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A LEGISLATIVE STRATEGY TO MANAGE GROWTH IN MAINE

Prepared by the Natural Resources Council of Maine
for the
Commission on Land Conservation and Economic Development
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INTRODUCTION

In this document, the Natural Resources Council of Maine ("the Council") presents its proposed legislative strategy for managing growth in Maine, for consideration by the Legislature's Commission on Land Conservation and Economic Development.

Over the past eighteen months, the Council has undertaken a major initiative to identify appropriate strategies to wisely guide growth. During that time we have sought the input of hundreds of Maine citizens and decision-makers, extensively studied other growth management programs from around the country, and looked at the successes and failures of Maine's existing growth management efforts.

The proposed legislative strategy is intended to be a comprehensive response to the serious and longlasting problems being created by the rapid, unplanned land use development occurring throughout the state. These problems, and the fundamental structural deficiencies in Maine's current approach to addressing them, were detailed in the Council's earlier written report to the Commission, An Analysis of Maine's Land Use Management System and Goals for Proposed Changes (September 23, 1987). The Council's concerns have been dramatically and repeatedly emphasized by scores of citizens from across the state who have testified at the Commission's four public hearings.

This document is organized as follows:

Tab #1 contains a short overview and summary of the proposed legislative strategy. This overview and summary is intended to provide the Commission with an initial understanding of the basic concepts, approaches and organization of the proposal.

Tab #2 contains a limited number of questions and answers about the proposal. These are designed to address some of the basic issues which it might raise. As the details of this proposal are discussed by the Commission, we certainly anticipate that there will be additional questions which arise.

Tab #3 contains a complete outline of the Council's proposal. The many details and specifics of the legislative strategy which are not in the overview and summary are presented here.

**OVERVIEW AND SUMMARY
OF THE COUNCIL'S
PROPOSED LEGISLATIVE STRATEGY**

Overview

Rapid, unplanned growth is creating a wide variety of social, economic and environmental problems in all regions of Maine. The disappearance of affordable housing, the destruction of critical wildlife habitat and recreational access, the degradation of our lakes, the loss of prime farmland, timber land and working waterfronts, the increased traffic congestion, and the imposition of rising taxes are just some of the problems which are alarming increasing numbers of Maine citizens and local officials. The unique character of Maine is at stake.

This public alarm over development boom has resulted in the imposition of some 50 local development moratoria, increased citizen intervention in state and local permitting processes, innumerable lawsuits, and constantly changing regulations. The decision-making environment is unpredictable, which has frustrated developers.

Amidst this conflict, a consensus is emerging among responsible development interests and concerned citizen groups: improved land use planning can help to avoid many of the confrontations which we now see occurring throughout Maine. There is a recognition that land use development need not conflict with the protection of Maine values and resources, provided that growth is properly guided and managed. Some other states have found that land use conflicts can be minimized through comprehensive planning.

From the Council's work over the past year, several fundamental conclusions have emerged. These conclusions are:

- * We must shift the emphasis from reactive case-by-case review of development proposals to advance planning for development and resource protection.
- * We must create an effective local/state/regional planning partnership with the primary responsibility for planning occurring at the local level.
- * We must adopt a series of state land use goals that protect important values and resources while encouraging orderly development and creating a mechanism to ensure that planning efforts effectively address these goals.

* We must provide greatly expanded financial and technical resources to regional and local governments to improve planning, project review and enforcement efforts.

The Council's proposed legislative strategy builds upon the strengths of Maine's current land use programs and the tradition of local control, while adopting changes necessary to manage the enormous development pressures now facing the state. It does not propose to dismantle any major components of Maine's current land use management system nor does it attempt to shift the balance of power from one level of government to another. Rather, it injects new state leadership and resources into a comprehensive land use planning process in which the primary decision-making responsibility will continue to rest at the local level.

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A summary of the major points of the Natural Resources Council's proposed legislative strategy follows.

Planning

Local comprehensive planning. The central feature of the Council's legislative strategy is the establishment of a program to ensure that Maine towns effectively plan for their future growth. Under the program, each municipality in the state would prepare a comprehensive land use plan along with an implementation program which fulfills the recommendations of its plan.

The legislation would establish seven state land use goals and accompanying guidelines to focus the local land use planning process. These goals and guidelines would only apply to those aspects of local planning that involve matters of state-wide concern. Towns would be given maximum flexibility on how they choose to meet the goals, which are as follows:

1. Encourage orderly growth and development in appropriate areas of each community, while protecting the state's rural character, preserving farm and forest resources, and preventing urban sprawl.

2. Protect the quality of the state's water resources, including lakes, aquifers, estuaries, rivers, and coastal waters.
3. Protect the state's other critical environmental resources.
4. Protect the state's marine resources industry, including the state's ports and harbors, from inappropriate land use development activities which serve to threaten the industry's viability.
5. Provide Affordable, Decent Housing Opportunities for all Maine Citizens.
6. Protect the state's historic, archeological, and scenic resources.
7. Protect the availability of outdoor recreational activities for all Maine citizens.

The legislation provides guidelines for each of the seven goals. The guidelines are designed to allow municipalities to develop implementation programs that are tailored to local needs and values. Of the seven goals, only one - protection of critical state environmental resources - requires protection of specific sites by municipalities.

A newly created state agency, the Department of Land Use Planning, would provide municipalities with three-fourths of the money needed to prepare the plan and implementation program as well as necessary technical assistance. Each local comprehensive plan would contain:

- * an inventory and mapping of local resources and land uses;
- * an analysis of demographic data along with projections of anticipated residential, commercial and industrial growth over a 10-year period;
- * a capital improvements plan;
- * a description of how statewide goals and regional needs have been met by the comprehensive plan and implementing programs.

The implementation program would contain all ordinances and descriptions of other non-regulatory

programs which the municipality would use to implement its comprehensive plan.

Towns would submit their plans and implementation programs to the Department of Land Use Planning for approval. This approval would be based on the consistency of the plans with the state goals and guidelines. Those towns facing the most intense growth pressures would be the first scheduled to submit their plans and the first eligible for planning grants. The schedule established by the Department would provide that all comprehensive plans be submitted within 8 years after the enactment of the legislation.

Regional Coordination. With financial assistance from the State, Maine's regional planning councils would conduct inventories of specified regional needs and resources, such as high value agricultural and forest land, working harbors, housing needs, and projected development trends. The regional councils would help local governments to address identified needs. They would also help to coordinate the planning activities of neighboring towns, particularly when natural resources cross municipal boundaries. Towns would be able to hire regional councils to prepare their comprehensive plans, if they so choose.

State responsibilities. A new, cabinet-level state agency, the Department of Land Use Planning, would be established to administer the program. The new department would have a broad range of responsibilities which include the following:

- * When appropriate, the Department would be responsible for developing standards for the state goals and guidelines through a public rule-making process.

- * The Department would identify critical state environmental resources and develop protection standards for these resources. This would be accomplished with the assistance of those state agencies with relevant expertise. This information would then be made available to towns for inclusion in their comprehensive plans.

- * The Department would assure that other state agencies, whose activities involve issues addressed by the state land use goals, act consistently with those objectives and assure that their activities are coordinated with local plans.

* The Department would assure that public participation in the planning process is maximized through the creation of a Public Participation Advisory Council and the disbursement of grants for this purpose. Additionally, a Municipal Officials Advisory Council would be established to advise the commissioner on problems related to the implementation of the program.

* The Department would initiate and operate a training and certification program for local code enforcement officers and provide funding for enforcement activities.

* The Department would have the responsibility of reviewing local plans to determine their consistency with statewide planning goals and regional needs assessments. The Department would establish a full and fair process for evaluation of local plans. In this process, the Commissioner would consider comments from the regional planning council regarding the consistency of a plan with regional needs, as well as comments from other state agencies. A five-member, quasi-judicial Board of Plan Appeals would be established to hear appeals of plan decisions. Municipalities would be provided with ample opportunity and assistance to bring their plans into compliance with the state goals. If the Department has fully exhausted all avenues available to resolve outstanding issues with the municipality, the Department would be charged with the responsibility of promulgating for the municipality those portions of the plan that continued to be inconsistent with the state goals.

Project Review.

When a plan is in place. Once a municipality has an approved comprehensive plan and implementation program, it can choose how it would like to handle the development permitting process. State funds would be available to the municipality and the regional agencies for technical assistance for permit review. Towns would have the option of applying to the Board of Environmental Protection to take over certain permitting responsibilities now administered by the State and thereby avoid two levels of review.

In the interim. Changes are needed immediately to state laws and the permitting process to help protect critical state resources and the integrity of the state land use goals until the more comprehensive solutions can begin to work. Until plans are approved, all municipal regulatory decisions must protect identified critical

state environmental resources and must be guided by state goals and guidelines.

A variety of changes would be made to existing state land use statutes to improve their efficiency and effectiveness. A new law, the Resource Protection Act, would be created which would streamline and combine the Great Ponds Act, the Coastal Wetlands Act, the Freshwater Wetlands Act, and the Stream Alterations Act. As part of the Resources Protection Act, several additional resources of statewide concern would be protected including identified critical wildlife habitat, high mountain areas, coastal erosion areas, and heritage coastal areas.

Several loopholes, which are regularly being exploited by some developers, must also be plugged in the Site Law, LURC Law, and Municipal Subdivision Law, most notably the 40 acre lot exemption. Additionally, developments requiring review under the Freshwater Wetlands Act and Shoreland Zoning Act would be expanded to ensure that the laws accomplish the objectives established by the Legislature. Finally, the review provisions in several laws would be strengthened to address major deficiencies identified by local and state regulators.

New Financing Mechanisms

A statewide land speculation tax would be enacted to tax the profits resulting from the rapid and speculative purchase and sale of raw land which has created skyrocketing land prices and other problems in many Maine communities. The goal of the tax would be to help discourage land speculation by well-financed, specialized land sales companies and to begin to offset the damage caused by such activities. The tax would be progressive based on the period of time the land is held between purchase and sale, as well as the degree of profit. Principal residences and land held for five years or more would be exempt. The revenues could be used either to help fund the state's assistance program to municipalities, or as state grants to towns for open space acquisition and affordable housing initiatives.

Also proposed is a local option real estate transfer tax to help town fund their share of developing and implementing comprehensive plans or be used to fund community land banks. Towns would have the option of imposing a 1% transfer tax on that portion of a transaction which exceeds \$80,000.

Timetable for implementation of planning program.

Year 1 - 2. During the first two years, the Department of Land Use Planning would develop standards for the state land use goals and guidelines. The regional agencies would conduct inventories and needs assessments of resources. Resources of statewide significance would be inventoried by appropriate state agencies. State agencies would submit their activities plans to the Department.

Years 2 - 8. Towns would undertake comprehensive planning efforts under a schedule which calls for the high growth towns to complete their plans first.

Beyond. Towns would update plans at five year intervals.

* * *

An Ambitious Program

The legislative strategy described here is an ambitious endeavor. It will also involve a significant investment of public funds, offset in part by the new revenue mechanisms proposed. However, after hundreds of hours of exhaustive study and discussion, we are convinced that there are no quick fixes - no cheap solutions to the serious and growing problems created by unplanned growth. The choice remains simple: Maine will either take responsibility for managing growth or it will lose its quality of life, as so many other states have done, forever.

The importance of this issue to all citizens of Maine has led us to the conclusion that State government must take the primary responsibility for funding and guiding this initiative, while enabling local governments, armed with the needed tools and resources, to carry out the essential elements of the program. The costs of inaction - socially, environmentally and economically - are enormous. If Maine people are truly serious about taking control of the future of our state, a program of the scope proposed by the Council is essential.

**QUESTIONS AND ANSWERS
ON THE COUNCIL'S
PROPOSED LEGISLATIVE STRATEGY**

1. Why has the Council proposed such a comprehensive and far reaching program?

To effectively manage the kind of land use development pressures that Maine is facing, there really is no choice. In the research the Council has undertaken over the last eighteen months, we have been unable to locate any programs that have been successful in managing growth, either in Maine or elsewhere in the United States, which do not incorporate a comprehensive planning approach that is guided by state goals and state oversight, with principal planning responsibility at the local level. It is widely acknowledged that Maine's current case-by-case regulatory approach, which was adequate in a different era, today is failing. The Council is not aware of any evidence which demonstrates that a less ambitious program will work in Maine.

2. How does the Council's proposal fit into Maine's existing land use management system?

In crafting this legislative strategy, the Council sought to build upon those portions of Maine's land programs which have proven successful. The proposal preserves the primary decision making role of local government in land use decisions. The proposal does not recommend the dismantling of any major pieces of Maine's current system nor does it dramatically shift the roles and responsibilities of current entities.

Several towns in Maine have done excellent planning and have made great strides in managing growth in their communities. Furthermore, many towns are currently in the midst of writing or updating comprehensive plans and ordinances. The efforts of these communities will not be wasted. On the contrary, these towns will simply have less to do to meet the statewide land use planning goals.

The establishment of the Department of Land Use Planning does not eliminate the responsibilities of existing land use entities. Rather the Department's purpose it is to assist, coordinate and oversee the efforts of these current bodies and to make the current system work better.

3. Why did the Council select the goals and guidelines contained in its proposal?

For several reasons. First, the goals and

guidelines are directed at addressing state-wide issues which are related to (or impacted by) land use development and growth management. Only issues that we considered to be matters of state-wide concern were selected.

Based on what the Council heard at the Commission's recently-completed public hearings, and based on our many discussions with local citizens and town officials across the state, we believe that there is general agreement that the goals and guidelines presented in this proposal are the issues of greatest concern to Maine's citizens. We also believe that these goals and guidelines accurately capture what a vast majority of Mainers want, in terms of managing growth and preserving the character of Maine.

4. Why has the Council required towns to undertake a comprehensive planning process which addresses statewide goals and guidelines?

The Council's proposal is based on the premise that current land use decisions being made at the local level have a profound impact on resources and values of statewide significance. Take, for example, the Portland waterfront. If the City of Portland decided to allow the entire working harbor to be developed into condominiums, would the impacts of that decision be limited to the local community? Obviously not. Such a decision could have a major impact on the commercial fishing industry, affecting dozens of businesses and hundreds of jobs that reach far beyond the city limits. Furthermore, it would be a decision that would have major implications for generations to come. One can provide similar examples related to each of the proposed statewide land use goals found in this proposal.

Some have expressed the sentiment that "we don't want someone from Augusta to tell us what Main Street should look like." This proposal does not take such an approach. The proposed state guidelines only address issues of statewide concern. How towns choose to address local concerns such as whether McDonalds should be able to open up a restaurant on Main Street is up to the town to decide. Furthermore, towns have been provided with maximum flexibility on how they may choose to address each of these goals. The only state land use goal that applies to specific sites is that which calls for the protection of critical environmental resources such as wetlands and shoreland areas.

5. Why has the Council proposed creation of a new state planning agency -- the Maine Department of Land Use Planning -- instead of reorganization or expansion of existing state agencies?

The tasks which must be undertaken at the state level under the Council's proposal are significant, and in many cases new. For instance, the state will be charged with identifying and cataloging critical state resources, developing rules and standards consistent with the state goals and guidelines, ensuring that local plans are consistent with state goals and guidelines, dispensing funds to local and regional entities, and addressing other state agency activities plans. For these many functions to be carried out properly, a singular focus is required.

These responsibilities do not fit neatly into the current duties of any existing state agency or department. The DEP would not be appropriate because it is a permitting agency, not a planning agency. The State Planning Office, which is not a cabinet-level Department subject to legislative oversight, really functions as a branch of the Governor's office, involved in strategic planning for the Governor on many issues. SPO does not engage in land use planning. The State Development Office's particular mission does not encompass the broad perspective required in land use planning. In addition, the State Development office is involved in many, widely different types of programs. Accordingly, a new agency is essential.

6. How does the Council's proposal address the problem of the cumulative impacts of development?

Maine's current land use management system relies on a reactive, case-by-case review of development proposals. This approach does not address the cumulative impacts of development, i.e., the impacts created by the additive effects of many small development projects. The reason that the existing system has failed is that it is often impossible for regulators to clearly identify thresholds, beyond which "significant" environmental damage will occur.

There is also the "fairness" issue. Regulatory boards face the difficult dilemma of denying a permit for a project that is similar to projects previously approved, because in their judgement the potential cumulative impacts would be significant.

The only fair and effective way to address the problems caused by the cumulative impacts of development is through prospective action. Through planning, towns can agree upon the carrying capacity of a resource (be it a lake or a road) and then develop a policy that will ensure that the carrying capacity is not exceeded and that all landowners are treated equally.

7. How does this proposal address the concerns expressed by some developers that the current decisionmaking process is unpredictable and cumbersome?

Adoption by all municipalities of comprehensive plans and ordinances that are consistent with specific state goals and guidelines will help ensure predictability in local decision-making. Developers will know, up-front, where and what type development may be sited in a particular location; the standards for review of development projects will be clear and enforceable. Because municipalities will have gone through an extensive and very open planning process, will have implemented programs to protect their resources, and will have sufficient technical assistance to evaluate particular proposals, they should rarely need to impose a moratorium.

In addition, the Council's proposal goes further, and offers developers a way to avoid multiple levels of permitting, by allowing delegation to municipalities of permitting functions now taking place at the Department of Environmental Protection.

8. How can this one proposal address the needs of the "two Maines?"

The Council's proposal gives municipalities great flexibility to tailor state goals to municipal needs and circumstances. While the intensity of the development pressures faced by York obviously differ from those faced by Houlton, there are great similarities between the issues that each must address. For instance, provision of adequate infrastructure, affordable housing, recreational opportunities, and the protection of critical state resources do not know municipal or county lines. The Council believes that the goals proposed in this document are shared by all Mainers, north and south; the implementation of these goals will vary depending on the needs of the town and the region.

Furthermore, the comprehensive planning process gives communities an opportunity to address economic development issues. While the local economies of York and Houlton are very different, the Council's proposal would permit each to determine what type of development it wants, where it wants to site it, and what it can do to attract or discourage certain forms of commercial and industrial development to meet the communities economic development needs.

9. Won't the establishment of a real estate transfer tax, a capital gains tax on land speculation, and new land use planning programs impose costs on those least able to afford them and add to the affordable housing crisis in Maine?

The speculation tax proposed by the Council is specifically designed to tax the enormous profits currently being reaped by a number of companies that specialize in the rapid turnover of raw land. Recent land speculation activities in Maine have resulted in skyrocketing land prices, putting real estate beyond the reach of many Maine people. A planning board member from Cherryfield stated that a large Patten Corporation development in that town has completely transformed the real estate market within a six month period with the result that many local people cannot now afford to buy land.

The speculation tax will not impact the typical Maine land buyer or seller and certainly not those seeking affordable housing. The sale of primary residences and sale of non-primary residences held for five years or more will be exempt from the tax. The tax benefits affordable housing interests in two ways. First, it will potentially diminish the incentive for land speculation which has been driving up land prices throughout Maine. Second, the Council has proposed that the revenues generated by the tax be used either to help support land use planning programs or for local initiatives to provide affordable housing and open space. In either case, affordable housing interests will benefit.

The real estate transfer tax is a tax imposed -- at the option of the municipality -- on the transfer of any real estate. Houses sold for under \$80,000 would be exempt from the tax. This will ensure that "affordable" housing is not subject to the real estate transfer tax.

One of the proposed seven state land use planning goals is "to provide affordable, decent housing opportunities to all Maine citizens." Municipalities, through their comprehensive plans and implementation programs, will need to demonstrate how they will encourage the siting and construction of affordable housing within the town if found to be needed. Currently, many towns have zoning ordinances which preclude the construction of affordable housing, even though a need may exist. Under this proposal, such towns would need to take positive action to improve the availability of affordable housing by removing such barriers or taking other initiatives.

10. How does the Council's proposal effectively deal with the problems created by the Patten Corporation and other land speculators?

The problems presented by sophisticated land development speculation companies have been addressed in several ways. First, many of these companies have engaged in development projects that are designed to avoid state and local review. The Council has proposed narrowing exemptions under the Site Law and Municipal Subdivision Law to ensure that major developments are reviewed in one forum or another. State and/or local review is needed to ensure protection of important state resources and preservation of community values.

Another problem created by these companies is that they overwhelm small communities with the lawyers and other professionals they employ. The Council has proposed increasing funding and technical assistance to Maine municipalities to ensure that the permitting process is played on a level field.

Many of the speculation companies seek out communities that do not have comprehensive plans or land use ordinances. The proposal of the Council requires plans and ordinances, with direction for what they must contain. Rather than permitting developers to set the town's agenda and determine its future, municipalities will be able to direct development to appropriate locations and pursuant to standards that have been established previously. Establishing the rules of the game up-front will give the towns the ability to deal with land speculation companies.

Finally, the Council has proposed a land speculation tax which should have an influence on the rate of land

speculation activities in Maine. Additionally, the revenues generated by the tax will be used to address the problems being created by land speculation activities in Maine towns.

11. Isn't the Council's bottom line zoning?

The proposal allows a number of approaches to protect land, natural resources and community values, including clustering of development, adoption of performance standards, and changes to tax laws. Zoning is one of the most effective and least costly means to preserve land and provide for orderly growth and development. The Council's proposal does not mandate that towns employ traditional zoning in their implementing regulations; the proposal allows a particular town to select the mechanisms which will ensure compliance with the state's goals and guidelines and which are consistent with local needs and values.

**DETAILED OUTLINE
OF THE COUNCIL'S
PROPOSED LEGISLATIVE STRATEGY**

In the discussion which follows, the Council presents the specifics of its proposed legislative strategy for managing growth in Maine. The proposal is intended to be a detailed outline of the substance of the legislation, rather than draft legislation. At the appropriate point in the Commission's deliberations, this proposal readily can be translated into statutory language, and items like legislative "findings" and "purposes" can be added.

Before reading this outline, it is probably useful to first read the overview and summary of the proposal contained at Tab 1 of this document.

The major sections of this outline are:

- I. Establishment/explanation of state land use goals and guidelines (pages 1 - 6).
- II. Discussion of the new comprehensive planning process, including the local, regional and state roles (pages 7 - 15).
- III. Description of land use permitting after comprehensive plans are in place (pages 16 - 17).
- IV. Description of changes to land use permitting before comprehensive plans are in place (page 18).
- V. Explanation of new funding mechanisms (pages 19 - 21).
- VI. Changes to existing state laws (pages 22 - 26).

OUTLINE OF PROPOSED LEGISLATIVE STRATEGY

I. ESTABLISHMENT OF STATE LAND USE GOALS AND GUIDELINES TO ADDRESS MATTERS OF STATE-WIDE CONCERN

SUMMARY: Because certain land use decisions involve issues of state-wide concern, and because many of these individual land use decisions, when added together, profoundly influence and alter the economy, environment and character of Maine, the legislation would establish seven state land use goals and accompanying guidelines. These goals and guidelines will be used in the development of those particular aspects of local comprehensive land use planning--and only those particular aspects--which involve matters of state-wide concern. The new Department of Land Use Planning will be charged, through rulemaking, with establishing standards to implement these legislative goals and guidelines where necessary.

A. The Seven State Goals.

1. Encourage orderly growth and development in appropriate areas of each community, while protecting the state's rural character, preserving farm and forest resources, and preventing urban sprawl.
2. Protect the quality of the state's water resources, including lakes, aquifers, estuaries, rivers, and coastal areas.
3. Protect the state's other critical environmental resources.
4. Protect the state's marine resources industry, including the state's ports and harbors, from inappropriate land use development activities which serve to threaten the industry's viability.
5. Provide Affordable, Decent Housing Opportunities for all Maine Citizens.

6. Protect the state's historic, archeological, and scenic resources.
7. Protect the availability of outdoor recreational activities for all Maine citizens.

B. State Guidelines to Ensure Implementation of these Goals while Maintaining Maximum Local Flexibility.

The following guidelines, organized around the seven state land use goals, are designed to assist municipalities in implementing the goals, while maintaining maximum flexibility at the local level to tailor these goals to municipal needs and circumstances. While most guidelines are designed to have a high degree of local flexibility built into them, one of the goals-- protection of critical state environmental resources-- requires protection of specific sites by the municipalities. The guidelines will form the basis of the standards to be issued by the Department of Land Use Planning.

1. Guidelines to achieve the goal of encouraging orderly development while protecting the state's rural resources.

Through its comprehensive planning process and in its implementation program, each municipality would identify and establish two types of land use areas within the municipality: a growth area (or areas), and a rural area (or areas).

The growth area(s) will provide for and encourage orderly residential, commercial and industrial development within a specified geographic location of the community to meet the needs of the community, by:

- a. identifying land areas that are appropriate for development, in an amount sufficient to accommodate projected development over the next ten years, and establishing standards that will be required of such developments;
- b. establishing permitting procedures which enable development proposals that satisfy these standards to be approved in a timely manner;

c. ensuring that needed infrastructure is available or can be made available to support anticipated growth within the growth area but not extending beyond it, including the potential use of impact fees to ensure that developments which require additional infrastructure pay their fair share of that municipal cost;

d. preventing residential, commercial and industrial development in natural hazard areas, including flood plains and erosion zones.

The rural area(s) will provide for the protection of agricultural, forest and open space lands in the community, by:

a. identifying valuable agricultural, forest and open space lands; and

b. adopting land use policies and procedures sufficient to protect these lands. Such procedures might include density limits; cluster, restrictive or special zoning; acquisition of land or development rights; performance standards; tax incentives or other mechanisms demonstrated to be effective.

2. Guidelines to Achieve the Goal of Protecting the State's Water Resources

Through the comprehensive planning process and in its implementation program, each municipality would:

a. Document the quality of water resources located within the municipality or adjoining its borders, and the vulnerability of these waters to degradation resulting from land use developments; and

b. Implement land use policies that will protect and maintain the classification of each water body, avoid degradation and the lowering of the existing water quality, and enable water quality to be improved over time where waters are currently degraded.

3. Guidelines to Achieve the Goal of Protecting Other Critical State Environmental Resources.

Through its comprehensive planning process and it

its implementation program, each municipality would:

a. protect the following critical state environmental resources located within its borders from the adverse effects of land use development: coastal and inland wetlands; identified critical wildlife and plant habitat; heritage coastal areas; identified high mountain areas; sand dunes; and shoreland zones.

b. ensure that in the planning process and under the implementation program these critical environmental resources receive at least the level of protection afforded to them under applicable state law, including the Resource Protection Act (see section VI.B, below), the Shoreland Zoning Law, and under the standards developed by the Department of Land Use Planning. Municipalities are free to adopt more restrictive individual standards to protect these resources;

c. address, through the planning process whether there are additional environmental resources of local or regional concern which the municipality intends to protect. Implementing programs should incorporate this decision.

4. Guidelines to Achieve the Goal of Protecting the State's Marine Resources Industry.

Through its comprehensive planning process and in its implementation program, each coastal municipality would ensure that:

a. ports and harbors which are important to Maine's marine resources industry continue to be available to support that industry;

b. other commercial infrastructure necessary to support the marine resources industry can continue to be sited and operated so as to serve that industry;

c. public access to coastal waters necessary for shellfishing, worming and commercial mooring be available; and

d. new or expanded land use activities otherwise be compatible with protection and preservation of the marine resources industry and the coastal waters on which it depends.

5. Guidelines to Achieve the Goal of Providing Affordable Housing.

Through its comprehensive planning process and in its implementation program, each municipality would:

a. identify the housing needs within the community, taking into account regional and other projections of housing needs; and

b. implement land use policies which encourage the siting and construction of affordable housing within the municipality. These policies may include the use of: density incentives; requirements that residential developments of a certain size provide a certain number of affordable units within the development; community acquisition of land for the construction of affordable housing; tax incentives and use of transfer tax revenues; subsidies; and zoning code revisions to encourage affordable housing to be constructed.

6. Guidelines to Achieve the Goal of Protecting the State's Historic, Archeological and Scenic Resources.

Through the comprehensive planning process, each municipality would:

a. identify historic, archeological, and scenic resources of statewide, regional or local concern located within its borders; and

b. ensure that these values are recognized and addressed in the planning process, with protection afforded to those resources identified in the planning process as meriting such protection.

7. Guidelines to Achieve the Goal of Protecting the Availability of Outdoor Recreational Activities.

Through the comprehensive planning process and in its implementation program, each municipality would:

a. implement land use policies to protect the availability within its borders of traditional outdoor recreational activities, such as hunting, fishing, and hiking, and the public access and open space necessary to support these activities. These policies may include the use of: clustering of development; requiring preservation of open space and public access when granting permits to develop land; community acquisition of land; purchase of development rights; and use of easements to insure access; and

b. establish a program to identify and protect certain "highest value" undeveloped lakeshore and riverfront areas in their natural state.

C. Department of Land Use Planning Adopts Standards After Extensive Public Participation.

Some of the goals and guidelines require further definition before they can be implemented-- such as what constitutes a "critical wildlife area." The Department of Land Use Planning will be charged with developing standards where necessary, after consulting with the public and relying on sister state agencies that have particular areas of expertise.

These standards would be adopted through a rulemaking process, in which there would be no less than one public hearing in each region of the state (as region is defined in this proposal). These public hearings would be part of an extensive program of public involvement required in all phases of the planning process.

II. ESTABLISHMENT AND APPROVAL OF COMPREHENSIVE LOCAL LAND USE PLANS

SUMMARY: The proposal establishes a comprehensive local land use planning and implementation process, in which primary decisionmaking rests with the municipalities. Regional needs are identified by regional planning commissions or councils of government, which assist municipalities in addressing the regional needs. Sufficient technical assistance and financial resources would be made available by the state to assist in the entire process. A new state agency, the Department of Land Use Planning, would be charged with a range of responsibilities, including gathering certain land use data to provide to municipalities and approving comprehensive plans and implementing programs.

A. The Local Level: Developing Comprehensive Plans Based on Local Needs and Statewide Goals and Guidelines

1. Each municipality in the state would prepare and submit to the Department of Land Use Planning a comprehensive land use plan and an enforceable land use program which implements the plan (the "implementation program"), for submittal to the Department of Land Use Planning. The implementation program would consist of those ordinances, maps, and other mechanisms that the municipality will adopt to implement the results contained in the comprehensive plan.

2. Each municipality would be eligible for funding from the Department of Land Use Planning. This funding would pay for three-fourths of the costs of preparing the plan and implementation program.

3. The comprehensive plan and implementation program would be based on local needs and values, consistent with the state's goals and guidelines.

4. The Department of Land Use Planning would promulgate, pursuant to formal rulemaking, policies on the required contents of a municipality's comprehensive plan and implementation program.

At a minimum, these policies would require that the comprehensive plan contain:

- a. an inventory and mapping of local resources, including public infrastructure, the location, type and extent of commercial, industrial and residential development, farm land and forest land, and significant environmental resources (based on the environmental information provided by the Department of Land Use Planning);
- b. an analysis of population and demographic data about the municipality, and a projection of expected residential, commercial and industrial growth within the municipality in the next ten years;
- c. a capital improvements plan detailing immediate and projected capital improvement needs in the next ten years and how these needs will be met; and
- d. a detailed description of how each of the state's goals and guidelines have been met by the comprehensive plan and implementing programs, including how identified regional needs have been met.

The implementation program submitted to the Department would contain the ordinances, zoning maps and descriptions of other programs which the municipality will use to implement its comprehensive plan.

5. The Department of Land Use Planning would establish a schedule for submittal of comprehensive plans and implementation programs. Those municipalities found to be facing the most intense growth pressures would be scheduled to submit their plans first, and would be the first to be eligible for the state funding provided for purposes of planning and implementation. The schedule established by the Department would provide that all comprehensive plans will be submitted no later than eight years after the enactment of this legislation.

6. Municipalities which are not scheduled to submit their plans first may submit their plans earlier than scheduled if they so choose, and would be eligible for financial assistance.

7. Part or all of an existing municipal comprehensive plan could be submitted by the municipality to the extent that this plans meets the requirements above.

8. Where appropriate, municipalities can file joint plans with an adjoining municipality, or can file portions of plans jointly to satisfy one or more state goals.

B. The Regional Level: Coordinating Local Plans and Ensuring that Regional Needs Are Addressed

1. Regional planning agencies--regional planning commissions and councils of government--will receive state funding from the Department of Land Use Planning to perform two important, but limited regional planning functions:

a. conducting inventories of specified regional needs and resources, and helping to ensure that municipal plans address these needs; and

b. assisting municipalities to coordinate their planning process with neighboring municipalities, especially with respect to those resources that cross municipal boundaries (e.g., lakes).

These functions are more fully described below. Regional agencies will not have the responsibility of developing comprehensive regional plans.

2. Regional planning agencies also will immediately receive additional state funding from the Department to provide technical assistance to municipalities (before any comprehensive planning under this Act has commenced). Later, funding from the state will also be available to provide technical assistance to those municipalities whose comprehensive plans and implementing programs have been approved by the Department. This assistance will be used for planning, project review, training, and other functions necessary to cope with increased development pressures.

While regional planning agencies would not directly receive state funding to assist municipalities in preparing their comprehensive plans, municipalities

could contract with the regional agencies for such assistance should they so choose.

3. Regional inventories and needs assessments. Regional agencies will inventory and prepare a regional needs assessment covering all goals and guidelines which the Department of Land Use Planning finds to contain a regional component (except for critical state environmental resources) and which would include:

- a. an inventory of significant agricultural and forest land based on current use, soils surveys and other relevant factors;
- b. an inventory and economic assessment of working ports and harbors of the region and the infrastructure supporting these ports and harbors;
- c. a survey of housing needs of the region;
- d. a survey of publicly owned lands in the region and recreational resources and needs; and
- e. an analysis of projected residential, commercial and industrial growth in the region and where that growth will occur.

Funding for these inventories and needs assessments will be provided by the Department of Land Use Planning.

4. Consistency of Local Plans with Regional Inventories and Needs Assessments. Based on these inventories and needs assessments, and as part of the requirement for receiving funding from the state, the regional agencies would be charged with working with municipalities to ensure that their plans take into account the results of this work, and incorporate the findings into the municipal comprehensive plan and implementing program. For example, the inventory of farm and forest land would be used by the municipality in designing protection of these resources, and the assessment of housing needs would be used in designing particular land use programs to address affordable housing problems.

5. Coordination of Municipal Planning Within the Region. Regional entities would also be responsible

for ensuring that local plans are consistent with those of adjoining municipalities.

6. Formal Comments to Department. As a condition for receiving funding, the regional agency would comment formally to the Department of Land Use Planning when one or more municipal comprehensive plans within the region are submitted to the Department for review. In these formal comments, the regional agency would state the findings of its inventory and needs assessments for each relevant goal and guideline, and make findings as to how, based on these results, the local comprehensive plan and implementing program will meet its fair portion of that goal and guidelines.

C. The State Level: Protecting Critical State Environmental Resources and Overseeing Development of the Comprehensive Plans

1. New State Agency. A new, cabinet-level state agency, the Department of Land Use Planning, will be created which would administer the various provisions of this Act, as noted herein. The Department would be headed by a Commissioner, appointed by the Governor and confirmed by the Senate.

2. Responsibilities. The Department would:

a. Identify critical state environmental resources, with the assistance of sister agencies. One of the first major responsibilities of the Department will be to oversee the identification of critical state environmental resources, as defined by the state goal. It is not anticipated that the Department would duplicate the expertise of other state agencies (such as IF&W's work on critical wildlife habitat), but would instead provide additional funds and direction to use effectively the in-house expertise of these agencies. At the same time that this identification is proceeding, the Department, with the assistance of other state agencies, would be developing standards to define the appropriate level of development on or affecting these critical state resources.

This work should be completed within two years after the passage of this Act.

b. Develop model ordinances for communities to use (at their discretion) prior to completing the comprehensive planning and implementation process, and to incorporate as potential mechanisms to implement a town's plan. These model ordinances would address significant, pressing, and recurring growth management issues including but not limited to ordinances governing application fees, impact fees, zoning, and site location. This work should be completed within one year after the passage of this Act.

c. Promulgate rules to implement the state's goals and guidelines, procedures for disbursing funds and technical assistance to municipalities and regional agencies, procedures for reviewing and approving local plans, etc.

d. Assure that other state agencies whose activities directly or indirectly involve issues addressed by the state's goals and guidelines, act consistently with these goals and guidelines. State agencies that make decisions and spend money on matters relevant to and affecting the state's goals and guidelines (e.g., DOT, IF&W, Bureau of Parks and Recreation, LURC) would be required within a year of passage of this Act to identify their needs and goals on a regional basis to the Department, and present activities plans to meet these needs.

e. Assure that these state agencies coordinate their activities with the local comprehensive planning process to ensure consistency with that process. State agencies will also be required to comment to the Department on whether municipal plans submitted to the Department for approval are consistent with the agency's activities plans.

f. Direct a full array of public participation procedures to maximize the

involvement of the broadest possible spectrum of Maine citizens in the planning process. To this end, the Commissioner of the Department would:

* appoint a Public Participation Advisory Council, on which would serve individuals with a wide range of expertise in facilitating citizen involvement in governmental decisionmaking, which would advise the Commissioner on programs and funding needs to maximize public involvement in the planning process;

* disburse grants to municipalities and regions for these programs, under the oversight of the Public Participation Advisory Council;

* appoint a Municipal Officials Advisory Council, on which would serve municipal officials, including selectmen, city councilors, and planning board members, who would advise the Commissioner on problems related to the implementation of this Act.

g. Dispense necessary funds and technical assistance to municipalities and regional agencies for the tasks noted earlier and for local code enforcement.

h. Initiate and operate a training and certification program for local code enforcement officers. After this program is fully operating, only those municipalities that employ certified code enforcement officers or officers in training would be eligible for state funds from the Department or for delegation of permitting (see Section III, below).

i. Approve or Disapprove the Comprehensive Plans and Implementing Programs Submitted by the Municipalities. Under a timetable established by the Department, the Department would:

1. require that each municipality submit to it a comprehensive plan and implementing program;
2. require comments from the regional and state agencies on those matters described earlier, and review the adequacy of their consistency findings;
3. review local plans and implementing programs to ensure that they are consistent with the state's goals and guidelines, and approve or disapprove the plans and programs;
4. require that the municipality submit to the Department for approval any substantive amendments to the comprehensive plan and implementing program;
5. require that the comprehensive plans and programs must be updated and resubmitted every five years; and
6. require the Land Use Regulation Commission to submit within one year of the enactment of this Act a comprehensive plan and implementation program that is consistent with the state's goals and guidelines, for approval by the Department.

Procedures for Plan Approval/Disapproval. The Department will establish a full and fair procedure by which it evaluates and determines whether a plan and program submitted by a municipality is consistent with the state's goals and guidelines. This procedure would include ample opportunity for a municipality to be informed of any deficiencies in the plan or program and to make needed corrections prior to any finding of deficiency by the Department. In no case would the Department take more than six months after the date of submittal to make its initial determination. Disapproval of a plan or program would be accompanied by a set of findings that state the reasons for the disapproval, and establish a timetable in which the municipality may submit a corrected plan or

program, which would be no longer than six months after the date on which the decision is issued.

Board of Plan Appeals. The Department's final determination would be appealable to a five person Board of Plan Appeals, whose sole responsibility would be to hear appeals of plan and program approvals or disapprovals. This Board would operate in a quasi-judicial manner and would adopt rules of procedure. Members of the Board would be appointed by the Governor and confirmed by the Senate for four-year, staggered terms. The Board would be composed of at least one municipal official, one planner, and one lawyer. The Board would be compensated on a per diem basis and would be provided with sufficient funds to hire independent consultants to assist it in deliberations. The decision of the Board would be made within three months of the commencement of the appeal, and would constitute final agency action.

Promulgation of Plan or Program by the Department. If the Department has disapproved a municipality's plan or program because it is inconsistent with state goals and guidelines, and if the Department's decision has been upheld by the Board of Plan Appeals (if appealed), and if the Department has fully exhausted all avenues available to it to informally resolve outstanding issues with the municipality, the Department is charged with the responsibility of adopting for the municipality those portions of the plan or program necessary to make it consistent with the state's goals and guidelines. This adoption shall take place within six months of the final decision of the Board.

III. AFTER PLANNING IS IN PLACE: LAND USE PERMITTING ONCE COMPREHENSIVE PLANS HAVE BEEN APPROVED

SUMMARY: Once comprehensive plans and implementing programs have been approved, state funds would be made available to the municipality and the appropriate regional agency for technical assistance in ongoing permitting decisions. In addition, municipalities have the option of applying to the Board of Environmental Protection for authority to issue permits under certain state environmental statutes, thereby avoiding two levels of review.

A. Local Permitting

1. As part of the submittal to the Department, municipalities will be required to obtain approval for their implementing programs. Upon approval of the plan and the program, necessary ordinances and other legally binding programs shall be adopted by the municipality.

2. Upon adoption, the municipality and the regional agency responsible for working with municipality would be eligible to apply to the Department for implementation funds to pay for the technical assistance necessary in ongoing planning and permitting activities.

B. State Permitting

1. Existing state resource protection laws (excluding the Site Location of Development Act) will be consolidated into one Resource Protection Act (see Section V, below), with a single permit required thereunder.

2. Delegation of Permitting to the Municipality. Once a municipality has an approved comprehensive plan and has adopted its implementation program, the Board of Environmental Protection would have the authority, upon application by the municipality, to delegate to the municipality the permitting power under the Resource Protection Act and the Site Location of Development Act. Such delegation would only occur if, after notice and opportunity for public comment, the Board finds that:

a. The municipality has in-place the financial, technical and legal resources to adequately review and analyze permit applications, and oversee and enforce permit requirements. If the Board finds that a municipality has the resources to review proposals of a certain size or type but not to review larger or more complex proposals, it may partially delegate permitting to the municipality.

On a yearly basis the Department of Environmental Protection would conduct an audit of the decisions of all municipalities with delegated authority to determine if continued delegation is appropriate and shall make recommendations to the Board. If, as a result of this audit or at any other time the Board determines that a municipality has failed to exercise and enforce its permit granting authority in accordance with its comprehensive plan and implementation program and the requirements of the Resource Protection Act and the Site Location of Development Act, the Board would notify the municipality of the specific alleged deficiencies and would order a public hearing. Following such hearing, if the Board finds that the deficiencies exist, it would revoke the municipality's permit granting authority. In the event that a municipality has its authority revoked, it may reapply to the Board for such authority at any time.

Any BEP permitting decision delegated to a municipality pursuant to this section would be appealable to BEP by an aggrieved person within thirty days of the final decision of the municipality.

IV. BEFORE PLANNING IS IN PLACE: LAND USE PERMITTING IN THE INTERIM

SUMMARY: Because of the length of time it might take to fully implement planning, and because the intense pace of land use development threatens the state's goals in the interim, changes are needed immediately to state laws to help protect critical state resources and the integrity of these goals until more comprehensive and fundamental solutions can begin to work.

A. Changes in Local Permitting

1. All municipal permitting decisions must be consistent with the state's goals and guidelines.
2. All municipal permitting decisions must protect identified critical state environmental resources.

B. Changes in State Permitting

1. Staffing. The Department of Environmental Protection would be provided with sufficient staff to ensure that permitting under state law is done without undue delay for the applicant, while at the same time allowing for complete and thorough review of proposed projects.
2. Changes to Existing State Land Use Laws. Several changes to state resource protection laws would be made to ensure that critical state resources are protected. As a result, certain types of developments that now escape state review will have to receive a state permit. The changes in state law are spelled out in Section VI, below.

V. ADDITIONAL FINANCING MECHANISMS

SUMMARY: The Legislature would enact a statewide capital gains tax on the speculative purchase and rapid resale of raw land, to discourage this kind of land speculation, which drives up real estate prices beyond the reach of Maine citizens. This tax program would also raise revenues which might be used for acquiring open space and affordable housing, thus offsetting the damage to Maine people caused by land speculation. The Legislature would also empower each municipality at its option to levy an additional one percent tax on the transfer of real estate, to help fund the municipal share of the planning process and for local acquisition of open space.

A. Land Speculation Tax

1. Basic Terms.

This tax essentially would be similar to one that has been in existence in Vermont for years, and has been refined over that period to best address the problem of land speculation.

The tax would be based upon capital gains as reported for federal tax purposes. It would apply only to gains on the sale of land, exclusive of the value of buildings and other improvements.

Ten acres of land underlying a principal place of residence would be excluded from taxation. Other exemptions would apply for land held by governmental or non-profit organizations, and land (up to ten acres) sold to a person who will be building a principal place of residence there within a two year period of time.

The tax would be progressive. The shorter the holding period before resale, the higher the tax. And the more profit made on the sale, the higher the tax. Thus, for land held for less than six months that is resold for twice its "basis" cost (or 100% gain), the gain would be taxed at a 60% rate (in order to better discourage this type of rapid churning), whereas the gain on land held for five years

(the longest holding period on which the tax would apply) would be taxed at the lowest rate, or at 5%.

The law would incorporate those refinements recently made in Vermont's tax law, based upon its long experience with the tax, in order to assure that land sales companies will not benefit from any loopholes.

2. Use of Tax Proceeds

Before this tax is in place, it is not possible to predict with any certainty the amount of money which such a tax would raise, although the Council understands that Vermont's speculation tax was raising about \$1 million per year even before a large loophole in its tax law was closed last year. Based on Vermont's experience and the fact that the Patton Corporation alone had sales of \$6.8 million in Maine last year, a carefully written tax could raise significant revenues.

The Council suggests two alternative uses for these revenues, both of which directly relate to remedying the problems being caused by land speculation. One use of the money would be to contribute toward funding the state's financial assistance programs for municipal planning efforts, as outlined in this proposal. The one drawback of this approach is that an initially uncertain amount of revenues would be funding an important state initiative.

The second possible use of the revenues is toward the purchase of land by municipalities for open space and affordable housing programs. All revenues from the speculation tax could be deposited in a specially earmarked state fund. Municipalities would be eligible to apply for significant state grants toward the purchase of land for these purposes.

B. Optional Local Transfer Tax

The Legislature would empower each municipality, at the option of the municipality, to levy an additional one percent transfer tax on the transfer of all real estate. Sale of principal places of residence

would be excluded from the transfer tax so long as the value of the residence sold was less than \$80,000. For principal residences valued at over \$80,000, the tax would apply on the amount over \$80,000.

Municipalities would be authorized to expend the funds collected in two ways: to help pay for the cost of the planning and implementation program outlined in this proposal, and for the purchase of public land for open space, through the creation of a community land trust.

VI. CHANGES TO EXISTING STATE LAND USE LAWS

SUMMARY: Most existing state land use laws were adopted by the Legislature at least a decade ago. In the intervening years, experience has demonstrated that, while the basic premise of these laws is sound, a number of statutory changes are now required to enable the laws to fulfill their original intent.

A. Amendments to the State Subdivision Law

1. Remove the exemption and prohibition from review for lots of 40 or more acres, as the exemption applies to both municipalities (30 MRSA section 4956) and to the Land Use Regulation Commission (12 MRSA section 682). This will assure that there is some oversight and review of large lot subdivisions, which currently are exempt from any review whatsoever.
2. Amend the definition of subdivision to state that the division of a building into three or more units on a single lot constitutes a subdivision. This assures that condominium projects will be subject to subdivision review.
3. Amend the "Guidelines" for subdivision review to include consideration of the following additional criteria:
 - a. The proposed subdivision will not impact on important wildlife habitat.
 - b. The proposed subdivision will not adversely effect the provision of municipal services and infrastructure.
 - c. In making its finding, the municipal permitting agency shall consider the cumulative impacts of the subdivision on all the specified criteria.
4. Require that any subdivision which crosses municipal boundaries must be approved by all involved municipalities, and that for any subdivision which is located within one municipality but has impacts on the

infrastructure or resources of an adjoining municipalities, the permitting municipality must consult with all affected municipalities.

B. Consolidation of Certain Laws through Creation of a Resource Protection Act

A new law would combine and streamline the protection now afforded under the Great Ponds Act, the Freshwater Wetlands Act, the Rivers and Stream Alteration Act, and the Coastal Wetlands Act (including sand dunes).

As part of the new Resource Protection Act, several changes must be made to existing laws to ensure that critical state environmental resources are better protected from the effects of land use development.

1. Critical wildlife habitat, high mountain areas, coastal erosion areas and heritage coastal areas will be defined in the Act and protected from adverse impacts;

2. The definition of freshwater wetlands will be expanded to include freshwater swamps, marshes, bogs and similar areas of one or more contiguous acres that have been designated as freshwater wetlands; and

3. Language will be added to require the Board of Environmental Protection to consider the cumulative impacts of a proposed development on these resources when making its decision.

C. Amendments to the Site Location of Development Law

1. Remove all exemptions from the definition of "subdivision," so that all subdivisions over twenty acres would be reviewed.

2. Add multi-unit housing to the definition of subdivision, to include buildings containing two or more units and projects containing ten or more units, to assure that large condominium projects are reviewed.

3. Add consideration of cumulative impacts of development, public access, community infrastructure, and impacts to important

wildlife habitat to the review criteria under 38 MRSA section 484.

4. Reword the review criterion which now states that the project shall cause "no adverse effect on the natural environment" to make it clear that the burden is on the applicant to affirmatively demonstrate that it has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character or natural resources on the development site. Further specify that the applicant is affirmatively required to demonstrate that alternative sites or project designs that have less adverse effect on the natural environment are not reasonably available.

5. Add a new section to clarify when, and under what conditions "mitigation" by the applicant of adverse environmental impacts will satisfy the requirements of the law.

6. Add a new section which states that approval under the law is necessary when a person makes the first overt act in furtherance of an intent to construct or develop.

7. Remove the exemption for borrow pits of less than five acres.

8. Amend the definition of "significant ground water aquifer" to include bedrock aquifers.

D. Amendments to the Shoreland Zoning Law

1. Extend minimum shoreland zoning to include land around coastal and freshwater wetlands, and not just open bodies of water.

2. Extend minimum shoreland zoning to include land along rivers and streams with drainage areas of ten square miles or more. Currently, the law protects rivers with drainage areas of 25 square miles or more.

3. Expand the shoreland zone to 330 feet from the high water mark. Currently, the law

defines the shoreland zone as land 250 feet from the high water mark.

4. Require consideration of cumulative impacts of development in shoreland areas;

5. Establish a serious and regularized system by which the DEP, and ultimately the BEP:

a. establishes and updates a guidelines ordinance which may be used by the municipality;

b. oversees the development of shoreland zoning ordinances by the municipalities;

c. reviews amendments and variances to the zone adopted by a particular municipality; and

d. has the legal authority to levy fines for the failure of a municipality to enforce the law, in the same way BEP is now authorized to assess fines for violations of other state environmental laws.

E. Changes to the State's Farm and Open Space Tax Law

In many areas of the state, there is growing evidence that Mainers are being forced to sell their farms because property taxes are being assessed at the rapidly escalating market value of the land, rather than at its current use rate. There also appears to be a general consensus among state and local officials that the state's Farm and Open Space Tax Law (36 MRSA section 1102 et seq.) is not doing what it was designed to do-- preserve farmland and open space by allowing this land to be taxed at its current use rate, instead of its fair market rate.

While there is general consensus that the law is not working, there is less agreement as to the reasons. Possible explanations include: the penalty provision, which might discourage farmers from using the law in the first place; the income or the size requirements, which may keep a significant amount of property out of the program; the application process; and the lack of

information and education about the program and its availability.

To date, there has been insufficient investigation of the problems associated with the Farm and Open Space Tax Law, to see if there is a way to make it work more effectively. In the next month the Council hopes to have the opportunity to fully evaluate how this program may be improved in order to meet its stated legislative objectives. We will report back to the Commission at that time.