONER

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May 19, 1995

Senator Lord, Co-chair
Representative Gould, Co-chair
Joint Standing Committee on Natural Resources
State Office Building, Room 120
Augusta, Maine 04333

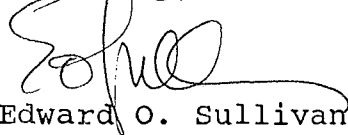
Re: Shoreland Zoning Report to the Legislature

Dear Senator Lord, Representative Gould, and Members of the
Natural Resources Committee:

It is my pleasure to submit the Department of Environmental Protection's shoreland zoning report to the Legislature. Title 38, Section 449 requires the Commissioner of Environmental Protection to biennially report to the Legislature on the implementation and impact of local shoreland zoning ordinances. The report includes a description of assistance and supervision that the Department has provided to municipalities, a summary of shoreland zoning violations investigated by municipal officials and recommendations from the Department for legislation and other administrative changes relating to shoreland zoning.

The Department would be pleased to discuss the report with the committee if you so desire.

Sincerely,



Edward O. Sullivan

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Serving Maine People & Protecting Their Environment

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AUG 6 1998

Shoreland Zoning Report to the Legislature
March 1995 for the Years
1992-93

Executive Summary

During the past two years the majority of the Department's efforts under the Shoreland Zoning Law have been directed toward updating local shoreland zoning ordinances. That effort was necessary due to a significant revision in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances in 1990. Following the July 2, 1992 deadline for updating local ordinances, the Department was responsible for adopting suitable ordinances for those municipalities which failed to do so. That process was completed in February of 1995. As a result there are sixty-seven (67) fully state-imposed ordinances and eight (8) supplemental ordinances.

During the next biennium the staff of the shoreland zoning unit plans to increase its outreach/technical assistance efforts to local officials. Increased training and assistance to planning boards and to code enforcement officers, in addition to increased newsletter publications, are needed to ensure adequate administration of local ordinances.

The Department recommends that no significant changes to the Mandatory Shoreland Zoning Act be enacted at this time. Municipalities have seen many changes in the recent years and should not be subject to still more changes. Notwithstanding that comment, the Department believes the Legislature should consider repealing the requirement that code enforcement officers biennially report to the Department on the activities of that office. Secondly, the Department recommends that the Legislature amend the standards of the Saco River Corridor Commission to cause those standards to be as stringent as those in the Department's Guidelines. By doing so, the Legislature will ensure that municipalities which wish to exclude the Corridor area from local shoreland zoning ordinances, can continue to do so.

SHORELAND ZONING REPORT TO THE LEGISLATURE

Introduction

Maine's shoreland zoning program is administered pursuant to the Mandatory Shoreland Zoning Act (Title 38 sections 435 through 449). That law requires Maine's 451 organized municipalities to adopt shoreland zoning ordinances regulating land use activities within 250 feet of rivers, great ponds, and tidal waters; within 250 of the upland edge of freshwater and coastal wetlands; and 75 feet of streams as defined in the Act. The Department of Environmental Protection establishes minimum guidelines for those shoreland ordinances through its State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. It also provides technical assistance to municipalities and acts to enforce against those municipalities which fail to administer and enforce the required ordinances.

Ordinances Updated

The shoreland zoning program has gone through numerous changes in recent years. In the late 1980's the law was expanded to include zoning adjacent to freshwater and coastal wetlands as well as streams. The law was also modified to prohibit new cleared openings to the water in both fresh and saltwater areas, except for the development of water-dependent uses. It was also in the late 80's that the Department initiated a major revision to the minimum guidelines for municipal shoreland zoning ordinances. The revisions were accepted by the Board of Environmental Protection (BEP) on March 24, 1990.

Subsequently, the BEP and the Legislature set July 1, 1992 as the deadline for municipalities to update local ordinances consistent with the BEP's guidelines. When the deadline arrived, more than 150 municipalities had not yet adopted updated ordinances. As provided in the Act, the Department then began the process of adopting suitable ordinances for those municipalities. Such ordinances are referred to as state-imposed ordinances.

Fortunately, the Department was able to obtain a grant from the U.S. E.P.A. to develop zoning maps for the delinquent communities. Although standard ordinance language is found in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, each town map is unique and is based on existing physical features and development patterns. The federal grant provided enough monies to draft up to 160 custom zoning maps.

As the process of adopting state-imposed ordinances moved forward, it became clear that earlier concerns over the number of municipalities which would require such ordinances were exaggerated. As the Department's efforts moved forward and municipalities realized that the State was indeed serious about the ordinance updating efforts, many adopted updated ordinances on the local level. Some towns did so before the Board voted to impose an ordinance, while others did so shortly after the Board's imposition action. Many of those towns incorporated the Department drawn zoning map as the official map for their community.

The shoreland zoning ordinance updating process is now complete. Sixty-seven (67) communities are subject to full state-imposed ordinances, and eight (8) are subject supplemental state-imposed ordinances. Supplemental ordinances are necessary when a municipality has enacted an ordinance which, although nearly consistent with the Board's Guidelines, has one or more significant deficiencies which must be addressed through supplemental standards or districting.

During the ordinance updating process detractors of the Department's efforts argued that municipalities were resistant to adopting the updated standards, citing the 70+ ordinances which the Board adopted for municipalities. The truth, however, is that there are more than 40 fewer state-imposed shoreland zoning ordinances than there were in 1990 under the less stringent standards. A full list of the municipalities which are subject to a state-imposed ordinance is found in Table 1.

Changes to the Guidelines

The Department's State of Maine Guidelines for Municipal Shoreland Zoning Ordinances were amended twice since the major revisions in 1990. The majority of those revisions were the direct result of legislative changes to the Act.

Guideline amendments which became effective July 15, 1992 changed the authority for approving local shoreland ordinances from the Board of Environmental Protection to the Commissioner of the Department. Also, a provision was added which allows an owner of two adjacent nonconforming lots of record to keep those lots as separate lots provided that each lot contains at least 20,000 square feet of lot area and 100 feet of shore frontage, and that the lots are served by a public sewer or can support a legal septic system. Other amendments eliminated the requirement that municipalities zone adjacent to forested wetlands; established a procedure for allowing a greater than 40% tree volume removal in a ten-year period; provided a mechanism

TABLE 1

Municipalities with State Imposed Shoreland Zoning Ordinances 4/10/95.

*Acton	Limington
Amity	Lovell
Athens	Lubec*
Aurora	Ludlow
Bancroft	Mechanic Falls
Bowdoinham	Medford
Bowerbank	Merrill
Bradford	Milo
Bridgton	Moose River
Brownville	Newcastle
Carthage	North Haven
Centerville	Orient
Charlotte	Paris
Chester	Parsonfield
Chesterville*	Passadumkeag
Columbia	Penobscot
Columbia Falls*	Plymouth
Cooper	Poland*
Corinth	Rockland*
Crystal	Shirley
Danforth*	So. Thomaston
Durham	Springfield
Edinburg	Stacyville
Etna	Steuben
Exeter	Stockton Springs
Farmingdale	Stonington
Frankfort	Stow
Freedom	Swanville*
Greene	Talmadge
Guilford	Troy
Hanover	Vanceboro
Harrington	Wade
Hersey	Waite
Hiram	Waldo
Isle Au Haut	Wellington
Knox	Whitefield
LaGrange	Woodville
Limerick	
TOTAL: 75 (67 full ordinances/8 supplemental*)	

for granting variances for handicapped access; and eliminated the requirement that variance applications be forwarded to the Department at least twenty (20) days prior to action on the application by the Board of Appeals.

Additional guideline amendments which became effective in August of 1994 greatly reduced the potential for local shoreland zoning ordinances to be challenged based on a "takings" argument. Those amendments now provide a mechanism for a landowner to obtain a permit by "special exception" for a single family home in a Resource Protection District if certain conditions are met. Previously, in that district residential development was prohibited with no opportunity for obtaining a variance.

The 1994 amendments also relaxed an earlier provision which prohibited seasonal conversions of residences in the Resource Protection District. The amended Guidelines now allow such conversions provided that the requirements of the seasonal conversion law are met.

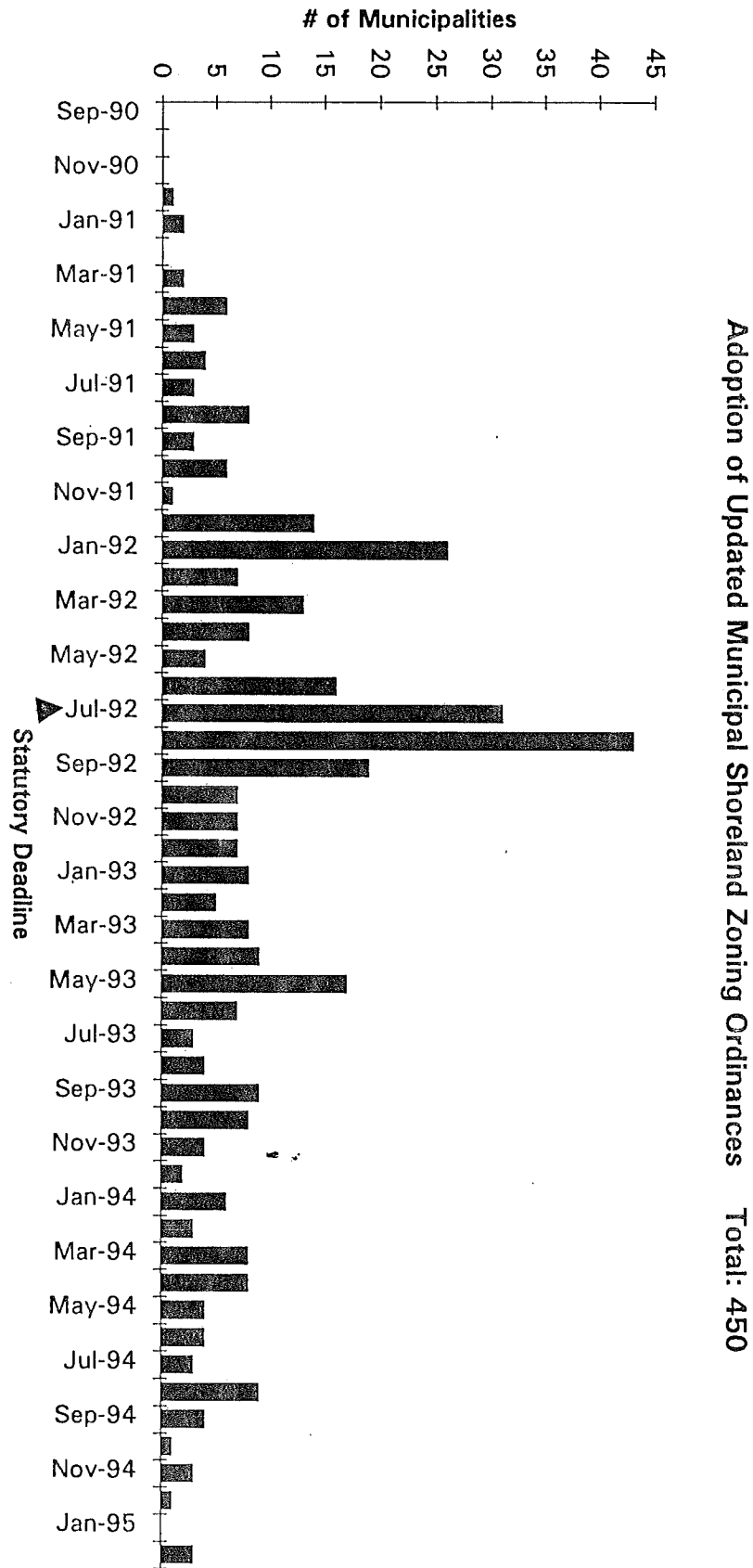
Staff Activities

The Department employs two staff members whose responsibility it is to administer the Mandatory Shoreland Zoning Act. The Shoreland Zoning Coordinator is paid from the State's general fund, while the assistant coordinator is paid through federal Coastal Zone Management funds. The majority of those two persons' efforts over the past two years have been devoted to the local ordinance updating process. Guiding 450 municipalities through the process of amending shoreland ordinances was extremely time consuming. Figure 1 illustrates how lengthy the updating process actually was. Efforts were first made to inform the municipalities of the need to update existing ordinances. Secondly, the municipalities needed to be made aware of what changes were necessary, and when controversy arose, staff needed to resolve those issues. The process entailed numerous mailings and newsletters to all municipal officials, hundreds of letters to individual municipalities, thousands of phone conversations, and many regional and town specific meetings throughout the state.

The shoreland zoning staff is also tasked with reviewing locally adopted ordinances and amendments for consistency with the requirements of the Mandatory Shoreland Zoning Act, and providing recommendations to the Commissioner. In many cases this review involved both draft ordinances and ordinances in adopted form.

As noted above, there are more than 70 state-imposed shoreland zoning ordinances in addition to those ordinances

Figure 1.



which were enacted by local action. Much time was expended to complete that project. Again, many public meetings and meetings with individual landowners throughout the state were necessary as part of the process.

Although the major portion of the staff's time over the past two years was devoted to activities toward updating local ordinances, staff continued providing general technical assistance to municipal officials and private land owners. On the municipal level, the local code enforcement officers and planning board staff are the primary targets of staff assistance. Keeping these local officials trained and conscientious is the key to good shoreland zoning compliance.

Staff has continued to work cooperatively with other local, regional, and state agencies. For example, we participate in many local code officer association meetings, and participate in the Department of Economic and Community Development's (DECD) code officer training and certification program. Shoreland zoning workshops are conducted in conjunction with regional planning commissions, although there has been less interaction with the planning commissions due to cutbacks in state funding to the agencies for shoreland zoning technical assistance. We are also working cooperatively with DECD in an effort to integrate shoreland zoning with the State's growth management program.

Biennial Reports from Code Enforcement Officers

Section 441.3.C of the shoreland zoning law requires local code enforcement officers to biennially submit a report of all essential activities of that office to the Bureau of Land and Water Quality. Records include applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected.

Compliance with the requirements of Section 441.3.C has been less than spectacular. Only 262 of Maine's 450 (58%) municipalities which have shoreland zoning ordinances submitted the required reports (see Table 2). The Department, however, does not have the staffing to dedicate to enforcing against those municipalities which have not submitted the reports.

From the reports that were submitted one positive trend has been identified. The percentage of variances granted since the previous reporting period has declined significantly. In 1990 nearly 70 percent of all variance applications were granted by local boards of appeals. Figures gathered in the recent code officers' reports indicate that over the past

two years the number has dropped to 54 percent. Although that number still remains high, a 16 percent drop is noteworthy.

Another interesting fact is that 53 of the 262 reporting communities indicated that during the two-year reporting period no shoreland permitting or enforcement activities occurred (see Table 3). While many of the 53 communities are small towns with less than normal shoreland area, it hard to believe that 20% of the reporting towns did not have shoreland activities which required permits.

The reports also indicated that nearly the same number of accessory structures as new principal structures were permitted. The 262 reports indicated that approximately 1000 of both types of structures were permitted during the reporting period. The number of additions and renovations of existing structures numbered more than 2000.

Most violations of the shoreland ordinances were settled informally. Of the 373 violations confirmed 68 were resolved through administrative consent agreements. Only 16 cases proceeded to the court system. The majority of the violations related to clearing of vegetation, timber harvesting and setback issues.

Future Activities

Now that all of Maine's municipalities are administering updated ordinances, the Department can redirect its efforts. Shoreland zoning ordinances will be successful only if local officials are adequately trained in their administration. The Department plans to place a greater emphasis in the coming biennium on educational issues. The greatest return on investment is realized when that effort reaches the most people. Although workshops with individual planning boards and code enforcement officers are very helpful to those individuals, more can be accomplished through regional training events. Also, mailings of our Shoreland Zoning News to town officials have been well received.

Unfortunately, we have not published the newsletter as often as we would have liked. The newsletter should be mailed quarterly, rather than once or twice a year as it has been since the reduction of staff in the early 90's. We will strive to publish the newsletter on a more regular basis.

In the coming biennium, the shoreland zoning unit will also shift its emphasis from technical assistance based strictly on the minimum requirements for shoreland zoning ordinances, to a more watershed based approach. Lakes, ponds and wetlands are not isolated from each other and the land around them. These resources depend on the integrity of one

TABLE 2

Municipalities Which submitted Code Enforcement Officer Activities Reports for 1992-93 Time Period.

Addison	Alexander	Alfred	Amity
Andover	Appleton	Ashland	Atkinson
Augusta	Baldwin	Bangor	Bar Harbor
Beals	Belfast	Belgrade	Benton
Berwick	Bethel	Biddeford	Bingham
Blaine	Blue Hill	Boothbay Harbor	Bowerbank
Bradford	Bradley	Brewer	Bridgewater
Bridgton	Brownfield	Buckfield	Burnham
Byron	Calais	Camden	Canton
Cape Elizabeth	Caratunk	Caribou	Carmel
Carrabassett Val.	Castine	Castle Hill	Chapman
Charleston	Chelsea	Cherryfield	China
Clifton	Clinton	Cooper	Corinna
Crawford	Cumberland	Cushing	Damariscotta
Danforth	Dayton	Deblois	Dedham
Deer Isle	Dennysville	Dexter	Dixfield
Dixmont	Dover-Foxcroft	Dresden	East Corinth
Eddington	Edinburg	Ellsworth	Embden
Enfield	Etna	Eustis	Exeter
Fairfield	Falmouth	Farmingdale	Farmington
Fayette	Fort Fairfield	Franklin	Freedom
Freeport	Frenchville	Friendship	Fryeburg
Gardiner	Garland	Georgetown	Glenburn
Gouldsboro	Great Pond	Greenbush	Greenville
Guilford	Hallowell	Hampden	Hanover
Harmony	Harpswell	Harrington	Hartford
Hartland	Hebron	Hiram	Hodgdon
Holden	Hollis	Houlton	Hudson
Industry	Island Falls	Islesboro	Jay
Jefferson	Kenduskeag	Knox	Levant
Lewiston	Limerick	Limestone	Limington
Lincoln	Lincolnton	Linneus	Lisbon
Littleton	Livermore	Livermore Falls	Long Island
Lovell	Lowell	Lubec	Lucerne
Ludlow	Machias	Machiasport	Madawaska
Madison	Mapleton	Mariaville	Mars Hill
Mercer	Merrill	Mexico	Milbridge
Monson	Monticello	Montville	Moose River

Table 2 con't. Municipal Code Officer Reports

New Canada	New Gloucester	New Sharon	Newcastle
Newfield	Newport	Newry	Nobleboro
Norridgewock	North Berwick	Northfield	North Yarmouth
Norway	O. Orchard Beach	Orient	Orland
Orono	Orrington	Otisfield	Oxford
Parsonsfield	Patten	Penobscot	Phillips
Pittsfield	Poland	Porter	Portland
Pownal	Presque Isle	Rangeley	Roxbury
Rumford	Sabattus	Saco	St. Agatha
St. Albans	St. Francis	St. George	Sanford
Sangerville	Scarborough	Searsmont	Searsport
Sebago	Shapleigh	Sherman	Sidney
Skowhegan	Smyrna	Southwest Hbr.	Stacyville
Standish	Starks	Stetson	Steuben
Stockton Springs	Stoneham	Stonington	Stow
Surry	Sweden	Talmadge	Temple
Thomaston	Thorndike	Topsfield	Topsham
Tremont	Troy	Turner	Union
Unity	Upton	Van Buren	Vassalboro
Veazie	Verona	Vienna	Vinalhaven
Wade	Waite	Waldoboro	Wales
Wallagrass	Waltham	Warren	Washburn
Washington	Waterboro	Waterville	Weld
Wellington	Wells	Wesley	Westfield
Westport	West Gardiner	Weston	Whiting
Wilton	Windham	Winslow	Winter Harbor
Wiscasset	Woodland	Woodstock	Yarmouth
York			

TABLE 3

Municipalities Which Reported No Shoreland Zoning Activities in the Years 1992 and 1993

Amity	Atkinson	Berwick	Blaine
Bradford	Bridgewater	Caribou	Castle Hill
Chapman	Charleston	Chelsea	Cherryfield
Clinton	Dayton	Deblois	Dennysville
Dixfield	Dixmont	East Corinth	Edinburg
Etna	Frenchville	Greenbush	Guilford
Harmony	Harrington	Hodgdon	Houlton
Knox	Limestone	Littleton	Ludlow
Mars Hill	Merrill	Mexico	Monticello
Moose River	New Canada	North Yarmouth	Patten
Pittsfield	Pownal	St. Francis	Smyrna
Starks	Talmadge	Thorndike	Wade
Waite	Wales	Washburn	Wellington
Wesley			

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another in order to carry out their biological functions. Municipal officials should be encouraged to deal with shoreland zoning matters as an ecosystem/watershed approach. Maintaining a buffer strip of vegetation adjacent to a great pond, yet failing to maintain that vegetative buffer on streams flowing to the pond will not protect the pond's water quality in the long run. Similarly, it does not make sense to provide tough standards on the east side of *Noname Pond* in one town, but have less restrictive provisions on the west side of the pond which is located in a different town. Staff will stress to municipalities that interlocal cooperation and integration of ordinances will do more to protect our shoreland resources than the past methods of each town looking only at its own resources, and only those water bodies and wetlands required by law. It is just as important for municipalities to protect the smaller water bodies that flow to the larger shoreland areas. We must do more to promote watershed protection through voluntary local initiatives.

Problem Areas and Recommendations for Legislation

The Department recommends that no significant changes to the shoreland zoning law be enacted at this time. As noted earlier in this report, Maine's shoreland zoning program has undergone numerous changes since 1989. We believe that municipalities are looking for stability in the program. They have enacted new ordinances and are not interested in further state-required amendments.

Notwithstanding the above comment, staff is aware of three issues worthy of discussion in this report. First, although the code enforcement officer certification program has greatly improved the effectiveness of code enforcement throughout the state, the requirement under Section 441.3 that code enforcement officers biennially submit a report to the Department detailing shoreland zoning transactions of that office, continues to be ignored by nearly fifty (50%) of the municipalities. The Department, nor the Attorney Generals office have the time nor staffing to enforce that provision and therefore compliance is lacking. In addition, staff has had little time to analyze the reports that are received. Now that code officers are better trained to administer and enforce shoreland zoning ordinances, the Department recommends that the legislature repeal the reporting requirement.

Another issue that arises frequently is the 30% expansion limitation found in section 439-A(4). That section limits expansions of nonconforming structures with respect to water setback requirements, to 30% of the floor area or volume of the structure as it existed on January 1, 1989. It was enacted by the legislature in order to limit the expansion

of structures within the vegetated buffer strip/setback area along a water body or wetland. Although we have had heard complaints regarding that limitation from both code enforcement officers and landowners, the law has proven effective in its purpose. No longer are small, often dilapidated, structures which are located very close to the water, being expanded to double and triple the original size immediately adjacent to the water. Existing buffer strips are being preserved and the natural beauty of the shoreland area is being maintained. The 30% expansion limitation for nonconforming structures is a valid provision of state law and should be retained.

Lastly, the municipalities which have shorelines along the Saco River Corridor (Ossipee, Little Ossipee and Saco Rivers) have been exempt from the requirements of the Mandatory Shoreland Zoning Act because, until recently, the Saco River Corridor Commission's land use standards have been as stringent as the Department's Guidelines for municipal shoreland zoning ordinances. However, recent changes to the Mandatory Shoreland Zoning Act and the Department's Guidelines have resulted in the Corridor Commission's rules being less stringent. For example, the Corridor law still allows clear-cut openings to the water for new development projects. However, the shoreland zoning law has prohibited new openings, except for water-dependent uses, since 1989. In addition lot size, shore frontage, and structure height standards under the Corridor Commission's law are less restrictive than those contained in the Department's guidelines for municipal shoreland zoning ordinances. Therefore, the Department recommends that the law which creates the Corridor Commission be amended to bring the Commission's requirements in line with the Department's minimum guidelines.