Final Environmental Impact Statement

Maine's Coastal Program

August 1978

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Cover Photograph by Christopher Ayres

Great Cranberry Island

The preparation of this document was financed in part by a planning grant from the National Oceanic and Atmospheric Administration of the U. S. Department of Commerce under the provisions of the Coastal Zone Management Act of 1972 (Public Law 92-583).

INTRODUCTION

Note to Readers:

The National Environmental Policy Act of 1969 (NEPA) requires that an environmental impact statement be prepared as part of the review and approval process of major actions by federal agencies. The action contemplated is final approval of the Maine Coastal Program under Section 306 of the federal Coastal Zone Management Act of 1972, as amended.

An immediate effect of approval is the qualification of the state for federal matching funds for use in implementing the proposed program. In addition, upon approval, the federal consistency provision of the Act goes into effect. This provides that federal activities conducted in or affecting the coastal zone be, to the maximum extent practicable, consistent with the approved management program.

This document is the Final Environmental Impact Statement (FEIS). It is the general policy of the federal Office of Coastal Zone Management to issue a combined document which contains both the Environmental Impact Statement and Maine's proposed program. It has the following parts:

- Introduction

  A standard introduction, written by the Office of Coastal Zone Management (OCZM), summary of the NEPA process and a description of the Act.

- Part I (White Pages)

  Part I is a description of the Maine Coastal Program; it was prepared by the State. The Federal Office of Coastal Zone Management has reviewed this section and relies upon it as the statement of the proposed action for purposes of NEPA. This description of Maine's Coastal Program consists of nine sections and an appendix. Appendix A describes how the Maine program meets federal approval requirements.

- Parts II - VIII

  These sections fulfill the requirements of the environmental impact assessment process (under NEPA) and were prepared by the federal Office of Coastal Zone Management (OCZM), with some assistance from the state.

- Part IX

  This section contains a summary of the written comments received by the Office of Coastal Zone Management on the draft environmental impact statement. Responses to these comments were prepared jointly by the OCZM and the Maine State Planning Office.

NEPA Summary

( ) Draft Environmental Impact Statement (X) Final Environmental Impact Statement Circulated by the U. S. Department of Commerce, in compliance with the NEPA. For additional information about this proposed action or this statement, please contact:

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Kathryn Cousins
Regional Manager, North Atlantic Region or
Nancy Carter
Assistant Manager, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D. C. 20235.

Written comments should be sent to the above address.

1. Type of Action
Proposed Federal approval of the Maine Coastal Program
(X) Administrative ( ) Legislative

2. Brief Description of Action
It is proposed that the Associate Administrator approve the Coastal Program application of the State of Maine pursuant to the Coastal Zone Management Act, P.L. 92-538. Approval would permit administrative grants to be awarded to the State, and require that federal actions be consistent with the approved program to the maximum extent practicable.

3. Summary of Environmental Impacts and Adverse Environmental Effects
Approval and implementation of the program will foster better coordination and effective implementation of state and local regulatory responsibilities. Enhanced municipal involvement in resource management will supplement and support these responsibilities and lead to better overall resource management in the state. While there may be some negative impacts, approval of the proposed program will, in general, improve the quality of the natural, social, and economic environment of the Maine Coast by: 1) providing funds for needed resource planning and management activities at all levels of Maine's government, and 2) allowing review of federal activities for consistency with Maine's program. The overall impacts of carrying out the program specified should include: improved water quality, improved management of marine species, improved management of areas such as wetlands and steep slopes deserving special attention.

4. Alternatives Considered
The Assistant Administrator could:
1) Deny approval if the state is not adequately organized to implement the program.
2) Deny approval if the program does not provide adequate specificity and predictability.
3) Deny approval if the national interest in the siting of facilities in the coastal zone were not adequately considered.
4) Deny approval if the program does not meet any of the other specific requirements of the Coastal Zone Management Act.

A list of all federal, state, and local agencies and other parties receiving copies of the FEIS is in Part VIII. This Final Environmental Impact Statement was delivered to the Environmental Protection Agency on August 28, 1978.

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The Federal Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (P.L. 92-583) was passed in recognition of the importance of the coastal zone of the United States and the potentially adverse effects of intense pressures upon this national resource. The Act authorized a voluntary program of financial assistance to states to manage their coasts and is administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration (NOAA), Office of Coastal Zone Management. The program was substantially modified by Coastal Zone Management Act Amendments of 1976 (P.L. 94-370).

The CZMA opens by stating "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." (Section 302(a)). The statement of Congressional findings goes on to describe how competition for the utilization of coastal resources, brought on by the increased demands of population growth and economic expansion, has led to the degradation of the coastal environment, including the "loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion." The CZMA then states, "the key to more effective protection and use of the land and water resources of the coastal zone is to encourage states to exercise their full authority over the land and waters in the coastal zone by assisting states ... in developing land and water use programs ... for dealing with coastal land and water use decisions of more than local significance." (Section 302(h)).

The state level of government has prime responsibility for achieving "effective management, beneficial use, protection, and development of the coastal zone" (Section 302(a)). Under Section 305 of the federal Act, up to four years of grants are available to 34 coastal states and territories (the Great Lakes States are included) to finance up to 80 percent of program development costs. General guidelines for the preparation of management programs are provided in (15 CFR 923.3.)

After developing a management program, the state may submit its program to the Assistant Administrator for approval. If a program has deficiencies which can be remedied but prohibit full approval under Section 306, the state is eligible for additional funding under Section 305(d). Funds provided under this Section can be used for initial program implementation and continued program development efforts. (15 CFR 923.74). If approved, the state is then eligible for annual grants under Section 306 to administer its management program.

OCZM has published criteria to be used for approving state coastal management programs and guidelines for program administration grants (15 CFR Part 923.72.) These criteria and guidelines set forth: (a) the standards to be utilized by the Assistant Administrator in reviewing and approving coastal management programs developed and submitted by coastal states for approval, (b) procedures by which coastal states may qualify to receive program administrative grants, and (c) policies for the administration by coastal states of approved coastal management programs. The Assistant Administrator will review the management program in accordance with the following general requirements:

1) The Act clearly envisions that such activities as population growth and economic development will occur in a manner that recognizes and reflects the findings of Sections 302 of the Act. The Act emphasizes that important ecological, cultural, historic, and aesthetic values such as living marine resources, wildlife habitats, public and open space, and nutrient rich areas are being lost or adversely affected by population growth and economic development in the coastal zone.

2) That the policies, standards, objectives, and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program; and

3) That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the management program.

As of January 1, 1978, 33 out of 34 eligible coastal states and territories had received program development grants and three states (Washington, Oregon, and California) and two segments had received program approval under Section 306. This is one of several programs coming in for approval prior to October 1978.

The 1976 Amendments established a new assistance program consisting of grants, loans, and bond guarantees to states impacted by OCS oil and gas or other forms of energy development. In order to be eligible for assistance, a state must be receiving development (305) or administrative (306) grants, or, in the Assistant Administrator's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the Coastal Zone Management Act. Other sections of the Act provide grants to states to coordinate, study, plan, and implement interstate coastal management programs (Section 309); allow the Assistant Administrator to conduct a program of research, study, and training to support state management programs (Section 310) and provide grants to states to acquire lands for access to beaches and other public coastal areas (Section 315).

Besides the financial assistance incentive for state participation, the Coastal Zone Management Act stipulates that federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with approved statement management programs, the "federal consistency" requirement, Section 307(c)(1) and (2). The state must concur with any applicant's certification that a federal license or permit affecting land and water uses within the coastal zone is consistent with the state's coastal management program before the federal license or permit can be issued. Section 307 of the Coastal Zone Management Act requires that any outer continental shelf oil and gas activity described in an exploration, development, or production plan be certified prior to any approval by the Department of the Interior. All direct federal development activities and certain forms of federal assistance to state or local governments must also be consistent with the approved program. Section 307 further provides for mediation by the Secretary of Commerce when serious disagreement arises between a federal agency and a state with respect to the administration of a state's program and shall require public hearings in the concerned locality.

What Federal Approval Will Accomplish

Maine's proposed program has two basic components. One aspect of the program is to show that existing laws are adequate to meet the requirements of the Act. The other, found mostly in Section 8 of Part I, is to fund local, state, and regional agencies to expand and promote sound coastal management. While the basic framework of this program is established in Maine by its existing laws, the funding made possible by program approval will provide the means to accomplish a more comprehensive and coordinated resource management effort which complements and supports these laws.

The Maine Coastal Program will be directed to support activities which will improve resource management and which enhance implementation of the core laws. These eleven laws form the basis for a strong regulatory system to manage land and water resources in the coastal area and provide an effective means of controlling development and conserving those natural resources in need of protection.

Though Maine has based its Coastal Program upon existing authorities, the greatest anticipated changes will be:

- A more extensive approach to coastal resource conservation and development;
- Greater state, local, and regional cooperation;
- Better implementation of existing state laws promoting sound coastal management by all levels of government;
- Enhanced municipal involvement in resource planning and management;
- Funding to municipalities to carry out site specific studies implementing state policies;
- Technical assistance to municipalities from regional and state personnel;
- Increased coordination between coastal towns on cooperative projects to implement coastal policies effecting more than one jurisdiction;
- Greater public awareness and knowledge of sound resource management practices;
- More coordinated management of state activities in the coastal area;
- Greater predictability in facility siting;
- Enhanced management of fisheries resources;
- The process for continued consideration of national interest in siting facilities and resource protection has been identified.
- Federal activities affecting the coastal area will be required to be consistent to the maximum extent practicable with the Maine Coastal Program.

STATE OF MAINE

OFFICE OF THE GOVERNOR

AUGUSTA, MAINE 04333

August 4, 1978

Robert Knecht
Assistant Administrator
Office of Coastal Zone Management
Department of Commerce
Page Building No. 1
3300 Whitehaven Street
Washington, D.C. 20235

Dear Bob:

With this letter I am transmitting the Coastal Program of the State of Maine for approval. After reviewing this program, I approve and endorse its implementation in the State of Maine. I am committed to carrying out the goals, policies, and provisions of the Coastal Program and am directing State agencies to use this as a guide for their activities in the coastal area.

The people of the State of Maine and officials from all levels of government have had an opportunity to review and comment on Maine's Coastal Program, first on the program draft, then on the Draft Environmental Impact Statement. Revisions in the program have been made in response to comments offered by the public and governmental agencies in the course of this review. The program represents state policy as it applies to the coastal area. As Governor, (1) I can attest that the eleven existing laws which form the legal basis for the program provide the necessary authority and that the State has the organizational structure to implement the program, and (2) I have designated the State Planning Office to receive and administer the implementation grants in accordance with the provisions of the program. This agency has the legal authority, as well as fiscal and administrative capability, to carry out the responsibilities specified for it in the program.

Because our Coastal Program has been developed in close consultation with the people of the State of Maine residing in the affected areas, I believe its provisions are in the best interest of the State and the nation. I trust you will approve this program proposal at your earliest opportunity.

Thank you for your assistance and cooperation.

Sincerely,

JAMES B. LONGLEY
Governor

JBL:sg
cc: A. Pease, SPO
J. Childs, Chairperson, CCDC

Section 1

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I. INTRODUCTION

I.1 THE PURPOSE OF THIS REPORT

This is a description of Maine's Coastal Program.

It describes how the State has developed, with considerable citizen and agency involvement, a program that will qualify it for Federal funding for a variety of projects relating to coastal resource management. In essence, this program describes eleven existing Maine laws, shows how these same laws qualify the State for funding, and explains how such funding can best be used to assure a balance between conservation and development in the coastal area.

1.2 WHAT IS MAINE'S COASTAL PROGRAM?

Maine's Coastal Program is a combination of proposed action to further implement policies regarding the coast already established by the Legislature in existing laws. Local resource management projects will be conducted with guidance and leadership provided by the State Planning Office, and work will continue to refine the policies of the State related to the use of coastal resources. Through the coordination provided by the State Planning Office, the various activities of local, regional and state governments will result in integrated and improved coastal management which meets long- and short- term economic, social, and environmental needs by balancing the conservation and development of Maine's coastal resources.

Maine's Coastal Program was initiated in 1969. At that time, in an Executive Order, Governor Curtis called for cooperation between all levels of government to resolve coastal land use conflicts, and the Legislature committed funds to this purpose. Under Governor Longley, the program has been expanded. A representative Committee on Coastal Development and Conservation now serves to advise the Governor on policy direction and to assure broad public involvement in the ongoing activities of the program.

Over the last few years the State Planning Office, serving as the core staff for the program, has used money available from the Coastal Zone Management Act

to undertake mapping, inventory work, data analysis, and informational and technical services. These funds have also been used to develop a long-range program for the coast. Such a program would draw on so-called "306" Coastal Zone Management funds. This report describes that long-range program. It represents a new direction in that most of the Federal funds would be made available for eligible local projects with lesser amounts allocated to program administration, technical assistance, and to the development of policy recommendations on issues of broad concern.

1.3 HOW DOES MAINE'S COASTAL PROGRAM RELATE TO THE COASTAL ZONE MANAGEMENT ACT?

When Congress approved the Coastal Zone Management Act of 1972 it recognized a national interest in the coastal areas of the nation. The Act views the resources of the coast as worthy of protection, development and restoration, seeks to encourage states to assert their responsibilities in the area and calls for Federal, State, and local cooperation. It also makes substantial sums of money available to those coastal states wishing to participate through the submission of a program that conforms with minimum Federal requirements.

Maine's Coastal Program has utilized "305" funds made available through the Office of Coastal Zone Management (an office within the National Oceanic and Atmospheric Administration and a division of the U. S. Department of Commerce), in part, to help finance the work necessary to the development of this report and application.

During this time, it has become increasingly evident that it is in the state's interest to apply for "306" funds. In numerous meetings persons concerned with the coast have supported the idea of seeking "306" funds to administer a Coastal Program such as described in this report and have supported the program itself.

The lead agency for initiating and coordinating Maine's Coastal Program will be the Maine State Planning Office. This office, as part of the Executive Department,stays abreast of trends in resource use and development needs. Further, in resolving problems, it takes a balanced approach which recognizes broad regional, state, and national needs and interests. This approach will be reflected in the program's activities.

Thus, because there is a common goal to both Maine's program and that spelled out in the Coastal Zone Management Act, it is appropriate that the State show how it meets Federal requirements and thereby qualify for funding. This description of Maine's Coastal Program is organized to both explain to Maine people how funds will be used if the application is successful and to show others how the program fits with "306" rules and regulations. The bulk of the technical information showing, in Federal terms, how Maine's program meets requirements is contained in the Appendix.

The organization and content of this report is described separately elsewhere in this section.

1.4 WHY SHOULD MAINE USE FEDERAL CZM FUNDS FOR ITS COASTAL PROGRAM?

The most compelling reason for Maine to apply for Coastal Zone Management funds to undertake this program is that it is strongly supported by town, county, and regional officials along the coast. Of the 69% of towns responding to a survey, 90% indicated that they would like to participate in a Coastal Program that made funds available for local resource planning and management projects.

Likewise, a Preview of Maine's Coastal Program mailed to some 1,900 individuals and groups has been widely accepted.

An approved "306" program would have the following major advantages to Coastal Maine:

- It will provide money to improve Maine's ability to deal adequately with the complexities of improving resource management on the coast of Maine;
- Coastal towns would receive funds for approved resource planning and management projects, a need expressed by many towns;
- Federal activities significantly affecting the coastal area must be consistent, to the maximum extent practicable, with the Maine Coastal Program; in other words, the State would gain an opportunity to review federal activities and assure that they are conducted consistently with the policies of the State.
- It will foster greater cooperation and coordination among different levels of government, with the local communities playing the key role.

1.5 HOW THIS REPORT IS ORGANIZED

This description of Maine's Coastal Program consists of nine Sections. An Appendix with background information supplements the nine Sections.

The Sections describe the Program in considerable detail to give the reader a clear idea of what is to be submitted to the Office of Coastal Zone Management and, if the Program is funded, what the money will be used for and how it will be distributed.

The Appendix is intended to satisfy two needs. First, it contains supplementary information to support and document points raised in the main body of text. Second, it contains additional information in which the Office of Coastal Zone Management

and other federal agencies have a particular interest. How Maine's program will consider the national interest is described in Section E of the Appendix. The administrative procedures for reviewing federal actions for consistency with Maine's program are also found in Section E of the Appendix.

The nine Sections comprising the main body of this text include Section 1, the Introduction to the entire '306' application, and Section 2, the Summary. Section 3 serves to explain how the Program was developed and emphasizes the roles various citizens, groups, and agencies have played. Section 4 identifies the major issues that are important to the coast of Maine.

Section 5 describes the extent of the coastal area. Section 6 begins with a goal statement and contains the policies that have been established to guide the Coastal Program.

The core of the Program, the 11 existing laws which enable Maine to satisfy Federal requirements and on which Maine's application for "306" funding is based, are described in detail in Section 7. Section 8 deals with the way in which Maine will utilize the funds made available through the Coastal Zone Management Act. The final part of the main text, Section 9, identifies the roles and responsibilities of the Committee on Coastal Development and Conservation, the State Planning Office, and the other groups and agencies of government involved in Maine's Coastal Program.

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2. SUMMARY

The purpose of this application and description of Maine's Coastal Program is to inform Maine people of its contents, seek their comments on it, and then submit the program, with the Governor's approval, to the Office of Coastal Zone Management in anticipation of funding. If the Office of Coastal Zone Management finds that the program meets the requirements of the Coastal Zone Management Act, Maine will receive up to $1.2 million per year for coastal resource planning and management activities.*

The Coastal Program has been developed over the past two years. It has benefited from considerable public and agency involvement and has, at this stage of its development, been supported by reviewers. However, in order for the State to receive funding, it must show that the purposes of the Coastal Zone Management Act will be achieved and that all Federal requirements can be met. This report therefore serves to answer Federal concerns, while explaining how the program can best serve Maine.

This summary describes the highlights of Maine's Coastal Program. In this regard, the materials prepared to date include this report which contains nine sections and an appendix.

* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

2.1 HOW MAINE'S COASTAL PROGRAM WAS DEVELOPED

The impetus for the preparation of this application was provided by Governor Longley when, in February 1976, he established the Committee on Coastal Development and Conservation and requested that they emphasize the role of local government in preparing an application. Since that time the Committee on Coastal Development and Conservation has provided broad policy direction for the Program, has advised the Governor on coastal issues, and has helped ensure public input.

The State Planning Office, in the Executive Department of Maine State government, provides the core staff for the program and looks to the Committee on Coastal Development and Conservation for guidance. These groups, together with a Technical Advisory Committee, have been responsible for eliciting public input and response to the emerging program and for arranging meetings, surveys, updates, and previews of the program.

Public participation in the development of the program has occurred through advisory groups, surveys of town resource planning and management needs, numerous local meetings, and a public information service.

Two key advisory groups are the Committee on Coastal Development and Conservation and the Technical Advisory Committee; the former consists of public representatives (6), legislators (2), state agency directors (8), and a representative from the University of Maine and from a regional planning commission; the latter is a committee of technical experts drawn from state, local, regional, and in-state Federal agencies.

Surveys, questionnaires, and meetings have been very important to the development of Maine's Coastal Program. An August, 1976, survey of coastal towns indicated that most towns wished to participate in the Coastal Program. Twenty-five meetings between October, 1976, and February, 1977, in the coastal area provided opportunity for participants to state their preferences on how funds should be expended and what the limits of the coastal area should be. They also stated that the program should be based on existing laws and that consideration should be given to the development of recommendations on issues of broad concern.

Subsequent to these meetings and a meeting with Federal agencies with an interest in the program, a "Preview" of this application was drawn up. Over 1,900 individuals and groups received copies of the Preview and twelve more informational meetings were held. Overall, the response was most positive and, consequently, the Committee on Coastal Development and Conservation has urged the writing of this proposal, continued public involvement, and another meeting with Federal agencies to explain Maine's Coastal Program in more detail.

In November of 1977, six public hearings were held to elicit further comment on the program. In March, 1978, Governor Longley submitted the program to OCZM for federal approval. A Draft Environmental Impact Statement was issued in April, and three public hearings were held in May. The response of the coastal citizens was positive, encouraging further efforts to seek program approval.

2.2 COASTAL ISSUES

Essential to the formulation of Maine's Coastal Program has been the identification of those issues and problems that the program should address. Three broad categories of issues have been established by coastal residents, advisory groups, and the State Planning Office.

The first category relates to issues such as pollution prevention, the conservation of wildlife habitat, wetlands and scenic beauty, fisheries management, shoreland development and the siting of subdivisions and other large-scale developments. These are issues that Maine has already addressed by adopting land and water use laws.

Eleven of these existing laws are the heart of Maine's Coastal Program application; they are the:

Protection and Improvement of Waters Law
Coastal Conveyance of Oil Law
Protection and Improvement of Air Law

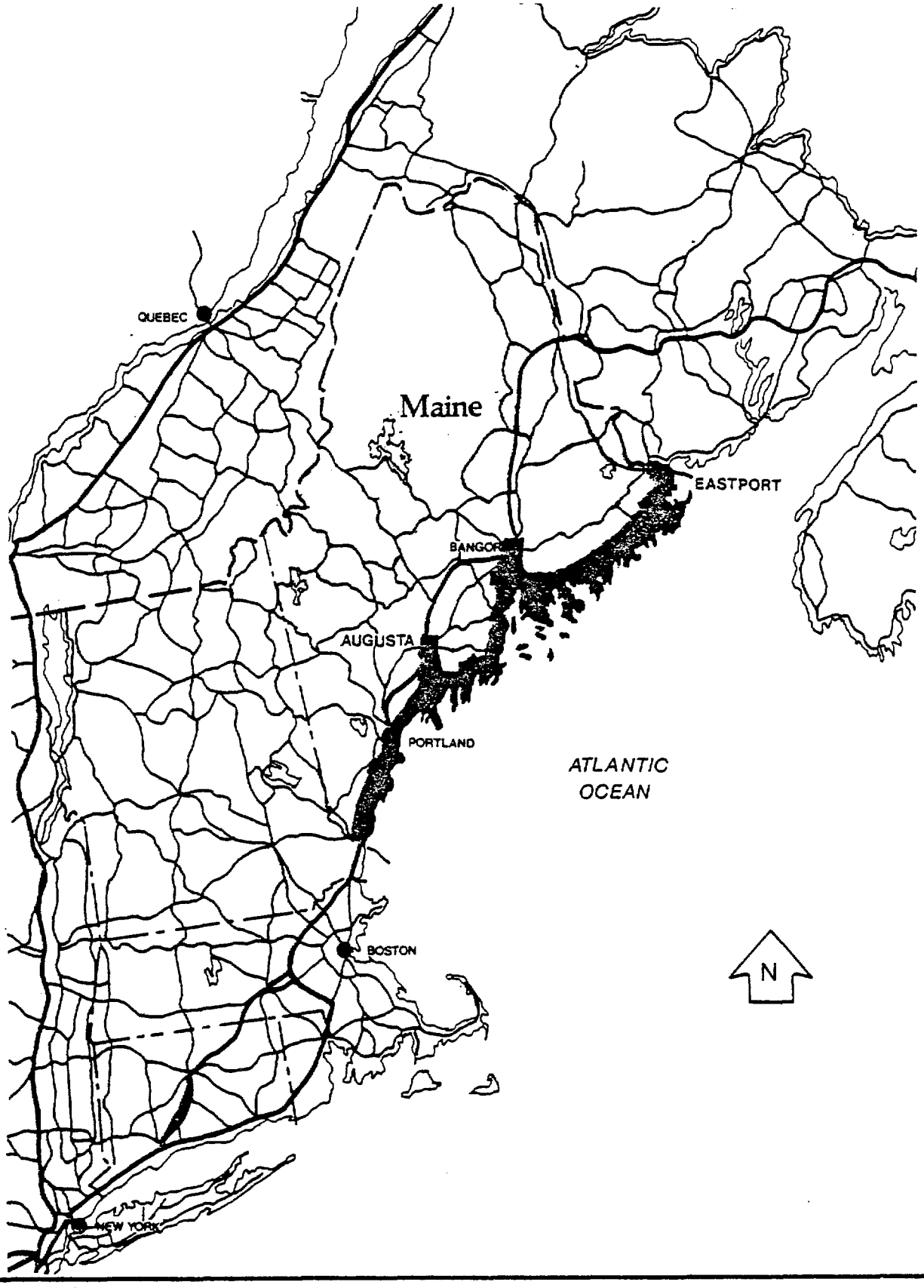
Shoreland Zoning Law
Land Use Regulation Law
Subdivision Law
Site Location Law
Solid Waste Management Law
Marine Resources Law
Stream Alteration Law
Coastal Wetlands Law

The second category relates to issues that can be resolved largely through the funding of this application. Under home rule law, municipalities have comprehensive land use planning and management powers and responsibilities but very limited funds to carry out these functions. Maine's Coastal Program is designed to make money available to municipalities so that these functions can be made to work better.

The third category relates to issues where it is felt that refinements in the state's existing policies may be desirable. They include such issues as port development, tourism, recreation, heavy industry, fisheries, and the cumulative impact of small-scale development. Improvement in the way these issues are dealt with currently can be achieved by funding research that will result in recommendations that can be forwarded to the Governor and the Legislature.

2.3 THE EXTENT OF MAINE'S COASTAL AREA

The extent of Maine's coastal area is shown on the accompanying map; the area includes all coastal towns on tidewater and the sea to the limits of the State's jurisdiction.



MAINE'S COASTAL AREA
AND THE NEW ENGLAND COASTLINE

Solid lines indicate major roads.

Maine's
Coastal Program

2.4 A BRIEF OVERVIEW OF MAINE'S COASTAL PROGRAM - HOW THE VARIOUS PARTS FIT TOGETHER

To deal adequately with the complexities of improving resource management on the coast of Maine, Maine's Coastal Program must of necessity consist of several parts. These various parts are described in detail in other portions of this document.

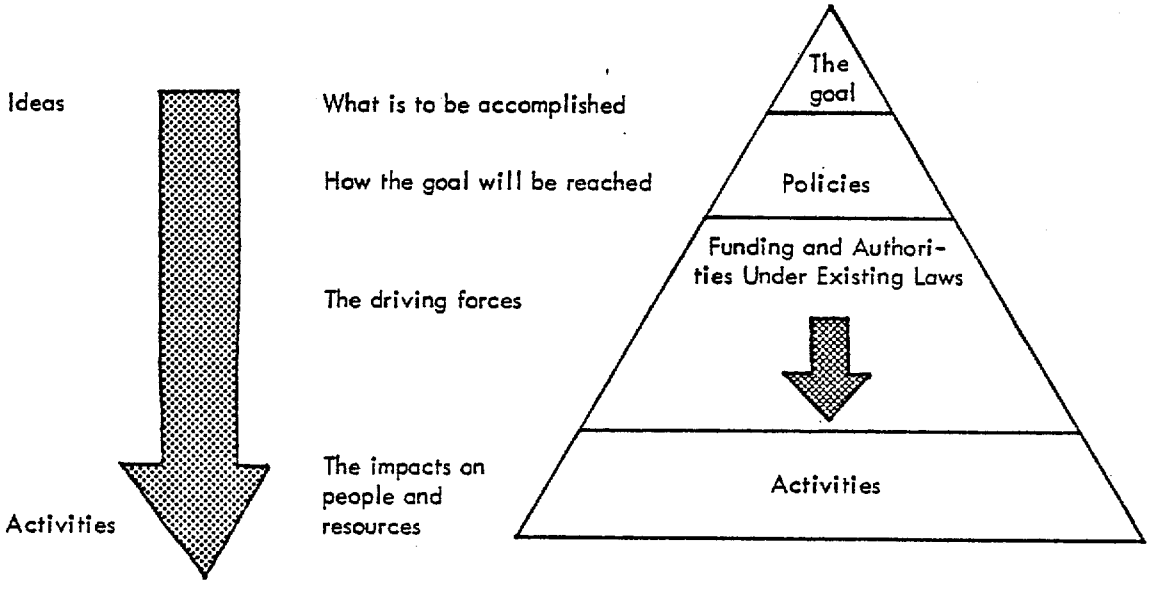
Maine's Coastal Program Can Be Thought of as a Pyramid

To visualize the whole, Maine's Coastal Program can be thought of as a pyramid. As shown in Figure 1, the pyramid consists of ideas or concepts near the top and activities that affect coastal resources at the bottom. The peak of the pyramid, or the top stone, is the goal of the program; below it are the program's policies. These two elements of the program tell what is to be accomplished and how it is to be done. In general, they point out that a balance is to be achieved between conservation and development in the coastal area.

The middle of the pyramid is its real strength. It consists of the elements of the program that enable the concepts described in the goals and policies to be translated into action. These elements are the funding for the program and the legal authorities given state and local governments by Maine's existing laws.

The base of the pyramid, or its impact on the ground, is made up of the many activities that are undertaken as part of it.

Figure 1



The Program's Activities Are Balanced

The program's activities are of many different sorts. To be effective and balanced, they include both the implementation/administration of the state's existing land use laws and other activities intended to improve resource use while also improving economic and social conditions. These latter activities involve increasing the productivity of coastal resources, encouraging selected economic activities which are the most beneficial, technical assistance, and other similar activities.

To a large extent, Maine's existing system is focused on regulation. To be more effective in bringing about improved resource use, it should be supplemented by resource enhancing projects which increase productivity and encourage the native coastal economy, such as deep sea and shell fishing, forestry, recreation, and shipping.

The Program Consists of Existing and Proposed Activities Woven Together

Clearly perceiving the relationships between the parts of Maine's program and the whole is made difficult by Maine's unusual situation. This is that the Maine legislature and Governor established authorities by law and provided funding to implement these authorities before the passage of the Coastal Zone Management Act. These laws principally address the regulatory side of Maine's Coastal Program. The laws include those such as Site Location Law, Wetlands Law, Shoreland Zoning Law, and others which are the core of the program. These are an important part of the program which enable us to meet the federal requirements for controlling certain types of high-impact activities and controlling uses of sensitive environmental areas.

However, as explained earlier, the whole of Maine's Coastal Program is much broader than merely having restrictions on particular uses or areas. The fabric of the whole program has been formed by weaving together the threads of existing laws (referred to above and described in detail in Section 7) and existing programs to implement these laws with the new threads of Federal Consistency and projects to be undertaken with 306 funding. What we are concerned with here is how we can most advantageously supplement our existing programs to improve the management of coastal resources. Briefly, if Maine's program is approved, existing regulatory activities will be complimented by a variety of activities at the local, county/regional, and state levels which are broader in scope.

While the new activities will address improving the implementation of existing state laws and local ordinances, they will also involve improving the productivity and beneficial use of Maine's coastal resources, e.g., shellfish; encouraging those economic activities that are of the greatest overall benefit to the people of the coast because they provide jobs, while protecting social and environmental conditions; guiding development to proper locations considering factors broader than those in existing laws; and other similar activities. The amounts allocated to the different categories of activities reflect where, in the judgment of the people of the State of Maine, the new funds could be used most advantageously. As detailed subsequently, local resource

planning and management projects will get the greatest amount of funding. One rationale for taking this course of action is that while the administration and implementation of existing laws on the state level already receives substantial funding (approximately $3,000,000 per year statewide), local resource planning, management, implementation, and administrative activities receive little or no state or federal funding specifically earmarked for these purposes.

For more information on how the various parts of Maine's program fit together, see Section 5.5.

2.5 GOAL, OBJECTIVES AND POLICIES

The primary goal of Maine's Coastal Program is to achieve a balance between conservation and development in the coastal area that will satisfy the short and long term social, economic, and environmental needs.

The Committee on Coastal Development and Conservation has adopted a comprehensive set of policies to help achieve the above goal. The following policies are representative of the full set of policies in Section 5.

Funding Policies

- make the majority of Program funds available to coastal towns for projects that further the Program goal;
- make Program funds available to Regional Planning Commissions and other units of government for projects that further the Program goal.

Policies Related to Issues of Broad Concern

- develop recommendations for more refined policies on issues of broad concern to the coastal region, the State, and the nation, and consider, in particular, issues related to port development, tourism, heavy industry, fishing, public access, and the cumulative effect of small-scale development decisions.

Policies Related to Program Administration

- provide ongoing opportunity for public and governmental participation;
- maintain the Governor's Advisory Committee on Coastal Development and Conservation;
- designate the State Planning Office (S.P.O.) as the key technical agency to administer the program and act as staff to the above group;

Policies Related to Economic Development and Jobs

- encourage development activities that provide substantial economic benefits and job quality and that are compatible with environmental quality, social conditions, and traditional forms of coastal employment.

Policies Related to Outdoor Recreation

- improve and expand opportunity for Maine people and visitors to the state for outdoor recreation on the coast.

Policies Based on Existing Laws

- assure that commercial and industrial development planned for areas within 250 feet of high water is located on sites with suitable soils that have been designated for such uses;	12 M.R.S.A. § 4811 Shoreland Zoning and the Shoreland Guidelines
- assure that all development in shoreland areas is conducted in such a manner that safe and healthful conditions are maintained;	12 M.R.S.A. § 4811 Shoreland Zoning
- assure, through a permit procedure, that the subdivision of land is conducted in such a way that air and water quality standards are maintained, soils remain stable, safe highway conditions prevail, waste disposal is provided for, and scenic values and areas of natural beauty are conserved;	30 M.R.S.A. § 4956 Subdivision Law
- assure that the quality of the natural environment is maintained by requiring a permit for large-scale developments.	38 M.R.S.A. § 481 Site Location

Policies Related to Natural Resource Management

- maintain the quality of the water in the coastal area;
- protect the quality of coastal wetlands;
- maintain soil stability and minimize erosion;
- manage activities in flood plain areas to minimize flood damage;
- conserve natural, historic, and scenic resources;
- conserve wildlife and fisheries resources;
- maintain state air quality standards.

2.6 EXISTING LAND AND WATER USE LAWS, THE CORE OF MAINE'S PROGRAM

Maine's program for managing land and water resources in the coastal area relies on the 11 existing laws listed earlier. The 11 laws form the basis for a strong regulatory system that qualifies the State for Coastal Zone Management funds. The laws, described below, provide an effective means of controlling development and conserving those natural resources in need of protection. In addition, they resolve many issues identified in Subsection 2.2.

Protection and Improvement of Waters (T. 38 §§ 361-A - 454)

Under this law, the State, through the Department of Environmental Protection, classifies the current quality of all tidal and fresh surface waters. The Department issues licenses to permit the construction, maintenance, or operation of all waste discharge facilities in, on, above, or under fresh and tidal waters or subtidal lands, provided such facilities comply with the terms of the license. The law also prohibits certain discharges and requires the best practicable treatment for others.

The purpose of the legislation is to set attainable water quality standards and to protect the quality of the State's waters from waste discharge pollution.

Alteration of Coastal Wetlands (T. 38 §§ 471 - 8)

All tidal and subtidal lands are provided protection through this act which is administered by the Department of Environmental Protection. A permit is required of the Department (or a municipality acting under its authority) for all filling, draining, or dredging, or the construction of permanent structures. Permits are issued provided it can be shown that the activity will not unreasonably interfere with existing uses, cause harm to natural systems, or lower the quality of any waters.

Mandatory Shoreland Zoning and Subdivision Control Act (T. 12 §§ 4811 - 14)

This act requires all municipalities to adopt zoning and subdivision control ordinances for all shoreland areas within 250 feet of the high water mark of any pond, river, or salt water body. All ordinances must be consistent with guidelines established by a policy-making board of Land Use Regulation Commision and Board of Environmental Protection members and must protect water quality, protect the natural environment, and enhance the aesthetics of water bodies. Most land uses and all subdivision in shoreland areas are subject to this law, which has as its primary purpose, the prevention and control of water pollution. The State Planning Office administers the Act at the state level.

The shoreland act, in itself, establishes land use controls that contribute significantly to Maine's existing system of coastal management.

The Land Use Regulation Commission (T.12 §§ 681-9)

The Land Use Regulation Commission is empowered by law to regulate all land use in the unorganized areas of the state; this includes a portion of the coastal area and a number of coastal islands. The Commission bases its land use decisions on a Comprehensive Plan and regulates uses by prescribing what activities are allowed by right or permit in different protection,management and development districts. The overall goal of the agency is to protect natural resources by prohibiting uses that will cause undue degradation to those resources. The Commission's powers ensure that a high level of land use control is exerted over those areas of the coast within its jurisdiction.

Land Subdivisions (T. 30 § 4956)

All land subdivisions involving three or more lots (of less than 40 acres, in a five-year period) require a permit. Requests to municipal boards or officers for permission to subdivide land, therefore, are required to be considered in the light of the requirements established by the law. Thus, before any proposed subdivision can be approved, criteria concerning its impact on air and water quality, water supplies, soil erosion, highway safety, natural beauty, and sewage and waste facilities must be considered. These criteria are mandated by the Act, which is administered locally.

Site Location Act (T. 38 §§ 481 -9)

The purpose of the Site Location Act is to ensure that those development projects that might substantially affect the environment be located and conducted in a manner such that they will have a minimal adverse impact on the surrounding natural environment. The Act gives the Board of Environmental Protection police power to require that development that occupies a land area in excess of 20 acres or affects an area in excess of 60,000 sq. ft., notify the Board. The Board may approve a proposal, with or without conditions, when it finds it can meet air and water pollution control standards, provides for adequate traffic movement, fits into the existing natural environment, and occupies a location with suitable soil types. Proposals that require Bureau of Environmental Protection approval must also meet local regulatory requirements.

Protection and Improvement of Air (T. 38 §§ 582-608)

The intent of this legislation is to establish a coordinated statewide program to control present and future air pollution. The law authorizes the Department of Environmental Protection to establish air quality regions for the State, develop ambiant air quality and emission standards, and collect and evaluate air quality data. Emission licenses are required from the Board of the Department for the operation of all air contamination sources.

Solid Waste Management (T. 38 §§ 1303-1308)

The Board of the Department of Environmental Protection is empowered through this legislation to establish and enforce regulations relating to solid waste management. The Department regulates the location of all solid waste disposal sites and the establishment, construction and alteration of solid waste facilities. The Act requires that the Department provide technical assistance to localities in every phase of solid waste facility development and operation.

Stream Alteration Act (T. 12 §§ 2206-2212)

All rivers, streams and brooks above head of tide are provided protection through this Act which is administered by the Department of Inland Fisheries and Wildlife. A permit is required for most construction of permanent structures, filling, or dredging activities. Permits are issued provided it can be shown that the activity will not unreasonably interfere with existing uses, cause harm to natural systems, or lower the quality of any waters.

Oil Discharge Prevention and Pollution Control Law (T. 38 §§ 344-349; 541-557, 560)

The purpose of the Oil Discharge Prevention and Pollution Control Law (T. 38 §§ 344-349; 541-557; 560), the formal title, is to protect the coast of Maine from the hazard posed by the passage of oil carrying vessels through Maine waters and the transfer of oil at terminals. It employs the police power of the state, administered by the Department of Environmental Protection, to prohibit unlicensed transfer or discharge of oil to waters or adjoining lands of the state. Any oil terminal facility with storage capacity exceeding 500 barrels, and oil carriers arriving at or departing from such terminal, are subject to strict regulation of operations. The law also creates a Coastal Protection Fund limited to $6,000,000 (increased from $4,000,000 July 1, 1978) generated from terminal license fees and penalties which provides monies for operation of Department of Environmental Protection, Division of Oil Conveyance Services, immediate clean-up of oil spills, prompt settlement of third party damage claims, and research into causes, effects, and methods for the removal of oil pollution from the marine environment.

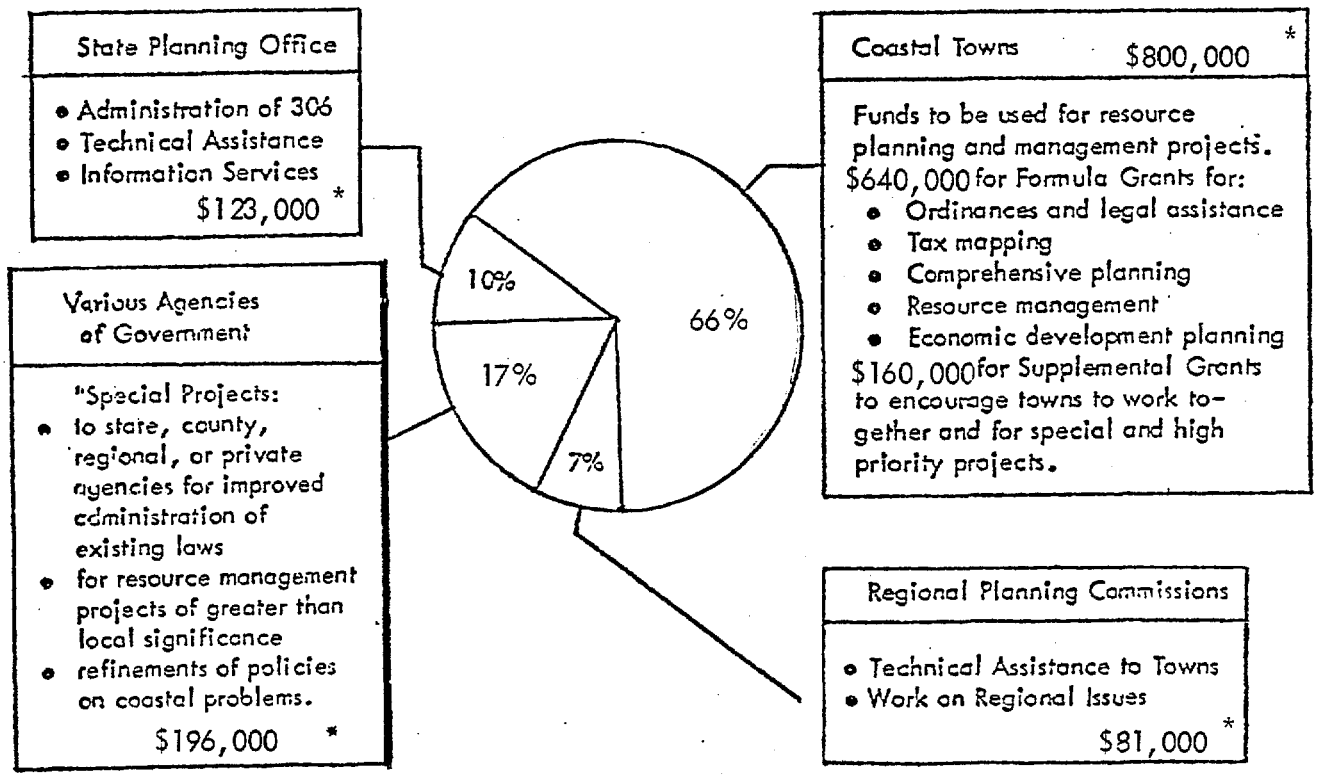
Marine Resources Law (T. 12 §§ 3504-5)

The taking of any species of marine fish and plants in State waters and intertidal areas may be regulated under this Act. Regulations are set by the Commissioner of the Department of Marine Resources upon a declaration of emergency, at his own initiative, or after receipt of a petition and public hearing. Regulations may be based on management recommendations by the Department.

2.7 WAYS TO IMPROVE RESOURCE PLANNING AND MANAGEMENT

If Maine's Coastal Program is funded, the monies will be used for: grants to towns; technical assistance programs and high priority projects at the regional, county, or state levels; developing recommendations for policies on issues of broad concern; and for the coordination and administration of the overall program. The basic intent is to fund projects that will make resource planning and management mechanisms work better, within the scope of this program's goal and policies.

Maine is applying for $1.2 million* for first-year funding of its Coastal Program. Similar grants are expected to be available on an annual basis thereafter. The diagram below shows how funds will be allocated.



Under this procedure decisions concerning funding priorities and standards for acceptable projects will rest with the Committee on Coastal Development and Conservation. The State Planning Office will administer the funds and let contracts.

Participating coastal towns will be assured Formula Grants, with no matching funds required, provided the projects proposed meet established guidelines. Generally, projects must involve planning for and/or the management of coastal resources in accordance with the principles established in the policies for this program. The

* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

formula gives weight to considerations of town area and population and length of shoreline; most towns would be eligible for between $5,600 and $10,400 (if 100 towns were to apply); but some larger towns may be eligible for about $16,000.

Supplemental Grants to coastal towns will be awarded on the basis of similar criteria. High priority project proposals submitted by single towns will require a 20% match; however, proposals from two or more towns will be encouraged by not requiring a match and by relating the size of the grant directly to the number of towns participating.

Matches of 20% will be required of state and regional planning agencies and for Special Projects. Priority will be given Special Projects that affect a large area, are "model" projects, or are of an "emergency" nature.

2.8 ORGANIZATION

In order to be effective, Maine's Coastal Program relies on existing committees, agencies of government, and extensive public input. Key groups within the state's entire governmental structure thus form the organization that will make Maine's Coastal Program work. The roles these various groups perform vary and include planning, regulatory, coordinative, and informational functions.

The key roles are played by: the Committee on Coastal Development and Conservation, the State Planning Office, coastal municipalities, the Board of Environmental Protection, the Regional Planning Commissions, and the public. Other State agencies with an involvement in the program include the Land Use Regulation Commission, the Department of Marine Resources, and the Department of Inland Fisheries and Wildlife.

The Committee on Coastal Development and Conservation's main function is to advise the Governor and state agencies on issues, including development and conservation policies, in the coastal area. The Committee also has responsibility for coordinating citizen participation, advising on Coastal Program funding priorities, and advising on the other Coastal Program efforts. The State Planning Office relies very heavily on the recommendations of the Committee in this regard.

The lead agency for initiating, administering, coordinating, and monitoring all program activities will be the State Planning Office. It is a staff agency within the Executive Department responsible for a broad range of planning, research, and coordinative functions. As the state agency with principal responsibility for the Coastal Program, the State Planning Office's role includes:

- applying for, administering and disbursing Coastal Zone Management funds;
- advising individuals and other agencies through research and analysis and the provision of technical information, maps, and handbooks;
- coordinating the program with other state, regional, and federal agencies;
- acting as administrator of the Shoreland Zoning Law;
- designated coastal agency for federal consistency.

The municipalities in Maine have broad responsibilities and powers under home rule laws. Their role is decisive in accomplishing an effective Coastal Program because they have the authority to prepare comprehensive plans, adopt shoreland zoning ordinances, establish planning boards, and enforce the provisions of various regulations governing land use.

Given adequate funding, through the State Planning Office municipalities can improve on existing functions and initiate new programs to better their resource planning and management capabilities. For example, they may: prepare economic development plans or zoning or subdivision ordinances; undertake conservation plans; hire legal services or enforcement officers; organize resource education programs; and perform any number of other functions provided they further the objectives defined by this program.

The Department of Environmental Protection is the state agency with responsibility to "protect and improve the quality of our natural environment . . ." Generally, this is achieved through state laws and a permit process that is controlled by the Board of Environmental Protection.

The main roles of the Department of Environmental Protection in Maine's Coastal Program are: the Commissioner serves on the Committee on Coastal Development and Conservation; the Board administers the Protection of Waters, Coastal Wetlands, Site Location, Coastal Conveyance of Petroleum, Protection of Air, and Solid Waste Management Laws. The Shoreland Zoning Act is jointly directed by the Department and the Land Use Regulation Commission.

The Department of Marine Resources, another state agency, is responsible for the conservation and development of marine and estuarine resources in the state. The Commissioner serves on the Committee on Coastal Development and Conservation and administers the Marine Resources Law and relevant sections of the Coastal Wetlands Law.

The Department of Inland Fisheries and Wildlife is a state agency, which along with other responsibilities, protects the rivers, streams and brooks in the state from adverse effects of development through the administration of the Stream Alteration Act.

The Land Use Regulation Commission is a bureau within the Department of Conservation. Served by a Director and staff, the seven-member Commission has responsibility for sound planning in the unorganized areas of the State. Its role there (and thus, in the unorganized areas and islands of the coastal area) is to plan, zone, and consider permits for activities in these areas. The Commissioner of the Department of Conservation serves on the Committee on Coastal Development and Conservation.

The seven Regional Planning Commissions and one Council of Governments in the coastal area assist towns through technical, advisory, and staff services; they act to encourage cooperation between towns, are represented on the Committee on Coastal Development and Conservation, and their role in the Coastal Program will be to further these ends and generally help towns resolve their own resource planning and management problems.

The role of the public in the development of Maine's Coastal Program is documented in Subsection 2.1. Citizens have participated in meetings and through questionnaires and serve on the Committee on Coastal Development and Conservation, Board of Environmental Protection, Land Use Regulation Commission, municipal boards, Regional Planning Commissions, and other groups associated with Maine's Coastal Program.

2.9 FEDERAL CONSISTENCY *

One of the advantages of an approved Coastal Program would be that the State will gain increased leverage and control over federal activities that affect the coastal area. "Federal Consistency" is one of the provisions of the Coastal Zone Management Act.

Pursuant to procedures uniformly defined for all states with approved coastal programs, the State gains the ability to review the federal activities taking place upon, or affecting, the coastal area. The State intends to apply this provision using existing laws and to as large an extent as possible, already established administrative procedures.

The State will evaluate whether or not any of the federal activities are consistent with the Coastal Program by determining if the proposed activity would meet the requirements and provisions of the 11 laws which are the core of the Coastal Program. As federal activities or federally-licensed activities do not necessarily have to meet with state laws, this is a new opportunity to improve the management of the coast.

The State Planning Office is the designated coastal agency and therefore will be the lead agency for federal consistency according to Section 307 of the Coastal Zone Management Act.

* Details of the federal consistency procedures are found in Section E of the Appendix.

Section 3

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

3. HOW MAINE'S COASTAL PROGRAM WAS DEVELOPED

3.1 BACKGROUND

Maine people have long been aware of the value of their coast as a source of livelihood and of enjoyment. Over the years people have recognized the need to control some uses of the coast in order that other uses might also continue. Laws such as the Protection and Improvement of Waters Act and the Coastal Wetlands Act were passed in response to this need. However, by the late 1960s, pressures on the coast and conflicts over its use prompted Governor Kenneth Curtis to conclude that a more comprehensive way of handling coastal issues was necessary. Therefore, in 1969, responding to public sentiment about the importance of this need, he established the Coastal Planning Program in the State Planning Office.

The purposes of this early coastal planning effort were to help (1) avoid problems which could be foreseen, (2) prepare Maine to capitalize on opportunities which might arise, and (3) achieve desirable social, economic, and environmental goals. Initially, these goals were pursued primarily by gathering information for decision makers to assist them in making wise choices concerning the use of the natural resources of the coast. However, the services of the program were necessarily limited.

In 1972, the Federal government passed the Coastal Zone Management Act. The purpose of this Act is to assist states, which voluntarily participate, in developing and administering their own programs that will "preserve, protect, and where possible, . . . restore our coastal resources." The Act also is intended to encourage states to achieve the ". . . wise use of the land and water resources . . . giving full consideration to ecological, cultural, historic, and esthetic values, as well as to needs for economic development." Initially, the Act provides financial support for two phases of state coastal programs, program development and program administration. Later amendments will make funds available for energy related concerns, land acquisition for public access to the coast, interstate coordination of coastal programs, and program-related research, technical assistance, and training.

Under Section 305 of the Act, funds are available (for a maximum of four years) to assist states in developing programs for the management of coastal resources. Since 1974, Maine has benefited from this provision and, consequently, has been able to expand the services of its Coastal Program. The services provided over the last three years are described in detail in the "Update on Maine's Coastal Program" (March 1977).

In 1975, in order to be eligible for funding available under the second phase of the Act, Section 306, Maine prepared an application by describing a program for the mid-coast area of the state. Since that application was not well supported at the local level, it was withdrawn.

However, recognizing the potential benefits of participating in such a program, Governor James Longley asked for a reorientation of Maine's Coastal Program in order to allow greater apportunity for public input and to place greater emphasis on the role of local government in planning for the use of coastal resources. He also requested that the program be balanced to maintain environmental quality and to provide for desirable economic development.

Since that time, a new direction has been established, and major changes have been made in the Program. Notable are the following changes:

1) Provision of opportunities for meaningful public and governmental participation in shaping the future direction of the program;

2) Increased emphasis on the role of local governments in planning for, and the managing of, Maine's coastal resources;

3) Establishment of a broadly representative group outside of the State Planning Office to provide policy direction for the program;

4) Development of a program that, in the long range, strikes a balance between development and conservation; and

5) Increased emphasis on coastal issues of broad interest and concern.

This report describes the new program for Maine's coast. It has come about through extensive public and governmental discussion and the testing of alternative approaches. Basically, the consensus of opinion of coastal residents is that since Maine has already enacted laws that manage coastal resources and has initiated its own Coastal Program, the State has a program that meets Federal requirements and is in keeping with the goals of the Coastal Zone Management Act. The Federal requirements and the way Maine's policies meet them are discussed in Section 6.5.

Approval of Maine's management program would have several major advantages for the State.

1) It would provide money for continuing and improving the services of Maine's Coastal Program.

2) Coastal towns would be able to receive funds for eligible resource planning and management projects, a need expressed by many coastal residents.

3) Federal activities significantly affecting the coast (as defined by the core laws of the program) would have to be conducted in a manner consistent with Maine's Coastal Program, to the maximum extent practicable.

4) It will foster greater cooperation and coordination among various levels of government.

5) It will provide funding for research into issues of broad interest and concern.

Because public and governmental input has been so important to the development of this new direction in Maine's Coastal Program, Sections 3.2 and 3.3, which follow, outline the history of the program and describe its development in detail.

3.2 OUTLINE OF THE HISTORY OF MAINE'S COASTAL PROGRAM

- 1969 MAINE'S COASTAL PLANNING PROGRAM INITIATED
  Responding to increased development on the coast, Governor Curtis established the Coastal Planning Program in the State Planning Office. Land Use Regulation Commission also established.

- 1970 THE SITE LOCATION OF DEVELOPMENT ACT IS ENACTED
  COASTAL CONVEYANCE OF PETROLEUM ACT ENACTED

- 1971 SHORELAND ZONING ACT INTRODUCED AND PASSED

- 1972 COASTAL ZONE MANAGEMENT ACT ENACTED

- 1974 MAINE RECEIVES ITS FIRST GRANT UNDER SECTION 305
  Available in yearly grants for up to four years, Section 305 grants have enabled Maine to greatly expand the services of its Coastal Program. Over the past three years these services have included: resource inventory and analysis; information and education (maps, publications); technical assistance; initiation of the policy development process.

- Spring, 1975 MAINE SUBMITS ITS FIRST 306 APPLICATION AND THEN WITHDRAWS
  This application, which would have covered only the mid-coast section, was quite controversial at the local level. In response to public opinion, the application was withdrawn, and Governor Longley requested that the program be redirected to be more responsive to public needs.

- Dec., 1975 TECHNICAL ADVISORY COMMITTEE FORMED FOR COASTAL PROGRAM
  Made up of representatives of Federal, state, regional, and local government, this committee provides a forum for discussing the program and a means of providing feedback from others involved in planning efforts in the coastal area.

- Feb., 1976 GOVERNOR'S ADVISORY COMMITTEE ON COASTAL DEVELOPMENT AND CONSERVATION ESTABLISHED
  This broadly representative group brings together representatives of many different coastal interests, both public and private, to provide direction for the Coastal Program and recommendations on coastal policy issues.

- August, 1976 — MAINE AND FEDERAL AGENCIES DISCUSS THE NEW DIRECTION OF MAINE'S COASTAL PROGRAM
  Representatives of Maine's Coastal Program met with 20 contact people from Federal agencies to discuss progress of Maine's program and to solicit comments and information. (Two such meetings were held earlier to review the first 306 application.)

- August, 1976 — COASTAL MUNICIPAL OFFICIALS SPEAK OUT IN "TOWN LAND USE PLANNING AND MANAGEMENT NEEDS SURVEY"
  The results of this survey indicated that at least 90% of the respondents would probably want to participate in the "Program Administration" (Section 306) phase of the Coastal Program. Respondents also identified local projects with high priority for funding.

- Oct., 1976; Feb., 1977 — DIRECTION FOR THE PROGRAM SOUGHT IN 25 COASTAL MEETINGS
  To determine the type of Coastal Program under Section 306 that coastal residents would like to have, the State Planning Office held 21 local meetings with elected and appointed officials of local and regional government and of local conservation and development organizations. Four meetings were also held with representatives of statewide conservation and business/industrial organizations. Public opinion expressed at these meetings provided the basis for the positions taken on the key issues in the application.

- March, 1977 — PREVIEW OF THE 306 APPLICATION MAILED TO INTERESTED AGENCIES AND INDIVIDUALS FOR REVIEW
  Based directly on the input from the 25 coastal meetings, the preview briefly describes the direction proposed for the Coastal Program. It was mailed, along with a postage-paid request for comments, to everyone who had expressed interest in the program and to representatives of agencies and organizations that were expected to have an interest in the coast.

- March, 1977 — PUBLIC REVIEWS THE PROPOSED "PREVIEW" OF THE 306 APPLICATION AT THIRTEEN MEETINGS
  The preview was discussed at a series of 10 local meetings, plus two meetings with conservation and development organizations, and one meeting of the Technical Advisory Committee. Response to the proposed program was generally very positive. However, a number of questions were raised and suggestions offered relating to the mechanics of administering the program. Many of those questions are answered in Section 8.

- April, 1977 — PREVIEW OF THE 306 APPLICATION DISCUSSED WITH FEDERAL AGENCIES
  Interested Federal agencies met with representatives of the State Planning Office in Boston to discuss the preview of the 306 application. Some suggestions offered at this meeting are incorporated in this application.

- Nov. 1977 SIX PUBLIC HEARINGS HELD ON OCTOBER DRAFT

  Well publicized hearings attended by a total of 227 people, mostly local officials as well as organization representatives.

- Dec. 1977 PROGRAM REVISED TO REFLECT INPUT FROM PUBLIC AND FEDERAL AGENCIES
- March 1978 Program signed by Governor Longley and submitted for federal approval
- April 1978 Draft Environmental Impact Statement circulated
- May 1978 Public Hearings Held

3.3 SUMMARY OF PUBLIC AND GOVERNMENTAL INVOLVEMENT IN DEVELOPING MAINE'S COASTAL PROGRAM

In developing Maine's Coastal Program, a number of efforts have been made to involve interested agencies and individuals. In this section these public participation efforts are described in the following subsections:

3.31 Advisory Groups
3.32 Survey of Town Land Use Planning and Management Needs
3.33 Meetings With Interested Agencies, Organizations, and Individuals
3.34 Public Information
3.35 Hearings

3.31 ADVISORY GROUPS

To increase the ongoing public participation in Maine's Coastal Program, two advisory groups were formed. Described in subsection 3.311, the Committee on Coastal Development and Conservation provides policy direction for the program, while the Technical Advisory Committee, described in subsection 3.312, provides technical expertise and intergovernmental coordination.

3.311 THE GOVERNOR'S ADVISORY COMMITTEE ON COASTAL DEVELOPMENT AND CONSERVATION

The Committee on Coastal Development and Conservation is responsible for guiding Maine's Coastal Program and for providing recommendations on coastal policy issues. Established in February 1976, by an Executive Order (see Appendix F1), this new committee replaced a smaller one of the same name that had been established to deal with issues relating to outer continental shelf (OCS) development.

Bringing together many different points of view, the Committee is composed of representatives of the general public and of a number of governmental agencies. At present its membership includes:

6 Representatives of the Public
2 State Legislators
1 Regional Planning Commission Director
1 Representative of the University of Maine
8 Directors or Commissioners of State Agencies

Since its creation, the Committee has been involved in the following work:

1. Identifying the most important coastal policy issues;

2. Monitoring the current activities of the Coastal Program under Section 305;

3. Directing the development of this proposed 306 program, including the following activities:
    a. Conducting a survey of local needs;
    b. Supervising the public participation effort;
    c. Review reports on progress; and
    d. Voting on drafts of the application;

4. Developing Maine's position relative to possible OCS development.

3.312 THE TECHNICAL ADVISORY COMMITTEE

The Technical Advisory Committee was created in December, 1975, as part of an effort to provide opportunities for wider participation in the development of Maine's Coastal Program and to better coordinate the program with those organizations having planning interests in the coastal area.

Composed of persons from state, regional, and local government agencies and in-state federal agencies, this Committee serves as a forum for discussing the program with people of a technical orientation and resource management experience. The Technical Advisory Committee has met three times to date (June 1977) at critical stages in the development of the program to review and comment on its form and direction. (Also see Appendix G.)

3.32 SUMMARY OF THE SURVEY OF TOWN LAND USE PLANNING AND MANAGEMENT NEEDS

In August of 1976, the Committee on Coastal Development and Conservation mailed a questionnaire to town, county, and regional officials along the coast. The purpose of this survey was to give local officials an opportunity to identify high priority projects in land use planning and management that might be eligible for funding if the Coastal Program was accepted by the Office of Coastal Zone Management. It also gave the Committee an early indication of the number of communities that might like to participate in a Coastal Program, if funds were obtained under Section 306 of the Federal Coastal Zone Management Act of 1972.

By the end of January 1977, 69% of the towns surveyed had returned the questionnaire. Of these towns, 90% indicated that they would like to participate in the Coastal Program.

With the option of choosing from a list of 34 suggested projects within 10 categories, or listing projects of their own, respondents selected and rated the five projects on which they placed the highest priority. In order of preference, the three most favored categories of projects were "Economic Development," "Preparation of Town Ordinances," and "Collection and Refinement of Information". Also listed in order of preference, the three most frequently chosen projects were economic development through planning for the "Wise Use of Natural Resources," "Commercial Development," and "Preparation of a Comprehensive Land Use Plan".

The results of this survey were used to provide direction for the program in two ways. First, the fact that nearly all of the responding towns expressed interest in the Coastal Program gave the impetus for proceeding with the development of this 306 application. Second, because coastal municipalities expressed a strong need for funding for local projects in resource planning and management, the program is being developed to satisfy that need.

(A more complete summary of the survey results is in Appendix G.)

3.33 MEETINGS WITH INTERESTED AGENCIES, ORGANIZATIONS, AND INDIVIDUALS

One of the most significant aspects of Maine's effort to obtain public participation in developing the 306 program has been the use of face-to-face meetings with agencies and individuals who might be interested in the program or affected by it. This approach and its results are described in subsections 3.331, 3.332, and 3.333.

3.331 SEEKING DIRECTION FOR THE COASTAL PROGRAM: THE FIRST ROUND OF MEETINGS

At the Governor's request, the Coastal Program was reoriented to include more public participation. The first step in this reorientation was to seek direction for the program in a series of meetings with the advisory groups described above and with representatives of Federal agencies, local organizations, and statewide conservation and development organizations.

3.3311 Meeting with Federal Agencies

On August 10, 1976, representatives from the Maine Coastal Program met with Federal agency contacts under the auspicies of the New England River Basins Commission (NERBC) to discuss progress of Maine's program and to invite Federal agency comment on, and information for, the program. Attendees reviewed the status of Maine's Coastal Program and discussed its current direction. They also heard a report on key elements of the recently signed Coastal Zone Manugement Act

Amendments and draft regulations for Section 307, which deals with Federal participation in and review of a state's coastal program and Federal consistency with an approved state coastal program.

3.3312 Coastal Meetings

From October 19, 1976, through February 1, 1977, coastal residents attended a series of 21 meetings in the coastal area for the purpose of discussing Maine's Coastal Program. The people invited to these meetings were mostly elected or appointed officials and elected representatives of local conservation and development organizations.

In addition to the meetings to which specific participants were invited because of the organizations that they represented, three wide-area meetings were held so that any other interested individuals might become involved in the program. Held in Portland, Waldoboro, and Ellsworth, these meetings were preceded by announcements in 13 newspapers and by an invitational letter sent to the 900 people on the program's mailing list.

At all of these meetings, a representative of the State Planning Office summarized the history and current activities of the Coastal Program. Then, the group discussed the advantages and disadvantages of funding the program's activities with funds available under Section 306 of the Coastal Zone Management Act of 1972. After discussing the requirements of the 306 application and alternative ways of meeting them, participants completed a questionnaire by recording their preferences on four key issues relating to the application.

In response to the question of which level of government (state, regional, municipal, or other) should use the largest part of the funds that would be available if the 306 application were approved, most participants felt that it should be the municipal level. Regarding the geographical area to be covered by the program, most respondents felt that the boundaries should include the territorial sea and coastal towns on tidewater. On another question, concerning the legal basis for satisfying federal program requirements, most respondents said that the program should be based on existing state and local land use control programs. Many respondents also said that the option should be left open to add new land use control programs as needed in the future.

Participants were also asked to list issues they felt the Coastal Program should address in the future. The responses varied widely and sometimes conflicted, reflecting the background and interests of the respondents. In general, the most interest was expressed in issues that related to improving environmental quality and to utilizing coastal resources efficiently to increase economic opportunities.

3.3313 Meetings with Conservation and Development Organizations

In addition to the local meetings, the public participation effort has been directed toward obtaining input from many groups with diverse interests in the use of the coast. For this reason the State Planning Office held two meetings with leaders of the major conservation organizations in Maine and two meetings with representatives of the major organizations of businesses and industries with an interest in the use of the coast. The material discussed at these meetings was the same as that covered at the local meetings.

(More detailed information on this first round of local meetings will be found in Appendix G.)

3.332 FEEDBACK: THE PREVIEW OF THE 306 APPLICATION

At the meetings described above, participants expressed their preferences for the future of the Coastal Program. Recorded on questionnaires or notes made at the meeting, these preferences on the key issues to be addressed in the application were built into a "Preview" of the application. These key points are listed below:

1. The majority (66%) of the expected funds will be allocated for local projects that encourage sound resource planning and management and compatible development.

2. The boundaries of the program will include the territorial sea and the areas inside all towns on tidewater.

3. The program will be based on existing state laws.

4. The program will develop recommendations for refinements in existing state policy on issues where it is felt such changes may be desirable; these issues include: heavy industrial siting, outer continental shelf development, and others.

The purposes of the Preview were (1) to bring together the ideas expressed in the first round of meetings, (2) to outline a 306 program based on them, and (3) to get public review and comment in order to verify that this direction was indeed the preferred one. Following a map of the proposed boundaries of the program and a short history, the Preview briefly described the six Maine laws on which it was felt the program could be based. Then, it discussed the proposed allocation and use of the 306 funds.

3.333 PUBLIC REVIEW OF THE PREVIEW

To invite public comment on the Preview, two steps were taken. First, the Preview, a brief progress report, and an explanatory letter were mailed to the 1,400 Maine residents on the program's mailing list. The mailing list included, among others, all of the people who had attended the first round of local meetings. All of the recipients were invited to return their comments on the postage-free page that was provided.

Second, the letter in the packet also invited the recipients to attend any of the ten local meetings that would be held to discuss the Preview. To further publicize the meetings, the Preview, progress report, and letter with schedule were sent out through the Governor's Communications Coordinator to all of the newspapers in the State. In addition, press releases and meeting announcements were given to a number of newspapers individually.

The ten local meetings were held along the coast in March, 1977 to give people the opportunity to ask questions and make comments on the Preview. In addition, a meeting was held with leaders of the major development organizations and one was held with leaders of major conservation organizations to solicit their input.

Public response to the general direction taken by the Preview has been, on the whole, very positive. The majority of people appear to support the intent of the program and to approve of allocating a large portion of the funds to the local level. The review process did bring to light a variety of questions and concerns regarding the mechanics of administering the program. These statements, as well as a more detailed description of the review process, will be found in the Appendix in the "Report on the Review Process For and Public Response to the Preview of Maine's Application for Coastal Program Administration Funding Under Section 306 of the Coastal Zone Management Act of 1972". (See Appendix G.)

3.334 FEDERAL AGENCY REVIEW OF PREVIEW

In April of 1977, representatives of the State Planning Office again met with Federal agency contacts under the auspices of the New England River Basins Commission to discuss the Preview of the 306 application. Particular attention was given to the discussion of boundaries, authorities for the program (Maine's laws), and the proposed use of the funds. Also, information was requested from the Federal agencies regarding Federal programs and activities which should be considered in Maine's Coastal Program

3.34 PUBLIC INFORMATION

In addition to the meetings described above, efforts have been made in the following ways to provide information on Maine's Coastal Program.

1. State Planning Office Digest and Coastal Program Newsletters.

Published on a bimonthly basis, the State Planning Office Digest includes a regular update on the activities of the Coastal Program. The Digest includes in its regular circulation:

Regional Planning Commissions
State Legislators
Federal Agencies with grants to the State Planning Office
University of Maine
Businessmen
Local Development Organizations
Conservation Organizations
Resource Conservation and Development Offices
City Planners
Planners in State Departments
Interested Individuals

The Digest serves as a means of communication among members of the planning community and encourages intergovernmental coordination. Altogether there are about 350 persons or groups on the regular Digest mailing list.

When there were more involved issues to discuss than could be covered in the Digest, a newsletter or an update on the program was published. Such Newsletters or Updates were mailed to everyone on the State Planning Office mailing list, and distributed at public meetings. The mailing list has grown from about 900 to over 1,900 addresses.

2. Press Coverage.

The press has been utilized to inform the public of notable events in the program. Press releases describing aspects of the program and announcements of public meetings have been given directly to coastal newspapers, sent out through the wire services, and distributed through the services of the Governor's Communications Coordinator. (His information package is mailed weekly to all of the state's newspapers, radio and television stations, and department heads.) Also, some coastal newspapers have prepared articles on various aspects of the program and have provided coverage of local meetings. (A file of news releases and newspaper clippings is available at the State Planning Office.)

3. Requests for Information.

The Coastal Program regularly receives requests for a variety of information relating to the program. Requests for maps, publications, and other information are filled as quickly as possible at no charge.

Recently, the program has received an increasing number of requests for information from Coastal Programs and Planning Offices in other states. Believing that an information exchange could be mutually beneficial, Maine has added all of the other coastal states to the program's mailing list.

4. Brochure.

A recently prepared brochure describing Maine's Coastal Program is being widely circulated through the mail, at public hearings, and through distribution at coastal public libraries and town offices. Brief and easily understood, the brochure provides a summary of the program's history, goals and objectives, and ways of achieving the goals.

5. Publications.

One of the program's primary ways of assisting decision makers has been the gathering, publication, and distribution of information on coastal resources. These publications range from resource inventory maps to the information packets used at the meetings held to discuss the 306 application. (Copies of these meeting packets are on file at the State Planning Office.

3.35 PUBLIC HEARINGS

Six public hearings were held along the Maine coast during the last week in November and the first week in December 1977 to provide coastal residents the opportunity to discuss the October 1977 draft application and offer comments about the program. Meetings were held in Calais, Ellsworth, Rockland, Wiscasset, Portland, and Wells, with a total of 227 citizens attending.

Following the opening statement at each meeting, the Coastal Zone Management program was described, followed by discussion of the major aspects of the 306 program. A period for questions and public statements followed the presentation, and a questionnaire distributed to provide further opportunity for input.

On the whole, the public indicated their support and approval of the program. Appreciation was expressed for the program's emphasis on local assistance and local control, as well as the efforts to improve citizen involvement in the program.

Negative comments break into two groups. The one set, expressed only at the Wiscasset hearing noted "anti"-attitudes toward planning, federal and state funds, and the existing laws. The second category includes the opinions of the League of Women Voters, the Natural Resources Defense Fund, and Orlando Delogu, Professor of Law at the University of Maine, that the program either did not meet the requirements of the Act or did not give enough control or funds to state government to "network" and better enforce current laws.

Concerns expressed about the program included:

- Regulations and requirements will get tighter as the program moves along.

- Policy refinements might lead to regulations and leave out public participation.

- Many questions were asked regarding eligibility criteria for funding. People would like to see funds used for activities such as acquisition, dredging, construction, etc.

- Questions were raised about the make-up of the Committee on Coastal Development and Conservation and the decision-making procedures. There were suggestions to expand the committee for greater representation.

Of the 44 formal statements made at the six meetings, 37 were positive and supportive, 6 were critical or negative, and 1 was admittedly ambivalent.

Responses to questionnaires administered at the meetings are included in Appendix G.

Section 4

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

4. COASTAL ISSUES

4.1 INTRODUCTION

This section describes the major issues in the coastal area which were identified during the program's development stages. Identification of the issues was a prelude to defining the program itself and seeking solutions to the problems raised.

These issues are interrelated problem areas which impact a wide range of resource development and management activities. As will be pointed out in more detail in this and subsequent sections, many of the major issues have already been dealt with through the enactment of existing land use laws. However, their fullest resolution has been hampered by the lack of technical assistance and funding necessary for municipalities to fully participate in the management and development of the State's resources. One major issue, enhanced local involvement in resource planning and management activities, will be resolved in part with the funding from the approval of this application.

An immediate problem facing Maine is the conservation and effective use of the resources which are the foundation of its economy. Several other issues, including Outer Continental Shelf (OCS) oil and gas development and heavy industrial siting, will be topics for ongoing work; the purpose of that work will be to prepare recommendations for refinements in existing state policy which specify how such development might be dealt with in a more satisfactory way in the future.

This section is divided into three parts: natural resource conservation issues, resource development issues, and issues related to enhanced local involvement in resource management and development.

4.2 NATURAL RESOURCE ISSUES

4.2.1 WATER QUALITY

Maine's extensive coastal waters, both fresh and salt, are some of its most valuable economic, recreational, biological, and scenic resources. The lakes which lie within Maine's coastal region are an integral part of the high resource value of the coastal area as a whole. Wetland-lake systems contribute directly to the primary productivity of estuaries and coastal marine systems. Fresh water sport fisheries contribute to the recreational value of Maine's coastal region, and an extensive system of rivers, streams, and lakes provide spawning areas and seasonal habitat for Maine's commercially valuable anadramous species - alewives, smelt, and salmon.

The Kennebec and Penobscot Rivers once supported very large anadramous fish runs. However, the construction of dams and municipal and industrial pollution of Maine's rivers have restricted fish movements and destroyed habitat. Thus, the number of streams which support anadramous fish runs has been greatly reduced and much of the fishery was destroyed.

Ten years ago the situation looked very bleak. Only remnant runs of these species were found in the lower portions of the rivers.

Residential and industrial pressures have led to the improper siting of development in areas where soils could not support such activity. Siltation caused by poor land use practices; industrial and chemical pollution; pesticides; and untreated municipal wastes destroyed once abundant freshwater fisheries, polluted clam flats, and endangered other important estuarine resources. Large numbers of clam flats were closed from harvesting due to contamination.

Maine's marshes and swamps are valuable waterfowl nesting and breeding areas. As an example, Merrymeeting Bay is one of Maine's most productive waterfowl areas and is the home of bald eagles, a species listed as endangered by the U. S. Fish and Wildlife Service. Yet, in some areas, Maine's wetlands were being converted to development uses at an alarming rate.

For years deteriorating conditions threatened Maine's coastal waters and the economic and recreational activities dependent on them. In the 1950s and '60s the State felt it had to come to grips with the critical problems contributing to this deterioration. The passage, implementation, and enforcement of the Site Location Act, Protection and Improvement of Waters Act, Coastal Wetlands Act, Alteration of Waters and Streams, Solid Waste Management Act, and others have greatly improved water quality conditions throughout the State. Under these laws industrial and municipal wastes are being treated and development is being guided to suitable locations. As a result many clam flats and shellfish beds, closed for years, have been reopened for commercial use. A smelt fishery thrives in the Lower Kennebec River; the salmon have returned in substantial numbers to the Penobscot. However, much still remains to be done to ensure compliance, particularly at the municipal level. Many violations result from an inadequate understanding of the laws and the importance of compliance from a public health and natural resource perspective. Others stem from the lack of monitoring and enforcement. Though permits for waste water discharge are required by law, violations are more difficult to detect than it is to discover inappropriately located development. The participation of municipalities in encouraging compliance over the thousands of miles of Maine's coastal area is important if the problems of water pollution are to be more effectively eliminated. Shoreland zoning, subdivision ordinances, and more effective land use planning by municipalities working in concert with the State Plumbing Code can greatly reduce municipal pollution problems which still keep some clam flats, and other shellfish beds off-limits.

Technical assistance and public education services must be continued and increased to the local governments if they are to fully exercise their responsibilities in protecting sensitive coastal resources and developing those which are the backbone of their economy. To date most Maine towns lack adequate financial capability to acquire and support staffing to provide these and other necessary services. The prime thrust of the Coastal Program is to support these local efforts in order to supplement and enhance successful State activities. The State agencies will continue to monitor and enforce water quality laws and promote wiser coastal resource management and development practices.

4.2.2 LAND USE

Nearly half of the State's 1,049,395 people live in the coastal area. This area is less than 12% of Maine's total land area. Coastal counties have, on an average, experienced population increases of 13% over the five year period from 1970-1975. Hancock County, which grew by 16%, experienced the highest population increase of any county in the state. In addition, the summer population in some coastal towns increases the total number of people to more than three times the yearround population. More than 55 million people visit the Maine coast each year. The southwestern portion of the coast receives the greatest number of seasonal visitors. Public recreation areas increased more than 23% between 1966 and 1971. Increased population has accelerated the need for public facilities such as sewer systems and solid waste disposal sites. These demands have accentuated existing municipal problems with providing these services. This has caused increased air and water pollution along the coast and created public health hazards.

Interest in industrial growth along the Maine coast has been apparent over the last ten years, mostly in response to the nation's increasing energy needs. Proposals for four electric generating plants, three oil refineries, and four oil terminals were among those considered for siting along Maine's coast. In addition, future pressures for deepwater oil ports in Maine's several deepwater harbor areas and onshore facilities for OCS activities can be anticipated. In some cases mining activities threaten significant natural areas and pollute nearby water bodies.

To some extent these activities may conflict with traditional fisheries and other coastally dependent commercial interests. Long-term commitment of resources for port facilities, wharves, power or manufacturing and processing plants necessarily limits options for future use of these resources and changes the nature of associated wildlife and fisheries and related activities.

Sport and commercial fishing are important activities on the Maine coast. Wastewater discharges, dredging and filling, bulkheading and other development activities do, if improperly conducted, adversely effect the very resources which foster these commercial and economic interests. Thus, the need for appropriately siting needed development is becoming even more important in light of the increasing and conflicting pressures.

Producing blueberries, milk, and chickens have been significant activities along the coast; however, economic conditions have seriously impacted these industries. In the southern more-populated areas of the State, the incentive to convert farmland to nonfarm uses is high. Population growth pressures and changing housing patterns have encouraged development outside urban areas - often on areas previously used as farmland.

Wildlife habitat is decreasing as a result of residential and industrial development. Stresses of unplanned or poorly planned development on marshland and wetland habitat areas, have taken their toll on the land areas and the fisheries and wildlife dependent on them.

Increase in population, tourism, residential, commercial, and industrial development together with increasing interest in energy, conservation, and concern for the fragile coastal environment, are resulting in increased conflicts over the use of coastal resources.

To meet the variety of needs that exist a balance must be maintained between the development of resources and their conservation.

In response to these problems and concerns, the Governor and legislature have established and implemented a number of state land use policies. These policies are contained in legislation such as the Site Location Law, the Coastal Wetlands Act, the Shoreland Zoning Law, the Land Use Regulation Commission Law, and others. To implement these policies the state has established boards and commissions to make land use decisions, provided staff, and is spending approximately $3,000,000 annually on these state activities.

To some extent municipal comprehensive plans, shoreland zoning, and the Land Use Regulation Commission's comprehensive plan, and other existing programs, are managing conflicting demands for use of limited coastal resources. However, passage of resource conservation laws, on which these and other programs are based, was only a partial answer to the need for effectively managing available resources and maintaining the character of the Maine coast. To more effectively achieve this end, these activities should be encouraged.

Municipal projects supported by the CZM funds will provide Maine coastal towns the opportunity to incorporate infra-structure planning and implement adopted plans prepared under Section 208 of P.L. 92-500. These plans will guide land use activities so they are compatible with local growth policies, while also protecting water quality.

At the state level, policy refinement is needed on such issues as: natural resource information transfer; heavy industrial siting; tourism; ports; and the cumulative impacts of development. Refinement of policy in these areas will help to resolve conflicts and assimilate these important concerns into the resource planning and management for the coast. This effort must of necessity adequately address the problems created by growth while encouraging sound resource development to strengthen our economic base.

4.2.3 AIR QUALITY

Air quality has been, and continues to be, a local problem in Maine. Industrial emissions from pulp and paper mills, manufacturing and processing plants, as well as from the practice of open burning of municipal solid wastes have created some problems.

To some extent this problem has been ameliorated through the passage of regulatory legislation. However, the interim air quality standards of the Protection and Improvement of Air Act, and the criteria outlined in the Solid Waste Management Act, have not been wholely successful in effectively solving the air pollution problems. Only approximately 25 of Maine's 454 solid waste disposal sites meet the anticipated and more restrictive federal standards. State activities have helped industry to make great strides in complying with the laws; but due to the cost of alternatives, municipal open burning of solid wastes continues. Industry has had the advantage of technical and financial capabilities which municipalities sorely lack.

State agencies and the regional planning commissions have been and will continue to work with municipalities in finding suitable alternative solutions to present solid waste practices. The laws themselves provide no guidance for alternative methods or locating of suitable sites for waste disposal. Technical assistance and intergovernmental services to municipalities have helped to find specific disposal sites and have encouraged towns to work together to extend their technical and financial capabilities to solve this problem. However, these cooperative, positive types of activities are needed on a broader scale to more actively and effectively manage the sources of air quality degradation.

4.2.4 RECREATION AND ACCESS

The scenic beauty and unhurried atmosphere of the Maine coast have traditionally attracted hosts of vacationers from all across the country. Recreation and fishing provide jobs and a sizeable income to the State as a whole and to coastal residents in particular. However, the growing demands of recreationists have also presented the coastal area with a challenge to accommodate these demands while maintaining the very characteristics which make the coast so attractive and important.

Maine's summer visitors place heavy demands on public facilities and public investment. Improper development and utilization of sensitive resources has in the past led to flood damage, pollution, accelerated erosion of beaches and other shoreline areas, and degradation of productive sport and commercial fisheries.

Hunting, long-established as a part of the Maine way of life, is dependent upon the availability of suitable habitats and access to them. In some areas of the coast important habitats, for example wetlands, have been put to other uses with the concomitant loss of their wildlife value. Oil spills, improper solid waste disposal, and inappropriately located development have all contributed to reductions in habitat.

State game and fisheries management programs, improved water quality, the Coastal Wetlands Act, and other similar programs have helped to maintain or improve habitat areas along the coast, and thus have helped to assure continuance of commercial and recreational activities. However, to maintain these resources at an optimum level, improved management should be implemented by all levels of Maine government. This is particularly true at the local level. In general, to maintain large populations of game animals requires large areas of suitable habitat resulting from a mixture of land uses. Hence this is not a problem that can be solved by improved decision making on large scale developments alone. The solution of this problem depends on effective planning and development control at the local level. Municipal efforts to better plan and manage resources and to guide needed development to the most environmentally beneficial areas is sorely needed.

Over the years access to coastal resources for hunting, other recreational and commercial purposes has become more difficult in many areas of coastal Maine. Visual, as well as physical, access has become more difficult as conflicting pressures and the density of development have increased. Public ownership guarantees the public access to only a small proportion of Maine's coast. Only 5% of the coast is in public ownerhsip, while 60% is owned by residents of Maine, and 35% is owned by nonresidents. Easy access to coastal resources is in keeping with Maine tradition; in fact, some activities, e.g. commercial clamming, are dependent on ready access. Guiding development to

areas which do not unduly limit visual or physical access to the shoreline are means of ensuring continued enjoyment and use of Maine's coastal resources. Shoreland zoning and development siting guidelines are sound tools already established in Maine law, however, with increasing land use pressures, these resource planning and management issues are becoming ever more important.

While there are actions which the state can and is taking to improve access, e.g. building more boat launching sites, a great deal can be done by local governments. Municipal awareness and effectiveness in land use planning and resource management which accommodate conflicting development and conservation needs and resolve the problems of poorly planned growth are imperative to the resolution of such problems. At the state level the State Planning Office and the Bureau of Parks and Recreation in the Department of Conservation are working to identify access problems of more than local significance and prepare recommendations for their resolution.

4.3 RESOURCE DEVELOPMENT ISSUES

The goal of the Coastal Program is to promote better utilization of limited resources to meet people's short- and long-term economic, social, and environmental needs. Thus resources are not just to be locked up, although there is a place for strict preservation of some highly significant natural areas, but rather in most cases to be used in as wise, environmentally sound, and productive a manner as possible to meet man's needs for food, fiber, building materials, and other products. Additionally, employment is a very important concern in the State of Maine. Coastal unemployment has hovered around 8.5% in the recent past. Further, income levels in Maine are low by comparison with other parts of the nation and the cost of living is high. As demonstrated by public opinion polls, Maine's coastal residents feel that employment and other economic issues are the most important ones confronting them. It is Maine's policy to encourage selected types of economic development and provide job opportunities that are compatible with maintaining or improving environmental quality and social conditions. This policy is based on the firm belief that to be effective Maine's program must be balanced and address coastal residents' real needs. As important as this objective is, it is not enough just to protect the environment. The program must also help to provide a desirable way for people to earn a living. In fact, when properly accomplished these two objectives can be mutually supportive. High environmental quality maintains productive natural systems which provide employment and satisfy people's psychological needs. Having a stable economic base that provides desirable employment and is in part based on the use of native resources enables industries and the public to invest directly and indirectly in maintaining the quality of their environment and managing its resources for otpimum yield.

The regulatory means of maintaining the quality of Maine's coastal environment represent the core laws of the program while the resource planning and management activities to be undertaken with 306 funds allocated for policy work, and special and municipal projects are the more positive part of the program which complements the existing regulatory laws. As an example of this latter category of activities fisheries

management projects at both the state and local levels will work to promote the optimum sustained yield of clams, and other shellfish and finfish species by identifying and conserving important habitat areas, reducing pollution levels, developing and implementing species management plans, and making better use of the fish which are harvested. One specific example of a type of project that will contribute to these impacts is improved local clam management. A number of towns have expressed their desire to work on clam flat inventory and mapping, and developing clam management plans and implementation ordinances. Finfish, also a significant coastal resource, should be more commercially important with the advent of the 200 mile limit. The Maine Department of Marine Resources has also expressed their desire to work on and implement species management plans for Maine's nearshore finfish species. These steps should provide the basis for more stable employment in one of Maine's traditional industries.

4.4 ENHANCED LOCAL INVOLVEMENT IN RESOURCE MANAGEMENT

While the state exercises control over selected sensitive environmental areas and high impact activities through Maine's existing laws, under Maine's existing land use guidance system municipalities are the unit of government which have the most comprehensive responsibilities and powers for land use planning and management. Municipalities are empowered to adopt comprehensive plans; building codes; subdivision ordinances; zoning ordinances; decide how local funds will be used to provide public facilities such as sewers, water supply systems, and roads; and other related activities that affect growth and resource management.

The Maine legislature established this emphasis on the local units of government with the passage of zoning enabling legislation (30 M.R.S.A. §§ 4961-4964) and laws relating to home rule (30 M.R.S.A. §§ 1917). (See appendix F8 .) Further, the concept of keeping these powers and responsibilities at the local level is one that is strongly supported by Maine people. Public opinion polls conducted during the last few years indicate that a large majority of Maine people feel that municipalities should continue to play the major role in land use planning and control.

It is obvious then that Maine's municipalities are and will continue to play a big role in determining the use of Maine's coastal resources. Further, it is felt that substantial improvements in resource management can be realized by increasing the funding for municipal resource planning and management efforts. This is because while the state legislature has delegated considerable authority to the towns and in several cases, e.g. shoreland zoning mandated town land use responsibilities, it has provided no money specifically earmarked for these purposes. Further, the towns which rely very heavily on property taxes as their principal source of revenue have difficulty in raising substantial amounts of funding for these activities on their own. Typically the planning board in a coastal town has a budget of a few hundred dollars and is made up of citizen volunteers who, in most cases have no training, education, or extensive experience with resource planning. This is in cont5ast to the situation at the state level where approximately $3,000,000 was spent last year on implementation of the state administered core laws.

Responses to recent surveys of public and elected officials opinions, and contacts with coastal residents at numerous meetings have indicated that Maine's coastal municipalities and their people are eager to get on with the task of improving local resource planning and management.

Thus through the funding that will be made available to coastal towns, Maine's Coastal Program will very substantially improve local capabilities and local decisions on growth, the siting of development, and the wise use of resources.

Section 5

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

5. MAINE'S COAST AND AN OVERVIEW OF MAINE'S COASTAL PROGRAM

5.1 THE VALUE OF THE COAST

Maine's Coast is a special place, both in terms of its natural characteristics and as a source of enjoyment and economic benefit. It is also a place experiencing changes that are causing increasing conflicts over the use of its resources; resources that are of significant value to both the State and the Nation.

Today, the Maine Coast contains an incredibly diverse and complex human and natural environment. It includes the "near-suburbs" of urban regions to the south, the growing Portland urban-industrial region, fishing villages, remote island communities, and wild timberland areas without local government or permanent settlement. The natural setting for this varied human environment is equally diverse; including long expanses of sand beaches; mountainous areas; numerous islands; large marshes; and rocky, highly indented shorelines.

The special values of the Maine Coast have been appreciated for centuries. In precolonial times, Indians fished extensively along the shores, as their many large shell heaps now show. Early explorers enjoyed these same shores. In 1605, James Rosier wrote of the St. George area, "We stayed the longer in this place, not only because of our good Harbour, (which is an excellent comfort) but because every day we did more and more discover the pleasant fruitfulness."

Modern sailors, too, consider Maine waters to be among the finest sailing waters in the world, partly because the Maine coast offers countless sheltered anchorages and the deepest harbors on the east coast of the United States. Many of these harbors have become important centers of trade, initially exporting lumber and now, handling a variety of products. Commercial and industrial activity has grown around these ports, increasing employment opportunities and benefiting the coastal economy.

The "pleasant fruitfulness," of which that early explorer wrote, is now a vital part of Maine's economy. The fishing industry supplies products to many states across the nation and including the harvesting and processing of shellfish, shrimp, lobsters, and fin fish, it provides about 18,000 jobs and contributes about $250 million to the state's economy each year.

These seafood delicacies are part of the attraction of the coast for Maine's summer visitors. Each year, an estimated four million tourists from across the country visit the coast to enjoy its unique beauty and recreational opportunities.

In comparison with other areas, the demands placed on the Maine coast have, until recently, produced only modest changes. One reason for this moderate impact is that Maine has a relatively small population scattered over 3,400 miles of coastline.

Recently, however, large parts of the coast have begun to change rapidly. The following facts give an indication of the pressures on the coast and the changes they are causing:

- Nearly half of the state's population lives in the coastal area, which comprises less than 12% of the state's land area.

- Sagadahoc, Lincoln, Waldo, and Hancock counties, all coastal, were the fastest growing counties in the state from 1970 to 1975, with average population increases of about 13%. Hancock County experienced a 16% increase, the highest in the state.

- With increased tourism, the seasonal population of some coastal towns has increased to more than three times the year-round population.

- Many proposals for heavy industrial use of the Maine Coast have been made in the last ten years; these include proposals for four electrical generating plants, three oil refineries, four oil terminals, and an aluminum smelter.

- In some communities the amount of land developed for residential, commercial, and industrial purposes increased by more than 100% between 1966 and 1974. Most of that development was strip development along roads, much of it on former agricultural land.

Increases in population, tourism, and residential, commercial, and industrial development, particularly onshore facilities to serve potential offshore outer continental shelf (OCS) development, together with increasing interest in energy, conservation, historic and cultural resources, and concern for the fragile coastal environment, are resulting in increased conflicts over the use of resources.

Those resources and the major characteristics of the Maine coast are briefly described on the following pages.

5.2 NATURAL CHARACTERISTICS

Maine has over 3,400 miles of rugged and irregular coastline. Scattered offshore are more than 3,000 islands with an aggregate acreage of about 225,000 acres. Seven major rivers - the Piscataqua, Saco, Androscoggin, Kennebec, Penobscot, Machias, and the St. Croix - and many lakes and streams drain into the coastal area.

Physiographically the coastal area can be described by dividing it into three major segments. The southwestern segment, from the New Hampshire border to the beginning of Casco Bay, is characterized by an uncomplicated shoreline of beaches with few inlets and bays. The midcoast segment, extending from Casco Bay to Frenchman's Bay, is characterized by long narrow bays, rocky shores, and numerous offshore islands. The northeastern ("Downeast") segment extends from Frenchman's Bay to the New Brunswick border and is characterized by an extremely irregular complex of bays and islands with high coastal bluffs and headlands.

Broadly speaking, Maine's coastal forests can be classified as part of the White Pine - Hemlock - Northern Hardwood forest; however, considerable variation in actual species composition exists, and much of the forest land is interspersed with farmland. These forests have a significant role in providing the aesthetic and recreation attraction of the Maine coast. They also provide watershed stability for the streams that flow to the coastal areas.

The significant commercial shellfish found along the coast of Maine include lobsters, shrimp, hard- and soft-shell clams, and scallops. Commercial fin fishes include herring, ocean perch, cusk, cod, haddock, hake, pollack, mackerel, halibut, whiting, and flounder.

Animals of the coastal area are typical of the eastern forest and include deer, raccoons, squirrels, red foxes, porcupines, woodchucks, weasels, mink, snowshoe hares, beaver, and muskrat. Large carnivores are now rarely seen in the coastal area. The marine waters support whales, porpoises, dolphins, and seals. Occasionally the gray seal, as well as the more common harbor seal, are seen on the smaller coastal islands and in adjacent waters. Guillemots breed and are found in these same areas, while eider ducks are the only ducks that breed along the coast. Small colonies of oceanic birds, including the Atlantic puffin, razorbills, and petrels are located on several offshore islands.

Mineral resources of significance along the Maine Coast include limestone deposits in the Union-Warren and Rockland-Thomaston area. There are also numerous deposits of copper, lead, zinc, and silver in what is known as the coastal mineral belt which extends from East Penobscot Bay to Canada.

In 1974, approximately 47% (485,380 persons) of Maine's permanent population of 1,049,395 resided in coastal towns on slightly more than 11.5% of Maine's total area.

5.3 SOCIOECONOMIC CHARACTERISTICS

In 1974, approximately 47% (485,380 persons) of Maine's permanent population of 1,049,395 resided in coastal towns on slightly more than 11.5% of Maine's total area.

About 53% of this coastal population lives in rural communities of less than 2,500 inhabitants; however, the population is very unevenly distributed. Two-thirds of the present coastal population is concentrated in towns in the southwestern counties. Census data shows that the population in coastal counties increased by 1.5% during 1960-1970, while census estimates show a 9.4% increase from 1970-1974.

About 60% of the coastal area is in private Maine resident ownership, 5% is in public ownership, and 35% is owned by nonresidents. The greatest nonresident ownership occurs in the midcoast region, with the greatest resident ownership occurring in the southwestern segment. Over 15% of all housing units on the coast are seasonal homes.

In 1975, the average gross wage in the coastal area was $7,911. Taxable sales in 1974 were $1,170 million, or 59% of the state total. In 1970, 49% (216,212 persons) of the state's total work force was located in the coastal area. In 1976, coastal unemployment was 8.5%.

Fishing is Maine's oldest and most traditional industry. The fishing industry employs 14-15,000 people as fishermen, dealers and buyers and an additional 2-3,000 persons in processing plants. In 1975, the fishing industry contributed about $249 million to the state's economy.

Aquaculture is in its infancy, however, activities currently underway include: raft culture of oysters and blue mussels, lobster, salmon, and trout culture.

Farmland occupies a considerable amount of open space in Maine's coastal area, although farming has suffered a decline in Maine during the past 20 years. The principal sources of farm income on the coast are poultry products, dairy products, and blueberries.

Tourist and recreation related industries play an important role in the State's economy. Recreation demand upon the coastal resources has increased because of increased population, greater affluence, increased amounts of leisure time, and greater mobility. Vacationers come to Maine at the rate of 5.5 million persons per year, and it is estimated that two-thirds of these vacationers are bound for the southwestern and midcoast segments of the coastal area. About 77% of the State's recreation-generated employment occurs in the coastal area.

Oil is the major source of energy in England and the eastern United States. Oil importation already occurs on the Maine coast at Portland and Searsport. Because Maine offers the deepest, the best, and the most (13 out of 23) deepwater harbors on the East Coast, there has been significant interest in developing deepwater oil ports in the State.

Maine's coastal mineral development has consisted mainly of quarrying for building rock for export out of state, limestone for transformation into cement and fertilizer, and sand and gravel.

Manufacturing is largely concentrated in the five-county area of York, Cumberland, Androscoggin, Sagadahoc, and Kennebec counties. Four of these counties are largely in the coastal area.

MAINE'S COASTAL HISTORY

1600-1760

- The French establish trading posts and missions at St. Croix Island, Castine, and Norridgewock
- English make settlements from Kittery to Pemaquid and at Machias on the coast and inland at the Berwicks, Richmond, and Augusta
- French were largely fur traders and trappers. English settled more permanently - farmed and fished for food and shipped lumber, masts, and furs to England
- French Acadia - Penobscot to St. Croix. Was the object of disputed claims and wars between English and French and Indians from 1626 to 1759
- Region from Pemaquid to Castine was a sparsely settled buffer zone.

1760-1820

- After English-French Treaty of 1763, destroyed English settlements were reestablished, and settlers moved inland along rivers and into Penobscot Bay area and eastern Maine coast
- By 1800, settlers filled in the regions between the lower river valleys and settlements stretched along the coast to Calais
- Search for more lumber areas inland and sawmills established on river-ocean towns
- Commercial lumber ports developed at river ports. Three advantages- accessibility to the interior, water power, and sea transport. Lumber shipped to East coast cities, Europe, and West Indies
- Grist mills developed for local use
- Fishing for local consumption purposes carried out along entire coast
- Shipbuilding industry develops in large, well protected harbors (Kittery, Portland, Bath, Rockland, Belfast, Bangor, Machias)
- Embargo, War of 1812
  - Smuggling helps the growth of Eastport and Calais
  - Embargo curtailed the lumber trade, people turned their attention to farming (Portland, South Portland, Cape Elizabeth)
- Factors restricting settlement and development from 1760 to 1820
  - The bad reputation of Maine's climate and soils,
  - Maine's disorganized and violent early history prevented it from establishing an extensive population and market for goods,
  - By being removed from the economic mainstream, Maine was removed from innovative thinking and investment capital.

1820-1860

- Exhaustion of lumber sources near major eastern U.S. cities
- Growth of Bangor to become nation's largest lumber port, drawn from the hinterland of the Penobscot Basin
- Limits of the coastal economic area defined by major ports, important coastal manufacturing centers, towns on navigable rivers
  - Kittery - ship building port
  - Biddeford-Saco - textile plants at water power centers
  - Portland - major commercial area, port, ship building center, state capitol 1820-1831
  - Brunswick - lumber mills, cotton mills - Bowdoin College
  - Bath - ship building
  - Upper Kennebec (Gardiner-Hallowell-Augusta) assorted industries - lumber, textiles, shipping, and ice
  - Thomaston-Rockland (one town until 1848) Lumber (early) shipping, ship building, lime production, fishing (primarily for local consumption)
  - Belfast - Lumber (early), finished wood products, ship building
  - Bangor - Primary lumber port, also ship building
  - Ellsworth - Water power site for lumber (second only to Bangor during this period
  - Machias-Machiasport - Lumber production and shipment
  - Calais - Lumber
- Abundance of wood and cheap, skilled labor allows Maine to become the world's ship building center during this period
- Lumber trade with the south stimulates the growth of the cotton textile industry at water power sites along the western Maine coast
- Worldwide shipping by Maine captains on Maine ships stimulates innovative thinking and creates a cosmopolitan society
  - Portland becomes a cultural center and rivals Boston economically
  - Potential for Maine's resources is realized - lime (Rockland), granite (Vinalhaven), ice (Kennebec and Penobscot Rivers), tanning using Maine hemlock

1860-1940

- Disruption of shipping caused by the Civil War
- Decline of ship building due to iron hulls (establishment of Bath Iron Works to avoid obsolescence)
- Lumber supply nears exhaustion in the accessible woods - the search moves to the mid-west
- Granite industry dies as building stone is replaced by reinforced concrete
- Railroads built connecting inland towns with seaports (1830s and '40s)
- Introduction of paper pulp process (1890s) - necessity for locating paper mills near the wood source and the growth of railroads hastened the decline of shipping and lowered the importance of seaports
- After WWI, chemical refrigeration and pollution had effectively killed the Kennebec and Penobscot ice industry.
- Most paper companies originated outside Maine, and thus much of the profit was taken out of the state
- In 1870, Bar Harbor was "discovered" by wealthy families from New York, Philadelphia, and Boston
- After 1930, the textile industry gradually moved operations to the south
- Portland, Rockland, and Eastport took advantage of excellent harbors and rail facilities to develop successful fishing and fish processing industries. Unorganized lobster fishing and clamming become important in most coastal towns

1940-1970

- Coastal residents want municipalities to have larger role in planning for their future
- Fishing industry affected by varying supply of fish, overfishing, pollution, inefficient equipment, and marketing problems; but 200 mile limit on foreign competition offers hope
- Economic development of the coast for large scale industry an important issue
- The conservation of fish and wildlife habitats, wetlands, and areas of natural beauty becomes increasingly important and results in enactment of environmentally sensitive laws
- Land use control in the form of shoreland zoning, subdivision regulations and the siting of large scale development deemed necessary to minimize conflicting interests and conserve valuable natural resources

5.4 THE EXTENT OF MAINE'S COASTAL AREA

The extent of Maine's coastal area was established in 1969 when the Coastal Program was initiated. The area includes all coastal towns and townships on tidewaters, all coastal islands, and the sea to the limits of the State's jurisdiction. The inland boundary of the coastal area is, therefore, the inland line of coastal town lines (see the map titled "The Coastal Area"), and the seaward boundary is the outer limit of the U. S. territorial sea.

This area contains 143 minor Civil Divisions, 131 of which are organized municipalities, 3 are plantations and 8 unorganized townships, and one Indian Reservation. The plantations and unorganized townships are in the jurisdiction of the Land and Water Resources Council. The population of the coastal area in 1974 was 485, 380. The irregular coastline including 3,000 coastal islands is 3,478 miles in length. Physiographically, the coastal area can best be described in three major segments - the southwestern segment, which extends from the New Hampshire border to the beginning of Casco Bay; the midwest segment, extending from Casco Bay to Frenchmen's Bay; and the northeastern segment ("Downeast"), extending from Frenchmen's Bay to the Canadian border.

This area contains all those areas described in the Coastal Zone Management Act of 1972 that must be within the "coastal zone". It therefore includes: islands, transitional and intertidal areas, salt marshes, wetlands and beaches, and extends, as is required by the Act, "seaward to the outer limit of the United States territorial sea".

Inland, the extent of Maine's coastal area is such that it includes all areas and uses which may have a direct and significant impact on coastal waters. (See Appendix C 2 for a definition of "direct and significant impact.")

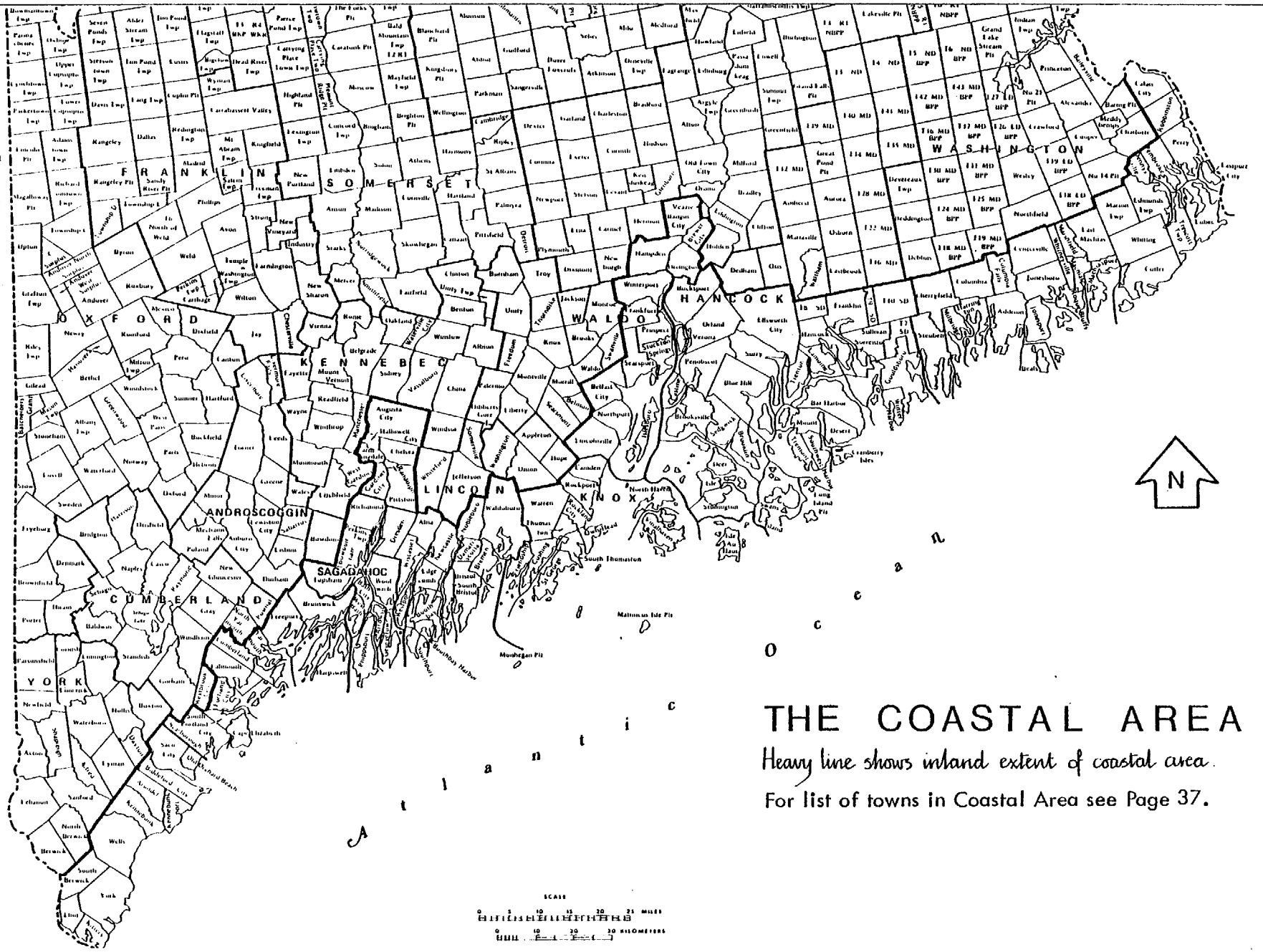
Existing state laws applicable within the coastal area serve to provide the "control" that the Coastal Zone Management Act requires be in force if a state's program is to be acceptable. The 11 laws mentioned in Section 4 (Issues) control land and water uses in the coastal area; they are listed on the diagram on the next page. The diagram divides the coastal area into four geographic "tiers" simply to illustrate where the different laws apply. The laws themselves, and the policies that they embrace, are described in Sections 6 and 7.

Maine's coastal area has thus been defined to assure that it meets Coastal Zone Management Act requirements. However, other considerations have also helped the state elect to limit the area to the territorial sea and coastal towns. These considerations include the fact that:

- Natural resources in this area have been extensively inventoried and mapped, and a series of over 200 maps is available for this area.

- The use of political limits to the area, rather than physical or cultural features, simplifies implementation procedures and avoids inequities within a single town.
- Administrative problems are minimized by this approach.
- A number of Maine's laws that relate to the coast refer to "head of tide" and use this demarcation as a geographic and jurisdictional reference.
- Coastal area boundaries that coincide with town lines serve to help coordinate activities in multi-jurisdictional areas because Planning and Development Districts and Counties are delineated along municipal or township lines.

Finally, this definition of Maine's coastal area was chosen after a number of alternative approaches were tested and rejected by the Coastal Program staff after many public meetings and discussions.



THE COASTAL AREA

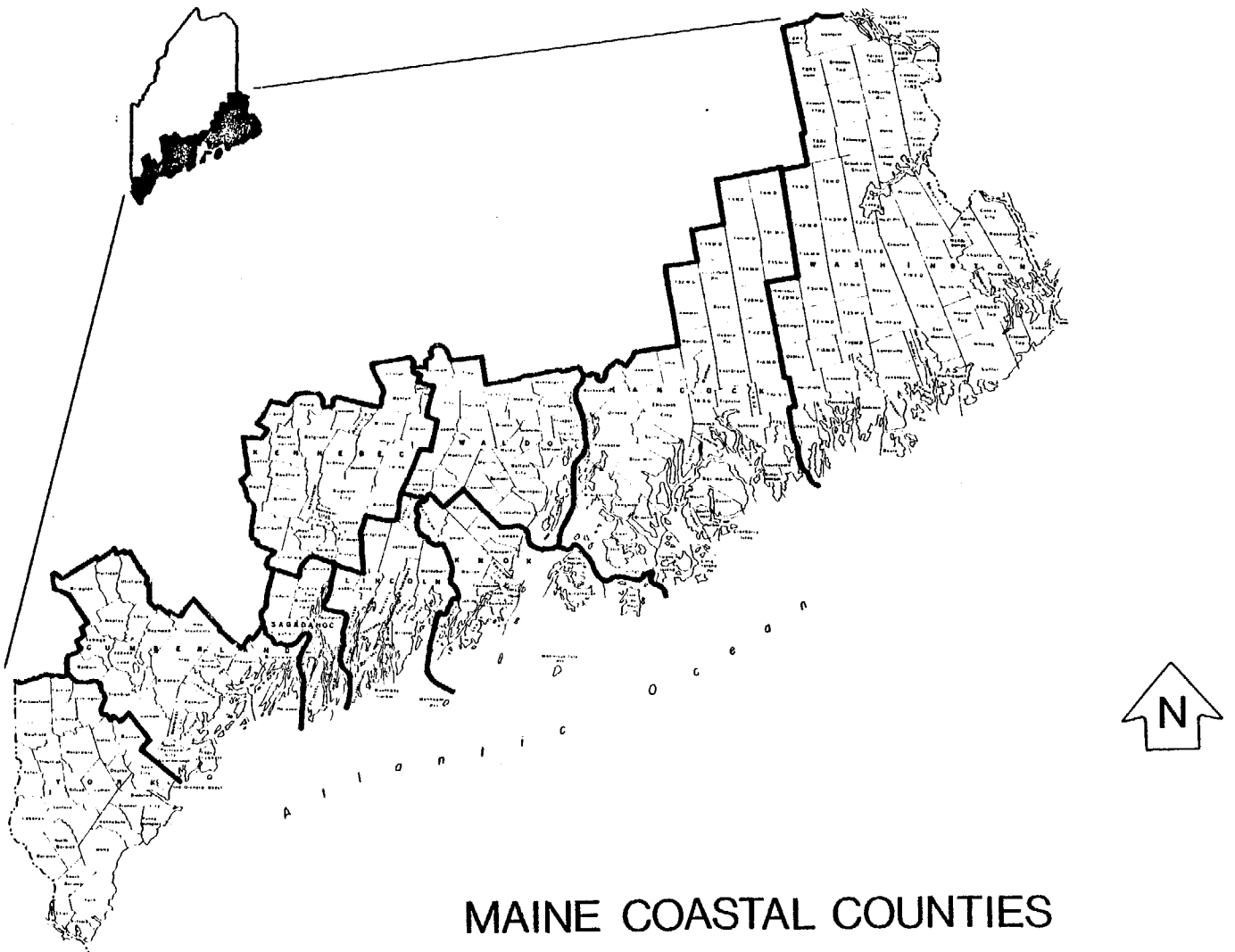
Heavy line shows inland extent of coastal area.

For list of towns in Coastal Area see Page 37.

LIST OF COASTAL COMMUNITIES

Town	County	Regional Planning Commission	Coastal Mapping Area
Addison	Washington	WCRPC	7.2
Alna	Lincoln	SMCRPC	5.2
Arrowsic	Sagadahoc	SMCRPC	6.1
Arundel	York	SMRPC	11.2
Augusta	Kennebec	SKVRPC	13.0
Bangor	Penobscot	PVRPC	12.0
Bar Harbor	Hancock	HCPC	4.1
Bath	Sagadahoc	SMRPC	6.2
Beals	Washington	WCRPC	7.2
Belfast	Waldo	EMCRPC	1.2
Biddeford	York	SMRPC	11.2
Blue Hill	Hancock	HCPC	3.3
Bremen	Lincoln	SMCRPC	5.3
Brewer	Penobscot	PVRPC	12.0
Bristol	Lincoln	SMCRPC	5.1
Brooklin	Hancock	HCPC	3.3
Brooksville	Hancock	HCPC	1.1
Brunswick	Cumberland	SMRPC	6.1
Boothbay	Lincoln	SMCRPC	5.1
Boothbay Harbor	Lincoln	SMCRPC	5.1
Bowdoinham	Sagadahoc	SMCRPC	6.2
Bucksport	Hancock	HCPC	1.3
Camden	Knox	EMCRPC	2.2
Calais	Washington	WCRPC	9.2
Cape Elizabeth	Cumberland	GPCOG	10.1
Castine	Hancock	HCPC	1.2
Centerville	Washington	WCRPC	7.2
Chelsea	Kennebec	SKVRPC	13.0
Cherryfield	Washington	WCRPC	7.1
Columbia	Washington	WCRPC	7.1
Columbia Falls	Washington	WMCPC	7.2
Cranberry Isles	Hancock	HCPC	4.1
Cumberland	Cumberland	GPCOG	10.2
Cushing	Knox	EMCRPC	2.1
Cutler	Washington	WCRPC	8.2
Damariscotta	Lincoln	SMCRPC	5.3
Deer Isle	Hancock	HCPC	3.2
Dennysville	Washington	WCRPC	9.2
Dresden	Lincoln	SMCRPC	5.2
Eastport	Washington	WCRPC	9.2
Edgecomb	Lincoln	SMCRPC	
Edmunds	Washington	WCRPC	9.1
Eliot	York	SMCRPC	11.1
Ellsworth	Hancock	HCPC	4.2
East Machias	Washington	WCRPC	8.1
Falmouth	Cumberland	GPCOG	10.2
Farmingdale	Kennebec	SKVRPC	13.0
Friendship	Knox	EMCRPC	2.1
Frankfort	Waldo	PVRPC	1.3
Franklin	Hancock	HCPC	4.2
Freeport	Cumberland	GPCOG	10.2
Gardiner	Kennebec	SKVRPC	13.0
Georgetown	Sagadahoc	SMCRPC	6.1
Gouldsboro	Hancock	HCPC	4.3
Hallowell	Kennebec	SKVRPC	13.0
Hampden	Penobscot	PVRPC	12.0
Hancock	Hancock	HCPC	4.2
Harpswell	Cumberland	SMCRPC	6.1
Harrington	Washington	WCRPC	7.1
Isle au Haut	Knox	EMCRPC	3.2
Islesboro	Waldo	EMCRPC	1.1
Jonesboro	Washington	WCRPC	7.2
Jonesport	Washington	WCRPC	7.2
Kennebunk	York	SMRPC	11.2
Kennebunkport	York	SMRPC	11.2
Kittery	York	SMRPC	11.2
Lamoine	Hancock	HCPC	4.1
Lincolnville	Waldo	EMCRPC	2.2
Long Island Plt.	Hancock	HCPC	3.1
Lubec	Washington	WCRPC	9.1
Machias	Washington	WCRPC	8.1
Machiasport	Washington	WCRPC	8.1
Marion	Washington	WCRPC	8.2
Marshfield	Washington	WCRPC	8.1
Matinicus	Knox	EMCRPC	2.3
Milbridge	Washington	WCRPC	7.1
Monhegan	Knox	EMCRPC	5.1
Mt. Desert	Hancock	HCPC	4.1
Newcastle	Lincoln	SMCRPC	5.2
Nobleboro	Lincoln	SMCRPC	5.3
North Haven	Knox	EMCRPC	2.3
Northport	Waldo	WCRPC	1.1
Old Orchard Beach	York	SMRPC	11.2
Orrington	Penobscot	PVRPC	12.0
Orland	Hancock	HCPC	1.3
Owls Head	Knox	EMCRPC	2.1
Pembroke	Washington	WCRPC	9.2
Penobscot	Hancock	HCPC	1.2
Perkins Twp.	Sagadahoc	SMCRPC	6.2
Perry	Washington	WCRPC	9.2
Phippsburg	Sagadahoc	SMCRPC	6.1
Pittston	Kennebec	SKVRPC	13.0
Portland	Cumberland	GPCOG	10.1
Prospect	Waldo	PVRPC	1.2
Randolph	Kennebec	PVRPC	13.0
Richmond	Sagadahoc	KVRPC	6.2
Robbinston	Washington	WCRPC	9.2
Rockland	Knox	EMCRPC	2.2
Rockport	Knox	EMCRPC	2.2
Roque Bluffs	Washington	WCRPC	7.2
Saco	York	SMRPC	11.2
St. George	Knox	EMCRPC	2.1
Scarborough	Cumberland	GPCOG	10.1
Searsport	Waldo	PVRPC	1.2
Sedgewick	Hancock	HCPC	3.3
Sorrento	Hancock	HCPC	4.3
South Berwick	York	SMRPC	11.1
South Bristol	Lincoln	SMCRPC	5.1
Southport	Lincoln	SMCRPC	5.1
South Portland	Cumberland	GPCOG	10.1
South Thomaston	Knox	EMCRPC	2.1
Southwest Harbor	Hancock	HCPC	4.1
Steuben	Washington	WCRPC	7.1
Stockton Springs	Waldo	PVRPC	1.2
Stonington	Hancock	HCPC	3.2
Sullivan	Hancock	HCPC	4.3
Surry	Hancock	HCPC	4.2
Swans Island	Hancock	HCPC	3.1
T7SD	Hancock	HCPC	4.3
T8SD	Hancock	HCPC	4.3
T9SD	Hancock	HCPC	4.3
T10SD	Hancock	HCPC	4.3
Thomaston	Knox	EMCRPC	2.2
Topsham	Sagadahoc	SMCRPC	6.2
Tremont	Hancock	HCPC	4.1
Trenton	Hancock	HCPC	4.1
Trescott	Washington	WCRPC	9.1
Verona	Hancock	HCPC	1.3
Vinalhaven	Knox	EMCRPC	2.3
Waldoboro	Lincoln	EMCRPC	5.3
Warren	Knox	EMCRPC	2.2
Wells	York	SMRPC	11.1
West Bath	Sagadahoc	SMCRPC	6.1
Westport	Lincoln	SMCRPC	5.1
Whiting	Washington	WCRPC	8.2
Whitneyville	Washington	WCRPC	8.1
Winter Harbor	Hancock	HCPC	4.3
Winterport	Waldo	PCRPC	12.0
Wiscasset	Lincoln	SMCRPC	5.2
Woolwich	Sagadahoc	SMCRPC	6.2
York	York	SMRPC	11.1
Yarmouth	Cumberland	GPCOG	10.2

LEGEND:
SMRPC—Southern Maine Regional Planning Commission
SMCRPC—Southern Mid-Coast Regional Planning Commission
HCPC—Hancock County Planning Commission
WCRPC—Washington County Regional Planning Commission
EMCRPC—Eastern Mid-Coast Regional Planning Commission
PVRPC—Penobscot Valley Regional Planning Commission
GPCOG—Greater Portland Council of Governments
SKVRPC—Southern Kennebec Valley Regional Planning Commission



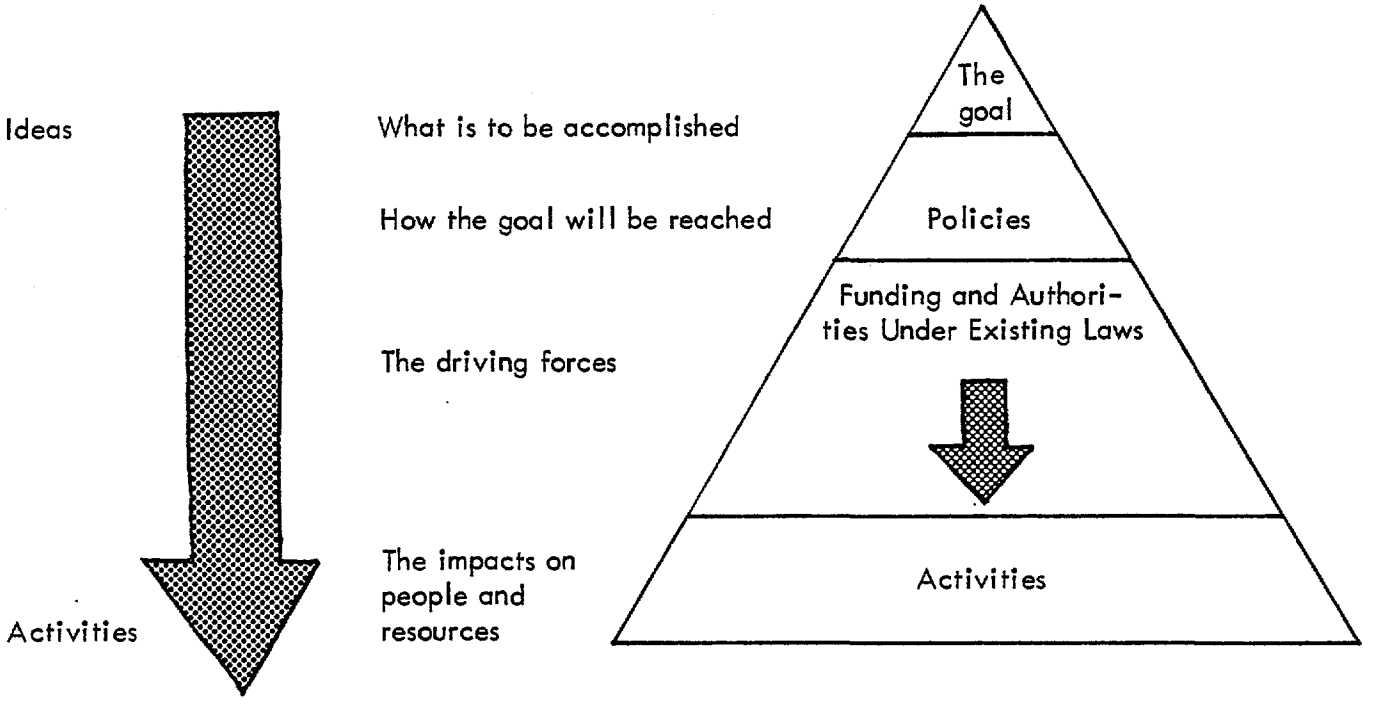
MAINE COASTAL COUNTIES

5.5 AN OVERVIEW OF MAINE'S COASTAL PROGRAM - HOW THE VARIOUS PARTS FIT TOGETHER

To deal adequately with the complexities of improving resource management on the coast of Maine, Maine's Coastal Program must of necessity consist of several parts. These various parts are described in detail in other portions of this document. The purpose of this section is to describe how they fit together to form an integrated whole.

Figure 1

Maine's Coastal Program Can be Thought of as a Pyramid



To visualize the whole, Maine's Coastal Program can be thought of as a pyramid. As shown in Figure 1, the pyramid consists of ideas or concepts near the top and activities that affect coastal resources at the bottom. The peak of the pyramid, or the top stone, is the goal of the program. This is the most abstract or distant element of the program. It describes in general terms what the program is to accomplish. The goal of the program is to achieve a balance between conservation and development in the coastal area that will satisfy short- and long-term social, economic, and environmental needs and aspirations of the people of the State of Maine.

Below the goal are the policies for the program as described in Section 6. These policies specify how the program will be carried out and include policies on such subjects as: kinds of coastal activities to be encouraged, e.g., ports and commercial fishing; use of Coastal Program funds; resolving coastal issues of broad concern, e.g., heavy industrial siting; public participation; the siting of development; and the conservation of coastal resources.

The middle of the pyramid is its real strength. It consists of the elements of the program that enable the concepts described in the goals and policies to be translated into action. These elements are the funding for the program and the legal authorities given state and local governments by Maine's existing laws. These two elements, described in Sections 7 and 8 of this document, are the energy which drives the program.

Finally, the base of the pyramid, or its impact on the ground, is made up of the many activities that are undertaken as part of it.

The Program's Activities Are Balanced

The program's activities are of many different sorts. To be effective and balanced, they include both the implementation/administration of the state's existing land use laws and other activities intended to improve resource use while also improving economic and social conditions. These latter activities involve increasing the productivity of coastal resources, encouraging selected economic activities which are the most beneficial, technical assistance, and other similar activities. The activities which are part of the program are described in Sections 7, 8, and 9 ot this document.

The Program Consists of Existing and Proposed Activities Woven Together

Clearly perceiving the relationships between the parts of Maine's program and the whole is made difficult by Maine's unusual situation. This is that the Maine legislature and Governor established authorities by law and provided funding to implement these authorities before the passage of the Coastal Zone Management Act. These laws principally address the regulatory side of Maine's Coastal Program. The laws include those such as Site Location Law, Wetlands Law, Shoreland Zoning Law, and others which are the core of the program. These are an important part of the program which enable us to meet the federal requirements for controlling certain types of high-impact activities and controlling uses of sensitive environmental areas.

However, as explained earlier, the whole of Maine's Coastal Program is much broader than merely having restrictions on particular uses or areas. The fabric of the whole program has been formed by weaving together the threads of existing laws (referred to above and described in detail in Section 7) and existing programs to implement these laws with the new threads of Federal Consistency and projects to be undertaken with 306 funding.

The activities which make up the fabric of the program are its end results, its impact. They are directed toward improving the management of coastal resources, while also improving economic and social conditions. Section 8 specifies how funding that will become available if this program is approved will be used. Briefly, if Maine's Program is approved, existing regulatory activities will be complemented by a variety of activities at the local, county/regional, and state levels which are broader in scope.

While the new activities will address improving the implementation of existing state laws and local ordinances, they will also involve improving the productivity and beneficial use of Maine's coastal resources, e.g., shellfish; encouraging those economic activities that are of the greatest overall benefit to the people of the coast because they provide jobs, while protecting social and environmental conditions; guiding development to proper locations considering factors broader than those in existing laws; and other similar activities. The amounts allocated to the different categories of activities reflect where, in the judgment of the people of the State of Maine, the new funds could be used most advantageously. As detailed subsequently, local resource planning and management projects will get the greatest amount of funding. One rationale for taking this course of action is that while the administration and implementation of existing laws on the state level already receives substantial funding (approximately $3,000,000 per year statewide), local resource planning, management, implementation, and administrative activities receive little or no state or federal funding specifically earmarked for these purposes.

Section 6

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

6. GOAL, OBJECTIVES & POLICIES FOR MAINE'S COASTAL PROGRAM

INTRODUCTION

This section describes the goals and policies of Maine's Coastal Program. They provide direction and guidance to decision makers and encourage enhanced resource planning and management throughout the coastal area. All of the program's activities are designed to further the goal and policies.

The goal is a statement of what the program is to accomplish in a general sense and is reflective of current legislative and gubernatorial attitudes.

The policies provide more specific direction for program activities. They cover such subjects as: how recommendations for refinements in existing state policy will be developed; the use of funds; public participation; the kinds of coastal economic activities to be encouraged; the siting of development; and the conservation of coastal resources. The following policies, also derived from existing legislative and gubernatorial actions, have been incorporated by the Committee on Coastal Development and Conservation to guide program activities toward the goal.

These elements of the program specify its direction; in essence, they tell what will be done and how it will be accomplished. For more information on how these elements of the program fit into the larger whole, see Section 5.5, the "Overview of Maine's Coastal Program".

THE GOAL

THE GOAL OF MAINE'S COASTAL PROGRAM IS TO ACHIEVE A BALANCE BETWEEN CONSERVATION AND DEVELOPMENT IN THE COASTAL AREA THAT WILL SATISFY SHORT- AND LONG-TERM SOCIAL, ECONOMIC, AND ENVIRONMENTAL NEEDS.

In establishing this broad goal for the program the Committee on Coastal Development and Conservation has been guided by the Executive Order that established the Committee itself and by many existing state policies and statements of purpose within existing legislation. The "balance" that the Committee has identified as the Key to Maine's Coastal Program thus strives to incorporate diverse state policies and the "findings" of the Governor's Order (Number 10, FY 75/76, see Appendix F1.) The goal, therefore, recognizes that important uses of the coast are for public and private recreation, private commerce in fishing, food production and other commercial activities, and that it is a matter of "urgency" to maintain the coast in "as close to pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses." (38 M.R.S.A. § 541). The goal also recognizes that in other instances the legislature has, for example, directed the State Development Office to implement a program designed to promote and attract new industry and expand existing economic activities. (5 M.R.S.A. § 7002).

The following policy statements have been adopted for Maine's Coastal Program by the Committee on Coastal Development and Conservation to help achieve the above goal. They are intended to guide the implementation and administration of the program.

6.1 POLICIES RELATED TO THE FUNDING OF MUNICIPAL AND OTHER GOVERNMENTAL PROJECTS

It is the policy of Maine's Coastal Program to:

- make the majority of Program funds available to coastal towns for projects that further the Program goal;

- make Program funds available to Regional Planning Commissions and other units of government for projects that further the Program goal;

  fund projects that:

  - encourage environmentally sound economic development;
  - stimulate resource conservation and management;

- increase the local information base;
- result in the preparation of needed plans and ordinances;
- make existing land use controls work more effectively;
- educate and increase public awareness of coastal values;
- assist in the writing, administration, and/or enforcement of town ordinances;
- encourage cooperation between various governmental units in conserving coastal values;
- assist in the management of valuable natural resources;

- provide clear explicit criteria which can be used to determine eligible projects that are consistent with Program goals.
- give the Committee on Coastal Development and Conservation responsibility for defining the criteria for funding all municipal, governmental, and other projects.
- develop straightforward procedures by which municipal and governmental, and other agencies can apply for Coastal Zone Management funds.
- establish clear, explicit criteria which can be used to determine if a project has been satisfactorily completed.

6.2 POLICIES RELATED TO THE RESOLUTION OF COASTAL ISSUES OF BROAD CONCERN

Recognizing that there are issues of broad concern that may be in the national interest that cannot be resolved entirely at the municipal level, it is the policy of Maine's Coastal Program to:

- continue work on refining policies on issues of broad concern to the coastal region, the State, and the nation, and make such recommendations available to the public, the Governor, State and other agencies, and the Legislature for their consideration as possible state policies;

- give first priority to policy refinement of issues related to port development, tourism, heavy industry, fishing, public access, recreation, and the cumulative effect of small-scale development decisions;

- give full consideration, for siting on the Maine Coastal Area, to those facilities that may be in the national interest.

The purpose of developing any such policies that relate to issues of broad concern would be to:

- provide for better coordination between existing state laws;

- make decisions relating to the siting of large-scale facilities more predictable;

- permit the private sector to capitalize on well-defined, long-range policies;

- allow the State to encourage development and open space conservation in accordance with well-defined objectives;

- improve opportunities for accommodating uses that provide jobs consistent with coastal lifestyles and standards of environmental quality;

- provide coastal residents with knowledge of long-range goals and future opportunities.

6.3 POLICIES RELATED TO PROGRAM ADMINISTRATION

In order to assure the availability of funds, and an ongoing Coastal Program that is responsive to the people, it is the policy of Maine's Coastal Program to:

- provide ongoing opportunity for meaningful public and governmental participation in shaping the direction of the program and in its future refinement and assessment;

- maintain the Governor's Advisory Committee on Coastal Development and Conservation as a broadly representative group, consisting of State officials, the general public, legislators and others, to act as the ongoing core policy-making body for the program;

- designate the State Planning Office (S.P.O.) as the key technical agency to administer the program and act as staff to the above group;

- maintain a technical advisory committee consisting of State technicians, regional and local planning directors to assist the State Planning Office;

- coordinate the activities of public and private groups whose activities and services affect the Maine coast;

- establish procedures to expedite the review of Federal activities, projects that require federal permits, licenses, or assistance, and outer continental shelf related activities that must be judged to be consistent to the maximum extent practicable with Maine's Coastal Program;

- assist public and private entities in the siting of development and in identifying areas appropriate for conservation related land uses;

- provide information on the resources of the coast to decision makers in the form of maps, inventories, statistics, reports, research papers, technical studies, and analyses;

- assure interagency cooperation and coordination in carrying out the Program through the establishment of memoranda of agreement which describe each agency's responsibilities and commitments.

6.4 POLICY RELATED TO ECONOMIC DEVELOPMENT AND THE PROVISION OF JOB OPPORTUNITIES

6.41 ENCOURAGE ECONOMIC DEVELOPMENT AND PROVIDE JOB OPPORTUNITIES

Building upon existing general legislative policies and executive economic development statements, the Committee on Coastal Development and Conservation has adopted the following policy for the Coastal Program:

1. - encourage those specific development activities that provide substantial economic benefits and job quality to coastal residents, and that are compatible with environmental quality, social conditions, and traditional forms of coastal employment.

The above policy statement was drawn from the following existing Maine Laws and from "The Halfway Point: Goals and Major Activities for 1977-78" which is the major executive policy statement of the Governor:

STATEMENTS (drawn from the existing laws and executive policy)	Existing Law(s) and Documents from which statement or policy is derived
Plan for guiding and carrying forth coordinated, effective, and economic development of the state, with due respect to its topography, resources, and its present needs and future possibilities, as will best promote the health, safety, order, convenience, welfare, and prosperity of the people.	5 M.R.S.A. § 3305 State Planning Office
The "highest and best uses" of the coast are for public and private recreation, as a place of "solace," and as a source of private commerce in fishing, lobstering, and other marine life useful in food production and other commercial activities. Such uses can only be	38 M.R.S.A. § 541 Coastal Conveyance of Petroleum Law

served by maintaing the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the coast in as close "to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses."	
Create job opportunities by encouraging and assisting the expansion and improvement of both new and existing economic activities within the state, and to provide enlarged opportunities for gainful employment by the people of Maine and thus ensure the preservation and betterment of the economy of the state and its inhabitants.	5 M.R.S.A. § 7001 and 10 M.R.S.A. § 702 State Development Office Maine Guarantee Authority
Improve Maine's competitive position as a place to do business, by controlling the costs and increasing the convenience of establishing, expanding, and operating business ventures in the State.	The Halfway Point: Goals and Major Activities for 1977-1978
Identify key development opportunities and problems and promote complementary public and private action to meet them. Encourage self-sustaining economic growth and development in Maine which brings new opportunities to areas of chronic unemployment, underemployment and low personal income.	The Halfway Point: Goals and Major Activities for 1977-1978
Encourage the conservation, higher use, and beneficial economic impact of the State's existing natural resources.	The Halfway Point: Goals and Major Activities for 1977-1978
Implement a program designed to promote and attract new industry to the state, expand existing economic activities in the state, and help existing businesses to find both domestic and foreign markets for their products.	5 M.R.S.A. § 7002 State Development Office
Provide advice and assistance in the field of utilization and marketing of wood products.	12 M.R.S.A. § 501-A Bureau of Forestry, DOC
Provide promotional and marketing assistance for commercial fisheries.	12 M.R.S.A. § 3502-A Dept. of Marine Resources

6.42 ENCOURAGE PORT AND FISHING DEVELOPMENT

In seeking to achieve the above economic policy and thus encourage development that will provide jobs on the coast, the Committee on Coastal Development and Conservation (CCDC) recognizes that Maine's ports and commercial fishing industry should continue to play a central role in the economy of the coast and the State. The Committee has therefore developed and adopted the following policies relating to these two activities:

2. • encourage the planned development of ports and port facilities so as to improve their usefulness in serving water dependent uses and transportation needs; develop port areas especially to serve water dependent uses such as commercial fishing, recreation, cargo handling, boat building, and renewable resource related industries that have port export requirements, in a manner that is consistent with maintaining environmental quality.

3. • encourage the continued viability and growth of commercial fin and shell fishing, lobstering, aquaculture, and use of other marine life useful to food production.

The two policy statements above were drawn from the following sources:

Statement	Source
Acquire, construct, operate, and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; ...	23 M.R.S.A. § 4206 Department of Transportation
The highest and best uses of the coast are for public and private recreation ... and as a source of private commerce in fishing, lobstering, and other marine life useful in food production and other commercial activities.	38 M.R.S.A. § 541 Coastal Conveyance of Petroleum Act
Conserve and develop marine and estuarine resources and promote and develop the Maine Coastal Fishing Industry.	12 M.R.S.A. § 3502-A Department of Marine Resources
Provide promotional and marketing assistance for commercial fisheries.	12 M.R.S.A. § 3502-A Department of Marine Resources
Conserve the renewable natural resources of the State whenever possible.	Halfway Point: Goals and Major Activities for 1977-78.

6.5 POLICY RELATED TO OUTDOOR RECREATION

Building upon existing general legislative policies and executive statements, the Committee on Coastal Development and Conservation (CCDC) has adopted the following policy for the Coastal Program:

4. • Improve and expand opportunity for Maine people and visitors to the state for outdoor recreation on the coast through coordinated planning, conservation of visual qualities, open space preservation, and land acquisition.

The above policy statement was drawn from the sources listed below.

IMPROVE AND EXPAND OPPORTUNITY FOR OUTDOOR RECREATION ON THE COAST	Source of Statement
Improve and expand opportunities for outdoor recreation and improve the visual quality of the State.	The Halfway Point: Goals and Major Activities for 1977-78.
Promote the wisest and fullest use of Maine's resources for recreation and preserve the quality of the outdoor environment in order to satisfy the needs of the residents of Maine, the seasonal visitors, and the short-term vacationers to Maine.	Goal of Bureau of Parks and Recreation, S.C.O.R.P.
... the Legislature declares it to be for the public benefit and for the good order of the people of this State, encourage the well planned and well managed multiple use of land and resources and encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including but not limited to, hunting, fishing, boating, hiking, and camping.	Land Use Regulation Commission Statute, 12 M.R.S.A. § 681
Encourage the wise use of the scenic, mineral, and forest resources of the State of Maine, and ensure that coordinated planning for the future allocation of lands for recreational, forest production, mining, and other public and private uses is effectively accomplished	Department of Conservation policy, 12 M.R.S.A. § 5011

Improve and Expand Opportunity for Outdoor Recreation on the Coast	Source of Statement
The "highest and best uses" of the coast are for public and private recreation, as a place of solace; and as a source of private commerce in fishing, lobstering, and other marine life useful in food production, and other commercial activities....	38 M.R.S.A. § 541 Coastal Conveyance of Petroleum Statute
Subject shoreland areas to zoning and subdivision controls in order to further ... and conserve cover, visual as well as actual points of access to inland and coastal waters and natural beauty.	12 M.R.S.A. § 4811 Shoreland Zoning
Acquire in behalf of the State, land or any interest therein within the State with or without improvements, by purchase or gift, and by eminent domain . . .	12 M.R.S.A. § 203 Bureau of Parks and Recreation.
Protect the scenic beauty and unique characteristics of great ponds, as well as the protection of their recreational, cultural, historical, and environmental value . . .	Great Ponds Alteration Statute 38 M.R.S.A. §§ 386-397

6.6 POLICIES RELATING TO AGRICULTURE

Building on existing legislative and executive policies, the Committee on Coastal Development and Conservation has adopted the following policies for the Coastal Program:

5. • encourage agriculture as an economic activity which is consistent with the Program's resource conservation and economic development policies.

6. • encourage the conservation of significant agricultural lands.

The above policy statements were drawn from the following existing Maine laws and from "The Halfway Point: Goals and Major Activities for 1977-1978" which is the major executive policy statement from the Governor.

ENCOURAGE AGRICULTURE AND THE PRESERVATION OF AGRICULTURAL LAND	Source of Statement
Protect the food production cabability of the State and provide consumers with ready access to wholesome locally-produced food products and encourage greater food and agricultural self-sufficiency.	1977 Private and Special Laws, Ch. 65. Food and Farmland Study Commission
Encourage the agricultural use of land and the continuity of agricultural open space, thus contributing to the income and employment of many citizens of the State and to the environmental benefits of rural aesthetics and enhanced air and water quality.	1977 Private and Special Laws, Ch. 65. Food and Farmland Study Commission
Encourage the preservation of farmland and open space land and prevent its forced conversion to more intensive uses as the result of economic pressures caused by their assessment at values incompatible with their preservation.	Farmland Open Space Tax Law 36 MRSA 1101-1118
"Encourage the conservation, higher use and beneficial economic impact of the State's existing natural resources. ... Prepare an agricultural development strategy to preserve and utilize prime agricultural land ...."	The Halfway Point: Goals and Major Activities for 1977-1978.
Limit nonfarm related land uses in prime farmland areas within the unorganized and deorganized areas of the State.	Land Use Regulation Commission Comprehensive Land Use Plan

Aid and assist societies and associations organized and established for the promotion of pomology, horticulture and dairy work.	7 MRSA § 8, Department of Agriculture
Carry out preventative and control measures and works of improvement for the control and prevention of soil erosion and sedimentation.	12 MRSA § 54, Soil and Water Conservation Commission

6.7 POLICIES RELATED TO HOW MAINE'S MANAGEMENT PROGRAM SATISFIES COASTAL ZONE MANAGEMENT REQUIREMENTS

The following policy statements are drawn from 11 existing Maine laws and from regulations promulgated under those laws, and therefore are the enforceable policies of Maine's Coastal Program. The statements reflect the most important aspects of these existing laws; they are highlights and the listing below is not exhaustive. Many more policies, both explicit and implicit, could be drawn from the 11 laws and their supporting documents, however, the reader could best gain more detailed insights by referring to the laws themselves (see F2 - F7a) or by reading the supporting plans, standards, rules and regulations; the most important of which are contained in the Appendix.

6.71 POLICIES RELATED TO THE SITING OF DEVELOPMENT

(drawn from the 11 existing laws that are the core of Maine's Management Program)	Existing Law(s) from which policy is derived.
7 Assure that water quality is maintained by licensing facilities necessary to the lawful discharge of pollutants into the surface waters of the state and by prohibiting certain types of discharges.	38 M.R.S.A. § 413 Protection of Waters 38 M.R.S.A. § 541 Coastal Conveyance of Petroleum
8 Assure, through a permit procedure, that development activities proposed for coastal wetlands are located and conducted so that the value of these areas for wildlife habitat, recreational and navigational use, natural storm water storage, and erosion control is maintained.	38 M.R.S.A. § 411 Coastal Wetlands
9 Assure that commercial and industrial development planned for areas within 250 feet of high water is located on sites with suitable soils that have been designated as General Development areas.	12 M.R.S.A. § 4811 Shoreland Zoning and the Shoreland Guidelines
10 Assure that residential development within 250 feet of high water, or within any part of the unorganized areas, is located in those areas designed as suitable for such development.	12 M.R.S.A. § 4811 Shoreland Zoning and Land Use Regulation Law

11 Assure that all development in shoreland areas is conducted in such a manner that safe and healthful conditions are maintained, water quality is maintained, aquatic, bird, and other wildlife habitat is conserved and structures are placed so as to conserve shore cover, water access, and points of natural beauty.	12 M.R.S.A. § 4811 Shoreland Zoning
12 Encourage residential, commercial, and industrial development to locate in areas where they will not adversely affect water quality, productive habitat, biotic systems, or scenic or natural values; such areas include coastal wetlands, 100 year flood plains, and areas with slopes of greater than 25%.	Shoreland Zoning Guidelines
13 Encourage, through zoning, new development in the unorganized areas to locate in, or adjacent to, suitable existing developed areas; permit large well-planned development in other areas as planned unit development.	12 M.R.S.A. § 681 Land Use Regulation Law and the Land Use Regulation Comprehensive Plan
14 Encourage the relocation of development presently in flood prone areas and areas susceptible to flood damage, to nonflood prone areas; require that new building be constructed in nonflood prone areas.	Land Use Regulation Commission Comprehensive Plan
15 Assure, through a permit procedure, that the subdivision of land is conducted in such a way that air and water quality standards are maintained, soils remain stable, safe highway conditions prevail, waste disposal is provided for and scenic values and areas of natural beauty are conserved.	30 M.R.S.A. § 4956 Subdivision Law
16 Assure that the quality of the natural environment is maintained by requiring a permit for large scale developments; thereby assure safe traffic conditions, maintenance of state air and water quality standards and other natural environmental qualities, and siting that takes soil capabilities into account.	38 M.R.S.A. § 481 Site Location

17 Assure that air quality is maintained by establishing ambient air quality and emission standards and by licensing air contaminant sources.	38 M.R.S.A. 590 Protection and Improvement of Air
18 Assure that the site for disposal of solid waste is suitable.	38 M.R.S.A. 1304 Solid Waste Management
19 Assure, through a permit procedure, that development activities proposed for rivers, streams, and brooks above head of tide are conducted in a manner that minimizes soil erosion, fish and wildlife habitat destruction, and recreational and navigational use.	12 M.R.S.A. §§ 2206-2212 Stream Alteration

6.72 NATURAL RESOURCE MANAGEMENT POLICIES

(drawn from 11 existing Maine laws)

MAINTAIN THE QUALITY OF THE WATER OF THE COASTAL AREA

20 Classify surface waters and tidal flats into specific water quality categories.	38 M.R.S.A. § 365 Protection of Waters
Maintain and enhance the quality of state waters by regulating discharges from facilities, so as to meet established water classification standards, and by requiring "best practicable treatment."	38 M.R.S.A. § 413 Protection of Waters
21 Assure water quality is maintained by prohibiting the discharge of certain hazardous materials.	38 M.R.S.A. § 413 Protection of Waters
22 Apply zoning and subdivision controls to all shoreland areas within 250 feet of normal high water, so as to assure and maintain water quality.	12 M.R.S.A. § 4811 Shoreland Zoning
23 Ensure that land subdivisions are designed so as to assure quality waters.	30 M.R.S.A. § 4956 Subdivision Law
24 Maintain and enhance water quality classifications.	LURC Comprehensive Plan
25 Assure that activities in coastal wetlands maintain the quality of the waters by requiring permits for such activities.	38 M.R.S.A. § 471 Coastal Wetlands
26 Assure that dredging, filling, and permanent construction activities in, over, or adjacent to flowing waters above head of tide maintain water quality by requiring permits for such activities.	12 M.R.S.A. §§ 2206-2212 Stream Alteration

27 Assure the safe conveyance and transfer of oil on waters of the State, and lands adjoining, extending 12 miles seaward from the coast. (The application of the Coastal Conveyance Act beyond 3 miles does not extend the seaward boundary of the Coastal Zone (see Appendix B2).	38 M.R.S.A. §§ 541 Coastal Conveyance of Petroleum Law
28 Preserve the public and private recreational, fishing, lobstering, and gathering of marine life uses from the hazards of oil pollution by authorizing the Board of Environmental Protection to exercise the police power of the state to deal with such hazards.	38 M.R.S.A. §§ 541 Coastal Conveyance of Petroleum Law
29 Maintain coastal waters and estuaries in as close to pristine condition as possible by the preventing of discharges, spills, and if these should occur, by rapid clean up.	38 M.R.S.A. §§ 541 Coastal Conveyance of Petroleum Law
30 Ensure the quality of ground and surface water by controlling the siting of land fill facilities.	Solid Waste Management Regulations

PROTECT THE QUALITY OF COASTAL WETLANDS	
31 Assure, through a permit procedure, that activities in coastal wetlands permit the natural flow of any waters.	38 M.R.S.A. § 471 Coastal Wetlands
32 Assure that recreational and navigational uses in coastal wetlands are not unreasonably restricted by permanent structures.	38 M.R.S.A. § 471 Coastal Wetlands
33 Assure that water quality is maintained in wetland areas through the regulation of uses that influence water quality.	Land Use Regulation Commission Comprehensive Plan
34 Provide protection for coastal wetlands from residential, commercial, and industrial development, by designating these areas as Resource Protection districts under Shoreland Zoning.	12 M.R.S.A. § 4811 Shoreland Zoning and Guidelines

35 Maintain tidal flats, beaches, and public lands adjoining the seacoast in as pristine a condition as possible by regulating the coastal conveyance and transfer of oil, and providing for prompt clean up of oil spills.	38 M.R.S.A. §§ 541 Coastal Conveyance of Petroleum

MAINTAIN SOIL STABILITY AND MINIMIZE EROSION IN THE COASTAL AREA

36 Assure the stability and value of coastal wetlands as storm runoff retention areas and natural sieves, by requiring permits for activities thay may cause erosion.	38 M.R.S.A. § 471 Coastal Wetlands
37 Designate areas within 250' of high water having slopes of greater than 25% (or unstable soils that are subject to slumping or severe erosion) as protection areas and use these areas for natural resource management activities.	12 M.R.S.A. § 4811 Shoreland Zoning
38 Assure stable soils and sediment free waters by conducting filling, grading, and other earth-moving activities within 250 feet of high water, in conformance with established erosion prevention measures.	12 M.R.S.A. § 4811 Shoreland Zoning
39 Assure stable soils and sediment-free waters by requiring no tilling of agricultural soils in areas within 50 feet of ponds or lakes or removal of vegetation without replacement in areas within 50 feet of high water mark.	12 M.R.S.A. § 4811 Shoreland Zoning
40 Assure that unreasonable soil erosion does not result from development activities adjacent to rivers, streams, or brooks by requiring a permit for such activities.	12 M.R.S.A. §§ 2206-2212 Stream Alteration

41 Utilize the capability of the soil to support development so as to determine its suitability for development, in the unorganized areas of the coast.	12 M.R.S.A. § 681 Land Use Regulation Law
42 Assure, through a permit procedure, that land subdivisions maintain soil stability and do not cause unreasonable soil erosion.	30 M.R.S.A. § 4956 Subdivision Law
43 Assure, through a permit procedure, that large developments that may substantially affect the environment are built on soils suitable to the nature of the proposal.	38 M.R.S.A. § 481 Site Location

MANAGE ACTIVITIES IN FLOOD PLAIN AREAS OF THE COAST TO MINIMIZE FLOOD DAMAGE

44 Designate 100-year flood plain areas (or areas having recent flood plain soils) that are within 250 feet of normal high water as protection areas and use for appropriate nonintensive uses, such as forestry, agriculture, open space, recreation areas, etc.	12 M.R.S.A. § 4811 Shoreland Zoning
45 Use flood prone areas, in the unorganized areas, for natural resource and agricultural management so as to minimize flood damage to development uses.	LURC Comprehensive Plan

CONSERVE NATURAL, HISTORIC, AND SCENIC RESOURCES IN THE COASTAL AREA

46 Consider natural sites of significant scenic or esthetic value, within 250 feet of high water, as areas that should be designated as protection areas; these areas to be used for natural resource protection and management such as forest management, non-intensive recreation, wildlife management, agriculture, etc.	12 M.R.S.A. § 4811 Shoreland Zoning

47 Apply the clearing and tree harvesting standards of the Shoreland Zoning program to conserve and protect visual, as well as actual, points of access to inland and coastal waters and natural beauty.	12 M.R.S.A. § 4811 Shoreland Zoning
48 Assure, in the unorganized areas, the protection of areas containing unique, rare, or critical landforms, water resources, vegetation, animals or archaeology, so as to preserve their scientific, ecological and educational values.	LURC Comprehensive Plan
49 Assure that provision be made, in the unorganized areas, for fitting all structural development harmoniously into the existing natural environment.	12 M.R.S.A. § 681 LURC
50 Assure that land subdivisions conserve the scenic or natural beauty of the area, on aesthetics, historic sites or rare and irreplaceable natural areas.	30 M.R.S.A. § 4956 Subdivision Law
51 Assure that all large development proposals conserve the natural environment and do not adversely affect existing uses, scenic character or natural resources.	38 M.R.S.A. § 481 Site Location
52 Protect and preserve significant natural, scenic, and historic features where appropriate, beneficial and consistent with the comprehensive land use plan.	Land Use Regulation Commission Comprehensive Plan
53 Encourage methods of storing and disposing of solid waste to minimize scenic intrusion.	Solid Waste Management Regulations

CONSERVE WILDLIFE AND FISHERIES RESOURCES

54 Assure that activities in coastal wetlands conserve wildlife and freshwater, estuarine or marine fisheries and their habitats, through a permit procedure.	38 M.R.S.A. § 471 Coastal Wetlands
55 Designate areas identified by the Dept. of Inland Fisheries and Wildlife as moderate to high value waterfowl areas (that are within 250 feet of high water), as protection areas suitable for natural resource conservation; consider other significant wildlife habitat for this designation.	12 M.R.S.A. § 4811 Shoreland Zoning

56 Assure that dredging, filling, and construction activities in or adjacent to flowing fresh water conserve wildlife and fish species.	12 M.R.S.A. §§ 2206-2212 Stream Alteration
57 Assure the conservation of marine resources in coastal waters and flats through appropriate regulations.	12 M.R.S.A. § 3504 Marine Resources
58 Preserve the use of the seacoast for fishing, lobstering, and gathering of marine life by maintaining waters of the State extending 12 miles seaward in as pristine a condition as possible.	38 M.R.S.A. § 541 Coastal Conveyance of Petroleum
59 Assure that land uses and activities in the unorganized areas conserve habitats judged to be essential to the species, including fish spawning and nursery areas.	12 M.R.S.A. § 681 LURC

MAINTAIN STATE AIR QUALITY STANDARDS

60 Assure that activities proposed for construction in the unorganized areas meet state air pollution control standards.	12 M.R.S.A. § 681 Land Use Regulation Law
61 Ascertain that subdivisions maintain applicable state health regulations.	30 M.R.S.A. § 4956 Subdivision
62 Assure that large development projects meet state air pollution control standards.	38 M.R.S.A. § 481 Site Location

63 Assure that solid waste disposal practices do not cause undue air pollution.	38 M.R.S.A. §§ 1304 Solid Waste Management
64 Assure by emission licensing that new air contamination sources meet air quality and emission standards.	38 M.R.S.A. §§ 590 Protection and Improvement of Air
65 Assure the maintenance of air quality by the registration of all sources and by monitoring emissions and ambient air.	38 M.R.S.A. §§ 589 Protection and Improvement of Air
66 Assure that open burning at municipal solid waste disposal sites does not violate air quality standards by establishing a reasonable compliance schedule with the violator for the cessation of the practice.	38 M.R.S.A. §§ 599 Protection and Improvement of Air

Section 7

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

7. THE CORE OF MAINE'S COASTAL PROGRAM: ELEVEN EXISTING LAWS

INTRODUCTION

This section describes the existing laws that form the core of the program and enable Maine to meet the federal requirements for controlling certain high impact activities and the use of environmentally sensitive areas. Thus, this section describes the legal authorities that state agencies and local governments have for carrying out the land use policies stated in Section 6.

Further, this section describes how the state administers/implements these laws. The actions taken to implement the laws have included: creating commissions and boards to make decisions on the acceptability of development proposals under the core laws; hiring staff for the agencies charged with administering the laws;and spending approximately $3,000,000 annually to implement the core laws statewide.

Thus, Maine is in the unusual situation that many of the elements which are parts of its 306 program were implemented by being given legal authority and funding prior to the approval of Maine's 306 program by the federal government and, in fact, prior to the passage of the federal Coastal Zone Management Act in 1972. This makes Maine's program somewhat difficult to understand, as it is a combination of the existing regulatory laws and implementing programs described in this section and the new projects that will be undertaken with 306 funding if the program is approved. These latter projects are described in Section 8.

In summary, this section describes (1) the legal authorities for implementing the land use policies in Section 6, and (2) the actions that the state has already undertaken to implement the core laws. For more information on how this section fits into the entire program, see Section 5.5, the "Overview of the Coastal Program".

7.1 THE PURPOSE OF THE ELEVEN LAWS

To qualify for Federal funds, Maine's Program must be able to show that it includes mechanisms for controlling land and water uses in the coastal area. Maine's Coastal Program, therefore, relies on 11 existing laws. These existing land and water use laws serve to manage coastal resources by guiding development (through permit and zoning procedures) and by conserving those natural resources in need of protection.

The 11 laws form the basis for a strong regulatory system; they are described in detail in this section.

The 11 laws are the means by which the Maine Coastal Program development and resource policies (in Section 6.7 are implemented.

As a system, the 11 laws qualify the state for Coastal Zone Management (Section 306) funding and satisfy the objectives of the Coastal Zone Management Act of 1972. In extensive meetings with public and governmental groups, the state has described the 11 laws as the core of its Coastal Program; the concept has received broad support (see Section 3). Furthermore, as is shown in Section 4 (Coastal Issues) these same 11 laws resolve a number of issues that have been a cause for concern in the past.

The 11 laws and their basic purposes are listed below:

- Protection and improvement of Waters - protects the quality of state waters through classifying them and requiring licenses for proposed discharges.
- Coastal Wetlands Act - controls uses so that environmental quality is maintained.
- Shoreland Zoning Act - requires municipalities to enact shoreland zoning for areas within 250 feet of water.
- Land Use Regulation Law - promotes principles of sound land use planning in unorganized areas.
- Subdivision Law - requires municipalities to review subdivisions according to minimum state criteria.
- Site Location Act - controls large projects through permit procedure.

- Protection and Improvement of Air - protects and enhances air quality by establishing standards and licensing proposed emissions.
- Solid Waste Management - promotes a coordinated statewide program regulating solid waste disposal.
- Stream Alteration - controls the alteration of flowing waters so that environmental quality is maintained.
- Coastal Conveyance of Petroleum - prevents, regulates, and expedites clean up of oil spills; regulates the transfer and conveyance of oil, and sets up fund for effective clean up of spills.
- Marine Resource Management - provides for the conservation of marine resources through regulations.

Each of the above laws is described separately below. The descriptions are organized so that the reader can trace the legislative history of each Act, understand the amendments that have been enacted, and see what exposure each Act has had to both the public and the legislature over recent years. The descriptions explain what land and water uses or activities are regulated by each law and which land and water areas they apply to. The final part of each description deals with: how each law is administered, administrative responsibilities, license and permit procedures, and the criteria and applicable regulations that each administering agency or board uses to evaluate project proposals.

It should be emphasized that the 11 laws described are existing laws and that Maine's Coastal Program consists solely of these laws. They are described in detail so that Maine citizens can fully understand them, so that those Federal agencies that will be required to be consistent with them to the maximum extent practicable, understand their scope; and so that the Office of Coastal Zone Management can evaluate them and confirm that they meet federal requirements.

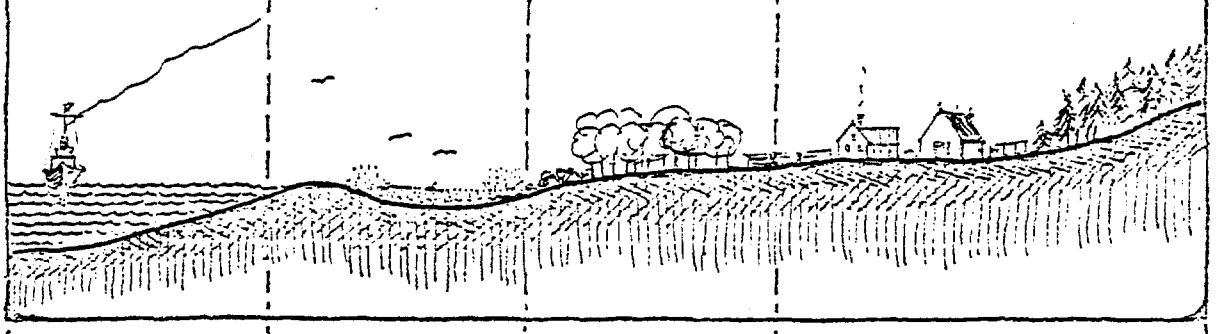
Finally, it should be noted that there are, nonetheless, many other state laws that are relevant to land and water uses in the coastal area. These other laws are not invalidated by this program; they will continue to be in effect. However, they are not central to Maine's application for 306 funds and, unlike the 11 laws above, do not apply for the purpose of consistency determinations. (See Appendix E2.) (A summary of these other laws is in Appendix F14.)

HOW THE 11 EXISTING LAWS RELATE TO DIFFERENT TIERS WITHIN MAINE'S COASTAL AREA

The diagram shows which areas of the coast are regulated by the 11 existing laws referred to previously. The seaward limit of the area (and of Tier 1), is the extent of the State's jurisdiction; the inland boundary (and the upland limit of Tier 4), is the town line of those towns in the coastal area. (Refer to inside cover for map and list of coastal towns.)

TIER 1	TIER 2	TIER 3	TIER 4
Tidal & Fresh Water (to limit of State jurisdiction) Sub-tidal Lands	Inter-tidal Water and Lands	250' Inland from High Water	From upland edge of 250' line to inland border of Coastal Towns

DIAGRAMMATIC SECTION THROUGH COASTAL AREA



EXISTING LAND & WATER USE LAWS

Protection of Waters		SOLID WASTE MANAGEMENT	
Coastal Wetlands		Stream Alteration (applies only to the beds and banks of rivers and streams)	
Marine Resources		Shoreland Zoning	
Land Use Regulation Commission (L.U.R.C.) (only applies in unorganized townships and plantations)			
		Subdivision of Land	
Site Location of Development, Protection of Air, and Oil Discharge Prevention			
TIER 1	TIER 2	TIER 3	TIER 4

7.2 PROTECTION AND IMPROVEMENT OF WATERS

7.21 SUMMARY

The purpose of the Act (38 M.R.S.A. 361-A -371-A, 411 - 451-B) is to control, abate, and prevent pollution of State waters. Administered by the Board of Environmental Protection, the Act provides the mechanisms that control public and private waste discharge into State waters. (The full text of the Act is contained in Appendix F2.)

The Protection and Improvement of Waters Act establishes standards of classification to be used by the Board of Environmental Protection in the assessment of State waters. Fresh surface and tidal waters are assigned to one of five categories, whereas two standards have been created for great ponds and lakes.

The Act prohibits discharge of any pollutant from a private or public source without a waste discharge license from the Board. The Board is allowed to issue a license only upon the condition that the discharge, alone or in combination with other discharges, after best practicable treatment, will not lower the water quality below its present or expected classification. The Act protects waters of higher quality than the assigned classification by providing that waste discharge, having received the best practicable treatment, may not lower the actual, higher water quality unless such lowering is a result of necessary economic and social development.

A general prohibition is placed on the spill or unlicensed discharge of petroleum products, forest products refuse, potatoes, refuse, or waste from watercraft, and on the sale of high phosphorus detergents. Log driving on inland waters is banned, but a three year renewable permit for storage of logs may be granted if certain conditions are met and if a refusal of the permit would impose undue economic hardship on the applicant.

Discharge of radiological, chemical, or biological warfare agents and other toxic substances identified by the Board is entirely prohibited, whereas mercury discharge is conditionally permitted except where danger to public health necessitates an emergency prohibition on all mercury discharge.

The Board of Environmental Protection is empowered to grant licenses for construction of permanent structures, dredging, deposit of fill or other shoreline alteration in, on, above, or under tidal or subtidal lands of the State. The Board is also charged with supervision of the location of solid waste disposal areas adjacent to any classified body of water.

To aid in pollution control, the Act provides for State contribution of 15%-25% of the expense of a federally approved and funded municipal or quasi-municipal pollution abatement construction program. The Act set October 1, 1976, as the deadline for completion and operation of any project necessary to achieve compliance with applicable water classification standards. Variances from the statutory water pollution abatement time schedule may be granted by the Board to public applicants until federal funds are available and to private applicants until July 1, 1977. The Commissioner of Environmental Protection may appoint and train volunteers to aid in monitoring water quality. Finally, the Board may revoke, modify, or suspend waste discharge licenses in response to changed circumstances or license violations.

7.22 HISTORY

The present statute establishing a comprehensive program of water protection and improvement has evolved through legislative amendments made during the past thirty-six years. This process began in 1941 with the creation of a Sanitary Water Board; in 1945 the Board was empowered to license new sources of discharge, but the Board still lacked water quality classification and standards with which to measure the impact of these new discharge sources.

In 1951 the Sanitary Water Board was replaced by the Water Improvement Commission. The Commission was established as an independent agency and granted staff to carry out its function. The Commission eventually became the present Department of Environmental Protection. In 1953, the Legislature established specific water quality standards and a classification system, thereby providing the Commission with more detailed policy guidance. These standards created four levels of water quality classification for fresh and marine waters (amended in 1955 to five classifications - see following section.) Such classification of State waters and assignment of water quality standards to specific reaches of waterways provided a precise framework for the pollution abatement program. The classification of specific bodies of water has continued over a number of years, based on analysis of water body conditions and existing and prospective uses by industry and municipalities for wastewater discharge.

In 1957 the Legislature provided for state contribution to costs of pollution abatement. A State cost-sharing arrangement with the federal government was established whereby the State presently contributes 15%-25% of the total construction costs of federally funded municipal wastewater treatment plants. In 1967 the Act was amended to include a timetable for planning and construction of facilities to abate pollution.

Discharge of harmful materials such as petroleum products, high phosphate cleaning agents, mercury, and other toxic or hazardous materials into waterways was prohibited in 1971. During the same year, the Legislature declared that log driving on rivers was to be illegal after October 1, 1976. In 1973 waste discharge licenses were made a requirement for any identified discharge of waste into State waters.

7.23 USES AND AREAS REGULATED

All waters of the State, both fresh and marine, are regulated by the Act. Fresh waters include rivers, streams, brooks, lakes, ponds, and other nontidal waters. Marine waters, including tidal water with appreciable salt content, are defined as territorial waters under jurisdiction of the State. The area covered by the Act is that referred to as tiers 1 and 2 in Section 5.

It is unlawful for any legal entity to discharge waste which, following reasonable opportunity for diffusion, will lower the quality of such waters below the minimum classification requirements, notwithstanding any exemptions or licenses granted by the Board of Environmental Protection. The function of the waste discharge license within this classification system is to require the best practicable treatment of discharge and regulate discharges to prevent degradation of receiving waters.

Virtually all bodies of water have been classified by name and encoded into the statute. Great ponds and lakes, receiving special attention in the Act, are assigned to the higher classification, GP-A, unless "public interests" require a lower standard, GP-B. Existing licensed discharges to class GP-A ponds and lakes will be allowed to continue until practicable alternatives exist, but no new discharges will be permitted (aquatic chemical applications are exempted). The Board may classify unclassified waters or raise any classification after careful consideration, public hearing, and consultation with appropriate state and federal agencies. Such classification remains in effect until ninety days after adjournment of the Legislature, unless the Legislature adopts the classification by legislative enactment.

The building and operating of sewage treatment plants are regulated by the funding mechanisms (see below) and by the licensing of effluent discharge from the treatment plant.

STATUS OF DISCHARGE TREATMENT FACILITIES REGULATED BY ACT

The construction program of pollution abatement facilities scheduled for an October 1, 1976, completion by the Maine Legislature has been executed in most instances. Nearly all industrial wastewater discharge treatment plants have been completed.

Many municipal treatment plants planned under the public facilities construction program are in operation. Only the failure of the Federal government to provide funds according to a previously announced timetable has prevented construction of more plants. Numerous individual discharges have been identified and have been or will be licensed for improved water quality according to a time schedule applied by law or by regulatory variance.

MARINE WATER QUALITY STANDARDS

Class	Water Uses	Parameter	Standard
SA	Water Contact Recreation Fishing Harvest and Propagation of Shellfish Fish and Wildlife Habitat	Dissolved Oxygen Fecal Coliform	minimum 6 ppm median number 14 per 100 ml
SB1	Water Contact Recreation Fishing Harvest and Propagation of Shellfish Fish and Wildlife Habitat	Dissolved Oxygen Fecal Coliform Shellfish Area Nonshellfish Area	minimum 6 ppm median number 14 per 100 ml 43 per 100 ml
SB2	Water Contact Recreation Fishing Harvest and Propagation of Shellfish Fish and Wildlife Habitat Industrial Cooling and Processing	Dissolved Oxygen Fecal Coliform Shellfish Area Nonshellfish Area	minimum 6 ppm median number 14 per 100 ml 43 per 100 ml
SC	Recreational Boating Fishing Shellfish Harvest for Depuration Fish and Wildlife Habitat Industrial Cooling and Processing	Dissolved Oxygen Fecal Coliform Shellfish Area Nonshellfish Area	minimum 5 ppm 150 per 100 ml 300 per 100 ml
*SD	Fish Migration Industrial Cooling and Processing Navigation Power Generation	Dissolved Oxygen Fecal Coliform	3 ppm Numbers which will not cause undue health hazard

* No State waters have been classified as SD.

RIVER AND STREAM

WATER QUALITY STANDARDS

Stream Classification	Water Uses	Parameter	Standard
A	Recreational purposes Water Contact Recreation Water Supply (after treatment) Fish & Wildlife habitat	Dissolved Oxygen Fecal Coliform	≥ 75% Saturation ≤ 20 per 100 ml
B-1	Recreational purposes Water Contact Recreation Water Supply (after treatment) Fish & Wildlife habitat	Dissolved Oxygen Fecal Coliform Chromium	≥ 75% Saturation or ≥ 5 ppm ≤ 60 per 100 ml ≤ 50 ug/liter
B-2	Recreational purposes Water Contact Recreation Water Supply (after treatment) Fish & Wildlife habitat	Dissolved Oxygen Fecal Coliform Chromium	≥ 60% Saturation or ≥ 5 ppm ≤ 200 per 100 ml ≤ 50 ug/liter
C	Recreational Boating and Fishing Fish & Wildlife habitat	Dissolved Oxygen Fecal Coliform	≥ 5 ppm (unless naturally occurring) but in no case < 4 ppm ≤ 1000 per 100 ml
*D	Power Generation Navigation Industrial Process Waters (after treatment)	Dissolved Oxygen Fecal Coliform	≥ 2 ppm numbers which will not cause undue health hazard

*No waters within coastal zone are classified as D.

GREAT PONDS AND LAKES

WATER QUALITY STANDARDS

Class	Water Uses	Parameter	Standard
GP-A	Recreational Purposes Water Contact Recreation Water Supply (with disinfection) Fish and Wildlife Habitat	Fecal Coliform Phosphorus concentration	≤ 20 per 100 ml ≤ 15 ppbillion
GP-B	Recreational Purposes Water Contact Recreation Water Supply (after treatment) Fish and Wildlife Habitat	Fecal Coliform Phosphorus concentration	≤ 60 per 100 ml ≤ 50 ppbillion

7.24 ADMINISTRATION

The Act is administered by the Department of Environment Protection. Policy direction and major decisions of the Department are made by the Board of Environmental Protection. The Bureau of Water Quality within the Department has specific responsibility to:

a. study and investigate water quality in given bodies of water

b. recommend to the legislature, after public hearing, water quality classifications for bodies of water

c. identify and license all sources of waste discharge

d. coordinate and review the Federal-State financed programs for construction of treatment facilities by municipalities

e. review plans for construction of wastewater treatment by industrial and individual concerns

f. appoint volunteers to serve as monitors of water quality in order to assure compliance with the Act

g. report violations to the Attorney General for enforcement.

The essential tool created by the Act to assure protection and improvement of water quality is the waste discharge license, which is granted at the discretion of the Board of Environmental Protection. The Board has adopted reasonable regulations for administration of licenses within the intent of the law, regarding form and content of application, public notice and comment procedures, public hearing procedures, and means to install appropriate devices or methods to monitor waste discharge.

Licenses are granted for a period of three to five years. It is unlawful to violate the terms of a license, even if receiving waters are not degraded below the classified standard. The Board is empowered to revoke, suspend, or modify, in whole or in part any license, after opportunity for hearing, if a violation of the license provisions, or a change in circumstances has occurred. Power to inspect facilities and records relating to discharge is granted by the Act to the Department for monitoring purposes.

In connection with a license, the Board may grant a permit to a licensee for construction and operation of any facility, necessary to comply with terms of the license in, on, above, or under tidal waters or subtidal lands of the State. The Board must insure such facilities create minimal interference with existing uses of these lands and waters, and it may order removal of the facilities if they are deemed unneeded, or if it is subsequently determined that there is interference with public health and safety or another use, provided that such removal does not cause economic hardship to the licensee.

The appeal procedure found in the Act provides that any person aggrieved by a Board order or decision resulting from a hearing may appeal to Superior Court within 30 days. The court proceeding shall be based upon the hearing transcript. The court's review is limited to questions of law and whether the Board acted within the scope of its authority. The Board's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse, or remand the Board's decision for further proceedings.

7.3 COASTAL WETLANDS ACT

7.31 SUMMARY

The Alteration of Coastal Wetlands Act (38 M.R.S.A. §§ 471 et seq.) was passed in 1975, replacing the 1967 Wetlands Control Act. The purpose of the present Act is to assure that dredging, draining, filling, or construction of permanent structures on or over any tidal or subtidal land does not unreasonably interfere with existing navigational or recreational uses, cause unreasonable soil erosion, unreasonably interfere with the natural flow of any waters, unreasonably harm wildlife or freshwater, estuarine, or marine fisheries, or lower the quality of any waters. The law requires that any person proposing such an activity first obtain a permit.

Permits for alterations may be issued by the Board of Environmental Protection (BEP) or by those municipalities which have been given permit granting authority by the BEP, provided the alterations are consistent with the standards in the Act.

This section describes the History, Administration, Uses, and Areas Regulated by the Coastal Wetlands Act, and the Permit Review Process under this Law. Appendix F3b includes a Legal Analysis of the Alterations of Coastal Wetlands Act which describes judicial interpretations of the Act and Board policies and regulations adopted in order to implement the Act, and presents a summary of the results of the permit review process.

7.32 HISTORY

By the middle 1960s, research had shown the value of coastal wetlands as nutrient producers, nursery grounds for fish, waterfowl feeding, nesting, and wintering areas, and buffers which protect the land from storm waves and tidal action. This information, along with the knowledge that filling of salt marshes was occurring in southern Maine, convinced the Maine Department of Sea and Shore Fisheries and the Department of Inland Fish and Game, along with a private environmental group, to lobby for legislation aimed at protecting Maine's coastal wetlands.

As a result, the Wetlands Control Act, (12 M.R.S.A., §§ 4701 et seq.) was passed in 1967. This law required that all persons, agencies, and municipalities obtain permits before attempting to remove, fill, dredge, or drain sanitary sewage into, or otherwise alter, any swamp, marsh, bog, beach, flat, or other wetland bordering coastal waters. Permits were issued by the municipalities upon approval by the Wetlands Control Board.

In 1972, the functions of the Wetlands Control Board were passed to the Board of Environmental Protection (BEP), which is the permit granting authority for the present Alteration of Coastal Wetlands law.

The Alteration of Coastal Wetlands Act, 38 M.R.S.A., Sec. 471-478, passed in 1975 by the Regular Session of the 107th Maine Legislature, replaced the 1967 Wetland Control Act. The primary regulatory change of the 1975 legislation was the extension of the area of jurisdiction from the intertidal to the subtidal lands of the State. In other words, all proposals for permanent alterations in the area from the upland limit of normal saltwater storm flowage seaward to the limit of the state's jurisdiction are now subject to permitting procedures.

7.33 USES AND AREAS REGULATED

In general, any permanent alteration of a coastal wetland is subject to the provisions of the law. For the purposes of administration, coastal wetland is defined as all areas below the landward limit of vegetation that is tolerant of salt water, including all tidal and subtidal lands, and all swamps, marshes, bogs, beaches, flats, or other contiguous lowland which is subject to tidal action or normal storm flowage seaward to the limits of the state's jurisdiction. Areas that are subject to storm flowage only during periods of maximum storm activity are excluded from the definition if no salt water tolerant vegetation is present. (These areas regulated under the Alteration of Coastal Wetlands law coincide with Tiers 1 and 2 in Section 5.)

The Board of Environmental Protection (BEP) may exempt from regulation certain activities. Minor repairs and the maintenance of permanent structures (defined below), involving less than one cubic yard of material to be dredged, deposited, filled, moved, or removed in any coastal wetland are allowed under the law. Normal maintenance and repair of presently existing ways, roads, railroad beds, or installations and facilities of any utility are also allowed, provided no watercourse is substantially altered. The building up or adding to the height of an existing road bed is exempt from permit requirements, but the widening of a road bed requires either a permit or a written advisory opinion from the Department of Environmental Protection (DEP)* indicating that a permit is not required. Exemptions for repairs or maintenance are allowed if: a) the structures, including but not limited to piers, wharves, and lobster pounds, were in existence and in active use within the twelve month period preceding the repair or replacement, b) the repair or replacement does not result in an encroachment into the Wetland area greater than that of the previous structure, c) the repair or replacement does not result in a structure significantly different from that of the previously existing structure as to size, form, or material, and d) all repairs will be completed within 60 days of their commencement. Coastal wardens of the Department of Marine Resources (DMR) are authorized to issue exemption slips on the above activities.

* Discussion of the relationship between BEP and DEP is contained in Section 9.

Fish weirs and small boat moorings in waters below the low tide line are exempted from permit requirements as the Board of Environmental Protection (BEP) has ruled that the construction and operation of such structures has little or no adverse impact on the environment. The deposit of treated sanitary sewage and construction of a sewage outfall line from a single-family residence is exempted, provided the property owner holds a valid sanitary wastewater discharge license issued by BEP, and is meeting the standards of best practicable treatment.

For the purposes of the law, permanent structures do not include: (a) floating structures located in the water less than seven months per year, and (b) temporary structures which are in place less than seven months per year. However, any dredging, draining, filling, or installation of any other permanent fixtures or alterations (such as piers, cement slabs, rock, gravel, or sand fill) intended to support, attach to, or provide access to such floating or temporary structures, are not exempted from the requirements of the law.

The construction of sewage treatment systems, including the laying of pipes and construction of pumping stations and treatment plants on or over coastal wetlands, require a permit from the Board of Environmental Protection under this Act.

7.34 ADMINISTRATION

The Administering Agency

The primary administering agency for the Wetlands Alteration Law is the Board of Environmental Protection. Permits may be granted by the BEP, or by a municipality, provided the municipality has a) established a planning board, b) adopted a Shoreland Zoning ordinance approved by the BEP and by the Land Use Regulation Commission, and c) has made provision by ordinance or regulation for prompt notice to the BEP and the public upon receipt of the application and for written notification to the applicant and the BEP of the issuance or denial of a permit, and d) has received such authority from the Board. The BEP may, after a public hearing, revoke the municipality's permit granting authority. At the present time, two municipalities, Harrington and Southport, have requested and received permit-granting authority.

The DEP staff act on the following types of applications: a) pile structures entirely above mean low water, b) repairs and/or maintenance necessary to preserve or restore an existing structure or land contour or one which has existed on the applicant's property within one year prior to the date of application, if the proposed project will not result in any harm to the natural environment, c) erosion-preventive measures, d) trenching operations where there will be immediate restoration, e) marine railways or ramps where no significant dredging or filling is involved.

If the BEP action is required, a working document with recommendations is prepared by the DEP staff and mailed to the BEP members one week prior to the next scheduled Board meeting for its consideration and deliberation.

Before issuing a permit, the BEP must notify the municipality wherein the planned activity is proposed and consider any comments received from the municipality within a "reasonable period" (usually two weeks).

7.35 PERMIT REVIEW PROCESS

A) The Application Form

A person seeking approval for a regulated activity must submit a completed 'Application for Wetlands Alteration Permit and Water Quality Certification'. This application, adopted and periodically revised by the Board, establishes what specific information is required of applicants in order for consideration of approval. For the full application, see Appendix F3c.

Applicants must indicate the location of the proposed project on the appropriate U.S.G.S. topographic map, and submit it with both a sketch of the project and a scale drawing of the coastal wetland to be affected (showing the project in detail, the landowner's property boundary lines, and low- and high-water marks). The applicant must describe: a) The present use of the wetland, b) The project, and c) The measures which will be taken to protect the surrounding area from any adverse effects of the project.

The application for project approval under the Wetlands Alteration Law requests information of the applicant which the Board deems necessary or desirable in order to approve or deny a regulated activity. The burden of proof is on the applicant to demonstrate that the proposed development will meet the criteria of the Wetlands Law. An applicant having questions such as the degree of detail or the applicability of certain questions in the application to a specific development is encouraged to seek guidance from the Department of Environmental Protection staff prior to formal submission. In the case of large developments, a pre-application conference between developer and staff may be held to address these questions.

B) Application Processing Procedure

The following is a description of the application processing procedure followed by the Department of Environmental Protection's Land Bureau staff.

When an application is submitted to the Department of Environmental Protection, it is reviewed to determine if it is complete.

The Commissioner of DEP must, within 10 working days of receipt of an application, notify applicants (a) of the official date on which the application was accepted, or (b) return the application to the applicant specifying in writing the reasons for returning the application. (§§ 344.3)

In order to make the necessary conclusions that a project meets these criteria, the Act, in Section 481, provides for consultation between appropriate state agencies and the Department of Environmental Protection. Those agencies within the state having jurisdiction or regulations which may pertain to wetland projects and which address one or more of the above criteria are considered "review agencies".

In order to solicit reviews, the completed application is summarized and sent along with copies of the exhibits to appropriate review agencies. Those state agencies

most commonly receiving review materials are listed in the following chart, along with their regulations or jurisdictions and the criteria which they address.

A visit to the site is made by a Department of Marine Resources staff member, and perhaps representatives of the Department of Inland Fisheries & Wildlife or the Soil and Water Conservation Commission.

C. The Review Criteria

The following discussion is a guide to understanding how the Wetlands Alteration criteria are supplied in reviewing complete applications. It describes in more detail the information contained in the following chart. The questions in the application which most commonly pertain to each criterion are identified. Also included is a description of any review agencies, and their standards, which may be asked to review the application.

The Proposed Activity Will Not Unreasonably Interfere With Existing Recreational And Navigational Uses...

Questions in the application regarding this criterion include: project description (1); length of shoreline owned (3) and nature of shoreline (4); physical dimensions of project (6); present use of wetland (7) and adjacent wetland (8); site plan (10); proposed measures to protect surrounding area from adverse impact (11); description of any related projects (12); dredging, filling, and deposition of material (13 and 14).

Review agencies include the U.S. Army Corps of Engineers, which charts, categorizes, and maintains navigation channels in the state's tidal waters. The U.S. Coast Guard may also supply comment on a proposals probable effect on navigational uses. Municipalities and private individuals, whose comments are solicited as an application requirement, may provide evidence of possible interference of a project to navigational use and/or recreational use.

Within the Department of Conservation, the Bureau of Parks and Recreation, which owns recreational lands along the coast including boat launching sites, may comment on proposals impacting these lands or the recreational and navigational activities associated with them. Municipalities owning or maintaining public recreation or boat access facilities may also serve to review wetlands proposals under this criteria. The 'Recreation Facilities and Activities' maps, part of the Maine Coastal Inventory, provide the DEP with additional information concerning existing recreation use in coastal wetlands.

The Department of Transportation, Bureau of Waterways reviews Wetland applications which may cause interference with state ferry service routes. The Bureau is also responsible for comprehensive plans and surveys for the use of port facilities, which may additionally aid in reviewing navigational impacts.

*Numbers relate to question numbers in the permit application (see Appendix F3c).

STANDARDS FOR REVIEW OF WETLANDS LAW APPLICATIONS IN ACCORDANCE WITH REVIEW CRITERIA

Wetlands Law Criteria	Review Agency	Standards
The proposed activity will not unreasonably interfere with existing recreational or navigational uses.	Department of Transportation - Bureau of Waterways	State Ferry Routes Port Plans and Surveys
	Department of Conservation - Bureau of Parks and Recreation	Management Plans for State Park Holdings
	Executive Department - State Planning Office	Recreation Facilities and Activities Inventory Maps
The proposed activity will not cause unreasonable soil erosion.	Department of Agriculture - Soil and Water Conservation Commission	'Environmental Quality Handbook' for Erosion and Sediment Control
The proposed activity will not unreasonably interfere with the natural flow of any waters	Department of Marine Resources (DMR) - Division of Marine Research	Data on Species Requirements Related to Water Flow and Flushing Rates
	Department of Inland Fisheries & Wildlife - Fisheries Division	Data on Species Requirements Related to Water Flow and Flushing Rates
The proposed activity will not unreasonably harm wildlife or freshwater, estuarine, or marine fisheries.	DMR - Division of Marine Research	Species Management Plans
	Department of Inland Fisheries & Wildlife	Wetlands Inventory
	Executive Department - State Planning Office	Fish and Wildlife Coastal Inventory Maps
The proposed activity will not lower the quality of any waters	Department of Environmental Protection - Bureau of Water Quality Control	Water Classification Standards: Tidal or Marine Waters

This criterion's major applicability rests in proposals where structures may extend out into waters deep enough to interfere with recreation or navigation, such as warfs or docks; and structures proposed along shore which may block recreational access to the water. In cases where it appears that a proposal may affect recreation or navigation, the DEP Land Bureau staff must ascertain, through review agencies or study, to what extent the affected area is utilized for these activities.

The degree to which an affected wetland is presently utilized for recreation or navigation, the extent of interference on these activities imposed by a proposed activity, and the practicality of minimizing any interference (through design alteration or better location, for example), are important considerations when reviewing a wetlands proposal under this criterion.

The Proposed Activity Will Not Cause Unreasonable Soil Erosion...

Questions pertaining to this criterion in the application include: the project description (1), nature of shoreline (4), power equipment to be used in construction (9), site plan (10), measures to prevent adverse impacts (11), extent of dredging and filling, location of the high and low water mark in relation to the project, and the extent of earth moving and earth stabilization measures proposed. Altered shoreline or fill subject to wave action may be highly erodible unless properly and quickly stabilized.

The 'Environmental Quality Handbook' for erosion and sediment control in Maine depicts methods and techniques for the control of non-agricultural erosion and sedimentation. This publication is distributed by several state agencies, including the DEP, which recommends its use by anyone proposing a wetland activity likely to cause erosion potential. This handbook is also used by the DEP Land Bureau staff in reviewing the adequacy of proposed erosion control provisions in an application. Prospective applicants may receive guidance in the use of the Handbook from the district Soil Conservation Service Office, the Maine Soil and Water Conservation Commission, or from the DEP Land Bureau staff. These are the same agencies which normally review complete applications for erosion control measure adequacy.

The Department of Marine Resources and Department of Inland Fisheries and Wildlife review the applications in order to assess the potential adverse impacts on marine and wildlife in wetland areas caused by erosion and sedimentation from the proposed project.

The Board of Environmental Protection recently adopted a policy whereby wetland applications for the approval of new seawalls will generally not be approved since such structures promote erosion of materials seaward of the wall, in most cases.

The Proposed Activity Will Not Unreasonably Interfere With The Natural Flow Of Any Waters...

Questions in the application dealing with this criterion include: project description (1), shoreline owned by applicant (3), and nature of shoreline (4), physical dimen-

sions of project (6), present use of wetland and adjacent wetland (7 and 8), provisions for preventing adverse impact from the surrounding area (11), dredging, filling and location for deposition (13 and 14).

Key aspects of a project considered by review agencies under this criterion are the projects dimensions and intrusion beyond the low water line, orientation of structure with respect to direction of flow, extent of flow, probable effects on shoreline, wetland bottom, and wetland biota or habitat.

In its administration of the wetlands law and consultation with the various review agencies, the DEP Land Bureau staff and the Board recognize that certain types of structures located in wetlands interfere less with the natural flow of waters than others. Examples include wharves on pilings as opposed to solid fill, and a preference for rip rap over sea walls for shoreline stabilization.

The location of solid structures such as piers or bulkheads along the shoreline owned by the applicant to minimize water flow interference is common review consideration under this criterion, particularly if the interference will affect nearby fisheries or wildlife.

The Department of Marine Resources and Department of Inland Fisheries and Wildlife biologists review proposals to aid the DEP in identifying potential adverse impacts on fish and wildlife habitat or populations caused by potential interference of water flow and flushing rates.

The Proposed Activity Will Not Unreasonably Harm Wildlife Or Freshwater, Estuarine Or Marine Fisheries...

Information in the completed application dealing with: project description (1), length of shoreline owned by applicant (3), nature of shoreline (4), physical dimensions of project (6), present use of the wetland and adjacent wetland (7 and 8), site plan specifications (10), provisions for preventing adverse impact (11), extent of proposed dredging, filling, and location for deposition of dredged material (13 and 14), is used in reviewing a proposal's probable impact on fisheries and wildlife.

Key review agencies consulting with the DEP regarding this criterion include the Department of Marine Resources and the Department of Inland Fisheries & Wildlife.

Department of Marine Resources coastal wardens and biologists utilize on-site inspections of proposal sites, professional fisheries expertise, species management plans, and local knowledge of wetland productivity to aid the DEP in assessing probable biological and economical impacts of an activity on marine or estaurine fisheries.

The Department of Inland Fisheries and Wildlife maintains a wetlands inventory which identifies intertidal wetlands of importance to waterfowl.

By way of agreement between the DEP and the State Planning Office (Appendix 12d), coastal inventory maps depicting areas and waters of importance to specific fish and wildlife species, assist the DEP in their review of applications under this criterion.

In evaluating a proposal under this criterion, the BEP utilizes the information in the application, review agency comments, and public comments.

In general, structures placed on rocky bottoms pose less threat to fisheries, such as clams, than do structures placed on marine sediments. Structures on pilings as opposed to rock-filled cribs tend to destroy less productive bottom habitat. The damming of an embayment to create a natural lobster pound may prevent access to producive clam or worm habitat; however, a regular schedule of drawdown may provide reasonable access for harvesting.

In considering action on a proposal, the Board utilizes the information gathered to find whether the proposal presents any threat to fish or wildlife, and if so, whether or not such threat can be avoided through reasonable alterations in the proposal such as minor relocation or design alterations, enforced through permit conditions.

The Proposed Activity Will Not Lower The Water Quality Of Any Waters

Questions in the application dealing with this criterion generally include: description of the project (1), and whether or not a waste discharge liscense from the Department of Environmental Protection, is required (5).

For most proposed activities, determination of whether or not a proposal will lower the quality of any waters is determined by consulting the Classification Standards for Marine or Tidal Waters, administered by the DEP Bureau of Water Quality Control. These standards identify substances whose discharge into waters is controlled by the State in accordance with water quality classifications.

If the applicant for a Wetlands Alteration permit has already received a Waste Discharge liscense, this fact ordinarily proves compliance with this criterion. If a Waste Discharge liscense is denied for a project, it cannot meet this review criterion of the Wetlands Law.

Applications submitted simultaneously for Wetlands and Waste Discharge approval will be processed simultaneously by the two DEP Bureaus, and if approved, will normally be conditioned upon reciprocal approval. Additionally, if the need for a Waste Discharge liscense has not been determined by the applicant for a Wetlands permit, the Bureau of Water Quality Control, acting as a review agency, will do so, and if one is required, notify the applicant. (Section 7.2 describes Marine Water Quality Standards.)

D. Project Evaluation

The staff of the DEP Land Bureau performs the final evaluation of a project once all solicited reviews have been received from the review agencies.

Reviews are studied and, along with any findings by Land Bureau staff, are linked with the appropriate review criteria. In order for any proposal to be approved, it must be found to satisfy all the review criteria specified in the Wetlands Alteration Law.

The Board frequently includes in the Board Order approving the application special conditions designed to insure reasonable compliance with site approval criteria.

E. Final Action

Within 30 days after receipt of an application, the BEP, the DEP, or the municipality must either issue or deny the permit, or order that a public hearing be held within 30 days of the order. If a public hearing is held, the permit must be issued or denied within 30 days after adjournment of the hearing. An applicant may request a public hearing.

A permit issued by the BEP is effective on the date of approval, while a permit issued by a municipality does not become effective until 30 days after issuance. Immediately after issuance of a permit by a municipality, a copy of the application for the permit and the permit issued must be sent to the BEP. The BEP may then review the permit and either approve, deny, or modify it. Failure of the BEP to act within 30 days of receipt of the permit from the municipality constitutes effective approval of the permit.

F. Appeal

If a permit is denied, the applicant may request a hearing by the Board or municipality. An average of perhaps half a dozen applications are appealed annually, and perhaps one of those may be reversed.

Within 10 days of the applicant's receipt of the final Board decision, anyone who is aggrieved by the decision may petition the BEP for an opportunity to present new or additional evidence which may result in reconsideration of the conditions of approval or of denial. The BEP may, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing, or dismiss the petition. Municipalities which handle an application may handle appeals in the same manner as does the BEP.

Anyone aggrieved by any order or decision of the Board or municipality in regard to any matter upon which there was a hearing before the Board or municipality and of which a transcript is available, may, within 30 days after notice of the filing of such order or decision, appeal to the Superior Court. The court's review is limited to questions of law and to whether the Board or municipality acted regularly and within the scope of its authority. The decision of the Board or municipality is final so long as supported by substantial evidence. The court may affirm, reverse, or remand the decision of the Board or municipality for further proceedings.

G. Violations

Any filling, dredging, depositing, altering, or erecting of permanent structures which takes place on tidal or subtidal land without a permit or contrary to the provisions of a permit is a violation of the law and is subject to a fine of not more than $500 for each day of violation, regardless of whether or not the violation was unintentional. In the event of a violation, the Attorney General may institute proceedings to prevent further violation and to compel restoration of the affected area to its prior condition. Restoration in the past has primarily involved removal of fill and subsequent stabilization of the area.

Enforcement of the regulations in the law can be carried out by all law enforcement officers under a formal cooperative agreement with the DEP. This is primarily done by the Department of Marine Resources (DMR) coastal wardens, and to a lesser extent by Department of Inland Fisheries and Wildlife wardens.

7.4 SHORELAND ZONING ACT

7.41 SUMMARY

Generally known as Shoreland Zoning, the Mandatory Zoning and Subdivision Control Act is one of the most effective tools Maine has to control land uses that may adversely affect the waters of the State. (The full text of the Act is contained in Appendix F4a.)

As stated in the legislation, the purpose of the Act is:

> "To aid in the fulfillment of the state's role as trustee of its waters and to promote public health, safety, and the general welfare, it is declared to be in the public interest that shoreland areas defined as those land areas, any part of which are within 250 feet of the normal high water mark of any navigable pond, lake, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty." (12 M.R.S.A., § 4811)

All cities and towns, with the exception of a few unorganized towns in LURC jurisdiction, in the coastal area have Shoreland Zoning ordinances. The ordinances must, by law, meet minimal acceptable standards which include provisions that relate to:

- the protection and enhancement of water quality and the aesthetics of water bodies;
- the protection of shoreland areas from erosion;
- the protection and preservation of indigenous shoreland vegetation and wildlife;
- the protection of development in flood plain areas from flood hazards; and
- the protection of points of access to water bodies.

In most coastal communities, ordinances follow Guidelines suggested by the State and in all cases must be judged to be equally effective, even if they differ in format. (See Appendix F4b for "State of Maine Guidelines for Municipal Shoreland Zoning Ordinances.") Thus, most ordinances contain three districts and establish

what uses are permitted in each. While an oversimplification, the table below describes the basic relationships between districts, areas, and permitted uses.

District	Area Where Applied	General Use
Resource Protection	Wetlands, steep slopes, flood plains	No residential, commercial, or industrial structures
Limited Recreational-Residential	Land not in other two districts	Mix of uses, including forestry, agriculture, and residential dwelling units set back at least 75 feet
General Development	Areas devoted to or suitable for intensive development	Mix of development uses with no required setback

In communities where this form of ordinance is not in force, other equally effective shoreland regulations have been adopted to assure compliance with the law. In those few cases where a municipality has not adopted Shoreland Zoning, a state Imposition Ordinance is in effect. Under state imposed ordinances, all shoreland areas are zoned by the State in conformance with the above-mentioned districts.

Each coastal town is responsible for administering and enforcing its own shoreland ordinance. Guidance is provided as mandated by the law, by the Department of Environmental Protection (DEP) and the Land Use Regulation Commission (LURC), under the administrative direction of the State Planning Office (SPO). Technical assistance is also provided by the Regional Planning Commissions (RPCs) but is not required by law.

7.42 HISTORY OF THE SHORELAND ZONING ACT

The Shoreland Zoning Act was introduced to the 105th Legislature in 1971 as an act that could help maintain water quality and guide development growth on Maine's lakes, coast, and major rivers.

At that time, large sums of money were being spent to clean up polluted rivers, yet little was being done to plan for thoughtful land use along these same rivers. Ironically, dirty water had discouraged shoreland development, and, although the clean-up might reverse this trend, towns were ill-prepared to ensure that new development would not contribute more pollution. Furthermore, the building and second-home booms of the late sixties had resulted in accelerated, uncontrolled shoreland development.

The original Act of 1971 passed and required organized municipalities to establish zoning controls on all navigable lakes, rivers and streams, and ocean frontage by July 1, 1973. However, no funding was appropriated and the deadline proved unrealistic. Few municipalities complied, and of those that did, many enacted weak or inadequate ordinances. The Act failed to assign clear State responsibilities, did not clearly define what water bodies should be zoned, and provided no funds for public education or implementation.

In recognition of these initial shortcomings, further legislation was enacted in 1973. On June 23rd of that year, Public Law 424, AN ACT to Extend the Deadline for Mandatory Shoreland Zoning, was enacted as an emergency measure by the 106th Legislature. The Act gave municipalities an additional year to enact shoreland zoning ordinances and made the following provisions (among others):

1. Assigned the State Planning Office the role of administering and coordinating the Act under the guidance of the Board of Environmental Protection and the Land Use Regulation Commission.

2. Directed the State to adopt shoreland zoning Guidelines* to assist municipalities.

3. Directed the State Planning Office to list those rivers subject to shoreland controls.

4. Directed the Board of Environmental Protection and the Land Use Regulation Commission to adopt ordinances for those municipalities that failed to enact their own.

5. Directed the Attorney General to institute legal action if a municipality failed to administer or enforce its ordinance.

An initial draft of model Guidelines, in the form of a shoreland ordinance, (which a municipality could adopt directly or, preferably, revise and hone to best fit local conditions and needs) was released by a BEP-LURC Shoreland Zoning Task Force on October 23, 1973. This was followed by five (5) public hearings. The Guidelines were then finalized and adopted, as required by law, by the Board of Environmental Protection and the Land Use Regulation Commission before the statutory deadline of mid-December, 1973.

The Guidelines provided a base on which to work towards local ordinances. In addition, the 106th Legislature appropriated $15,000 to hire a full-time shoreland zoning coordinator and prepare technical materials for distribution to the towns and regional planning commissions. No State funds were directly appropriated for shoreland related work by the Regional Planning Commissions. Nevertheless, they did

* For full text of the "State of Maine Guidelines for Municipal Shoreland Zoning Ordinances," see Appendix F4b.

provide considerable technical assistance to the towns, using, in part, monies provided by the State for technical services.

At the municipal level, substantial work was required of concerned citizens, planning boards, selectmen and others, to assure the development of a reasonable ordinance. Generally, each municipality had to go through the following steps:

1. Designate a responsible group to develop an ordinance; this was generally a local planning board;

2. Determine an approach;

3. Obtain a base map;

4. Collect data and information;

5. Establish land use districts and boundaries;

6. Prepare an ordinance, map, and text;

7. Hold public information meeting(s);

8. Finalize the shoreland zoning map and ordinance;

9. Enact the ordinance at an Annual or Special Town meeting, or by the Town or City Council.

Thus, each municipal planning group had to inventory land and water resources within 250 feet of the normal high water mark, determine the degree of protection required, and designate districts in accordance with the Act and the State's minimum Guidelines. Public meetings assured citizen participation within the process of developing the final ordinance.

By August 6, 1974, approximately 68% of the communities in the coastal area had enacted a shoreland zoning ordinance, or a general zoning ordinance with shoreland protection provisions. A State Imposition Ordinance was imposed on those towns without ordinances.

Adopted by the Board and Commission, the Imposition Ordinance acted as a temporary one-year moratorium and involved placing all unzoned shoreland in a Resource Protection District according to the text of the State Guidelines Ordinance.

Between August 7, 1974, and August 7, 1975, 24 Imposition Ordinances in the coastal area were repealed. Those coastal towns that failed to achieve an effective ordinance after the one-year moratorium have had a Final Shoreland Ordinance imposed on them by the State. These ordinances consist of the State Guideline Ordinance with the districts tailored to fit the shoreland characteristics

and resources of the town. The establishment of three districts - Resource Protection, Limited Residential/Recreation,and General Development - was preceded by special meetings with town officials to determine the accuracy and relevance of the various zones.

Status of Shoreland Zoning Ordinances in Coastal Towns		
Total minor civil divisions in coastal area	142	--
Total Unorganized towns in LURC jurisdiction*	11	--
Total organized towns in coastal area	131	100%
Organized towns with acceptable Shoreland Ordinance in August, 1974	89	68%
Organized towns with acceptable self-imposed and adopted Shoreland Ordinances in April, 1977	110	84%
Organized towns with State imposed Shoreland Ordinance in April, 1977	18	14%
Organized towns with partial State-imposed Shoreland Ordinance in April, 1977	3	2%

* Towns in LURC jurisdiction have equivalent or better shoreland zoning controls in shoreland areas under the agency's "Land Use Districts and Standards." (For more information, see Section 7.5 and Appendix F5b - F5c.)

The Maine Shoreland Zoning Act has thus been substantially implemented as envisioned. Controls to guide and direct growth of development in shoreland areas are in place and no legal challenges have been forthcoming. Nonetheless, some problems remain concerning the effective implementation of individual ordinances. Basically, those problems include:

1. Inadequate funds for technical assistance to the towns.

2. Increased fiscal and administrative responsibility for under-staffed municipalities with limited funds.

3. Misconceptions about the law.

4. Lack of enforcement.

5. Poorly constructed ordinances and maps.

As can be discerned in this brief history, the Shoreland Zoning Act has gained strength over a six-year period, despite its technical nature and a lack of funding for administration, enforcement, scientific research, and educational programs.

Maine's Coastal Program embraces the Act in its current form, yet seeks to improve on its usefulness through coastal zone funds which can help resolve some of the problems identified above. (See Section 8.)

7.43 USES AND AREAS REGULATED BY THE SHORELAND ZONING ACT

The extent to which land uses are regulated by Shoreland Zoning varies to some degree from town to town. All towns, however, are required to uphold minimum land use regulations modeled or copied from those contained in the State's "Guidelines for Municipal Shoreland Zoning Ordinances." (See Appendix F4b and the Summary described later on in this section.)

The land areas regulated by Shoreland Zoning are described in the Act as: ". . . land within 250 feet of the normal high water mark of any pond, river, or salt water body . . ."

The normal high water mark of coastal waters is that line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap. The normal high water mark of inland waters is the line on the shores and banks of nontidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to prolonged action of the water. Ponds are defined as bodies of water of more than 10 acres. (An exception is made for man-made ponds in single-ownership.) A river is defined as "any free-flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth." However, areas within 250 feet of rivers with less than a 25 square mile watershed drainage may be zoned, under this Act, at the local communities' option.

The Act allows this 250-foot band to be expanded, at the discretion of towns, in order to protect the public health, safety, and welfare and to avoid problems associated with flood plain development. Further, it states that the area "not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program."

The Act requires that land areas designated as shoreland zoning areas be subject to controls to assure safe conditions and water quality, protect spawning grounds, fish, aquatic life, bird and other wildlife habitat, and conserve shore cover, visual and physical access to the water and natural beauty.

Obviously, land conditions in the shoreland zone vary considerably. However, each town's shoreland ordinance designates which land areas require most protection and which require least. Typically, this results in the designation of three "districts": Resource Protection, Limited Residential/Recreational,and General Development. The diagrammatic sketches on the following page illustrate how the districts are applied. The extent of each district is discussed below.

Resource Protection District

The State's shoreland Guidelines require that the Resource Protection District (or its equivalent) include all: . . . "areas in which development would adversely affect water quality, productive habitat, biotic systems, or scenic and natural values." The Guidelines require that this district include:

1. "Inland or coastal wetlands as defined in Section 13, and specifically areas rated as moderate to high-value waterfowl areas by the Department of Inland Fisheries and Wildlife, as of January 1, 1973."

2. "Flood plains as defined by the 100-year flood or the flood of record or, in the absence of these, by soil types identifiable as recent flood plain soils."

3. "Areas having sustained slopes greater than 25%, or unstable soil subject to slumping, mass movement, or severe erosion, when these areas are two acres or more in size."

It is also suggested that this District include:

4. Other significant wildlife habitat.

5. Natural sites of significant scenic or aesthetic value.

6. Areas designated by Federal, State, or municipal governments as natural areas of significance to be protected from development; and

7. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance.

General Development District

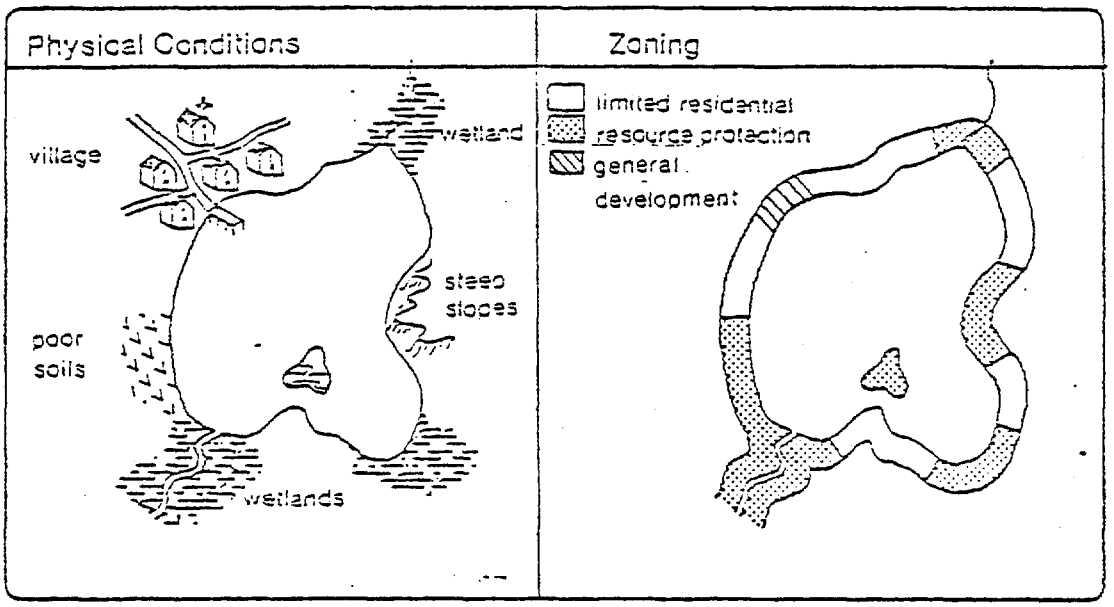
The "Guidelines" require that the General Development District include the following types of areas:

1. Areas of two acres or more devoted to intensive residential, recreational, commercial, or industrial activities or combinations of such activities, including, but not limited to:

   a. Transportation rights of way;
   b. Communication and utility rights of way;

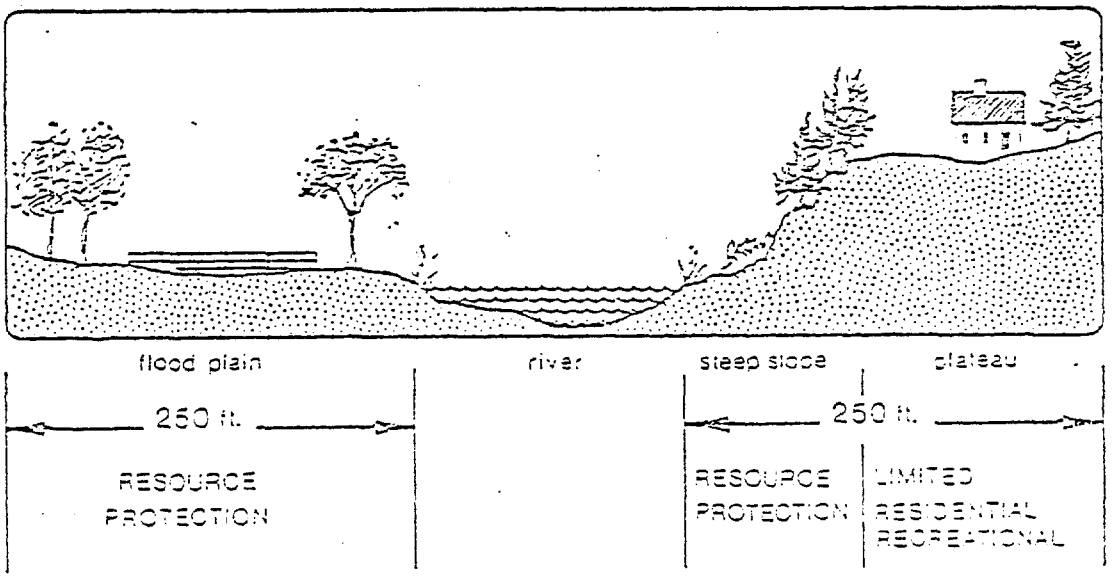
District	Areas to which it should be applied
Resource Protection	—wetlands, steep slopes, flood plains
Limited Residential-Recreational	—Land which may be suitable for development and which doesn't fall into the other two districts.
General Development	—areas devoted to intensive urbanization or development

Example #1



Example #2

Municipalities could place all shoreland area into one of these three districts, as shown:



c. Areas used for the extraction or processing of mineral resources;
d. Areas devoted to: manufacturing, fabricating, wholesaling, warehousing or other commercial activities;
e. Areas devoted to retail trade and service activities;
f. Areas devoted to intensive recreational development and activities;
g. Areas devoted to residential dwelling units at a density of 3 or more per two acres;
h. Areas devoted to mixed or combined patterns of a through g above.

2. Areas otherwise discernable as having patterns of intensive residential, recreational, commercial, or industrial uses.

Thus, towns are mandated to include these areas. It is probable that a number of towns have included undeveloped areas adjacent to these areas to allow for future growth.

Limited Residential-Recreational District

The Limited Residential-Recreational District includes areas other than those included in the Resource Protection District which are used less intensively than those included in the General Development District.

Land Use Activities Regulated in Each District

Most land uses proposed in any one of the three districts above are subject to controls, if allowed. It would be an extensive task to specify precisely what uses are permitted in any one district without referring to individual town ordinances. However, the State's minimum Guidelines do provide an overview of how different uses are controlled. The table on the next page is extracted from the Guidelines. Basically, it prohibits all residential, commercial, or industrial structures and private sewage disposal systems in Resource Protection Districts. Furthermore, it requires that certain uses (shown on the table marked with asterisk) be subject to land use standards or performance criteria. The Standards in the Guidelines are summarized briefly below:

A. Agriculture: requires manure spreading and disposal to follow specified guidelines and that no tilling occur within 50 feet of the normal high water mark.

B. Beach Construction: requires permit from DEP.

C. Campgrounds: 75-foot setback required for the placement of all recreational vehicles, and 5,000 sq. ft. each vehicle.

D. Clearing: no more than 30 feet every 100 feet of shoreline can be cleared within 50 feet of the water.

E. Erosion and Sedimentation Control: to be accomplished to maximum extent possible to reduce soil erosion and sedimentation.

F. Mineral Exploration: permit required for actions that require more than minimal ground disturbance.

LAND USE CHART

KEY: Yes - Allowed (no permit required)
No - Prohibited
BP Permit - Requires permit issued by the Planning Board
CEO Permit - Requires permit from Code Enforcement Officer
* - Subject to specific Land Use Standards, Section II

Land Uses	DISTRICT: Resource Protections	Limited Residential-Recreational	General Development
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing and hiking	yes	yes	yes
2. Motorized vehicular traffic on roads and trails, and snowmobiling	yes	yes	yes
3. Forest management activities except for timber harvesting	yes	yes	yes
4. Timber harvesting *	CEO permit	yes	yes
5. Fire prevention activities	yes	yes	yes
6. Wildlife management practices	yes	yes	yes
7. Soil & water conservation practices	yes	yes	yes
8. Mineral exploration *	yes	yes	yes
9. Surveying and Resource analysis	yes	yes	yes
10. Emergency operations as defined	yes	yes	yes
11. Harvesting of wild crops	yes	yes	yes
12. Agriculture *	PB permit	yes	yes
13. Principal structures *			
Residential dwelling units	no	PB permit	PB permit
Commercial structures	no	no	PB permit
Industrial structures	no	no	PB permit
14. Structures accessory to permitted uses	CEO permit	CEO permit	yes
15. Road construction *	PB permit	yes	yes
16. Small non-residential facilities for educational, scientific or nature interpretation purposes	PB permit	yes	yes
17. Public and private parks and recreation areas involving minimal structural development	PB permit	yes	yes
18. Campgrounds	no	PB permit	PB permit
19. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 ft. in length, and uses projecting into water bodies.			
Temporary	CEO permit	CEO permit	CEO permit
Permanent	PB permit	PB permit	PB permit
20. Clearing for approved construction	CEO permit	yes	yes
21. Essential services accessory to permitted uses	yes	yes	yes
22. Private sewage disposal systems	no	CEO permit	CEO permit
23. Public utilities, including sewage collection & treatment facilities	PB permit	PB permit	PB permit
24. Signs *	yes	yes	yes
25. Filling or other earth-moving activity of less than 10 cubic yds	CEO permit	yes	yes
26. Filling or other earth-moving activity of more than 10 cubic yds	PB permit	CEO permit	CEO permit
27. Uses similar to permitted uses	CEO permit	CEO permit	CEO permit
28. Uses similar to uses requiring a CEO permit	CEO permit	CEO permit	CEO permit
29. Uses similar to uses requiring a PB permit	PB permit	PB permit	PB permit

G. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 feet long and uses projecting into water bodies:

1. Access from shore shall be on appropriate soil.

2. The location shall not interfere with beach areas.

3. Adverse effects on fisheries should be minimized.

H. Residential Lots:

- Minimum lot size (without sanitary sewer) 20,000 square feet;
- Minimum shore frontage: 100 feet; Maximum building coverage 20%;
- These same minimum requirements must be met for each additional dwelling unit.

I. Road Construction: roads are to be constructed so that minimal erosion results, at least in conformance with standards specified in a U.S.D.A. Logging Road publication. Further, watercourse crossings should be minimized and exposed mineral soil revegetated or stabilized.

J. Sanitary Standards: subsurface disposal systems must be located on suitable soils, as determined by a State licensed soil investigator. The State Plumbing Code requirements must be met and facilities must be set back at least 100 feet from the high water mark.

K. Signs: limits location, size, and number of signs in Resource Protection and Limited Residential-Recreational Districts.

L. Soil: land uses shall be located on soils without causing adverse environmental impacts, including severe erosion and mass soil movement.

M. Structures:

1. All principal structures in Resource Protection or Limited Residential-Recreational Districts shall be set back 75 feet from the normal high water mark.

2. First floor level shall be at least two feet above the 100-year flood elevation.

N. Timber Harvesting:

1. No substantial accumulation of slash is to be left within 50 feet of the high water mark.

2. A filter strip of vegetation must be left between skid trails and the water.

3. Harvesting shall be conducted so as to leave well-distributed tree stands.

4. No single harvesting activity shall create an opening of greater than 7,500 square feet in the forest canopy.

5. No more than 40% of the volume of trees shall be removed in any 10-year period.

O. Water Quality Protection: no activity shall discharge any liquid or material that is harmful to human, animal, plant, or aquatic life.

7.44 HOW SHORELAND ZONING IS ADMINISTERED AND ENFORCED

STATE ADMINISTRATION AND ENFORCEMENT RESPONSIBILITIES

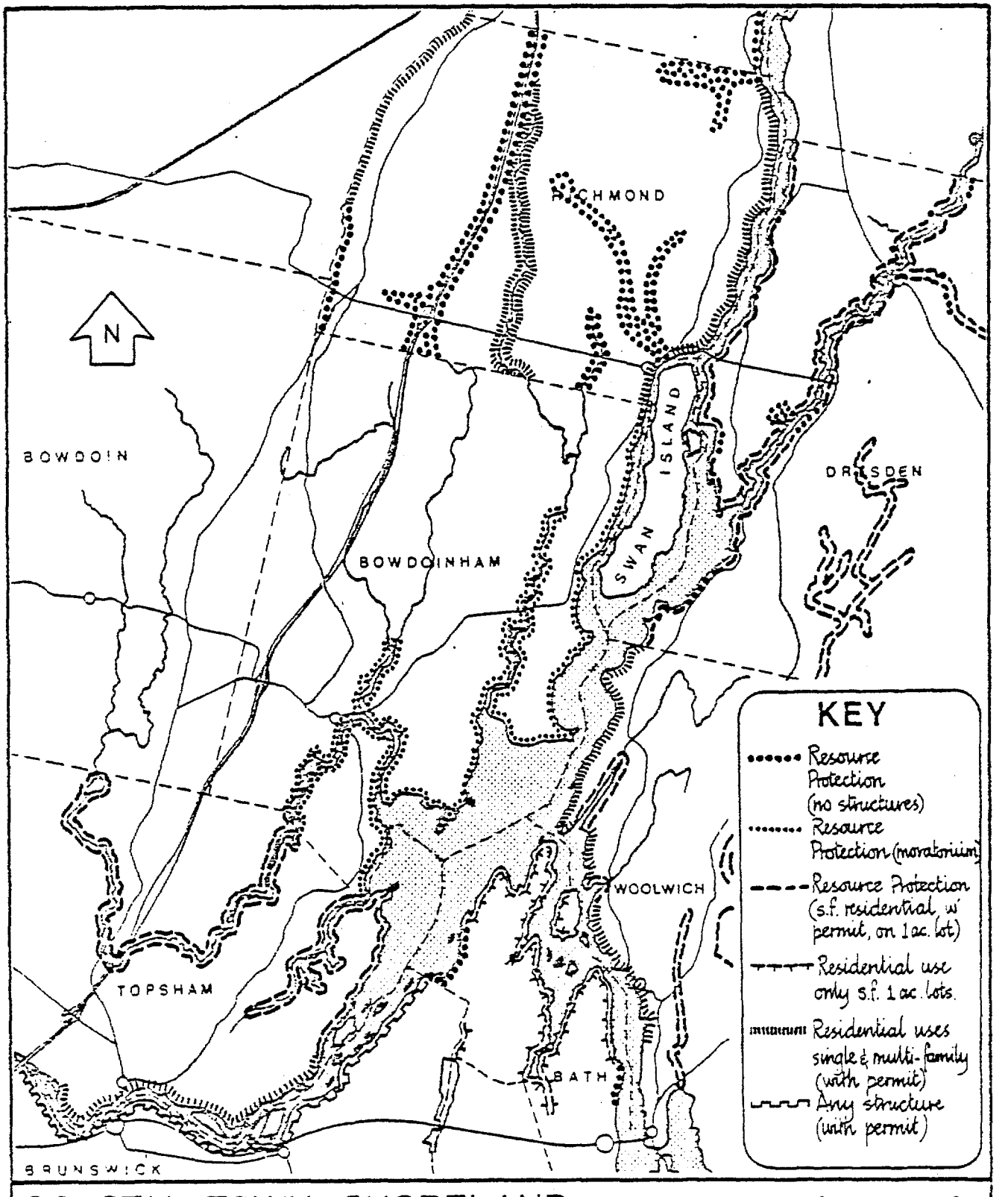
The Act states: "Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone, and control the subdivision of land." (12 M.R.S.A. § 4812) Section 4813 gives the Department of Environmental Protection and the Land Use Regulation Commission power to adopt suitable ordinances, following consultation with the State Planning Office, for those municipalities that fail to meet the requirements of the Act, and requires the municipalities to administer and enforce the State imposed ordinance.

The role of the DEP, LURC, and SPO is that of ensuring that the objectives of the law are met. The State Planning Office is responsible for coordinating the efforts of the Board of Environmental Protection and the Land Use Regulation Commission and ensuring that municipalities and all state agencies mutually cooperate to accomplish the purposes of the Act.

The Act requires towns to submit their shoreland ordinances to the State Planning Office for review for conformance with the laws. In practice, this administration procedure has worked well, and despite inadequate funding, both the State Planning Office (with assistance from the Regional Planning Commissions) have helped the coastal towns achieve reasonable shoreland ordinances. Nonetheless, there is still more to be done as many ordinances should be strengthened and refined.

The Act makes provision for ensuring that municipalities enforce their ordinances:

> "If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this



COASTAL TOWN SHORELAND ZONING

An example of individual Shoreland Zoning ordinances around a Merrimeeting Bay, an estuary within the coastal area. (Showing 1975 conditions)

0 1 2
MILES

Maine's Coastal Program

chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies requiring the municipal officials to enforce such zoning ordinance. The Attorney General shall be made a party to all civil and criminal actions in which the pleadings challenge the legality of any ordinance or portion thereof adopted pursuant to the guidelines promulgated under section 4813." Title 12 § 4814.

LOCAL ADMINISTRATIVE AND ENFORCEMENT RESPONSIBILITIES

Every coastal town administers and enforces its own "Shoreland Ordinance." Decision making typically rests with the Code Enforcement Officer, who is often the Town Manager, or the Planning Board, depending on the permit required. (In some towns the Board of Selectmen act as the Planning Board.) Appeals are generally heard by a Board of Appeals appointed by the municipal officers.

PERMIT PROCEDURE

Each local shoreland ordinance lists which uses require a permit from the Code Enforcement Officer or the Planning Board and, although exact submission requirements may vary locally, applications must be submitted in writing. Additional information may then be required to determine if the application conforms with the ordinance. Generally, action as to whether a permit has been approved, approved with conditions, or denied, should occur within 60 days of receipt of a complete application. No permit can be denied if it is in conformance with the provisions of the ordinance. The minimum Guidelines require that the Planning Board or Enforcement Officer find that the proposed use:

a. "Will not result in unsafe or unhealthful conditions;

b. Will not result in erosion or sedimentation;

c. Will not result in water pollution;

d. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;

e. Will conserve shoreland vegetation;

f. Will conserve visual points of access to waters as viewed from public facilities;

g. Will conserve actual points of public access to waters;

h. Will conserve natural beauty;

i. Will avoid problems associated with flood plain development and use; and

j. Is in conformance with the (provisions of Section 11) Land Use Standards."

Local shoreland ordinances include provisions for variances. Should an applicant wish to appeal a permit decision, a public notice and written notice to the Board of Appeals is required. The Board of Appeals is empowered to reverse a decision of the Planning Board or Code Enforcement Officer if it was made contrary to the provisions of the ordinance. An appeal may be taken, within 30 days after any Board of Appeals decision, by any party, to the Superior Court in accordance with State law.

Any person found in violation of any provision of a local shoreland ordinance may, after reasonable notice, be fined for each violation.

7.5 MAINE LAND USE REGULATION LAW

7.51 SUMMARY

In 1969 the 104th Maine Legislature created the Maine Land Use Regulation Commission under M.R.S.A., Title 12, Chapter 206-A. The purpose was ".... to extend principles of sound planning, zoning, and subdivision control to the unorganized and deorganized townships of the State...." (See Appendix F5a for full text of Act.)

The coastal area contains eight townships and three plantations in L.U.R.C. jurisdiction, including 116 coastal islands; all are subject to the provisions of the L.U.R.C. Statute, the Commission's "Comprehensive Land Use Plan" and its Rules and Regulations which include detailed "Land Use Districts and Standards."

The Land Use Regulation Commission's jurisdiction comprises about 5% of the coastal area (see map over and Appendix F5b - F5c.)

A Commission consisting of seven public members appointed by the Governor is charged with implementing the Land Use Regulation Law. The Commission staff is headed by a director appointed by the Commissioner of the Department of Conservation; the Land Use Regulation Commission is a division of the Department of Conservation.

Basically the Land Use Regulation Act instructs the Commission to: prevent inappropriate development uses and to provide for appropriate uses; to prevent despoilation and pollution; and to preserve ecological and natural values so as to encourage the well-planned use of land and resources.

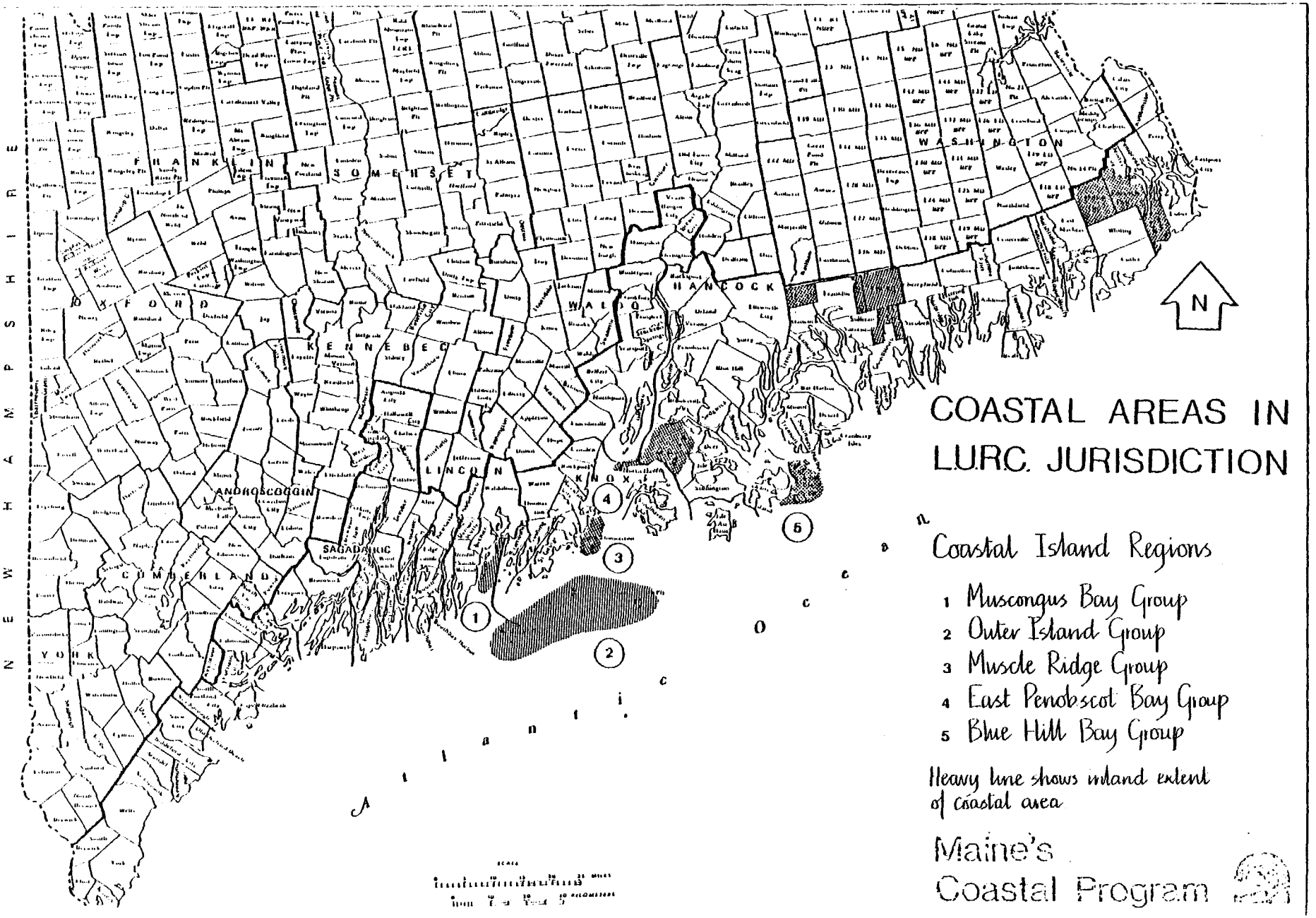
The Commission responded to this broad charge by adopting interim regulations and then, in the fall of 1976, by adopting a "Comprehensive Plan," which establishes policies for guiding development in the Commission's jurisdiction and recommends permanent land use districts based on natural resource parameters; permanent "Land Use Districts and Standards," which (together with official Land Use Maps) spell out how districts are defined and designated and what land uses are permitted therein, were adopted this year.

The table over summarizes the major policies of the Commission in the left margin, lists the districts that are established to help achieve those policies, and comments on the degree of development or protection required to achieve the policy objectives. There are eleven Protection subdistricts, three Management subdistricts, and four Development subdistricts.

POLICY AND DISTRICT INTER-RELATIONSHIP

MAJOR POLICIES	NEW DISTRICTS	DEVELOPMENT POTENTIAL	NEED FOR PROTECTION
	PROTECTION		
Protect the Natural Resources	P-WL Wetland P-FP Flood Prone P-SG Soils and Geology P-RR Recreation P-MA Mountain Area P-FW Fish and Wildlife P-AR Aquifer Recharge P-UA Unusual Area P-SL Shoreland P-GP Great Pond P-RP Resource Plan	Limited development potential. Most building restricted to Shoreland and Great Pond subdistricts Other development regulated Forestry operations permit required, unless performance standards are met	Needs most protection because of hazards of flooding, erosion, sedimentation and potential harm to water quality, wildlife habitat and special recreational resources
	MANAGEMENT		
Support Multiple Land Use Management	M-HP Highly Productive	Forest and agricultural management related development permitted	Needs intermediate degree of protection to ensure resource continues to produce a sustained yield
	M-GN General	Low Density residential development permitted on large lots All forest and agricultural management permitted	
Maintain the Natural Character of Certain Large Areas	M-NC Natural Character	Forest and agricultural management related development permitted All other development limited and regulated	Needs high degree of protection to ensure conservation of natural character
	DEVELOPMENT		
Establish suitable patterns of development and limits to growth	D-GN General D-RS Residential D-CI Commercial/Industrial D-PD Planned Development	Any development permitted within limits of district and resource capability	Needs least protection because only those sites most suitable for development will be so zoned

The Commission thus exerts considerable control over development within its jurisdiction. Through zoning, development is guided away from fragile areas that are unsuitable for construction and toward good soils and areas where existing building has occurred. Most development uses require a permit and permits are issued only when a use is judged suitable according to established standards and criteria. The Law provides for amendments to the Commission's district boundaries and standards, and allows for variances under certain conditions.



COASTAL AREAS IN LURC JURISDICTION

Coastal Island Regions

1 Muscongus Bay Group
2 Outer Island Group
3 Muscle Ridge Group
4 East Penobscot Bay Group
5 Blue Hill Bay Group

Heavy line shows inland extent of coastal area

Maine's Coastal Program

7.52 HISTORY OF THE LAND USE REGULATION LAW

The Land Use Regulation Law was first introduced to the Maine Legislature in 1967, was psssed in 1969, and revised and expanded in scope during subsequent regular and special sessions of the legislature. It was only in 1971 that the Commission's jurisdiction was expanded to include all of Maine's unorganized areas. At the same time the legislation was changed to give the Commission power to delineate districts, to adopt and enforce interim land use standards, issue permits and to adopt a Comprehensive Plan.

These issues occupied the Commission and its staff for the next four years. Considerable mapping, data collection and analysis was undertaken, the whole jurisdiction was interimly zoned on the basis of resource capabilities and existing uses, and efforts to initiate the development of a full Comprehensive Plan and permanent district standards and regulations were undertaken.

In 1973 during the 106th legislative session the composition of the Commission itself was changed. Public membership was expanded from four Governor appointees to seven, and despite subsequent minor changes, this is the present (1977) make-up of the Commission. The 106th also amended the Act by requiring that only three major Land Use Districts be established: Protection Districts, Management Districts and Development Districts.

At present all of the coastal area in Land Use Regulation's jurisdiction is subject to Interim Land Use regulations as specified in Chapter II of the Commission's Rules and Regulations.* (These will be in effect until March 1979, unless the Commission speeds up its program for permanent districting.) The Interim regulations (and the Permanent ones) are based on the three major Districts mentioned above. The Act has thus not changed much in substance since 1973.

The Commission's Interim standards were the subject of public hearings in 1972 and later, prior to the establishment of any proposed interim land use district boundaries, further public hearings were held in places convenient to persons affected by the proposal. Furthermore, as the Act requires the Commission to give written notice (of proposed land use boundaries) to all owners directly affected by its zoning decisions, all owners in the Land Use Regulation Commission's jurisdiction in the coastal area have had full opportunity to comment on regulations affecting their lands.

* "Standards for Interim Land Use District Boundaries and Permitted Uses," (as adopted and revised through June 27, 1975).

The Commission's Comprehensive Plan, mandated by the legislature, was likewise the subject of extensive public scrutiny and hearings during its drafting in 1976. Nine public hearings were held on the working draft and twenty-five hours of testimony was heard. The adopted Plan, revised to reflect public concerns, was approved by Governor Longley in September, 1976.

Between September, 1976, and January, 1977, the Commission drafted its permanent "Land Use Districts and Standards," made them available for public comment through an extensive mailing and three public hearings, redrafted them, and voted to adopt them on January 12, 1977.

The Commission has thus achieved the basic regulatory framework needed to guide land use decisions in its jurisdiction. Its Plan and permanent regulations are in place, as mandated by the Act; its future efforts will focus on mapping districts, establishing regional offices to augment the head office in Augusta, and instituting a "one-stop" permit review process that will eliminate the duplication of permits.

7.53 USES AND AREAS REGULATED IN LAND USE REGULATION COMMISSION'S JURISDICTION

All of the Land Use Regulation Commission's jurisdiction, and obviously all L.U.R.C. jurisdiction in the coastal area, is classified into one of three major districts: Protection, Management, and Development. This is mandated by Section 685-A, 1, of the Act which further states:

> "The Commission shall enact regulations for determining boundaries of each major type of district in accordance with the following standards:
>
> A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including but not limited to flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State.
> B. Management districts: Areas which are appropriate for commercial forest product or agricultural uses and for which plans for additional development are not presently formulated nor additional development anticipated.
> C. Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use, or commercial removal of minerals or other natural resources, and areas appropriate for designation as development districts when measured against

the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the Commission may delineate such subclassifications as may be deemed necessary and desirable to carry out the intent of this chapter."

Most "development" uses in the Land Use Regulation Commission's jurisdiction require a permit and are subject to land use standards, however, the Act makes a significant exception in Management Districts. Land use standards in this district may not limit timber cutting, haul road construction or the erection of structures used primarily for agricultural or commercial forest product purposes. Other uses that generally do not require permits include the following: Primitive recreation uses, motorized vehicle travel, fire prevention and forest management activities, mineral exploration, surveying and emergency operations. Of course, the same use may require a permit in one location and not in another, depending on what district it falls in.

Uses and areas in the coastal area, (in L.U.R.C.'s jurisdiction), are currently subject to interim standards and districts; by May, 1979, they will be subject to permanent standards and districts. There are differences between the interim and permanent regulations, however, the major differences relate to the delineation of subdistricts and not to the manner in which uses are regulated. The table over shows that the new (permanent) districts and subdistricts differ in that there are now subdistricts within the major Development and Management classifications. The central column briefly describes the extent of the subdistrict as is defined in the permanent regulations.

Within the Land Use Regulation Commission's overall jurisdiction it is estimated that about 79% of the land is zoned Management, 19% Protection, and 2% Development. Within the coastal area these figures should probably be revised so as to reflect the large amount of shoreline that will be in a Protection district; hence a higher percentage of land in the coastal area is probably in a Protection category.

Use regulation within each subdistrict listed on the table over is best summarized by the "Chart of Regulated Uses" that follows the table. The chart is a guide; it serves to explain the full text of the most recent use regulations and reasonably reflects how uses are regulated under the Commission's interim regulations. Accurate interpretation of what is permitted in each district or subdistrict can only be achieved by reference to the Commission's offical documents, Chapters II and X of the Rules and Regulations.

THE PERMANENT LAND USE DISTRICTS AND THEIR INTERIM EQUIVALENTS

PERMANENT DISTRICT & SUBDISTRICT	AREA COVERED	INTERIM EQUIVALENT *
PROTECTION DISTRICT		
Aquifer (P-AR)	Highly permeable soil and geologic areas that connect to public ground-water supplies	—
Flood Prone (P-FP)	Areas within 100 year flood plain	P2
Fish and Wildlife	Significant fish spawning, deer wintering and coastal nesting islands	P4
Great Pond (P-GP)	Areas within 250' of ponds of + 10 acres	P3/P10
Mountain Area (P-MA)	Areas over 2700' or areas below with certain high mountain characteristics	P6
Resource Plan (P-RP)	Area only identified by applicant	P1
Recreation (P-RR)	Significant trails, canoeing streams and remote fishing ponds	P7
Soil and Geology (P-SG)	Areas of + 10 acres with + 60% slope or areas of unstable soil or geology	P5
Shoreland (P-SL)	Areas 250 feet from tidal or flowing waters	P3/P10
Unusual (P-UA)	Important historic, scenic, scientific, and aesthetic areas	P8
Wetland (P-WL)	Areas below high water, coastal and inland wetlands of + 10 acres	P9
MANAGEMENT DISTRICT:		
General (M-GN)	Areas appropriate for forest or agricultural management not within M-HP and M-NC areas	Management (M)
Highly Productive (M-HP)	Prime or unique forest, food & fiber lands	Management (M)
Natural Character (M-NC)	Areas of unusual natural or wild character with opportunity for primitive recreation	Management (M)
DEVELOPMENT DISTRICT:		
Commercial/Industrial (D-CI)	Areas of 2 acres or more having existing commercial or industrial structures	Development (D)
General (D-GN)	Other intensively developed areas not included in D-CI or D-RS areas	Development (D)
Planned Development (D-PD)	Planned areas containing +150 residential acres or +50 commercial/industrial acres.	Development (D)
Residential (D-RS)	4 or more single family residential units within a 500 foot radius of each other	Development (D)

* The letter and number refer to the symbols used in the Land Use Regulation Commission publication: "Standards for Interim Land Use District Boundaries and Permitted Uses."

SUMMARY

CHART OF REGULATED USES

The following Chart of Regulated uses is to be used as a *guide* only in determining how the various activities are to be regulated by Chapter X of these regulations; in the instance of conflicts between the Chart and the text of Chapter X, the text of Chapter X shall prevail.

KEY TO CHART: Is the land use allowed in the particular subdistrict?

yes—allowed without a permit from the Commission.

stds—allowed without a permit from the Commission if in conformance with minimum standards for the land use; in certain cases, permit required if use is proposed which is not to be in conformance with the stadards for such use (see Section 10.17).

prmt—allowed only with a permit from the Commission.

sp.ex.—special exception; allowed as a special exception only in certain circumstances and upon approval of Commission.

no—prohibited insofar as such use is inconsistent with the purposes of this Subdistrict; (Subdistrict change may be obtained in some instances—see Section 10.08, Chapter X).

N/A—not applicable.

NOTE: The P-UA and P-RP Protection Subdistricts, and D-PD Development Subdistricts do not appear on this chart because the special nature of the standards for such subdistricts make them impossible to show in chart form.

CHART OF REGULATED USES (cont.)

Activities	Development: Commercial & Industrial D-CI	Development: General D-GN	Development: Residential D-RS	Management: General M-GN	Management: Highly Productive M-HP	Management: Natural Character M-NC	Protection: Aquifer Recharge P-AR	Protection: Floodplain P-FP	Protection: Fish & Wildlife P-FW[1]	Protection: Great Pond P-GP	Protection: Mountain Area P-MA	Protection: Recreation P-RR	Protection: Soils & Geology P-SG	Protection: Shoreland P-SL	Protection: Wetland P-WL
A. Non-Intensive Activities															
1. Primitive recreation, motorized traffic and snowmobiling, wild-life and fishery management activities, mineral exploration, non-permanent docks, emergency uses.	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes[2]	yes	yes	yes
2. Forest management excluding timber harvesting.	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
3. Campsites	no	prmt	prmt	yes	prmt	yes	prmt	yes	yes	prmt	prmt	prmt	no	prmt	no
B. Resource Management															
1. Timber harvesting	prmt	prmt	prmt	yes	yes	yes	yes	yes	stds	stds	prmt	prmt[3]	prmt	stds	stds
2. Agricultural mgn.	stds	stds	stds	yes	yes	yes	stds	stds	prmt	stds	stds	stds	stds	stds	prmt
3. Mineral extraction															
a. Commercial	prmt	no	no	no	no	no	no	no	no	no	no	no	no	no	no
b. Road 5 acres +	prmt	no	no	prmt	prmt	prmt	prmt	prmt	sp.ex.	prmt	no	sp.ex.	prmt	prmt	no
c. Roads < 5 acres	prmt	no	no	stds	stds	stds	prmt	prmt	sp.ex.	prmt	no	sp.ex.	prmt	prmt	no
4. Land mgn. roads	prmt	prmt	prmt	yes	yes	yes	prmt	stds	stds	stds	prmt	stds	prmt	stds	prmt
5. Land mgn. water crossings															
a. of streams draining < 60 sq. mi.	stds	stds	stds	N/A	N/A	N/A	prmt	stds	stds	stds	prmt	stds[7]	prmt	stds	stds
b. of streams draining 60 sq. mi. +	prmt	prmt	prmt	N/A	N/A	N/A	prmt	stds	stds	prmt	prmt	prmt	prmt	prmt	prmt
6. Water impoundments	prmt	prmt	prmt	prmt	sp.ex.	prmt	prmt	prmt	sp.ex.	prmt	prmt	prmt	prmt	prmt	prmt
C. Residential[4]															
1. Dwellings	no	prmt	prmt	prmt	prmt	no[5]	prmt	no	no	prmt	no	no	no	prmt	no
2. Subdivisions	prmt	prmt	prmt[6]	no	no	no	no	no	no	no	no	no	no	no	no
D. Commercial and Industrial[4]															
1. Campgrounds	prmt	prmt	no	prmt	no	prmt	prmt	prmt	no	sp.ex.	no	no	no	prmt	no
2. Commercial sporting camps	prmt	prmt	no	prmt	no	no	no	no	no	sp.ex.	no	no	no	sp.ex.	no

[1] Only wildlife and fishery management practices are allowed without a permit on colonial nesting islands from May 1st–July 15th
[2] Snowmobiling not allowed on trails designated as P-RR
[3] Permit required only in P-RR's adjacent to trails or streams
[4] Residential, commercial, and Industrial uses, other than remote camps, shall be prohibited in Management and Protection Subdistricts surrounded by an M-NC Management Subdistrict
[5] Unless dwelling is a remote camp
[6] No multi-family dwellings; subdivisions for single family dwellings only
[7] Permit required for water crossings of streams designated as P-RR

CHART OF REGULATED USES (cont.)

Activities	Development: Commercial & Industrial D-CI	Development: General D-GN	Development: Residential D-RS	Management: General M-GN	Management: Highly Productive M-HP	Management: Natural Character M-NC	Protection: Aquifer Recharge P-AR	Protection: Floodplain P-FP	Protection: Fish & Wildlife P-FW	Protection: Great Pond P-GP	Protection: Mountain Area P-MA	Protection: Recreation P-RR	Protection: Soils & Geology P-SG	Protection: Shoreland P-SL	Protection: Wetland P-WL
D. Commercial (cont.)															
3. *Wholly compatible with residential – e.g., small stores*	prmt	prmt	prmt	no[8]	no	no	no	no	no	sp.ex.	no	no	no	no	no
4. *Automobile related uses, large stores, entertainment est., eating est., light industry*	prmt	sp.ex.	no	no[8]	no	no	no	no	no	no	no	no	no	no	no
5. Others: heavy industry	prmt	no	no	no[8]	no	no	no	no	no	no	no	no	no	no	no
E. Institutional															
1. *Generally: Churches, schools, cemeteries*	no	prmt	prmt	no	no	no	no	no	no	no	no	no	no	no	no
F. Transportation and Utilities															
1. Level A road projects	stds	stds	stds	yes	yes	yes	yes	yes	yes	stds	yes	yes	yes	stds	stds
2. Level B road projects	prmt	prmt	prmt	yes	prmt	yes	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt
3. Level C road projects	prmt	prmt	prmt	prmt	sp.ex.	sp.ex.	sp.ex.	prmt	sp.ex.	prmt	sp.ex.	sp.ex.	prmt	prmt	sp.ex.
4. Water crossings:															
a. Streams draining <60 sq. mi.	stds	stds	stds	N/A	N/A	N/A	prmt	prmt	prmt	stds	prmt	prmt	prmt	stds	stds
b. Streams draining 60 sq. mi. +	prmt	prmt	prmt	N/A	N/A	N/A	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt
5. Utility facilities	prmt	prmt	prmt	prmt	sp.ex.	sp.ex.	prmt	prmt	prmt	prmt	sp.ex.	sp.ex.	prmt	prmt	sp.ex.
G. Miscellaneous															
1. Permanent docks	prmt	prmt	prmt	N/A	N/A	N/A	prmt	prmt	no	prmt	no	no	prmt	prmt	prmt
2. Non exempt signs	stds	stds	stds	stds	stds	sp.ex.	stds	stds	prmt	stds	prmt	prmt	stds	stds	stds
3. Sewage sludge disposal	no	no	no	stds	stds	stds	no	no	no	no	no	no	no	no	no
4. Solid waste disposal	prmt	no	no	prmt	no	no	no	no	no	no	no	no	no	no	no
5. Filling, grading, draining, etc.	prmt	prmt	prmt	prmt	sp.ex.	prmt	no	prmt	no	prmt	prmt	prmt	prmt	prmt	sp.ex.
6. Accessory uses to permitted uses	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt	prmt
7. Trails	yes	yes	yes	yes	yes	yes	yes	yes	yes	prmt	prmt	prmt	prmt	prmt	prmt

[8] Except for small commercial sporting camps, or structures for educational, scientific or nature observation purposes

7.54 THE ADMINISTRATION OF THE LAND USE REGULATION COMMISSION ACT

THE COMMISSION

The Act charges that the "Commission" implement its provisions. The Commission consists of seven public members appointed by the Governor for staggered four-year terms, four of the members are required to be knowledgeable in at least one of the following areas: Commerce and Industry, Fisheries and Wildlife; Forestry; and Conservation. Commission meetings are public and must be held at least once a month.

The Commission's budget must be approved by the Commissioner of the Department of Conservation who, with the consent of a majority of the Commission, appoints a director as principal administrator and executive employee of the Commission. The director hires needed staff.

The Commission's staff is organized into three divisions: Planning, Resource Analysis, and Development Review. The first two are responsible for planning, mapping, research, inventorying, and assisting the Development Review Division; this latter Division is responsible for processing applications for permits and for making recommendations concerning variances and rezoning applications.

PERMIT PROCEDURE

The staff has authority to approve, approve with conditions, or deny routine permit applications, however, the Commission has final responsibility for any and all land use decisions. Section 685-B.1 of the Act states:

> "A. No structure or part thereof shall be erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form other than normal maintenance or repair, without a permit issued by the Commission.
> B. No person shall commence development of or construction on any lot or parcel within any subdivision or sell or offer for sale any interest in any lot or parcel within any subdivision without a permit issued by the Commission.
> C. No person shall commence any construction or operation of any development without a permit issued by the Commission."

All applications for any permit have to be submitted on standard application forms and once judged "complete" by the staff, are required, by Statute, to be approved (with, or without conditions) or denied within a 30 day period. Staff recommendations on nonroutine permits are acted on by the Commission. No action is taken by the Commission unless upon approval by vote of four members. A person aggrieved by a Commission decision may petition them for a hearing.

If the Commission decides to hold a public hearing on an application it must be held within 45 days of the receipt of the application. Notice of the hearing must be published and within 45 days after the hearing the Commission must make known its findings and decision. Any person aggrieved by a Commission order or decision may, within 30 days, appeal to the Superior Court of Kennebec County.

CRITERIA FOR APPROVAL

Applications for a permit must be accompanied by a plan that shows the intended use of the land, proposed changes, and other details, as may be required by the Commission to determine conformance with applicable land use standards.

The Act requires that all applications meet certain criteria; it states:

"The Commission shall approve no application, unless:
A. Adequate technical and financial provision has been made for meeting the State's air and water pollution control standards, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies, and
B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods, and
C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal, and
D. Uses of topography, soils and subsoils meet standards of the current Soil Suitability Guide for Land Use Planning in Maine, or which are adaptable to the proposed use pursuant to said guide and will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water, and
E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto.
F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the Commission.
The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected."

Paragraphs A and B above establish criteria that are relatively straightforward to apply. Paragraph C requires a greater degree of discretion and often leads to a permit being issued subject to adequate landscaping, setback, and other environmental provisions. Reference to the Soil Suitability Guide in paragraph D and reference to other regulations in paragraph E, permits the Commission to deny applications proposed for soils rated as

"very poor" for a particular use. (See Chapter VI of the Commission's Rules and Regulations.) Paragraph E broadens the scope of staff review by referring to "regulations, standards, and plans..." adopted in accordance with the Act. This means that applications must meet: the land use and district standards described earlier; the State Plumbing Code and the minimum lot sizes it prescribes for various sewage disposal systems; other publications the Commission has embraced, by reference, like standards for logging road construction and guidelines for manure disposal.

The Statutory criteria thus provide leeway for the staff, and ultimately the Commission, to attach appropriate conditions to permit approvals. Perhaps the best way of determining what concerns, other than those found in the criteria and references above, are important to the Review staff is to refer to the Land Use Regulation Commission's application forms and to the requirements of the Planned Development Subdistrict.

The Commission's Subdivision application form, for example, states minimum lot and shore frontage criteria, specifies minimum road dimensions, requires certain minimum distances between wells and sewage disposal systems, encourages limited shorefront cutting and endorses the concept of common or "green areas" and the formation of lot owners associations. The Planned Development Subdistrict (D-PD) in Chapter X of the Land Use Regulations Commission's Rules and Regulations provides opportunity, in the future, (after May 1979) for the Commission to deal with large development proposals proposed for areas distant from existing developed areas. (Residential projects of more than 30,000 sq. ft. in building floor area and on sites of over 50 acres are considered large.) In the provisions of the D-PD subsection the formal application procedures are set out in detail and the criteria for approval are stated.

INTER-AGENCY COOPERATION

Because the Land Use Regulation Commission's jurisdiction and land use control powers oft-times overlap with those of other agencies, the Commission has established informal and formal agreements to avoid conflict and/or duplication of effort. Thus the Department of Environmental Protection has formally agreed to accept any Land Use Regulation Commission approval of an application, that qualifies for consideration under the Site Location Act, as prima facie evidence that it meets their criteria. The Land Use Regulation Commission likewise accepts the Department of Environmental Protection's approval of a Great Pond application as sufficient to justify a L.U.R.C. permit; (See Appendix F5c) and the Commission has an agreement for cooperating with the State Planning Office (See Appendix I2a).

On most other permit applications it is L.U.R.C. policy to notify all other interested agencies, including the State Planning Office, of pending applications and to allow time for their comment. Furthermore, legislation is now before the 108th Legislature to instigate a one-stop permit procedure whereby an applicant need only apply to the Land Use Regulation Commission for a permit; the agency will then be responsible for circulating the application to all relevant licensing agencies, thereby speeding and simplifying the application procedure.

7.6 SUBDIVISION LAW

7.61 SUMMARY

In Maine Subdivision Laws have been on the books for over 20 years. However, only since 1971 has 30 M.R.S.A. § 4956 contained specific criteria that require all municipal authorities to assure that a proposed development meets certain standards, other than those of "reasonableness." (See Appendix F6 for full text of Act.)

Until 1971 local communities could promulgate their own subdivision ordinances, which could be stricter than that of the State's broad legislation, but there was no state requirement, as there is now, that the land subdivision: not cause undue air and water pollution; have a sufficient water supply; not cause erosion or unsafe highway conditions; have adequate sewage disposal facilities and not have an adverse effect on scenic beauty.

Today the Land Subdivision Act broadly applies in all organized areas of the state to any subdivision of three or more lots created within a five year period; The Law requires that all requests for subdivision approval be reviewed by the municipal planning board (or municipal officers) and that they determine that at least the above criteria are met. Additional "reasonable" regulations may be adopted by the municipality after public hearing.

The Act establishes a timetable for reviewing applications, states that the burden of proof be upon the applicant and permits the municipal authority to approve, approve with conditions, or deny subdivision applications.

Subdivision Law is administered at the local level and most coastal towns, have adopted subdivision ordinances that go beyond the criteria established by 30 M.R.S.A. § 4956. In the unorganized areas subdivision activity is regulated and reviewed by the Land Use Regulation Commission. In all cases the Law overlaps with other land use control laws and regulations.

All approved subdivisions are required by the Act to be registered at the proper Registry of Deeds. Sales, leases, or conveyances prior to approval and registration are liable to a fine and proceedings may be instituted by the Attorney General (in exceptional circumstances), or by municipality or planning board.

7.62 HISTORY

Over the last 20 years Maine's Subdivision Law has redefined the meaning of "subdivision" several times and has made the State's interest in the "public welfare" much more explicit. At the same time more and more towns have taken it upon themselves to enact local subdivision ordinances that are more restrictive than the State Law. In 1975, approximately 100 out of 131 organized towns had such ordinances.

In the late 1950s the division of a parcel into five lots constituted a subdivision; in 1961 the Legislature stated that the creation of three urban lots or four rural lots constituted a subdivision. It was the 105th legislature of 1971 that reduced this provision to "three or more lots."

That same Legislature was responsible for broadening the Act to include eleven specific criteria or guidelines for evaluating projects; until this time the Act simply required conformance with the local ordinance and "general reasonableness."

The 106th and 107th Legislatures have not altered the Act significantly. The definition of subdivision has twice been clarified and in 1975 a review timetable was added to assure review of an application proceeded in a timely fashion.

Thus the Act has responded to the times, has long been open to public scrutiny through Legislative hearing and discussion and has basically remained unchanged over the last six years.

7.63 AREAS AND USES REGULATED BY THE SUBDIVISION LAW

The Subdivision Law applies to any division of a tract or parcel of land, in the organized areas of Maine, into three or more lots within any five year period, after September 22, 1971, "...whether accomplished by sale, lease, development, buildings, or otherwise...." Under the definition of land subdivisions in 30 M.R.S.A. § 4956 there are seven situations in which a lot is not considered to be part of a subdivision. These include lots of more than 40 acres; lots created by inheritance, condemnation or court order; and gift lots from a relative.

A recent Attorney General's opinion indicates that municipalities may, by ordinance, but not by regulation, define subdivision in ways more restrictive or inclusive than defined in the Subdivision Law (State Statute.)

A subdivision does not only imply a development of residential units on separate lots. Most proposals for multiple use of a piece of land are covered by Maine's Subdivision Law. This includes apartments, condominiums, shopping centers, hotels, campgrounds, industrial parks, and planned unit developments according to an advisory memorandum issued jointly by the Attorney General's Office and the Maine Municipal Association dated June 15, 1972.

Needless to say, in practice, in the vast majority of cases, subdivision invariably involves the creation of residential lots.

7.64 HOW THE SUBDIVISION ACT IS ADMINISTERED

MUNICIPAL ADMINISTRATION

The Subdivision Law states that "All requests for subdivision approval shall be reviewed by the municipal planning board, agency or office, or if none, by the municipal officers..." This simply means that if a town has established a planning board it is required by law to review all subdivision proposals within its jurisdiction. If a planning board does not exist, this same responsibility rests with the municipal officers (the Board of Selectmen or Council).

The Law also permits the local reviewing authority to adopt additional reasonable regulations to augment those specified by the legislature. Such regulations must be subject to a public hearing.

The Law is very specific about the administration of subdivision reviews. Outlined below are the time constraints:

1. The developer submits an application for which the Planning Board (or its equivalent) issues a dated receipt.
2. The Planning Board has 30 days to decide whether or not the application is complete and, if not, to notify the developer as to exactly what additional information must be submitted.
3. Other than notifying the developer of the need for additional information, the Planning Board is not required to do anything until it receives a complete application.
4. Upon receipt of a complete application, the Planning Board has sixty days in which to reach a decision.
5. If the Planning Board decides a public hearing is necessary, it must hold the hearing within 30 days of the date the completed application was received. Notice of the hearing must be properly posted at least 7 days in advance of the hearing.
6. If a public hearing is held, the Planning Board has 30 days from the date of that hearing to reach its decision.

In addition to following this timetable closely, the Planning Board must keep accurate records of its meetings and actions: what it did, why, and when.

The planning board must decide either to approve the application, approve it with terms and conditions, or deny it. They are required to make "findings of fact" and assure that the proposal satisfies the criteria of the law and that the "public health, safety, and general welfare" is protected. The "burden of proof" rests with the subdivider. In other words, the subdivider must prove that all the conditions set forth in the Act have been met.

The Act states that no subdivision land may be sold, leased, or conveyed without municipal approval or before it is recorded in the proper Registry of Deeds. Plans or plats that are recorded must have the approval (with conditions, if applicable) written directly on them.

The subdivision law requires that no public utility, water district, sanitary district, or any utility company may serve a subdivision for which a plan has not been approved by the appropriate municipal body. This provision gives the Act more "teeth" and improves its effectiveness.

The municipality, planning board, or municipal officers may institute proceedings to enjoin violations of the law and in extraordinary circumstances the Attorney General may do so.

If a town consistently disregards the standards contained in the subdivision law and if the deviations are considered to be significant, the Attorney General can bring mandamus action. (See Attorney General's opinion, Appendix F6b.)

The statute is silent on the subdividers right to appeal, however, appeals may be taken pursuant to the Maine Rules of Civil Procedure.

REVIEW CRITERIA

The Subdivision Law establishes guidelines or criteria for judging subdivisions, it states... "When promulgating any subdivision regulations and when reviewing any subdivision for approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

A. Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.

B. Has sufficient water available for the reasonably foreseeable needs of the subdivision;

C. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized

D. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

E. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;
F. Will provide for adequate sewage waste disposal;
G. Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
I. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;
J. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; and
K. The subdivider has adequate financial and technical capacity to meet the above stated standards.
L. Whenever situated in whole or in part, within 250 feet of any pond, lake, river, or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water. "

As has been mentioned the above are minimum criteria and many towns have enacted stricter regulations or ordinances. It would be a difficult task to summarize the many different ways towns have elected to improve upon the above, however, the State Planning Office has sponsored the publication of two technical handbooks that provide towns with information on how to write their own subdivision regulations. These are: Subdivision Review: A Procedural Guide for Local Planning Boards (1976); Planning Board Standards for Reviewing Land Subdivisions (1972), Maine State Planning Office.

Nonetheless, only a reading of an individual towns actual Subdivision ordinance will provide a complete picture of applicable rules, regulations, and review criteria.

7.7 SITE LOCATION ACT

7.71 SUMMARY

The Site Location of Development Act became effective on January 1, 1970. Various amendments to the Act have been enacted since that time; however, the intent and basic provisions have changed little. (The full text of the Act is contained in Appendix F7a.)

Administered by the Board of Environmental Protection, the Act requires the Board to . . . "control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings". (38 MRSA § 481)

Generally projects proposed anywhere in the State (and hence in the coastal area) in excess of 20 acres or covering more than 60,000 square feet, with some exceptions for highway-related projects, must obtain approval from the Board of Environmental Protection or, if in an unorganized area, from the Land Use Regulation Commission. Before issuing a permit the Board must conclude that the applicant meets certain criteria pertaining to his or her financial capacity to undertake the project, traffic movement in and on the site, the project's effect on the natural environment, and the suitability of the soil types on the site for the proposed development. In its project review, the Board may also consider probable economic impacts of development, including that on tax base, marketing, and balance of payments policies.

Authority to grant permits to subdivisions of between 20 and 100 acres may be given to municipalities by the Board of Environmental Protection if that municipality meets certain criteria that will assure proper review.

The Site Location Act mandates a procedure and timetable for processing applications and includes appeal, enforcement and judicial review provisions. Generally 30 days after submission of a complete application, a decision is reached, unless a public hearing is called. The public hearing procedure increases the review period to a maximum of 90 days. The Board may vote to approve, approve with conditions, or deny an application. A summary of applications processed under the Site Law is included in the table located in Appendix F7b.

This section describes the History, Administration, Uses and Areas regulated by the Site Location Law, and the Permit Review Process under this law. Appendix F7b includes a Legal Analysis of the Site Location Law which describes judicial interpretations of the Act and Board policies and regulations adopted in order to implement the law, and presents a summary of the results of the permit review process.

7.72 HISTORY

The Site Location of Development Act was enacted in 1970 in response to a proposal for an aluminum smelting plant and other unregulated oil related development on the Maine coast. At that time, and subsequently, as various amendments to the Act have been made, legislative hearings have permitted members of the public to voice their opinions on the form and direction of the Act.

In 1975 the 107th Legislature redefined portions of the Act, added a clause saying that the Board may receive testimony on the economic effect of development, and included a section (§ 489) permitting the municipal review of subdivisions of between 20 and 100 acres. In the special session of the 107th Legislature "subdivision" was redefined so as to permit subdivisions containing lots of between 5 and 10 acres, meeting certain dimensional requirements, to be excluded from review by the Board of Environmental Protection. The Site Location Act has withstood two legal challenges in its short history. For a description of some of the legal aspects of this law, see Appendix F7b.

7.73 USES AND AREAS REGULATED BY THE SITE LOCATION ACT

The "purpose" clause of the Site Location Act states that . . . "many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings;" and that . . . "the location of such developments is too important to be left only to the determination of the owners of such developments . . ."

The Act therefore requires persons proposing such developments anywhere within the State's jurisdiction to obtain a permit from the Board of Environmental Protection or, in the case of unorganized areas, from the Land Use Regulation Commission. The Act thus applies in tiers 1, 2, 3, and 4 of the coastal area, as identified in Section 5.

Section 482 of the Act defines development and by so doing describes which uses are regulated and which are exempted from regulation:

> Development for the purposes of the Act . . . "means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, or which is a structure; but excluding state highways, state aid highways*, and borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation".

In the above definition "subdivision" means the division of a parcel into 5 or more lots in a 5-year period when the parcel is more than 20 acres in size. If none of the lots are less than 10 acres in size, or if they aggregate less than 100 acres and can contain a rectangle measuring 200 feet by 300 feet, the subdivision is exempted. If the lots are between 5 and 10 acres in size, they are subject to municipal subdivision regulations.

"Structure" means any building or buildings on a single parcel covering a ground area of more than 60,000 square feet, or parking lots, roads, paved areas, wharves or areas not to be revegetated occupying a ground area in excess of 3 acres.

Components of a municipal sewage system, including pumping stations, lagoons, and treatment plants, require a site law permit if they occupy 60,000 square feet or more

Power generating facilities of more than 1000 kilowatts and transmission lines carrying more than 125 kilovolts require Public Utilities Commission approval as well as Board of Environmental Protection approval.

When there is question concerning the applicability of these definitions to a specific proposal, the developer may request, in writing, an advisory letter from the Commissioner as to whether or not Site Location approval is necessary.

* For clarification of how the activities of the Department of Transportation are coordinated with the Coastal Program, see Appendix I.

7.74 ADMINISTRATION

THE ADMINISTERING AGENCY

The Legislature has mandated that the Board of Environmental Protection exercise the police power of the State, in consultation with other agencies, in implementing the provisions of the Site Location Act. Within the Department of Environmental Protection the Bureau of Land Quality Control is responsible to the Board of Environmental Protection for undertaking the staff level Site Location project processing, research and evaluation. Decisions concerning the approval or denial of applications rest solely with the Board, or, in the case of subdivisions of between 20 and 100 acres, with an authorized municipality. (The Board membership is described in Section 9.)

Authority for municipal review power of subdivisions is granted by the Board if the municipality applies on official forms, has adopted and plans to substitute its own subdivision regulations based on the State Subdivision Law to evaluate such proposals, can show it has an established planning board, has developed a suitable application form, and has made provision for a reasonable processing procedure and timetable. If the Board finds that a municipality fails to uphold the provisions of the Subdivision and Site Location Laws, it may revoke the review authority if the conditions persist after a public hearing on the matter. Only one town in the coastal area, Harrington, has chosen to obtain this authority from the Board of Environmental Protection. (See Section 489 of the Act in Appendix F7a for precise language.)

7.75 APPLICATION REVIEW PROCESS

A. The Application Form

A developer seeking approval for a regulated activity must submit a completed "Application for Project Approval" to the Department of Environmental Protection. The application, adopted and periodically revised by the Board, establishes what specific information is required of applicants, and contains 31 items that must be addressed. (See Appendix F7c for complete application form.) Among them is information concerning:

- Site plans and project costs and objectives;
- Construction schedule and project size and statistics (number of lots, building size, acres developed, etc.);
- Financing: how the project will be financed, financial statements, bank or other commitments;
- Sewage and solid waste disposal and water supply;

- Traffic; road and parking plans, vehicles per day;
- Services; fire, police, and other needed services;
- Existing site features; drainage characteristics, proposed landscaping, frontage on water bodies;
- Soils; onsite soils investigations (by a certified inspector).

The application for project approval under the Site Law is adopted by regulation and requests information of the applicant which the Board deems necessary or desirable in order to approve or deny a regulated activity. The burden of proof is on the applicant to show in the application, that the proposed development will meet the criteria of the Site Law.

An applicant having questions such as the degree of detail or the applicability of certain questions in the application to a specific development is encouraged to seek guidance from the Department of Environmental Protection staff prior to formal submission. In the case of large developments, a pre-application conference between developer and staff may be held to address these questions.

B. Application Processing Procedure

The following is a description of the application processing procedure followed by the Department of Environmental Protection's Land Bureau staff.

When an application is submitted to the Department of Environmental Protection, it is reviewed to determine if it is complete.

The Commissioner of DEP must, within 10 working days of receipt of an application, notify applicants (a) of the official date on which the application was accepted, or (b) return the application to the applicant specifying in writing the reasons for returning the application. (§§ 344.3).

The Board has 30 days from receipt of a complete application to (a) approve, (b) disapprove, or (c) schedule a public hearing on the applicant's proposal (§§ 483). A public hearing must be held by the Board on an application within 30 days of its own decision to hold such hearing (§§ 484).

In order to make the necessary conclusions that a project meets these criteria, the Act, in Section 481, provides for consultation between appropriate state agencies and the Department of Environmental Protection. Those agencies within the state having jurisdiction or regulations which may pertain to Site Law projects and which address one or more of the above criteria are considered "review agencies."

In order to solicit reviews, the completed site application is summarized and sent along with copies of the exhibits to appropriate review agencies. Those state agencies most commonly receiving review materials are listed in the following chart, along with their regulations or jurisdictions and the Site Law Criteria which they address.

C. Review Criteria

The following discussion is intended as a guide to understanding how specific aspects of the Site Law criteria are applied in reviewing complete applications. It describes in more detail the information contained in the chart. The description includes each criterion, broken down into specific points where helpful, and questions in the application which most commonly pertain to them. Also identified are the review agencies, which may be asked to review the application and their standards.

1. FINANCIAL CAPACITY

"The developer has the financial and technical ability to meet state air and water pollution control standards, and has made adequage provision for solid waste disposal..."

Questions in the application related to this requirement deal with (6) estimated project costs and financial statements, waste disposal operations (10) (17) (and 18), and erosion control measures (11).*

The financial capacity of the applicant is judged largely upon (a) the general accuracy of projected cost estimates for waste disposal and pollution control, and (b) sufficient evidence that the applicant has the financial means to meet those cost estimates (usually either a corporate financial statement of a letter from a bank.)

Proposals which include air emissions are reviewed by the Department of Environmental Protection's Air Quality Control staff to insure technical soundness of the proposal and whether or not an air emissions license is required (often this application is submitted simultaneously with the site application). If an air emission license is required, site approval may be granted, conditioned on the receipt of an air emission license. A similar situation exists concerning the water pollution control standards of the Bureau of Water Quality Control and solid waste disposal regulations of the Bureau of Solid Waste Management, within the Department of Environmental Protection. In all three cases, financial and technical capacity are determined either by (a) technical adequacy of proposed plans for an activity not exceeding state air, water, and solid waste control standards, or (b) the appropriate permit approval or license issued by the regulating bureau.

*Numbers relate to question numbers in the permit application. The entire application form appears in Appendix F7c.

STANDARDS FOR REVIEW OF SITE LAW APPLICATIONS IN ACCORDANCE WITH REVIEW CRITERIA

Site Law Criteria	Review Agency	Review Standards
The developer has made adequate provision for the securing and maintenance of sufficient and healthful water supplies ...	DEP - Bureau of Water Quality Control	Classification Standards Fresh Waters Great Ponds Tidal or Marine Waters
	DEP - Bureau of Land Quality Control	Regulations for Septic Tank Sludge Disposal on Land
	Department of Human Services - Division of Health Engineering	Maine State Plumbing Code, Part II, Private Sewage Disposal Regulations. Regulations Concerning Mobile Home Parks. Regulations Relating to Tent and Recreation Vehicle Parks and Wilderness Recreational Parks
The developer has made adequate provision for traffic movement out of or into the development area ...	DEP - Bureau of Land Quality Control	Regulations for Parking Lots Minimal Specifications for Interior Roads
	Department of Transportation - Bureau of Planning - Division of Traffic Engineering	Institute of Traffic Engineers Handbook State Aid Standards
The proposed development will be built on soil types which are suitable to the nature of the undertaking ...	Department of Agriculture - Soil and Water Conservation Commission	Soil Suitability Guide for Land Use Planning in Maine.
	DHS - Division of Health Engineering	Maine State Plumbing Code, Part II, Private Sewage Disposal
The developer has the financial capacity and technical ability to meet State air pollution control standards ...	Department of Environmental Protection (DEP) - Bureau of Air Quality Control	Ambient Air Quality Standards Emission Standards
The developer has the financial capacity and technical ability to meet State water pollution control standards ...	DEP - Bureau of Water Quality Control	Classification Standards Fresh Waters Great Ponds Tidal or Marine Waters
	Department of Human Services (DHS) - Division of Health Engineering	Maine State Plumbing Code, Part II, Private Sewage Disposal Regulations.
The developer has made adequate provision for solid waste disposal ...	DEP - Division of Solid Waste Management	Solid Waste Management Regulations
	Department of Conservation - Bureau of Geology	Maine Coastal Inventory: Surficial Geology Maps Depth to Bedrock Wells.
	DEP - Bureau of Air Quality Control	Ambient Air Quality Standards Emission Standards
The developer has made adequate provision for the control of offensive odors ...	DEP - Division of Solid Waste Management	Solid Waste Management Regulations Regulations for Sludge Disposal on Land
	DEP - Bureau of Air Quality Control	Ambient Air Quality Standards Emission Standards
The developer has made adequate provision for fitting the proposal harmoniously into the existing	DEP - Bureau of Land Quality Control	Regulations for Natural Buffer Strip Parking Lot Standards

"The developer has made adequate provision for the control of offensive odors... "

Questions (17) and (18) in the Application, dealing with liquid and solid waste generation and disposal address this criterion.

The adequacy of a proposal to control offensive odors is determined by comparison to the best known practical treatment for similar activities. For example, applicants proposing to handle waste materials, sludge, or compost material must show that these will be disposed of in a timely or periodic manner and in accordance with state standards for solid waste disposal or sludge disposal.

"The applicant has made adequate provision for the securing and maintanence of sufficient and healthful water supply ...."

This criterion is particularly applicable to large subdivisions proposing subsurface sewage disposal, and also applies to commercial developments proposing water discharge, and solid waste and sewage disposal.

Questions in the application dealing with adjacent water bodies (7), water supply (12), and sewage disposal (15 and 16), are directly related to this criterion.

Proposal adequacy on this subject is reviewed by the Maine Department of Human Services, Bureau of Health Engineering, which administers the Maine State Plumbing Code, and regulations concerning trailer parks. For some proposals, a statement from a reputable well driller is sufficient to prove adequacy.

Water discharges are reviewed by the Water Bureau of Department of Environmental Protection in accordance with the State water classification system and State Water Quality Standards.

2. TRAFFIC MOVEMENT

"The developer has made adequate provision for traffic movement out of or into the development area...."

Questions in the application pertaining to existing public access routes (19), specifications for interior roads and parking lots (20) and landscaping and maintenance plans for roads (21 and 22), and estimated number of vehicles per day (23), deal with this review subject.

D.E.P. Regulations for parking lots and quidelines for parking lot landscape design, as well as minimal specifications for interior roads, are supplied, when applicable to prospective applicants. These specifications are used for reviewing the adequac of traffic movement provisions in specific proposals.

The Maine Department of Transportation's Traffic Division reviews proposals involving entrances to public highways (an entrance permit may be required), while the Planning Division reviews proposals in order to assure compatibility with future highway plans.

3. NO ADVERSE EFFECT ON THE NATURAL ENVIRONMENT

The developer 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 in the municipality or in neighboring municipalities ...

Questions in the application addressing this criterion in the majority of proposals include: (1) objectives of the proposed project; (2) existing project; (4) area owned by applicant and (5) existing use; (7) surface drainage and water bodies affected; (8) topography; (9) site preparation and plans; (10) erosion control measures; (17) liquid waste discharge; (19), (20), (21); traffic provisions; (22) landscaping; and (26) exterior advertising.

In reviewing larger developments under this criterion, Department of Environmental Protection staff use the special conditions from past proposals for examples, as well as their own professional experience and the reviews from appropriate agencies. The Department of Inland Fisheries and Wildlife has the charge of protecting and managing the fish and wildlife resources of the state. Deer yards (areas utilized by deer in winter) have been mapped by the Department and are protected from destruction by development and buffered from nearby development through this criterion of the site law. Important waterfowl nesting areas and wildlife habitat are similarly protected, usually by the addition of requirements for suitable buffering from the proposal in the final board order if not proposed in application.

The Maine Bureau of Forestry may submit review comments concerning the adequacy and practicality of proposed plantings to be used in vegetative buffers.

The Board has adopted "Parking Lot and Landscape Design Guidelines" to help ensure that proposed developments are adequately buffered from highways. To protect and preserve the existing natural environment, scenic character and natural resources of the state, the Board has also adopted a policy (#370) concerning natural buffer strips between development and water bodies (Appendix F7b). These buffer strip regulations govern the establishment of natural buffers in developments requiring site law approval, and require written permission of the Department prior to any activity which may impact the buffered water body. The width of this buffer strip is determined by the Board on a case by case basis by evaluating existing conditions adjacent to the water body.

The Department of Transportation may submit comments on a proposal's likely adverse impact on traffic safety in the project area and existing traffic patterns.

Likely adverse effects on the environment caused by erosion are studied by the Soil and Water Conservation Commission, using the soils information for the site, the Soil Suitability Guide, and professional experience.

The Department of Human Services, Division of Health Engineering may associate specific likely adverse impacts on neighboring groundwater supplies associated with sewage disposal. The Maine Bureau of Geology may also provide comments concerning probable impacts on aquifers or groundwater.

Written comments from public officials or residents in nearby municipalities, or testimony at a public hearing held for an application also supply the Board with evidence on likely impacts of a proposed development.

4. SOIL TYPES

The proposed development will be built on soil types which are suitable to the nature of the undertaking.

Requirements of the application pertaining to this criteria include an on-site soil investigation (10), method of sewage disposal (15) and the project site plan (9), including location of buildings and roads.

Soil suitability for septic sewage disposal is reviewed by the Department of Human Service, Division of Health Engineering in accordance with the Maine State Plumbing Code, Part II, Private Sewage Disposal Regulations. This code categorizes the Physical properties of soils and identifies the size and type of system required for each category.

The Department of Agriculture, Soil and Water Conservation Commission, reviews site plans and soils information in accordance with the Soil Suitability Guide for Land Use Planning in Maine. The Guide gives suitability ratings for each soil type found in Maine for different land use activities, including buildings, roads, etc. The Board of Environmental Protection has adopted the Soil Suitability Guide as its standard for judging proposals under this criteria (see Appendix F7b).

E. Final Evaluation

The staff of the DEP Land Bureau performs the final evaluation of a project once all solicited reviews have been received from the review agencies.

Reviews are studied and, along with any findings by Land Bureau staff, are linked with the appropriate review criteria. In order for any proposal to be approved, it must be found to satisfy all the review criteria specified in the Site Law. All proposals which are approved are subject to a set of "Standard Conditions of Approval," as adopted by the Board (See Appendix F7b).

The Board frequently imposes on a developer, through inclusion in the Board Order approving the application, special conditions designed to insure reasonable compliance with site approval criteria.

F. Final Action

The Board, and in certain cases the staff when granted such authority, must act on the application within 30 days, and may either approve, approve with conditions, deny, or call a public hearing concerning the application. As can be seen on the chart on page 379 , the majority of permits are approved. Most approvals contain one or more special conditions requiring modifications of the original proposal in order to meet the site criteria.

When denying an application the Board states which of the review criteria have not been met, and to the extend possible, why. A person whose application is denied by the Board may request that a public hearing be held, and the Board must hold the hearing within 30 days of receipt of the request.

F. Appeal

Within 10 days of the applicant's receipt of the final Board decision, anyone who is aggrieved by the decision may petition the BEP for an opportunity to present new or additional evidence which may result in reconsideration of the conditions of approval or of denial. The BEP may, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing, or dismiss the petition. Municipalities which handle an application may handle appeals in the same manner as does the BEP.

Anyone aggrieved by any order or decision of the Board or municipality in regard to any matter upon which there was a hearing before the Board or municipality and of which a transcript is available, may, within 30 days after notice of the filing of such order or decision, appeal to the Superior Court. The court's review is limited to question of law and to whether the Board or municipality acted regularly and within the scope of its authority. The decision of the Board or municipality is final so long as supported by substantial evidence. The court may affirm, reverse, or remand the decision of the Board or municipality for further proceedings.

7.8 PROTECTION AND IMPROVEMENT OF AIR LAW

7.81 SUMMARY

The intent of the Legislature in passing the Protection and Improvement of Air Law (M.R.S.A. Title 38, Chapter 4) in 1969 was to control all air emissions in order to protect public health, property, and natural resources. For this purpose, the Chapter authorizes the designation of air quality regions and the establishment of ambient air quality and emission standards within those regions.

In establishing ambient air quality standards, the Board of Environmental Protection shall not only consider varying levels and types of air pollutants within each region, but al encourage the enhancement of air quality in that region. Emission standards must be established to control the amount and types of contaminants which may be emitted into the ambient air within a region.

The Protection and Improvement of Air Law also prohibits open burning in most cases and specifies the conditions under which certain open burning activities may be conducted.

Finally, the Act generally empowers the Board to: grant variances; require registration of pollution sources; issue emission licenses; grant open burning permits; and issue subpoenas to compel the production of information concerning any matter in issue at a Board hearing.

Discharging air contaminants in violation of the standards or operating a pollution source without a license from the board is prohibited by this Act.

7.82 HISTORY

The first major federal air pollution legislation was enacted in 1967. The Air Pollution Act, as it was popularly termed, recognized air pollution as an issue of national significance.

In 1969, the Maine State Legislature enacted the Protection and Improvement of Air Act. This legislation greatly expanded the scope of air quality control laws in Maine. The law authorized the establishment of ambient air quality regions within the state, as well as ambient air quality and emission standards.

Between 1967 and 1970 federal ambient air quality and emission standards were being developed. Then, in 1970, the passage of the national Clean Air Act required that each state develop an implementation plan to achieve desired air quality and establish ambient air quality and emission standards that were no less stringent than those developed federally.

In accordance with the federal Clean Air law requirements, the State of Maine prepared an implementation plan, including standards, which was submitted to the Environmental Protection Agency for review in 1971. The plan describes: monitoring network, monitoring results, and status of air quality attainment, means of attaining and maintaining standards, and the means for dealing with air pollution emergencies. The implementation plan was approved by E.P.A. and finally issued on January 31, 1972. A Bureau of Air Quality Control was created in 1972 to carry out the program.

As prescribed by the federal Clean Air Act, the state's Protection and Improvement of Air law establishes minimum air quality standards and control strategies for polluting activities of every type. In August, 1977, however, the Clean Air Act was amended because some states, including Maine, had not achieved desired air quality by the federally prescribed July 1977 deadline. These amendments to the federal law will require the state to adopt new contaminant control programs, (e.g. in the areas of nonattainment, prevention of significant deterioration, and enforcement.)

7.83 USES AND AREAS REGULATED

In establishing ambient air quality regions within the State, the Board designated six major areas: Metropolitan Portland, Portland Peninsula, Central Maine, Downeast, Aroostook, and Northwest Maine.

Each of these regions is required by law to adhere to the ambient air quality and emission standards established statewide. The standards for air quality define acceptable levels of particulate matter, sulfur dioxide, carbon monoxide, photochemical oxidant, hydrocarbon, and nitrogen dioxide. Similarly, emission standards specify permissible emission levels for fuel-burning equipment and incinerators. These emission standards include provisions dealing with particulates and sulfur dioxide; standards for low sulfur fuel emissions are established for each region.

With the exception of the specific activities noted herein, all air contamination sources are required to have a license from the Board of Environmental Protection.

Open burning is prohibited for most activities. However, it may be allowed und law in the following cases, provided a permit is obtained:

a) to control or prevent any disease, virus or similar hazard to public health;

b) for agricultural purposes (e.g., land clearing, blueberry control, etc.);

c) to dispose of materials generated by the demolition of any building or the clearing of land for the erection, modification or construction of any highway, railroad, power or communication line or pipeline, or commercial, industrial or recreational building or development;

d) for training, research and recreational purposes (fires for recreational purposes on a person's own property are not required to obtain a permit).

Further, open burning at municipal solid waste disposal sites serving less than 1,000 people is permissible unless upon investigation the Department of Environmental Protection determines that air quality standards are being violated.

The provisions of the Act do not apply to: cone burners constructed or operated by any municipalities providing that the population served does not exceed 25,000 and operation does not adversely affect the environment.

7.84 ADMINISTRATION

After ambient air quality and emission standards have been established for each region, the Board, by departmental regulation, requires that any person operating or planning to operate an air contamination source must make proper application to the Department to obtain an emission license. The application is presented on a standard form to the Division of Licensing and Enforcement where a review of the application is made, and recommendations are developed and submitted to the Board for approval.

Within 30 days of receipt of a properly completed application, the Board will either grant or deny the license or order a hearing. In granting the license, the Board and its staff ensure that the following criteria have been met:

(a) the emission is receiving the best practicable treatment;

(b) the emission will not violate applicable emission standards or can be controlled so as not to violate those standards;

(c) the emission either alone or in conjunction with other emissions will not violate applicable ambient air quality standards;

(d) the equipment to be used is both reliable in conforming to design specifications and expected operating characteristics, and dependable in performance.

Within 10 days after notice of the Board's decision, the applicant may request a hearing. The hearing may be conducted by any member of the Board, or any authorize employee or representative of DEP; it must be held in some municipality within the regio where the proposed emission occurs or will occur within 30 days of an applicant's request or a Board order. If after the hearing, the Board finds that the emission or proposed emission meets the criteria for approval, a license will be granted.

Any person aggrieved by a Board decision resulting from a hearing may file a notice of appeal with the Superior Court within 30 days after receipt of a Board decision.

Open Burning Permits

Under the Protection and Improvement of Air Law, forest rangers or town fores fire wardens may grant open burning permits for the activities specified in section 7.83.

a) there is no waste collection nor any reasonably located solid waste facility to which the material may be transported or the quantity of material is such that it cannot be reasonably transported;

b) there is no reasonable disposal alternative that would not endanger public health, property, and environment;

c) the existing wind speed and atmospheric stagnating conditions will not create any nuisance conditions;

d) burning will not take place within 25 feet of a public way;

e) conditions are such that burning will not promote the uncontrolled spread of the fire;

f) burning will comply with all Bureau of Forestry regulations and local fire requlations.

Highway Building

Under Section 606 of the Protection and Improvement of Air Law, the Board is responsible for reviewing the air quality impacts of any highway construction project of 4 or more lanes in the state. The impact analysis must be conducted in accordance with "mathematic modeling techniques as are mutually acceptable to department, the federal Environmental Protection Agency and the federal Highway Administration." The project cannot be undertaken unless the Board first determines that the project will not violate the state's ambient air quality standards. This review does not apply to highway projects that have no significant effect on air quality (e.g. lights, signs, landscaping and re-surfacing).

Variance Procedures

As with all licensing and permit granting procedures followed by the Department, the granting of variances from established regulations is a standard administrative responsi bility. A variance application is submitted to the Department, and reviewed by the staff for recommendation to the Board of Environmental Protection.

The Board may hold a public hearing on any variance application if it is determin that there would be substantial objection to the granting of the variance. Before a denia of a variance becomes effective, the Board must hold a public hearing if it is requested b the municipality.

Applications for variances from ambient air quality and emission standards may be submitted to the Board by any person owning or operating an air contamination source. No variance is granted in this case unless a public hearing is held in the municipality where the air pollution source is located.

If a complaint is made to the Board as a result of granting a variance, a public hearing on the complaint must be held before granting an application for renewal. Any person adversely affected by a Board decision in variance cases can obtain judicial review.

Source Surveillance

The Department monitors air pollution sources to ensure their compliance with regulations and emission standards it has adopted. All licensed sources are inspected at least once per year by the Department, and in some cases the Department requires self-monitoring and submission of reports for the purpose of:

a) confirming the accuracy of the emission license data;

b) confirming compliance with the conditions of the emission license;

c) investigating possible violations of emission standards and regulations;

d) updating the emissions inventory.

If violations are noted upon inspection, action will be taken according to Departmental enforcement procedures.

7.9 SOLID WASTE MANAGEMENT ACT

7.91 SUMMARY

In 1973, the Maine Solid Waste Management Act (Title 38, M.R.S.A., Chapter 13) was passed in the regular session of the 106th Legislature. The intent of the Act is to encourage programs that will reduce the volume of solid waste, promote the reuse and recovery of valuable resources, and assure the environmentally sound disposal of solid waste.

The Solid Waste Management law empowers the Board of Environmental Protection to adopt regulations regarding the management of solid waste. In formulating these regulations, the Board must consider economic impact, technical feasibility, and municipal differences created by population, waste volume and geographic location.

In addition to this authority, the Act grants DEP the power to approve the siting of solid waste facilities, to provide technical assistance in the different phases of facility operation once located, and to conduct research into solid waste processes, including the examination of recycling methods for solid waste materials.

7.92 HISTORY OF THE SOLID WASTE MANAGEMENT ACT

In 1966, the growing need for a systematic approach to solid waste disposal prompted Governor John Reed to direct the Department of Health & Welfare to initiate a statewide planning program in the area of solid waste management.

A survey of solid waste management practices in Maine conducted in 1967 and 1968 provided a data base for the Solid Waste Management Draft Plan submitted to Governor Curtis two years later. The Maine Integrated Collection & Disposal Plan (MICAD, 1970) recommended continuation of the state solid waste management planning program and adoption of an integrated collection and disposal system.

Then, in 1973 the 106th Legislature responded with the passage of the Solid Waste Management Act cited here. The intent of the law was to coordinate a statewide policy for solid waste management with the discontinuance of open burning practices. While the open burning of solid waste materials was prohibited under Section 599 of the Protection and Improvement of Air Act (M.R.S.A. Title 38, Chapter 4), except in the case of municipalities serving less than 1,000 inhabitants and those applying for variances from DEP, the Solid Waste Management law provides for the regulation of alternatives to open burning. Landfill methods of solid waste disposal, replacing open burning modes of operation, are delineated in the solid waste management regulations.

The regulations promulgated pursuant to the Solid Waste Management Act became effective Feburary 1, 1976.

7.93 USES AND AREAS REGULATED

Any useless, unwanted or discarded solid material with insufficient liquid content to be free flowing is regulated by this Act. Examples of such waste are rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse. Septic tank sludge and agricultural waste are not regulated by this Act.

Any solid waste disposal facility or land area, structure, or combination of land area and structures, including dumps used for the handling of solid wastes are similarly subject to the regulations authorized by this Act.

The solid waste management regulations promulgated pursuant to section 1304 of the Act govern the following areas: (1) resource recovery activity, (2) incineration, (3) storage and transfer facilities, and (4) land disposal.

First, each person operating a facility for resource recovery purposes is required to submit a plan to DEP to review for health, safety, and environmental soundness. The plan should describe operational items such as the nature and volume of material to be recovered, location of processing and storage facilities, safety equipment and procedures available. Residual from resource recovery activity will be subject to the land disposal regulations adopted pursuant to this law and/or to regulations pursuant to the water quality law.

Second, the solid waste management regulations specify that incinerator emissions be subject to Air Quality Control Regulations, while the disposal of residuals from incineration is subject to the regulations under this and the water quality law. A plan for the operation of incinerators or other similar burning equipment, indicating the manner in which the equipment will be integrated into the solid waste system, must be presented to the Department for review and approval.

Third, municipal and/or regional solid waste storage and transfer facilities must be approved by the DEP which also inspects their operation.

Fourth, land disposal is recognized by the Department as the common method of waste disposal in the state. Because of the potential for significant environmental damage, detailed regulations have been written. Facilities operating prior to October, 1973, which have not attained the standards established by the Department are required to follow closing procedures set out by DEP. The compliance schedule includes the submission of a closing plan 30 days prior to the start of closing operations. In addition the public must be notified of the closing at least 30 days in advance. Final inspection is conducted and certification of completion awarded one year after closing, if closing procedures have been adhered to.

Siting approval of solid waste facilities is an important aspect of DEP's regulatory function. Although the Department recognizes the variability of physical conditions in carrying out disposal activities throughout the state, certain criteria

have been developed to protect ground and surface water resources. The major criteria include:

1) surficial material soils must consist of well-graded granular material containing from 15-40% fines and relatively free of cobbles,

2) all refuse must be placed at least 5 feet above groundwater,

3) site sloping must be less than 15%

4) site boundary limits must not be closer than 300 feet to a classified body of water,

5) site boundary limit must not be closer than 1,000 feet to the nearest residence or potable water supply.

DEP may grant approval for siting of facilities even in cases where criteria are met, provided that surface and groundwater resources are protected. On the other hand DEP may deny approval if the criteria are met but surface and/or groundwater are not protected.

For proposed new sites or significant expansions of current sites, DEP requires that site maps, hydrologic/geologic/soils information and boring or test pit logs must be submitted to the Department for approval.

The Department has established criteria for the operations of varied solid waste disposal facilities. The following table provides a comparison of the standard and conditional operating criteria for facilities serving over and less than 5,000 people and facilities receiving less than 10 tons per week.

OPERATING CRITERIA COMPARISON

APPENDIX A

	STANDARD	CONDITIONAL	CONDITIONAL
	Over 5,000 People	Less Than 5,000 Open Weekly	10 Ton/Week or Less 2 day/week operation
1. All Normal Domestic And Commercial Wastes Accepted	YES	YES	YES
2. Junked Vehicle & White Goods Seperate Area	YES	YES	YES
3. Salvaging by Permits	YES	YES	YES
4. Attendant - During all Operating Hours.	YES	YES	YES
5. Special Hazardous Waste Provision	YES	CONDITIONAL	CONDITIONAL
6. Communication With Fire Dept., Medical and Law	YES	YES	NO
7. Fire Control Facilities Shall Be Provided	YES	YES	YES
8. Fences & Gates	YES	YES	YES
9. Final Grade Compliance	YES	NO	NO
10. Hot Load Area	YES	YES	NO
11. Disposal Area-Well Drained	YES	YES	YES
12. Litter Fencing as Needed	YES	YES	YES
13. All-Weather Access Road	YES	YES	NO
14. Face Width Restricted	YES	YES	YES
15. Operating Records	YES	YES	NO
16. Equipment Required	YES	YES	YES
17. Maintenance Back-up Equip.	48 HOURS	1 WEEK	1 WEEK
18. Daily Cover All Year (every day) April 1 - Dec. 15 Dec. 16 - March 31	YES	NO YES NO	NO YES(every 2 weeks) NO
19. Intermediate Cover (Every 14 Days)	YES	YES	ONCE IN SPRING, ONCE IN FALL
20. Final Cover	YES	YES WITHIN 30 DAYS OF FINAL REFUSE PLACEMENT	YES AS REQUIRED
21. Operation Manual	YES	YES	YES
22. Occurrence Reports	YES	YES	YES

7.94 ADMINISTRATION

The Department of Environmental Protection is the state authority designated to administer this Act. The Board of the Department promulgates regulations, following the holding of public hearings as specified in Section 361 of Chapter 3, Title 38, to assist in the management of solid waste throughout the state. The Division of Solid Waste Management has the responsibility to:

a. provide technical assistance in the location, proper design, and operation of solid waste facilities;

b. conduct impact studies to delineate the problems with existing solid waste facilities and to recommend appropriate remedial action;

c. provide support through federal contracts for innovative projects in the area of solid waste management;

d. assure compliance with state and federal solid waste management standards

The Board is authorized to issue standard and conditional use permits for solid waste activities. The applications for permits are submitted on standard application forms to the Department's Division of Review and Planning. The staff of the Division reviews the application for completeness, prepares a summary of the information, and distributes it to the following Review Agencies for comment: the Soil and Water Conservation Commission, the Regional Planning Commissions, and the Department of Inland Fisheries and Wildlife. After the review comments are received, the staff of the Review and Planning Division develop recommendations to be submitted to the Board for approval, approval with conditions, or denial. The order is mailed to the applicant within 30 days of submission of the application for permit.

Upon proper application, the Board may issue conditional use permits for the disposal of domestic and commercial solid waste and small quantities of non-hazardous industrial waste to facilities serving less than 5,000 persons and facilities receiving less than 10 tons per week. These permits differ from the standard use permits issued for facilities serving over 5,000 people in that they required reduced operating criteria (listed in section 7.93).

If the construction, operation, and maintenance of the solid waste facility are not according to the terms of the Conditional Use Permit, the permittee is given 30 days from the mailing date of the violation notice signed by the Commissioner to comply. The violation notification is sent certified mail with return receipt requested. If the operator of the facility does not comply within 30 days, the Board may revoke the Conditional Use Permit. If the Commissioner determines that an emergency situation exists, he may revoke the permit without allowing 30 days to correct the deficiencies.

Aggrieved applicants may appeal Board decisions within 10 days by submitting an Administrative Appeal to the Board. The applicant has 30 days to request a public hearing. If the Board upholds its decision, the applicant may appeal the decision to Superior Court within 30 days.

The Board is also empowered through the solid waste regulations adopted pursuant to this law to grant variances from these regulations when proper application is submitted to the Solid Waste Management Division staff for review and recommendation for action to the Board. The Board may grant the variance for whatever period it deems appropriate on the basis of the following criteria:

a. protection of human health and safety;

b. preservation of environmental quality;

c. compliance with regulations for which a variance is sought would produce serious hardship;

d. proposal of a reasonable and environmentally sound alternative.

The Solid Waste Management Act prescribes administrative responsibilities for municipalities as well. Municipalities are required to submit status reports to DEP for review. The reports must contain information on the location of, ordinances or regulations adopted for, legal arrangements established for, and/or management plans officially adopted for solid waste disposal facilities.

Municipalities have the right to enact ordinances regulating the disposal of solid waste to the extent that such ordinances are consistent with the provisions of this law.

7.10 STREAM ALTERATION ACT

7.101 SUMMARY

The Alteration of Rivers, Streams, and Brooks Act, 12 M.R.S.A., Sec. 2206 - 2212, was passed in 1974 by the Regular Session of the 106th Maine Legislature, replacing the Bulldozing of Rivers, Streams, and Brooks Act of 1954. Activities regulated by the Act include dredging, filling, and the construction of permanent structures on, in, over, or adjacent to any river, stream, or brook above the head of tide. The law requires that any person or other legal entity proposing such an activity first obtain a permit.

The purpose of the Act is to assure that such activities do not unreasonably: (1) cause soil erosion, (2) interfere with existing navigational or recreational uses; (3) harm fish or wildlife habitat; (4) damage the natural setting of the area, or (5) lower the quality of any waters.

Permits for alterations may be issued by the Commissioner of the Department of Inland Fisheries and Wildlife, provided that an application is filed with the Department and the proposed alterations are found to be consistent with the standards in the Act.

7.102 HISTORY

Maine's rivers, streams, and brooks have long been recognized as important navigation and recreation corridors, spawning and nursery grounds for fish and other wildlife, and valuable water supplies. In 1954 the Bulldozing of Rivers, Streams, and Brooks Act, 12 M.R.S.A. § 2205, was passed by the Regular Session of the 96th Maine Legislature to aid in the protection of the flowing, navigable waters in the unorganized territories of the state.

The Bulldozing Act, administered by what was then called the Maine Department of Inland Fish and Game, required permission from the Commissioner of the Department prior to any bulldozing between the banks in excess of 1000 feet. This law was enforceable and carried fines of not less than $100 nor more than $500 for each violation. In 1957 the law was amended to include all navigable waters in the state and all bulldozing between the banks in excess of 500 feet.

The Bulldozing Law provided some degree of protection against soil erosion and sedimentation and fish and wildlife habitat destruction in the state's rivers and streams; yet, since it had limited jurisdiction and was limited to bulldozing activities only, it was not totally effective in protecting these waters from sedimentation, construction activities, and habitat destruction.

In 1971 the Bulldozing Law was rewritten to include dredging and filling activities as well as bulldozing between the banks of a navigable watercourse. Exemptic were included for any public works project altering not more than 200 feet of shore and any private crossing or dam project altering not more than 100 feet of shore.

The present Alteration of Rivers, Streams, and Brooks Act (12 M.R.S.A. § 22(2212) was passed in 1974 by the 106th Legislature in order to: (1) enlarge the scope of

the Department's regulatory authority along rivers and streams, and (2) revise the law to afford the same degree of protection to flowing waters as was given to ponds and lakes in the Great Ponds Act (12 M.R.S.A. § 422) enacted in 1972.

To date, the only significant amendment to the law was the insertion, in 1975, of 'above head of tide' in describing activities regulated by the Act. Similar activities conducted below head of tide come under the jurisdiction of the Board of Environmental Protection under the Coastal Wetlands Act, passed by the same session in 1975 under 38 M.R.S.A. § 471-478.

7.103 USES AND AREAS REGULATED

Generally, the Stream Alteration Act regulates all dredging and filling activities, and all permanent structures erected above the head of tide, in, on, over, or adjacent to any river, stream, or brook in such a manner that any dredged soil, fill, or structure may fall or be washed into the water. All individual persons, firms, corporations, municipalities, state agencies, or other legal entities proposing such a project are subject to regulation under this law.

Activities most commonly requiring permits under the law include dredge and fill operations, the construction of causeways, bridges, sewer lines, marinas, docks, wharves, dams, and other permanent structures, streamside stabilization activities, and intermittent stream diversions related to construction activities.

Streams or brooks protected under the Act must have a defined stream channel at the site of the proposed activity. A stream channel is commonly identified as having defined banks created by water action and having a bed devoid of topsoil and terrestial vegetation which contains water borne deposits or exposed soil parent material or bedrock.

The Stream Alteration Act exempts from its jurisdiction any river, stream, or brook crossings connected with public works projects which do not alter more than a total of 300 feet in any mile of shore. Also exempted are private crossings or dam projects which do not alter more than 100 feet in any mile of shore. Alterations of both shores of the river, stream, or brook are combined in arriving at a total shore footage.

This law does not apply to emergency repairs, maintenance of railroad structures, track, or roadbed within the located right-of-way of any railroad.

7.104 ADMINISTRATION

A permit from the Department of Inland Fisheries and Wildlife is required prior to the commencement of any activity regulated under this Act. Although it is the responsibility of the person or legal entity planning the stream alteration to determine whether or not it is necessary to submit an application for a permit, the Department staff will answer any questions a person may have concerning this decision.

Application forms and instructions for projects proposed in the organized areas of the state are available from the Department. In an effort to streamline permit procedures in the unorganized areas, applications are available from the Land Use

Regulation Commission. Applicants must indicate the location of the proposed project on the appropriate USGS topographic map and provide a sketch of the proposed project, including cross sections of structures and the names of abutting property owners. The applicant must also describe the present use of the shoreland, the project itself, and any measures which will be taken to protect the surrounding area from any adverse effects of the project. No application fee is required.

The applicant must also send a copy of the application and legal notice to the Planning Board or Municipal Officers of the town, informing them that an application for a stream alteration permit is being filed with the Department of Inland Fisheries and Wildlife. Interested parties have 15 days after the date of submission of the application to submit written comments.

When the application is received by the Department, it is checked for completeness and assigned an application number. An on-site inspection is made of the project area by a biologist of the Department and; when deemed appropriate, by other agencies. After the review comments are received, the application is acted upon by the Commissioner of the Department of Inland Fisheries and Wildlife.

A permit is granted if the applicant demonstrates, to the satisfaction of the Commissioner, that the proposed activity will not unreasonably interfere with the existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters. Permits may be either approved, approved with conditions, denied, or recommended for further review at a public hearing at a specified date. Projects are inspected for compliance with conditions after the work is completed.

If the application is denied, the applicant may file a notice of appeal within 30 days. The Commissioner may, within 30 days of receipt of the notice of appeal, provide the applicant with the opportunity for a hearing. Anyone aggrieved by any order or decision of the Commissioner in regard to any matter upon which there was a hearing may, within 30 days, appeal to the Superior Court. The Court's review is limited to questions of law and to whether the Commissioner acted properly and within the scope of his authority. The Commissioner's decision is final as long as it is supported by substantial evidence. The Court may affirm, reverse, or remand the Commissioner's decision for further proceedings.

Any person or other legal entity who fills, dredges, alters, or erects a permanent structure within an area protected by this law, without a permit or contrary to the conditions of a permit, is subject to a fine for the violation of not more than $200 for each day of violation. In the event of a violation, the Attorney General may institute proceedings to prevent further violation and to compel restoration of the affected area to its prior condition.

7.110 OIL DISCHARGE PREVENTION AND POLLUTION CONTROL (COASTAL CONVEYANCE OF PETROLEUM ACT)

7.111 SUMMARY

The purpose of the Act (38 M.R.S.A. §§ 344-349; 541-557, 560) is to protect the coast of Maine from damage caused by oil spillage. Emphasis is on prevention, immediate clean-up reaction when spills do occur, and providing compensation for damages to property owners.

To accomplish its purpose, the Act employs the police power of the State to prohibit the unlicensed discharge of oil and to regulate the manner in which transfers of oil are conducted. Licenses to transfer oil between vessels and terminal facilities carry operating safety conditions and require payment of fees based on the volume of oil transferred. Vessel to vessel transfers must also be licensed.

The Act also creates the Coastal Protection Fund, limited to $6,000,000, generated by the collection of license fees and penalties which is used to pay administr tive expenses, costs of clean-up, and third party damages.

Research and development in the causes, effects, and removal of oil pollution relative to the marine environment costing up to $100,000 per year may also be charge to the Fund.

A capability to act immediately upon reports of prohibited or unexplained discharges of oil is provided for in the Act, which also charges the administering agency - the Maine Department of Environmental Protection - to remove or direct the removal of discharges reported.

Anchorage for more than seven days in Maine waters of vessels designed or used to carry oil as cargo is subject to regulation and requires a license from the Board of Environmental Protection.

7.112 HISTORY

In 1963 the grounding of the Northern Gulf on West Cod Ledge in Casco Bay demonstrated the threat to Maine's coast posed by the heavy oil tanker traffic entering and leaving Maine waters.

In 1967 the catastrophic potential of a large oil spill was further demonstrated by the Torrey Canyon disaster.

The 1970 Maine Legislature passed the Coastal Conveyance of Petroleum Act to deal with the threat to the Maine coast. The constitutionality of the Act was immediately challenged in regard to holding an oil terminal operator liable for acts or omissions of its carriers, both arriving and departing in state waters. The case went to the U. S. Supreme Court, which eventually upheld the Maine law.

In 1972 the Tamano incident in Casco Bay demonstrated the need of the Maine law in dealing with a large spill promptly, both as to cleanup and settlement of damage claims without having to wait for extended litigation over complex legal issues.

In 1977 the law was clarified to cover all oil spills within the State, inland as well as coastal. Ground waters as well as surface waters are protected.

7.113 USES AND AREAS REGULATED

The unlicensed discharge of oil into the following areas is prohibited:

- coastal waters extending 12 miles seaward *.
- estuaries
- tidal flats
- beaches
- lands adjoining the seacoast
- rivers, streams
- sewers, surface water drains
- other waters of the State

In order to reduce the likelihood of oil spills, regulation by means of attaching specified safety operating conditions to licenses is required of operators of all oil terminal facilities with a storage capacity of 500 barrels or more.

In addition to the transfer of oil between vessels and oil terminal facilities, related activities which are also subject to regulation are the operation of oil carrying vessels, barges, tugs, motor vehicles and other equipment used by terminals and refineries.

Moreover, the operation of arriving and departing vessels carrying oil to or from terminals is subject to terminal license conditions while within 12 miles from the coastline of the State. Terminals are held strictly liable for spills from their carrier

7.114 ADMINISTRATION

Responsibilities for carrying out the Oil Discharge Prevention and Pollution Control Act are distributed among several agencies. Hearings are held and major decisions concerning licenses, conditions on licenses, and violations are made by the Board of Environmental Protection. (The organization of the DEP is described in Section 9.5 of the Application.)

Day to day administration of licensing, oil spill cleanups, Coastal Fund activity, research and development and third party claims is carried out under direction of the Commissioner of the Department of Environmental Protection by the Division of Oil Conveyance Services.

* The application of this Act beyond 3 miles does not extend the Seaward Boundary of the Coastal Zone. (See Appendix B2.)

The Maine Attorney General is charged with enforcing all orders of the Board of Environmental Protection; Superior Court hears appeals from BEP decisions; and both the Commissioner of the Maine Department of Marine Resources and the Commander of the U. S. Coast Guard must be solicited for advice before adoption of anchorage regulations.

The Oil Conveyance Services Division of the Department of Environmental Protection maintains offices in Portland, Bangor, and Augusta. At the Portland office a 24-hour, toll-free telephone number receives oil spill reports. A radio communication network covers the entire coast. Equipment including work boats, oil skimmers, containment boom, and oil sorbents is stored in Calais, Rockland, Portland and other cities. Contractors have standby agreements with the DEP to clean up oil spills. Oil spill cooperatives made up of oil handling companies have been formed and have acquired equipment and pooled labor to respond to oil spill emergencies, notably in the upper Penobscot Bay area, as well as in Rockland-Camden and Portland.

Violators of laws administered by the Department of Environmental Protection are subject to criminal penalties of up to $25,000 per day and civil penalties of up to $10,000 per day. Any person falsifying statements when applying for or reporting as required under a license, or tampering with monitoring devices is, upon conviction, subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

7.12 MARINE RESOURCES MANAGEMENT LAW

7.121 SUMMARY

The Regulations for the Conservation of Marine Species Act (12 M.R.S.A. 3504) provides the Commissioner of the Department of Marine Resources with the authority to make regulations assuring the conservation of marine resources in any of the coastal waters or flats of the State.

The purpose of the Law, also called the Marine Resources Management Law is to protect any of the renewable marine resources of the State through enforceable regulations regarding the time, method, number, weight, length and location where a species is taken.

The adoption of regulations may be initiated by (A) declaration of emergency by the Commissioner, (B) by petition, or (C) by the initiative of the Commissior The proceedure for adoption of regulations is outlined in 12 M.R.S.A. § 3505.

7.122 HISTORY

The Commissioner of the Department of Marine Resources (formerly known as the Department of Sea and Shore Fisheries) was first granted regulation authority for fisheries conservation in 1917 (Laws of Maine of 1917, Ch. 293 § 3, 4, 6).

In the past, when most commercial species were abundant, little use was made of this law. Regulations on marine fisheries were more commonly enacted by the Legislature after initiation by industry and advice from the Commissioner. The Law, presently entitled 'Conservation of Certain Marine Species - Regulations' in Title 12, M.R.S.A. 3504, was amended in 1973 to include "length" and "location" as methods by which taking may be limited, and to allow the Commissioner to adopt regulations at his own initiative (1973 Ch. 513, §§ 11, 12). An Advisory Council composed of nine members engaged in commercial marine resource activities may advise the Commissioner on regulations prior to their adoption.

In recent years the importance and implications of this law have increased due to increased fishing pressure, loss of marine and intertidal habitat from pollution caused by coastal population and industrial growth.

The Department is presently compiling data and management recommendatic on the herring, shellfish, and lobster fisheries in the coastal area, from which regulati quired for conservation purposes will be promulgated. The Department is also consider management of the state's finfish resources pursuant to this authority.

7.123 USES AND AREAS REGULATED

The Law provides for the protection of all renewable marine resources, including fish, shellfish, marine worms, marine plants, and the entire ecology and habitat supporting the organisms in conjunction with the Department's overall responsibility to promote and develop the Maine coastal fishing industries.

Regulations may be promulgated regarding any one or more of the following i not covered by specific statutes enacted by the Legislature:

A. The time taken;
B. The method by which taken;
C. The number taken;
D. The weight taken;
E. The length;
F. The location.

Regulations may apply to the taking of marine species in any of the coastal v or flats of the State and waters outside the State involving fishermen licensed in the Sta Maine (or fishermen using vessels registered for purposes of Maine's Marine Resources Lc 12 MRSA §§ 36, 3401).

7.124 ADMINISTRATION

The procedure for the adoption of the regulations authorized in the Act are provided in Section 3505 (12 M.R.S.A.) entitled: Procedure For Adoption of Regulatio

Adoption of regulations may be initiated by one of three methods:

A. A declaration of emergency by the Commissioner, stating which species are affected, the conditions endangering their conservation, and the locality

B. A petition submitted to the Commissioner by a majority of the municipal officers or 25 citizens of the municipality, or by a majority of the county commissioners where the condition exists. The petition must state which spec are affected, the conditions which endanger conservation, and the location.

C. A declaration by the Commissioner, after investigation, that a regulatior is necessary to conserve marine species or promote their propagation.

Once an emergency is declared, a petition received, or a regulation is initiated by the Commissioner, a public hearing must be scheduled and adverti ed in the county in which the regulation is proposed. If a petition is received, a hearing mu be held within 30 days.

After the hearing, the Commissioner must adopt a regulation to remedy the danger proven to exist at the hearing. After adoption of a regulation, it is filed with the Secretary of State or with the Superior Court and published in a newspaper publishe in the county where the regulation is to be enforced.

A regulation adopted at the initiation of a petition becomes effective on the first day of January following newspaper publication. A regulation adopted under a declaration of emergency by the Commissioner or of his own initiative becomes effective the day following publication unless specified otherwise in the regulation.

Once effective, a regulation has the force of law. Enforcement is carried out by wardens of the Department.

Section 8

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
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MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

8. THE PROGRAM FOR IMPROVING COASTAL RESOURCE PLANNING AND MANAGEMENT IN MAINE

8.1 INTRODUCTION

This section describes what will be done with 306 funding to improve coastal resource management in Maine if this program is approved by the Office of Coastal Zone Management. As discussed earlier, because Maine initiated the land use programs described in Section 7 several years ago, the new activities should be seen as supplemental to existing ones. To use the analogy made earlier, the fabric of the program results from weaving together existing programs, e.g., Site Location Law administration, Coastal Wetlands Law administration, and others, with the new projects that will result from the program.

While the new projects will address improving the implementation of existing laws, they will also address related issues that are much broader in scope. Examples of such projects include: improving the producitvity of shellfish; improving the implementation of local plans and ordinances; guiding development to appropriate locations considering factors broader than those in existing laws; and improving the prospects for those economic activities that are the most beneficial for the coastal area. Both types of efforts are needed for a balanced and effective program.

This section describes not only the types of activities that will be undertaken as parts of the program but also the amount of funding they will receive if the program is funded at the $1,200,000 level. The amounts allocated to the different categories of activities reflect where, in the judgment of the people of the State of Maine, the new funds could be used most advantageously.

As detailed subsequently, local resource planning and management projects will get the greatest amount of funding. One rationale for taking this course of action is that while the administration and implementation of existing laws on the state level already receives substantial funding (approximately $3,000,000 per year statewide), local resource planning, management, implementation, and administrative activities receive little or no state or federal funding specifically earmarked for these purposes.

SUMMARY OF THIS SECTION

The direction for Maine's program for improving resource planning and management is based on what Maine's coastal residents have said they want.

The State Planning Office has held more than thirty-five meetings with coastal residents, coastal legislators, coastal town officials, and business and conservation interests; further, it has mailed out over 1,900 copies of informational

reports and received hundreds of replies to questionnaires. The purpose of these meetings and surveys has been to inform the people of the coast as to what Maine's Coastal Program has achieved, describe options for the future, and find out what direction and priorities they perceive as being important to the Program.

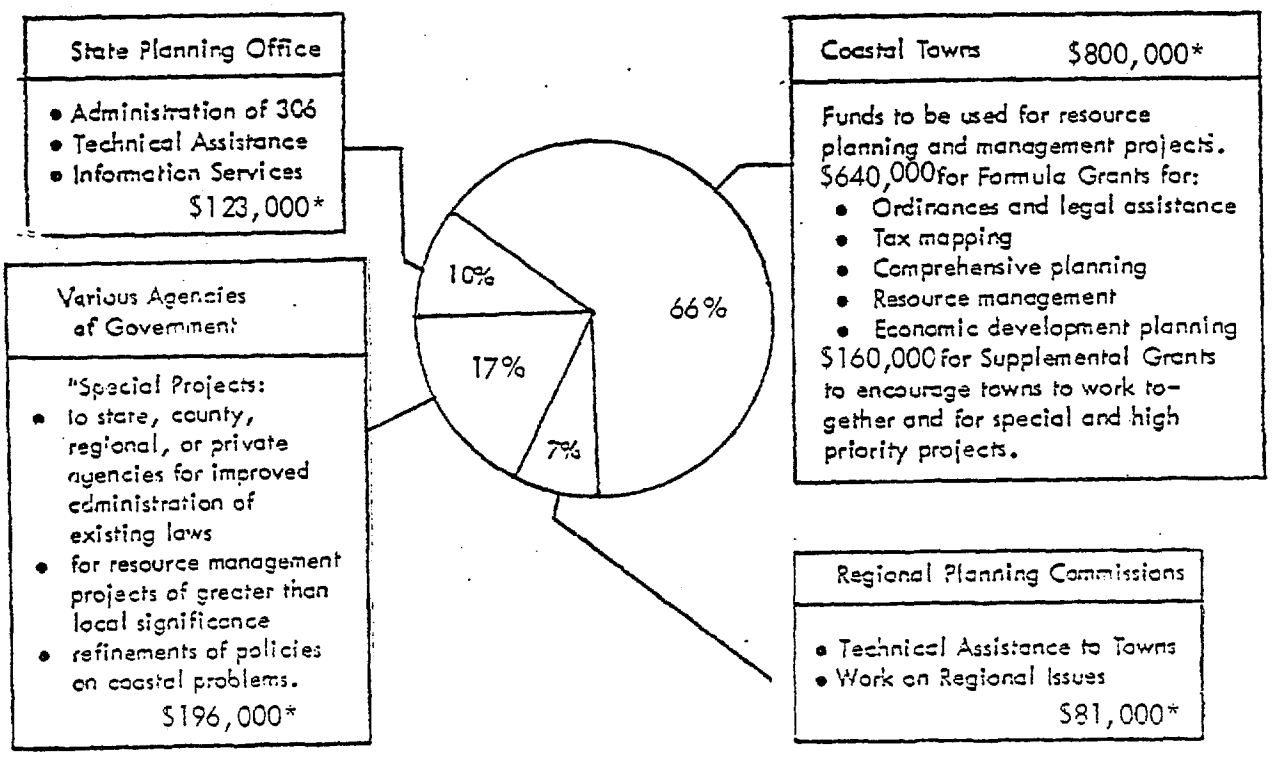
The majority of these coastal residents contacted:

- Believe that the majority of federal funds should be allocated for local projects to improve resource use;
- Recognize that there are issues, of more than local concern to the future of the coast, that should be addressed.

Funds* allocated to Maine under Section 306 will, therefore, be used largely to support local projects to improve resource use in the coastal area to develop recommendations for refinements in the policies on issues of broad concern, and to improve the implementation of existing programs which deal with these issues. In addition, funds will be allocated to continue ongoing technical assistance programs, and to the State Planning Office for program administration. It is important to remember that for Maine to qualify for funding, no new federal or state laws will be required.

The federal funds* available to Maine's Coastal Program under Section 306 of the Coastal Zone Management Act will be administered by the State Planning Office with policy direction established by the Committee on Coastal Development and Conservation.

Funds* available for coastal land and water use planning projects and management programs at the local, regional, county, and state levels will be allocated in the following way:



* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

- Under the allocation procedure outlined in the diagram, the decisions concerning the standards or criteria for acceptable projects will rest with the Committee on Coastal Development and Conservation (C.C.D.C.). The C.C.D.C. will advise the State Planning Office on priorities for the funding of projects.

- The State Planning Office will make final funding decisions and award and administer contracts.

- FORMULA GRANTS will be assured those coastal towns that choose to participate, provided they meet minimum guidelines and propose to undertake eligible projects. No matching grant will be required. Formula grants may be used, at the discretion of local officials, to fund regional planning commission projects that benefit the coastal towns. (See Section 8.31)

- SUPPLEMENTAL GRANTS are also available to coastal towns. These supplemental monies will be available to coastal towns, in addition to those available under the Formula procedure, for projects involving two or more towns acting together for common ends and for special or high priority projects to be undertaken by one town. The purpose is to encourage towns to work together and to set aside funds for those coastal towns that, in the judgment of the Committee on Coastal Development and Conservation, propose projects for which there is a special need, beyond that which can be met by a Formula Grant. (See Section 8.32)

- SPECIAL PROJECT funds will be awarded at the discretion of the State Planning Office with the advice of the Committee on Coastal Development and Conservation, according to established criteria. Priority will be given to projects that meet certain criteria, and matching funds will be required. (See Section 8.4)

- Funds will also be used to develop recommendations for refinements in the policies regarding such issues as Outer Continental Shelf oil and gas development and heavy industrial siting. This work will be done by a variety of agencies and organizations and will be coordinated by the Committee on Coastal Development and Conservation.

- REGIONAL PLANNING COMMISSIONS will be required to provide matching grants of 20%.

- THE STATE PLANNING OFFICE will retain 10% of the total OCZM grant for administration of the program and for technical assistance and contractual work. (See Section 8.2)

- In addition to the funds discussed above which constitute the regular funding for Maine's 306 Program, the Office of Coastal Zone Management is committing approximately $100,000 as a supplement to the program. The federal office is directing that these funds be used to improve the administration/implementation of the core laws, particularly the Site Location of Development Law, by the Department of Environmental Protection. This funding is discussed in more detail in Section 8.6.

FUNDING PROGRAMS AVAILABLE TO MAINE AGENCIES OF GOVERNMENT

AGENCY	GRANT AND MONEY AVAILABLE					
	Formula Grant $640,000*	Supplemental Grant $160,000*	Special Projects $196,000*	Planning & Technical Services $81,000*	Policy Analysis (included in Special Projects amt)	Admin. $123,000*
Coastal Towns (in organized areas of State)	Yes	Yes	No	Indirectly[1]	No	No
County	No	No	Yes	Indirectly[2]	No	No
RPC's	Indirectly[3]	Indirectly[3]	Yes	Yes	No	No
State Agencies	No	No	Yes	No	Yes	Yes[4]
Other[5]	No	No	Yes	No	No	No

1 Coastal towns cannot apply for these funds, however, they do benefit as the RPC's function to serve towns in this region.

2 Counties cannot apply, but they benefit indirectly from RPC activities.

3 RPC's (and others) may subcontract services to towns.

4 Primarily the State Planning Office

5 This includes Resource Conservation and Development districts and public and private groups, provided the project serves a public purpose and meets eligibility criteria.

* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

Linkages Between the Proposed Projects and the Existing Laws

While the new activities proposed to be undertaken with 306 funds are broader in scope than just implementing the core laws, there are, nonetheless, important direct and indirect relationships between these activities and the laws. A few of the most important relationships are as follows:

First, some of the activities will directly involve improved implementation of the core laws. Many towns have expressed their interest in using local grants to prepare subdivision ordinances, improve zoning ordinances, including those covering shorelands, and hiring town employees to carry out municipal responsibilities for implementation under the core laws. Further, with the availability of substantial funding, additional coastal towns will likely assume the responsibility for administering the Coastal Wetlands Law and portions of the Site Location Law. As pointed out in Section 7, the option of administering these laws is available to towns which meet DEP requirements.

Secondly, providing information and technical assistance at the state, regional, and local levels will result in improved decisions by developers regarding the location of facilities and their design. Further, a number of localities have expressed interest in projects that will serve to guide development to the most appropriate locations considering natural resources, social and economic conditions. Both of these types of activities will result in improved proposals for development for review under the core laws.

Thirdly, technical assistance which will be available from the state and regions will enable coastal municipalities to carry out their core law responsibilities more effectively. For example, having technical assistance available for reviewing a large subdivision proposal is very important to many of the small towns in coastal Maine. Most of Maine's coastal towns have less than 2,000 people. In these communities the subdivision law and shoreland zoning ordinance are typically administered by the planning board, which is made up of part-time volunteers who generally have no experience in land use planning. Further, the availability of technical assistance to the towns will enable them to present local interests more effectively to state agencies which administer core laws.

Fourth, many towns have expressed interest in either preparing or improving their town land use and capital improvement plans. When implemented, these plans will provide an important framework or context for the local administration of the core laws. For example, decisions made under Shoreland Zoning or under the Land Subdivision Law should be made consistent with town plans. In fact, for a town to have its own legally adopted Shoreland Zoning ordinance as imposed by the state, it must have an adequate land use plan.

Fifth, several of the policy issues to be investigated and a number of projects that towns have indicated they wish to undertake will be aimed at improving the prospects for segments of the coastal economy which are most beneficial because they provide jobs, while maintaining or improving social and environmental conditions. These activities will encourage the types of development which are most compatible with the core laws. Further, they should relieve pressures for other kinds of economic activities which are not so beneficial. In addition, increasing the productivity of Maine's coastal resources, e.g., shellfish, will link Maine's coastal residents even more closely to their environment and reinforce its importance in their decision making.

8.2 THE ROLE OF THE STATE PLANNING OFFICE

About 10% of the total Office of Coastal Zone Management grant expected will be needed by the State Planning Office to administer the program effectively.

The State Planning Office will have the principal responsibility for coordinating the activities which further the goals and policies of Maine's Coastal Program. It will assure that the coastal management activities of the various state, local, and regional agencies achieve a balance between conservation and development, and the policies as expressed by the Governor, the Maine Legislature, and the Congress in the federal Coastal Zone Management Act.

The general functions of the State Planning Office are described in Section 9.3. Its role as the designated state agency for coastal management includes identification of problems, conflicts, and issues needing policy refinement; administration of funds for implementing the Coastal Program, monitoring the functions of the core law agencies to assure meeting the objectives of the Coastal Program, and coordinating the state's functions in the federal consistency procedures.

The State Planning Office also provides the staff to the Governor's Advisory Committee on Coastal Development and Conservation (CCDC). The role of the CCDC is described in Section 9.2, but will be discussed in this section as their role relates to the functioning of the State Planning Office in carrying out its responsibilities under the Coastal Program.

Policy Refinement

The State Planning Office will play a lead role in development of recommendations on policy refinement regarding issues of broad concern. This is the continuation of a process begun under 305 and is part of a long term responsibility of the state's Coastal Planning Program. In the course of carrying out its other duties in the Coastal Program, the State Planning Office keeps track of current development trends, and problems related to coastal management. Additionally, other state agencies, the legislature, or the Governor may become aware of problems. The Coastal Program staff and the Committee on Coastal Development and Conservation (CCDC), through this program, are a focal point in state government to coordinate state level response to coastal problems. These needs may arise from new pressures or in the case of beach erosion, unusual storms, or they may arise from a conflict or problem with some of the existing state policy.

According to the procedure established to date, problems or needs are either brought to the attention of the CCDC by a letter from the Governor, or the CCDC may initiate a study itself. The CCDC may either assign a subcommittee to further define the problem or request that a study report be prepared as a basis for recommendations for policy changes. Upon receiving a report, the CCDC undertakes a staged discussion process which includes the Technical Advisory Committee, special interest groups, and public meetings. Final recommendations, reflecting this input, are submitted to the Governor for his action.

Thus, the CCDC provides a forum for executive policy consideration of issues which affect the entire coast. Although it does not have any decision-making authority on its own, the CCDC provides a mechanism for solving problems. Cumulatively the process on policy recommendations provide a framework for a rational and responsive management of the coast.

Administering the Funds

The State Planning Office will assure that the funds passed through it to local/state or private nonprofit organizations will be used to implement the policies of the Coastal Program. By guidance in applications, the screening of locally selected projects for conformance with eligibility criteria and the provision of technical assistance in the work conducted, the State Planning Office will exercise its leadership in coastal management.

The State Planning Office, through the special projects grants can also encourage and enhance the functions of state and regional agencies. Projects which lead to improved management of coastal resources, such as Coastal Islands Registry in the Department of Conservation, or the improved administration of other existing laws will be encouraged.

Monitoring Implementation

While the land and water use regulatory functions under the eleven core laws are not carried out by the State Planning Office, it does monitor the activities of these agencies. In addition to the A-95 review procedure, the State Planning Office will review periodic reports by the core law agencies and in the course of planning each year's program, discuss the needs and problems that the agencies have in administering their laws.

Federal Consistency

The State Poanning Office will also guide and coordinate activities to bring about federal consistency. The State Planning Office will receive federal agencies' determination of consistency, forward it for review to core laws agencies, and notify federal agencies of the state's review. Likewise, the State Planning Office will, using the A-95 notification procedure, receive and forward notice of other activities subject to federal consistency. (The complete write up of how the state will conduct federal consistency review is in Appendix E.)

Coordination

Specific memoranda of agreement with the Department of Environmental Protection, the Land Use Regulation Commission, the State Development Office, and the Department of Transportation will assure improved coordination between these agencies and the State Planning Office by calling for cooperation in dealing with federal consistency evaluations in the sharing of natural resource inventory information and in assisting persons seeking suitable development locations. (See Appendix I2a-I2c for the memoranda and B4 for a listing of available resource information.)

In close cooperation with the Coastal Program, the Natural Resource Planning Division of the State Planning Office also provides staffing for the State's Critical Areas Program. Under this program, the State Planning Office is working on the preservation of areas of unusual, natural, scenic, scientific, or historical significance. The purpose of the program is to identify and document the significance of natural areas. The reports and recommendations resulting from this work are offered as guidance for the decisions of private landowners and other decision makers. This allows the State to focus its attention on significant areas for preservation on the coast.

In summary, the role of the State Planning Office is to provide vigorous leadership and coordination of the coastal resource-related activities of federal, state, regional, and local government. By the responsible administration of funds, the State Planning Office can exercise its leadership in encouraging improved administration of existing laws, protecting the environment, and promoting resource management activities which enhance the sound utilization of coastal resources.

8.3 GRANTS TO COASTAL TOWNS

One of the major goals of Maine's Coastal Program is to encourage resource planning and management programs at the town level of government. Although the towns have the legal authority to plan and manage their own land and water uses, they have been hampered by inadequate funding.

By providing $800,000* to coastal towns choosing to conduct resource management programs during the first year of 306 funding, the Maine Coastal Program hopes to provide the funding most needed in the coastal area. Two types of grants are available only to coastal towns: Formula Grants and Supplemental Grants.

Formula Grants

Coastal towns will be eligible for $640,000* through Formula Grants during the first year of funding. These funds will not require a match. The total Formula funding available to each town will be determined by the Formula described in Section 8.3. Formula Grants will be available for funding local resource development and conservation projects that further the goals of the Coastal Program and are judged eligible according to criteria in Section 8.311. The towns will set their own priorities, among eligible projects, as to which should be submitted for funding.

Supplemental Grants

The remaining $160,000* in funds will be available to towns as Supplemental Grants. These grants are designed to encourage multi-town cooperative planning, and to supplement a town's Formula funds where more money is needed for special or high priority projects. Supplemental Grants for individual town projects will require a 20% match. Supplemental Grants for joint town efforts will not require a match.

8.31 FORMULA GRANTS TO TOWNS

Formula Grants are designed to provide money to individual towns for projects addressing local problems and opportunities. Towns set their own priorities in choosing among eligible projects. No match will be required for these projects, however, they must meet basic eligibility criteria.

8.311 ELIGIBLE PROJECTS

Generally, in order to conform with the policies established by Congress in enacting the Coastal Zone Management Act, Formula Grants will be awarded for municipal projects which involve planning for, and the management of, coastal resources.

* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

Furthermore, municipal project proposals should be consistent with the other aspects of Maine's Coastal Program.

ELIGIBILITY CRITERIA

Project applications submitted for a Formula Grant will, therefore, be eligible if they meet all of the following eligibility criteria:

1. They will further the goals and policies of Maine's Coastal Program.
2. They directly concern the planning for and management of coastal natural resources.
3. They are supported and signed by the top elected officials of the towns applying.
4. They maintain or improve environmental quality.
5. They maintain or improve social conditions.
6. They serve a "public" purpose.
7. They are consistent with the town's comprehensive plan and/or any other long-range plans for the town (if any).
8. They are consistent with state law.
9. They are consistent with any applicable town ordinances.
10. They are technically sound, are based on valid assumptions, and use effective methods to accomplish their objectives.
11. They make effective use of the relevant information that is available, and, when applicable, utilize standard codes, terminology, and reference systems (e.g., State Land Cover Code, Maine Soil Suitability Guide, etc.).
12. They will be completed within the grant period (grant periods run for one year).

In cases where there is a dispute over whether a project is eligible, the Committee on Coastal Development and Conservation shall advise the State Planning Office on the project's eligibility in light of these criteria.

Projects that propose using Formula monies for construction or the purchase of land or equipment that is not essential to resource planning and management activities are not eligible.

In selecting among eligible projects, the State Planning Office and the Committee on Coastal Development and Conservation encourage towns to give priority to projects that:

- Lead to the more effective application of existing land and water use laws through, for example, the improvement of maps, ordinances, informational services, project monitoring, enforcement, etc.

- Protect nonrenewable resources, such as mineral deposits, from conflicting land uses which preclude future utilization and economic benefit.

- Promote the management of natural resources on a sustained yield basis, so that the local or regional environment and economy benefits in the long term.

- Relate to the establishment, refinement and/or implementation of a comprehensive plan, or parts thereof.

- Are transferable and will serve as a model for other towns.

- Will help resolve local natural resource problems that have more than local impact.

- Promote, through educational programs, a better understanding of natural systems and their role in land and water use planning and management.

- Seek to resolve conflicts between competing land uses so that coastal natural resources are conserved.

- Mesh with problems in adjoining towns and utilize Formula Grant funds from a number of cooperating towns to study and/or resolve a common problem (e.g., hire a code enforcement officer to serve three towns, plan for a multi-town dump, etc.).

To assist towns in identifying suitable projects that meet the eleven eligibility criteria and that conform with some of the suggested priorities above, a list of EXAMPLES of eligible projects is included below. The State Planning Office will advise towns when they are uncertain of a project's eligibility.

EXAMPLES OF ELIGIBLE PROJECTS

Category of Project	Project	Comment
A. PLANNING OF ECONOMIC DEVELOPMENT (Note: All projects must meet eligibility criteria.)	Port or harbor planning	Such planning should consider alternatives to proposed action and its impact on the marine environment.
	Industrial, Commercial, or Residential development planning	Such planning should be in accordance with sound planning and ecological principles. Could include development and/or site selection advisory service.
	Planning for improved natural resource utilization	Examples include: a management plan to maximize local long-term benefits from wood, shellfish, agricultural, or mineral production or utilization.

Category of Project	Project	Comment
B. RESOURCE MANAGEMENT AND/OR CONSERVATION ACTIVITIES (Note: All projects must meet eligibility criteria.)	Open space and/or wildlife habitat conservation	Planning or management studies of: needed public access points, town forest lands, heron rookery protection, etc.
	Historic preservation	Architectural and/or engineering studies of restoration potential: studies of economic/tourist benefits of selective preservation: work to establish historic districts, etc.
	Watershed and water supply protection and management	Assess existing and future town supply needs, water sources, water quality, and causes of problems: assess the potential water power sources, etc.
	Natural resource restoration	Study means to restore areas to natural state, e.g., wetland fill, gravel pit restoration, etc.
	Agricultural land conservation	Planning or management studies of agricultural lands; inventories, development pressures, preservation alternatives.
C. TOWN ORDINANCE PREPARATION (Note: All projects must meet eligibility criteria.)	Subdivision, zoning, sign control, site plan review, etc., ordinances	Could include hiring subcontractor, planner, lawyer, etc., revising, reprinting, updating and other costs incurred in ordinance preparation.
	Building code	Preparation of code, printing, distributing, etc.
	Streamline permit procedures	Investigate, assess, revise, implement procedures to assure an efficient, responsive permit process.

Category of Project	Project	Comment
D. DATA COLLECTION AND REFINEMENT (Note: All projects must meet eligibility criteria.)	Tax map and shoreland zoning map preparation	Funds could be used for completing, improving, checking accuracy of existing town base maps; including tax, shoreland zoning, etc., maps.
	Socioeconomic data	Collect, refine, file, analyze, etc., current data to determine trends and needs. Make such data available through mailing, fact books, etc.
	Soils, geologic, land use, and other resource data	Inventory information, for example, to supplement or provide more detail than that on State Planning Office inventories.
E. PREPARATION OF TOWN PLANS (Note: All projects must meet eligibility criteria.)	- Comprehensive plan preparation - Open space and park planning - Comprehensive capital improvement planning - Landscape plan for business district	Funds could be utilized to hire subcontractor (a private firm, Regional Planning Commission, or university), undertake project using local people, or hire in-house town planner.
F. TOWN ORDINANCE ADMINISTRATION (Note: All projects must meet eligibility criteria.)	Hire administrator, lawyer, building code officer, shellfish warden, etc.	Person(s) work should be related to natural resource management and planning activities undertaken by local government.
	Hire temporary help	Provided such work will implement or complete planning and research necessary to resource management.
G. PUBLIC AWARENESS, INVOLVEMENT, AND EDUCATION (Note: All projects must meet eligibility criteria.)	Instruction in data collection, data analysis, planning, resource management	Funds could be used to pay instructor of course; course should increase awareness of need to chart course for the future, coastal ecosystems, applicable laws, use of maps and other technical information.
	Establish planning and natural resource information service	Distribute maps, booklets, copies of laws, etc., and provide advice.
	Heighten people's awareness of coastal issues	Hold public meetings, prepare materials on issues, etc.

8.312 DISTRIBUTION OF FORMULA GRANT FUNDS --

The $640,000 available to coastal towns through Formula Grants will be divided among all towns with eligible project proposals. The Formula Grant for any one town depends on its area, population, and length of coastline, and (with 100 towns applying) would typically provide from $5,200 to $18,400 per town, with most towns eligible for between $5,600 and $10,400. The formula is illustrated below:

FORMULA GRANT TO COASTAL TOWNS
($640,00 or 80% of the total amount available to coastal towns.)

$$\frac{1}{N}\ \$400,000 + \frac{a}{A}\ \$80,000 + \frac{p}{P}\ \$80,000 + \frac{s}{S}\ \$80,000 = \text{Total grant to a particular town}$$

where:
- N = total number of coastal towns applying for funds
- a = area of particular town
- A = total area of all coastal towns applying
- p = population of particular town
- P = total population of all coastal towns applying
- s = length of shoreline of particular town
- S = total length of shoreline of all coastal towns applying

For example, if 100 towns apply, a typical small town covering 50 square miles with a population of 1,500 persons, with a shoreline of 30 miles would qualify for about $5,000.

- N = 100 towns applying (this is probable based upon response to State Planning Office questionnaires)
- a = 50 square miles
- A = 3,400 square miles
- p = 1,500 persons
- P = 460,000 persons
- s = 30 linear miles
- S = 4,000 linear miles

$$\frac{1}{100}\ (\$400,000) - \frac{50}{3,400}\ (\$80,000) + \frac{1,500}{460,000}\ (\$80,000) - \frac{30}{4,000}\ (\$80,000) = \$5,095$$

8.313 THE APPLICATION PROCEDURE FOR FORMULA GRANTS

The application procedure will be straightforward and will consist of two stages:

(1) the filing of a Notice of Intent to apply for Formula Grant funds to the State Planning Office, and

* When the program was first proposed Maine assumed it would be eligible for $1.5 million. However, we will not know for certain how much money Maine will receive until our financial application is approved.

(2) the filing of an Application for Formula Grant funds to the State Planning Office.

Notice of Intent forms will be mailed to all towns once the Governor has formally submitted the program to OCZM for 306 Coastal Zone Management monies. These forms will be accompanied by guidelines to assist towns in preparing a response and further assistance will be available from the State Planning Office staff.

The Notice of Intent, filed by each town, should identify the type of project (or projects) for which funding is sought and should state if the town anticipates applying for a Supplemental Grant (see Section 8.32). The Notice allows the State Planning Office to determine how many towns intend to apply for grants, permits them to judge eligibility, and permits the Office to notify each town of the grant that will be available based on an application of the "formula".

The Formula Grant application form will require:

- the name of the Town;
- the name(s) and position(s) of the top elected officials filing the application;
- a description of the proposed project, its purpose, and the benefits the Town will derive from it;
- an explanation of project expenditures and time schedule;
- an explanation of how and why the Town came to select this particular project(s) for funding and what public purpose it will serve;
- the authority the Town has to receive monies;
- identification of the person (or Committee or Board) authorized to act as the Town's "Project Manager" and liaison with the State Planning Office.

8.314 LOCAL FORMULA GRANT MANAGEMENT RESPONSIBILITIES

Once a Formula Grant proposal is determined to be eligible by the State Planning Office, it will be incorporated into a contract between the State Planning Office and the Town. The responsibilities of the Project Manager designated by the town, will include:

- accepting and accounting for all money received under the grant;
- disbursing funds in accordance with contract specifications, including the hiring of staff and the letting and administration of subcontracts; and
- reporting on the program's progress.

A town will receive 33-1/3% of its grant from the State Planning Office when the contract is signed, 33-1/3% after six months (provided reasonable progress can be clearly demonstrated in a brief progress report), and 33-1/3% upon the successful completion of the project and the submission of a report on the work accomplished.

The report should permit the State Planning Office to determine if the completed project meets the conditions of the contract between the Town and the Office. In other words, the State Planning Office must judge that the project has achieved its stated purpose and goal and meets the eleven eligibility criteria specified in Section 8.211.

Failure to successfully complete a project will jeopardize future funding applications. Where funds have been misused, the State Planning Office may request the Attorney General's office to investigate.

Funds not expended by a Town because of lack of progress or savings will be returned to the State Planning Office and reassigned or returned to the Office of Coastal Zone Management.

8.32 SUPPLEMENTAL GRANTS

Two hundred thousand dollars in Supplemental Grants will be made available to individual towns requiring funding, beyond that provided by the Formula, for high priority projects, and to groups of towns submitting joint proposals for multi-town projects if Maine's program is fully funded.

A major purpose of Supplemental Grants is to encourage multi-town cooperation. Supplemental Grants for projects involving more than one town will therefore not require a match and the size of these grants will be based on an ascending scale, determined by the number of towns cooperating. Grants to single towns will require a 20% match.

The ascending scale will allow two cooperating towns to be eligible for 10% of their combined Formula Grants in Supplemental Funds. Each additional town (up to and including five towns) cooperating in a project increases the project's (and the individual town's) share by 5%. Thus, if the total amount in "Formula" funds allocated to towns A and B is $20,000, they are eligible for a total of $2,000 in Supplemental Funds for a cooperative project. If five towns together receive $60,000 in "Formula" funds, they are eligible for 25% of this amount, or $15,000, in Supplemental Funds for a cooperative project. This 25% figure applies even if more than five towns act cooperatively.

Under this funding program, two, three, four, or more towns could, for example, cooperate on a joint project to locate a regional solid waste disposal site and be eligible for funding in addition to their Formula Grants.

It is expected that some of the larger coastal cities and towns may need a Supplemental Grant to tackle involved and costly planning projects, such as a feasibility study for waterfront development in urban areas. High priority projects proposed by individual towns will require a 20% match. The criteria for determining priorities among competing Supplemental Grant applications are set forth in Section 8.222.

8.321 ELIGIBLE SUPPLEMENTAL GRANT PROJECTS

Supplemental Grants will be awarded to eligible municipal projects which involve planning for, and the management of, coastal resources.

ELIGIBILITY CRITERIA

To be eligible for either a multi-town or individual town Supplemental Grant, the applicant(s) must show that the project meets all of the following eligibility criteria:

1. Will further the goals and policies of Maine's Coastal Program.
2. Directly concerns the planning for and management of coastal natural resources.
3. Is supported and signed by the top elected officials of (all) the town(s) applying.

4. Maintains or improves environmental quality.

5. Maintains or improves social conditions.

6. Serves a "public" purpose.

7. Is consistent with the comprehensive plan(s) and/or any other long-range plans for the town(s) (if any).

8. Is consistent with state law.

9. Is consistent with any and all applicable town ordinances.

10. Is technically sound, is based on valid assumptions, and uses effective methods to accomplish its objectives.

11. Makes effective use of the relevant information that is available, and, when applicable, utilizes standard codes, terminology, and reference systems (e.g., State Land Cover Code, Maine Soil Suitability Guide, etc.).

12. Will be completed within the grant period (grant periods run for one year).

In cases where there is a disagreement over whether a project is eligible, the Committee on Coastal Development and Conservation shall advise the State Planning Office on the project's eligibility in light of these criteria.

Projects that propose using Supplemental Grant monies for construction or the purchase of land or equipment that is not essential to resource planning and management activities are not eligible.

In selecting among eligible projects submitted for consideration for Supplemental Grants, the State Planning Office will give FIRST priority to projects that are submitted by two or more towns. Only after all eligible multi-town projects are selected will funds be available for individual towns. Thereafter, priority will be given projects that:

- Demonstrate that there is need beyond that which can be satisfied by a Formula Grant.

- Demonstrate a high probability of success.

- Are judged to have the greatest overall benefit to the coastal area, relative to cost.

In addition, the following factors will be considered in determining which projects to fund. The State Planning Office and the Committee on Coastal Development and Conservation will favor projects that:

- Lead to the more effective application of existing land and water use laws.
- Promote the management of natural resources on a sustained yield basis, so that the local or regional environment and economy benefits in the long term.
- Relate to the establishment, refinement and/or implementation of a comprehensive plan, or parts thereof.
- Are transferable and will serve as a model for other towns.
- Will help resolve local natural resource problems that have more than local impact.
- Seek to resolve conflicts between competing land uses so that coastal natural resources are conserved.

Finally, within the constraints set by eligibility factors, and the above criteria, the State Planning Office and the Committee on Coastal Development and Conservation shall strive to fund projects that result in a broad geographic distribution of funds.

The examples of eligible projects in Section 8.311 generally will apply for Supplemental Grants to individual towns, with a few exceptions; however, Supplemental Grants to more than one town must involve projects that will benefit all of those towns.

8.322 APPLICATION PROCESS FOR SUPPLEMENTAL GRANTS

Supplemental Grant applications are to be submitted in the same manner and at the same time as Formula applications. Thus, the procedure will consist of two stages:

(1) the filing of a Notice of Intent to apply for Supplemental Grant funds to the State Planning Office, and

(2) the filing of an Application for Supplemental Grant funds to the State Planning Office.

Notice of Intent forms will be mailed to all towns, along with guidelines to assist the towns in filling out the forms. The Notice, once filed, will allow the

State Planning Office to determine initial eligibility and will permit the Office to instruct towns to proceed with a full Application.

Multi-town Supplemental Grant applications will have to show that they meet eligibility criteria and are supported and signed by all the top officials in each participating town. In addition, the application should describe the project, its benefits, the timetable for completion, the authority the towns have to receive the money, and the means devised to manage the project effectively.

Individual town Supplemental Grant applications must meet similar requirements. Furthermore, the application must specify the source and availability of the 20% matching money that is required.

8.323 SUPPLEMENTAL GRANT MANAGEMENT RESPONSIBILITIES

Once approved, Supplemental Grant applications will be incorporated into a contract between the State Planning Office and the town or towns. In the case of multi-town contracts, the participating towns will be responsible for selecting a Project Manager and for establishing and administering a project account. In all cases the Project Manager will act as the State Planning Office's chief contact person.

In the case of multi-town Supplemental Grants, towns will receive 33.3% of a grant from the State Planning Office when the contract is signed, 33.3% after six months (provided reasonable progress can be clearly demonstrated in a brief progress report), and 33.3% upon the successful completion of the project and the submission of a final report on the work accomplished.

Supplemental Grants to individual towns will be made available according to this same procedure, provided a 20% match is committed to the project when a contract is signed.

In all cases, the final report submitted to the State Planning Office should permit the Office to determine if the completed project meets the conditions of the contract between the town(s) and the Office. In other words, the State Planning Office must judge that the project has achieved its stated purpose and goal and meets the eligibility criteria specified in Section 8.311.

Failure to successfully complete a project will jeopardize future funding applications. Where funds have been misused, the State Planning Office may request the Attorney General's office to investigate.

Funds not expended by a Town(s) because of lack of progress or savings will be returned to the State Planning Office and reassigned or returned to the Office of Coastal Zone Management.

8.4 SPECIAL PROJECTS AND THE CONTINUING POLICY DEVELOPMENT PROCESS

As pointed out earlier the legal and regulatory framework for state-level management of Maine's coastal land and resources is already established. Explicitly stated in the core of Maine's Coastal Program are existing state policies regarding the siting of major developments, control of subdivisions, preservation of wetlands, maintenance of water quality, etc. Furthermore, as pointed out in Section 7, the state presently devotes substantial funds to the implementation of these policies through regulatory and management measures. Because of this a large proportion of Maine's proposed 306 funding will be used to fulfill local resource planning and management needs. Notwithstanding this fact, there are several important areas where funding is needed to improve coastwide management and policy making functions. If Maine's program is fully funded, 17% of its funding will be made available to state, county, regional, university, and private nonprofit agencies to:

- make the existing administrative framework for Maine's Coastal Program operate more efficiently and effectively;
- examine policy issues to identify appropriate and feasible refinements;
- support projects which will clarify resource use conflict situations, resource management questions, or major policy disputes of state or national significance;
- develop positive techniques for utilizing coastal land and resources for human needs in an economically and environmentally sound manner; and
- maintain the coastal planning process - a procedure by which issues and problems are examined and policy adjustments are recommended.

These objectives will be achieved through a special project grant program to appropriate government and private agencies, and a policy development program coordinated by the Committee on Coastal Development and Conservation and the State Planning Office. Operating in conjunction with the town and regional grant programs, these state-level functions will supplement and improve the state's established legal framework for coastal resource management.

The objectives of the special project grants are to achieve concrete results in terms of improvements in the implementation procedures for the core laws, establishing communication, and establishing constructive resource management and development projects. The policy development function, on the other hand, is a continuing process aimed at producing recommendations regarding refinements which are desirable in state policy. The two functions relate to one another at the state level, and they will be carefully coordinated.

8.41 SPECIAL PROJECT GRANTS

The Special Project Grant program supplements the existing aspects of Maine's Coastal Program by supporting the work of organizations and agencies which can:

- Improve the efficiency, effectiveness, and responsiveness of the administrative procedures currently used to implement Maine's core laws (a major portion of the Special Project funds will be devoted to this item);
- Supply better understanding of coastal systems and resources in order to facilitate the policy formulation process;
- Initiate resource management or development projects which are consistent with the program's policy of encouraging environmentally sound economic development;
- Develop effective two-way communication links between the coastal public and decision-makers at all levels.

These grants will be made available on a competitive basis to federal, state, and county agencies, Soil and Water Conservation or Resource Conservation and Development Districts, Eastern Maine and other areawide development districts, private nonprofit organizations and university groups, and regional planning commissions. Grants will be awarded and administered on a 20% matching basis.

The Committee on Coastal Development and Conservation will advise the State Planning Office on grant applications in accordance with the criteria and priorities listed below. The role of the State Planning Office will be to administer the process, to indicate program and research needs to approporate agencies, and to offer advice to agencies which are preparing applications. The State Planning Office will be responsible for preparing contracts, monitoring progress, and administering payments and assuring that contract obligations have been fulfilled.

8.411 ELIGIBILITY CRITERIA FOR SPECIAL PROJECT GRANTS

As mentioned above, grants under this section will be awarded on a competitive basis. In order to be <u>considered</u> for a grant, a proposal must meet all of the following criteria:

1. Will further the goals and policies of Maine's Coastal Program.
2. Directly concerns the planning for and management of coastal natural resources.
3. Is supported, where applicable, by the elected or appointed officials of the unit(s) of government that is (are) directly and significantly affected.

4. Maintains or improves environmental quality.

5. Maintains or improves social conditions.

6. Serves a "public" purpose.

7. Is consistent with the comprehensive plan(s) and/or any other long-range plans for the area(s) affected (if any).

8. Is consistent with state law.

9. If applicable, is consistent with any and all town ordinances.

10. Is technically sound, is based on valid assumptions, and uses effective methods to accomplish its objectives.

11. Makes effective use of the relevant information that is available and, when applicable, utilizes standard codes, terminology, and reference systems (e.g., State Land Cover Code, Maine Soil Suitability Guide, etc.)

Proposals which are deemed eligible for consideration will be evaluated as to their priority for funding. The objective of the evaluation process will be to support the combination of proposals which best meet the program's goal. Further, the highest priority for funding will go to those projects which:

1. Improve implementation and administration of Maine's coastal resource management laws;

2. Implement the program's policies;

3. Clarify the most important unanswered questions with respect to development opportunities, resource use conflicts, resource management methodology, or planning strategy;

4. Improve the coordination among the functions of the eleven laws which form the basis for Maine's Coastal Program;

5. Initiate a positive approach to consturctive use of Maine's coastal resources without environmental degradation.

8.412 EXAMPLES OF PROJECTS

To provide an indication of the types of projects which will be considered for funding, a list of EXAMPLES of eligible projects is included below. Obviously many other projects are possible.

General Objective	Project Description	Sponsoring Agency(ies)
a. Improve the efficiency and responsiveness of Maine's coastal management system	Support efforts to improve the administration of the core laws. These projects would provide advice and explanation of the laws and receive constructive input from citizens.	Department of Environmental Protection, Department of Marine Resources, Department of Inland Fisheries and Wildlife
	Streamline paperwork for application review procedures to make regulatory permit programs less onerous to the applicant.	Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife
	Feasibility study to assess innovative technological and management solutions to overcome environmental and institutional problems regarding regional solid waste disposal.	Department of Environmental Protection, University of Maine
b. Supply better understanding of coastal systems and resources in order to facilitate the policy formulation process.	Prepare baseline data, develop appropriate measurement techniques and/or define significant tolerance threshhold levels of natural and cultural systems into order to provide explicit assessment of cumulative growth impacts for shoreland zoning and site location procedures.	Department of Environmental Protection, Department of Inland Fisheries and Wildlife, Department of Marine Resources, regional planning commissions

General Objective	Project Description	Sponsoring Agency(ies)
	Collect necessary data for development of population dynamics models for nearshore finfish species management.	Department of Marine Resources
	Determine the nature and rate of sea-level changes relative to the southern Maine shoreline. This information the state's policy with regard to prevention of shoreline erosion.	Department of Conservation, University of Maine
c. Initiate sound resource management or development projects	Develop and implement management plans for nearshore finfish species.	Department of Marine Resources
	Develop land use and facilities plans for village areas within the unorganized townships and plantations.	Land Use Regulation Commission, regional planning commissions
	Support the ongoing program to inventory resources, implement desirable management, and determine public rights to selected Maine islands.	Coastal Island Registry, Bureau of Public Lands
	Improve small woodlot management within the coastal area by expanding management services.	Bureau of Forestry, Maine Audubon Society, U.S.D.A. Resource Conservation and Development Projects
	Improve clam management by expanding management assistance provided by Department of Marine Resources.	Department of Marine Resources
	Increase and improve aquaculture by expanding management assistance provided by Department of Marine Resources.	Department of Marine Resources
d. Develop effective communication links between the coastal public and policy-makers at all levels	Establish additional communication mechanism to facilitate active participation by the Maine fishing industry in N.E. Regional Fishery Management Council decisions	Department of Marine Resources

General Objective	Project Description	Sponsoring Agency(ies)
	Institute additional communication mechanisms on coastal issues to: 1) advise the CCDC and the state administrative structure regarding emerging resource issues and public opinions, and 2) improve public awareness regarding coastal resource opportunities, problems, and concepts.	League of Women Voters and Natural Resources Council
	Support an ongoing coastwide community advisory service which assists towns in evaluating the impact of community growth and open space preservation policies.	Maine Coast Heritage Trust and The Allagash Institute, University of Maine, Maine Association of Conservation Commissions

Projects that propose using monies for acquisition or the purchase of equipment that is not essential to resource planning and management activities are not eligible.

8.413 APPLICATION PROCEDURE FOR SPECIAL PROJECT GRANTS

Special Project applicants will be required to complete an application form that includes, at least, the following information:

- the name of the organization or individual filing;
- a full description of the project that covers:
  - the proposed project;
  - the purpose of the project;
  - the significance of the project to the coastal area;
  - the benefits to be derived from it;
  - expenditures to be incurred;
  - the time schedule

- text to show products and results;

- explantation of how the proposed project meets all eligibility criteria relating to Special Projects and the evaluative criteria listed in Section 8.51;

- statements as to applicant's authority to receive money and provide matching funds;

- the name of the person(s) who will act as Project Manager and as liaison with the State Planning Office.

A deadline for submission of proposals will be established. The evaluation of eligible proposals will begin immediately following the deadline. The Committee on Coastal Development and Conservation will review proposals and advise the State Planning Office regarding the projects which should receive consideration for funding. Final funding announcements will be made on a predetermined date within a reasonable time after the submission deadline.

8.414 GRANT MANAGEMENT PROCEDURE

Statewide program grants will be on a 20% matching basis, i.e. 80% provided by the State Planning Office and 20% provided by the participating organization.

Once a grant has been awarded to a participating organization, a contract will be established between the State Planning Office and the grantee (the primary agency may share funds or subcontract in cases where several organizations agree to cooperate).

The primary recipient of funds will specify a Project Manager to be responsible for completion of the specified tasks in the prescribed length of time. The project manager will be responsible for overall administration of the project for the grantee. Progress reports will be submitted to the State Planning Office every three months until the project is completed. The recipient will receive 20% of its grant from the State Planning Office upon commencement of the project, 60% divided among the quarterly report periods, and 20% upon successful completion of the project.

The State Planning Office staff, with advice from the Committee on Coastal Development and Conservation will determine whether adequate progress has been made at the quarterly report periods. The final report submitted to the State Planning Office should permit the office to determine if the completed project meets the conditions of the contract. The State Planning Office must judge that the project has achieved its stated purpose and goal and that the completed project meets the eligibility criteria specified in Section 8.51.

Failure to successfully complete a project will jeopardize future funding applications. Where funds have been misused, the State Planning Office may request the Attorney General's Office to investigate.

Funds not expended because of lack of progress or savings will be returned to the State Planning Office and reassigned or returned to the Office of Coastal Zone Management.

8.415 POLICY DEVELOPMENT

Several policy areas are in need of attention. This fact has been reiterated by the Governor in his Executive Order establishing the Committee on Coastal Development and Conservation (see Appendix F1) and in his speech to that body at its first meeting.

New issues, such as Outer Continental Shelf oil and gas development, are emerging. In other cases new, more orderly, efficient, and effective solutions to old problems are needed where it can be shown that existing policies are not achieving optimum results.

If this application is approved, funds will be used for the analysis of policy issues and the development of recommendations for refinements in existing policy. This effort will focus on issues of broad concern coastwide. Decisions regarding priorities, the focus of such work and further steps to be recommended to the Governor and the Legislature rest with the Committee on Coastal Development and Conservation.

The policy work will focus on issues which influence virtually the entire coast, which are felt to be the most pressing and/or which offer the greatest opportunities for improvement of problem situations. These problems are to be addressed in a manner which is consistent with the policy statements presented in Section 6 of this application. The first priorities for this work have been set as the result of the ideas expressed by coastal residents and their elected officials, and the work of the Committee on Coastal Development and Conservation. Initial work on the following issues has already begun:

- commercial fishing
- tourism
- port development
- heavy industrial siting
- cumulative effects of development
- natural resource information distribution
- coastal access and recreation opportunities.

After approval, 306 money will be committed to the resolution of other issues of broad concern. Consequently key issues will be identified annually by the Committee on Coastal Development and Conservation, and reports on these issues will be prepared by a variety of different agencies and organizations depending on where the greatest expertise and interest lies. The work on these reports will also be coordinated through the Committee on Coastal Development and Conservation and the State Planning Office. It will involve analyzing the problem or opportunity identified, identifying the pros and cons of alternative courses of action and recomm nding one course of action as being, on balance, the most desirable. As with the existing efforts, the results of this work will be made available for consideration by the public, the Governor, state, regional, and local agencies, the legislature, and others.

One issue which has been cited as being of particular urgency is the need to clarify the terms used in Maine's body of existing laws. Some say that much of the language used in these laws is too broad and that clarification will allow greater predictability and understanding by the coastal residents and organizations who are affected by the laws. This issue has, therefore, been given a high priority for work in the first year of 306 funding.

Examples of additional policy development tasks which the Committee on Coastal Development and Conservation and the State Planning Office staff are expected to undertake include the following:

- Evaluate the potential conflicts or consistency between:
  - Maine Department of Transportation port improvement priorities
  - Department of Marine Resources policy alternatives for fish processing and fishing fleet support facilities
  - alternatives which have been suggested regarding the clustering of heavy industry on the coast.

  This work will be directed toward resolution of conflicts between areas which have, until now, been treated as separate policy issues.

- Examine state regulations re: insurance, taxation, ownership, etc. to eliminate possible barriers to formation of joint venture arrangements within the fishing industry. Such arrangements can improve the efficiency of use of capital equipment and facilities for better utilization of opportunities offered by the 200 mile limit.

- Improve the mechanisms for maintaining coastal open space.

- Improve the prospects for the ship and boat building industries in coastal Maine.

- Update and revise management policies for Maine's coastal islands.

- Develop more effective floodplain management programs.

- Examine the State's role in research in order to direct research activities more effectively to urgent and practical issues.

As the result of public hearings, questionnaires, and Committee on Coastal Development and Conservation (CCDC) deliberations, about thirty major issues have been identified. The CCDC expects to address from four to seven issues per year, and expects to have completed reports and recommendations on each of these issues within a five year period. The CCDC will initiate the policy development process for a particular problem or issue, and organization and administration of the policy development process will be coordinated by the State Planning Office.

The recommendations for refinements in policy are intended to point the way toward actions that will:

- improve coordination in Maine's existing resource planning and management system;
- more clearly define overall goals and objectives for Maine's resource planning and management system;
- reduce uncertainty and increase the predictability of siting land and water uses subject to various licensing and permit processes; and
- improve the prospects for jobs in industries that are compatible with maintaining high environmental quality and desirable social and economic conditions.

Results of the policy development process will form the basis for legislative proposals to be prepared by the Committee for Coastal Development and Conservation, adjustments to core law administrative procedures, and changes in state/federal project/review criteria.

8.5 GRANTS TO REGIONAL PLANNING COMMISSIONS

Seven percent of the grant ($81,000 of a $1.2 million Coastal Zone Management grant to the State) will be available to support the municipal assistance programs of seven Regional Planning Commissions and the one Council of Governments (hereinafter referred to as an R.P.C.).

The R.P.C. function is to make technical assistance available to small towns which cannot afford full-time professionals and to coordinate projects of more than local concern. The R.P.C.s also serve as a mechanism through which communities may bring local problems with implementation of the core laws to the attention of appropriate state agencies, and assist the policy revision process leading to solutions of those problems. (See examples)

8.51 ELIGIBLE PROJECTS

The eligibility of the respective R.P.C.s for grants reflects the principle that carefully prepared resource development and management projects consistent with the core laws, including town comprehensive plans and related ordinances, will, in aggregate, assist towns in implementing core laws and provide economic benefit by improved resource utilization.

To receive grants, an R.P.C. must offer services which meet the following criteria:

1. Will further the goals and policies of Maine's Coastal Program.
2. Directly concerns the planning for and management of coastal natural resources.
3. Is supported by the majority of the R.P.C. Commissioners, representatives of member coastal towns.
4. Maintains or improves environmental quality.
5. Maintains or improves social conditions.
6. Serves a "public" purpose.
7. Is consistent with the comprehensive plan(s) and/or any other long-range plans for the town(s) affected (if any).
8. Is consistent with state law.

9. Is consistent with any and all applicable town ordinances.

10. Is technically sound, is based on valid assumptions, and uses effective methods to accomplish its objectives.

11. Makes effective use of the relevant information that is available, and, when applicable, utilizes standard codes, terminology, and reference systems (e.g., State Land Cover Code, Maine Soil Suitability Guide, etc.)

12. Will be completed within the grant period (grant periods run for one year).

13. Can be matched by a 20% match by the applicant.

During negotiation of grant contracts with individual R.P.C.'s, priority will be assigned by the State Planning Office and the Committee on Coastal Development and Conservation to kinds of assistance and areawide projects which:

- Are clearly related to local projects (under Section 8.3).
- Lead to the more effective application of existing land and water use laws.
- Promote the management of natural resources on a sustained yield basis, so that the local and regional economy benefits in the long term.
- Relate to the establishment, refinement and/or implementation of a comprehensive (or regional) plan, or parts thereof.
- Are transferable and will serve as a model for other areas of Maine's coast.
- Will help resolve natural resource problems that have more than local impact.
- Seek to resolve conflicts between competing land uses so that coastal natural resources are conserved.

Projects that propose using monies for land acquisition or the purchase of equipment that is not essential to resource planning and management activities are not eligible.

8.52 EXAMPLES OF R.P.C. COASTAL PROGRAM ACTIVITIES

R.P.C.'s will provide local technical assistance and will coordinate projects of more than local concern.

Implementation of Maine's 11 core laws which constitute a part of its Coastal Program depend in part upon local government administration. Towns have administrative responsibilities under Shoreland Zoning, Subdivision Review, and Solid Waste Disposal laws. Local planning boards are also involved in the review process for decisions under the other core laws. In most cases, local governments cannot afford to retain professional staff to perform technical review of proposals submitted. R.P.C. staffs are funded partially by local governments for the purpose of sharing the cost of professional staff to assist local planning boards with their decision responsibilities under the core laws. Funding support to R.P.C.'s will improve program implementation by providing technical services to communities. Examples are:

- mapping and refining Shoreland Zoning ordinances;
- reviewing subdivision and other development proposals for town decisionmakers;
- preparing clam management ordinances;
- recruiting clam wardens for towns to enforce town clam ordinances;
- reviewing proposals under the Coastal Wetlands and Stream Alteration laws;
- preparing subdivision ordinances;
- preparing town plans that affect implementation of the core laws.

Examples of core law implementation work of more than local concern coordinated by R.P.C.'s are:

- technical assistance in locating sites for regional solid waste disposal operations in compliance with state Solid Waste and Air Quality laws;
- technical assistance in locating sites for industries which will facilitate compliance with Water and Air Quality laws;
- assessing areawide needs for public access to the coast;
- multi-town projects to apply structural and non-structural measures to deal with shoreline erosion;
- multi-town shared code enforcement projects.

8.53 DISTRIBUTION FORMULA

The allocation of funds which may be granted by contract with the State Planning Office to each of the eight coastal R.P.C.'s will be determined by a formula which is weighted equally between the portion of total coastal area population (estimates of 1975 resident population by U. S. Census) within each R.P.C. and the portion of the total number of coastal Minor Civil Divisions located within each R.P.C. district.

Formula Grant to R.P.C. s

($81,000 or 7% of the total amount is available for R.P.C. funding)

$$g = \frac{t}{T} \quad \frac{G}{2} \quad + \quad \frac{p}{P} \quad \frac{G}{2}$$

where: g = grant available to a particular R.P.C.

G = total grant dollars available to R.P.C. s

t = number of Minor Civil Divisions (MCD) within the R.P.C.

T = total MCD's in the coastal area

p = estimated 1975 resident population of the R.P.C.

P = total estimated 1975 resident population in the coastal area

Using values for an hypothetical example, an allocation to an R.P.C. would be determined by using the distribution formula as follows:

where: g = allocation to an hypothetical R.P.C.

G = $81,000

t = 32

T = 143

p = 35,000

P = 462,900

$$g = \frac{32}{143} \times \frac{\$81,000}{2} \div \frac{35,000}{462,900} \times \frac{\$81,000}{2}$$

$$g = \$12,150$$

A 20% match is required for all grants to R.P.C. s. As in past years, the standard A-87 overhead rate of 13.7% will be applied to the amount available for each R.P.C.

8.54 APPLICATION PROCEDURES

Notice of approval of the state's 306 application to each R.P.C. will contain an invitation to submit letters of interest from each R.P.C., including a description of the Coastal Program services which each Commission will be able to offer its area towns during the program year.

The application for eligible projects should show how the service or project meets the eligibility criteria and reflect the priority factors listed above in Section 8.51. Accordingly, the application will include:

- a description of the proposed project, its purpose, and the benefits member towns will derive from it;
- an explanation of project expenditures and time schedule;
- a description of the qualifications of staff members and the capability of the R.P.C. to perform the services;
- as an indication that the majority of the participating towns support the project, the application will be signed by the majority of the coastal towns which are members of the regional planning commissions.

Upon receipt of the application, the State Planning Office will evaluate it and if questions arise, discuss it with the R.P.C. Should there be areas of disagreement in interpreting criteria or priorities, the CCDC will be asked to make the final decisions.

The State Planning Office will prepare contracts with the R.P.C. which specify the grant allocation amount, the categories of services to be offered, matching fund requirements, and modes of payment.

All grant awards to R.P.C.'s will be made by contracts which meet state purchasing requirements as to form and will be cleared by the state Contract Review Committee. Contracts will be signed by the Chairman of each R.P.C., thus recording the agreement of local elected officials with the Coastal Program services to be performed.

8.55 MANAGEMENT RESPONSIBILITIES

The Director of each R.P.C. entering a grant contract will be responsible for administering all monies, subcontracts, and expenditures under terms of the grant. The Director will also be responsible for reporting to the State Planning Office on progress, end of year accomplishments, and unexpended funds.

8.6 SUPPLEMENTAL FUNDING FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

The funding discussed previously for local projects, special projects, and policy work, the regional planning commissions, and administration make up Maine's regular 306 Program. As described earlier the Office of Coastal Zone Management has decided to fund the regular program at a level of $1.2 million and these funds will be allocated to the various projects according to the pie diagram, formula, and procedures outlined in the previous sections. However, in addition to the funds for the regular program, the Office of Coastal Zone Management has, in response to comments on the Draft Environmental Impact Statement, decided to supplement the funds for the program pursuant to the following agreement.

> "The State of Maine recognizes the need to assure that the core laws which make up the Coastal Program are fully implemented. In this regard the State will continue to aggressively pursue the work it has already undertaken to define what is needed to fulfill this responsibility in the case of the Site Location Law; and is committed to implementing measures that will guarantee excellence in the administration and enforcement of this law. These measures will involve either hiring expert consultants to supplement existing capabilities, reassigning personnel within state government, hiring several additional permanent staff, hiring additional seasonal staff, or other equally effective measures as yet undefined. The specific actions to be undertaken will be determined by the work currently in progress and will be implemented within the current calendar year. To support this effort, OCZM has committed approximately $100,000 in supplemental funds if they are needed to augment existing or supplemental state funds used to resolve this problem."

Section 9

Section Title	Contents of Section	Section Number
INTRODUCTION	- The purpose of and format for this document	1
SUMMARY	- The highlights of Maine's Coastal Program	2
BACKGROUND	- How Maine's program developed through strong citizen participation	3
COASTAL ISSUES	- A general description of resource and resource development issues and enhanced local involvement through program funding	4
MAINE'S COASTAL PROGRAM		
• OVERVIEW OF THE COAST AND THE PROGRAM	- A description	5
• POLICIES	- Funding policies - Policies for issues of broad concern - Administrative policies development - Economic policy - Development and natural resource policies based on existing Maine laws	6
• THE CORE OF THE PROGRAM: 11 LAWS	- A description of the laws, the areas and uses they regulate and how they are administered	7
• THE PROGRAM FOR IMPROVING RESOURCE PLANNING AND MANAGEMENT	- How funds will be allocated to towns, special projects, RPCs and state agencies and how the program will be administered	8
• ORGANIZATION	- Background information to supplement the above, primarily for use by persons interested in how Maine's program meets OCZM requirements	9

9. ORGANIZATION

9.1 INTRODUCTION

This section describes the roles of the various groups and organizations which are central to Maine's Coastal Program. These include the: Committee on Coastal Development and Conservation, the State Planning Office, coastal municipalities, the Board of Environmental Protection in the Department of Environmental Protection, the Land Use Regulation Commission in the Department of Conservation, the Regional Planning Commissions, and the public.

The roles of these organizations and groups vary from municipal resource planning and management to regulation performed by both state agencies and the towns. They also include coordinative functions performed by the Committee on Coastal Development and Conservation, the State Planning Office, and the Regional Planning Commissions.

The roles of organizations (such as the Department of Environmental Protection, the Land Use Regulation Commission, and, in the case of municipal regulation, the towns) are determined by the state's existing laws mentioned earlier. (See Section 7 and Appendix I 4, which shows a state agency organization chart.) The roles played by the Committee on Coastal Development and Conservation, the State Planning Office, and the Regional Planning Commissions are determined both by law and by executive action, including Executive Order.

9.2 THE COMMITTEE ON COASTAL DEVELOPMENT AND CONSERVATION

The Governor's Advisory Committee on Coastal Development and Conservation was established by Governor Longley with the signing of Executive Order Number 10 on February 4, 1976. (See Appendix F1.) The Committee consists of 18 members and includes representatives of the general public, the legislature, the Regional Planning Commissions, the University of Maine, and the state agencies with major coastal resource responsibilities. The Committee brings together in one forum a great many of the interests and organizations whose activities affect Maine's coastal area.

The most important responsibilities assigned to the Committee on Coastal Development and Conservation include the following:

1. Establish, with the concurrence of the Governor, the policy for the administration of Maine's Coastal Program.

2. Advise the Governor and state agencies on issues of coastal planning and use, including development and conservation policies.

3. Set priorities for work to be done as part of the Coastal Program.

4. Evaluate alternative policies and strategies and make recommendations for coastal economic development, the conservation of important natural resources, and the siting of energy and heavy industrial facilities.

5. Develop recommendations on changes which should be made in Maine's present coastal resource planning and management system for consideration by the Governor and Legislature.

6. Assure an effective, coordinated program of community and individual citizen participation in coastal planning activities.

7. Establish guidelines and priorities for the funding of municipal and special projects supported by the Coastal Program.

In essence, the Committee on Coastal Development and Conservation serves to assure broad public involvement in Maine's Coastal Program and to establish a direction for the Program. (Additional information on the Committee on Coastal Development and Conservation is contained in Section 3. That section describes, in more detail, the Committee's role in the development of Maine's Program.)

9.3 THE STATE PLANNING OFFICE

The State Planning Office was established by the Maine Legislature in 1968 with the passage of the State Planning Act, MRSA 5 §§ 3301-3307. The State Planning Office is a staff agency within Maine's Executive Department. It is the designated 306 agency for implementing the Coastal Program and federal consistency.

In general terms, the State Planning Office was established to: provide assistance to the Governor and the Legislature in identifying long-range goals and policies for the State; coordinate the development of a comprehensive plan for the State; conduct continuing economic analysis of the economy and resources of Maine;

provide planning assistance to local and regional, housing and urban renewal groups in Maine; participate in inter- and intra-state planning; provide assistance to public and citizen groups; act as the coordinating agency among the several offices, authorities, boards and commissions involved with planning issues; provide general review and coordination in functional areas of state government; and to represent the State on the New England River Basins Commission.

More specifically, the State Planning Office has been assigned the task of acting as the state agency with the principal responsibility for coordinating the activities which are a part of Maine's Coastal Program. These responsibilities have been given to the State Planning Office through law and through Executive Orders.

The most important roles which the State Planning Office plays in Maine's Coastal Program are as follows:

1. Acts as the single State agency to receive 305 and 306 funds directly from the Federal Department of Commerce. In this capacity it is responsible for putting together work programs and applications under guidance from the Committee on Coastal Development and Conservation.

2. Acts as the agency responsible for administering and disbursing these funds to towns, other units of government, and other organizations for projects covered in the work programs.

3. Acts to provide information and advice to industries and individuals so that they can avoid problems and capitalize on opportunities in the siting of facilities.

4. Acts to provide information and advice to other units of government including the towns, Regional Planning Commissions, and state and federal agencies in solving their resource planning and management problems. This includes providing maps, reviewing ordinances, etc.

5. Acts to provide administrative direction to the shoreland zoning task force which is made up of representatives of the Board of Environmental Protection and the Land Use Regulation Commission and determines the adequacy of town shoreland zoning ordinances. This role is established by the Shoreland Zoning Law. (12 M.R.S.A. § 4811)

6. Acts, under agreement with the other agencies, as a reviewer of permit requests filed under Maine's existing laws. In this capacity the office provides advice to these decision-making bodies (e.g., the Board of Environmental Protection and the Land Use Regulation Commission) based on its broad perspective, the information it has collected, and various land capability analyses it has performed.

7. Either directly or through contracts, collects and analyzes information needed for making fully informed planning and management decisions.

8. Prepares recommendations for consideration by the Committee on Coastal Development and Conservation, Governor, and Legislature on changes which should be made in the State's coastal policy.

9. Coordinates the efforts of other agencies in the preparation of recommendations for consideration by the Committee on Coastal Development and Conservation, Governor, and Legislature on changes which should be made in the State's coastal policy.

10. Is the designated agency for federal consistency, and coordinates recommendations from relevant agencies and organizations on the consistency of these actions with Maine's program to determine if a conflict exists.

11. Acts to coordinate the Coastal Program with other State and regional planning efforts including the Housing and Urban Development land use element and Environmental Protection Agency 208 water quality planning programs through the A-95 (State Clearinghouse) process and other means.

12. Acts to coordinate the review of plans for state aid highways for consistency with Maine's Coastal Program.

Memoranda of Agreement between the State Planning Office, the Land Use Regulation Commission, the Department of Environmental Protection, the State Development Office, Department of Transportation, are contained in Appendix I2a - I2d.

9.4 THE MUNICIPALITIES

Under Maine's existing resource planning and management system, the municipalities have the most comprehensive responsibilities and powers of any unit of State government. (See Home Rule & Zoning Laws in Appendix F13.)

This situation has been brought about by the Legislature's enactment of zoning enabling and home rule laws and by the strong popular support there is in Maine for keeping resource planning and management functions at the local level. Therefore, the towns' roles in the Coastal Program are perhaps the most diverse of any of the organizations described herein. These roles vary from conducting projects to encourage the wise economic use of resources to town comprehensive planning and code enforcement. The most important resource management roles that a town must fulfill under existing law are as follows:

1. Prepare a comprehensive plan; if such a plan is not prepared, the town runs the risk of having its Shoreland Zoning ordinance struck down by the courts. (Comprehensive Plan law, 30 M.R.S.A. § 4961)

2. Adopt a shoreland zoning ordinance consistent with minimum State guidelines. A State-imposed shoreland zoning ordinance is required if a town does not meet these guideline requirements. (12 M.R.S.A. § 4811)

3. Establish a planning board or its equivalent to administer shoreland zoning and the subdivision law provisions in a manner consistent with standards established by law.

4. Establish a board of appeals to administer shoreland zoning.

5. Designate a code enforcement officer or his equivalent to enforce the provisions of shoreland zoning.

Other roles that the towns are empowered to undertake and may choose to play are as follows:

1. The town may identify local resource planning and management projects for which funding from the Coastal Program is desired.

2. The town may review the activities of federal agencies for consistency with the locally-administered portions of the Coastal Program and forward their recommendation to the State Planning Office.

3. The town may prepare and adopt economic development plans.

4. The town may prepare and adopt a zoning ordinance. (30 M.R.S.A. § 4962)

5. The town may prepare and adopt a subdivision ordinance. (30 M.R.S.A. § 4956)

6. The town may prepare and adopt a building code.

7. The town may plan for the provision of public services, e.g., sewer and water.

8. The town may plan for solid waste disposal.

9. The town may plan for conservation of open space.

10. The town may plan for the conservation of wildlife habitats.

11. The town may collect detailed information needed for town planning and management purposes.

12. The town may prepare and adopt an on-premise sign ordinance.

13. The town may prepare and adopt a shellfish ordinance.

14. The town may hire legal assistance for town resource planning and management problems.

15. The town may plan for port and harbor development.

16. The town may administer the coastal wetlands law. (This is normally administered by the Department of Environmental Protection; however, there are provisions which enable the town to take over if it has an acceptable program.) (See Section 7 and Appendix F3 for more detail.)

17. The town may perform other related functions too numerous to mention.

9.5 THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department of Environmental Protection is a line agency in the Executive branch of Maine government. It has the responsibility to "protect and improve the quality of our natural environment and the resources which constitute it".

In general, this function is carried out through a permit process which requires that the Board of Environmental Protection grant a permit for a variety of different activities before they can be legally carried out. The Board of Environmental Protection consists of ten public members appointed by the Governor, subject to review by the Joint Standing Committee for Natural Resources and the Legislature. The members must have a broad interest and experience in laws relating to environmental protection. The Board is chaired by the Commissioner of the Department of Environmental Protection, however, he has no vote. The roles played by the Department of Environmental Protection in the Coastal Program vary from those of a regulator of activities to serving as a member of the Committee on Coastal Development and Conservation. More specifically, the most important roles of the Department of Environmental Protection in the Program are as follows:

1. The Commissioner serves as a member of the Committee on Coastal Development and Conservation.

2. The Department prepares recommendations for consideration by the Committee on Coastal Development and Conservation, Governor, and Legislature on changes which should be made in the state's coastal policy.

3. The Board and Department administer the Site Location of Development Law; in general, this involves considering applications for large-scale developments. (38 M.R.S.A. § 481)

4. The Board and Department administer the Coastal Wetlands Law; in general, this involves considering applications for all alterations of coastal wetlands, including beaches and mud flats. (38 M.R.S.A. § 471)

5. The Board and Department administer the Protection of Waters Laws; this involves recommending appropriate water quality classifications and considering permits for discharges. (38 M.R.S.A. § 361-A)

6. In conjunction with the Land Use Regulation Commission and under the administrative direction of the State Planning Office, members of the Board administer the Shoreland Zoning Law at the state level; this involves serving on the Shoreland Zoning Task Force, determining if town shoreland ordinances are acceptable and making recommendations on how they could be improved.

7. The Board and the Department administer the Protection and Improvement of Air Laws; this involves designating air quality regions, licensing of new emissions and monitoring of air quality (38 M.R.S.A. §§ 582-608).

8. The Board and the Department administer the Solid Waste Management Act; this involves the issuing of regulations regarding solid waste disposal and permitting of sanitary land fill facilities (38 M.R.S.A. §§ 1303-1308).

9. The Department administers the Coastal Conveyance of Petroleum Act; it licenses terminal transfer facilities, collects and dispenses funds, monitors for and coordinates clean up activities and conducts research causes, effects, and methods of removing oil pollution from the marine environment (38 M.R.S.A. §§ 344-349; 541-557; 560).

10. The Department will review the consistency determination of federal agencies regarding those federal activities which may have significant impact on the coastal area and forward their recommendation to the State Planning Office. (The procedure is described in Appendix E.) It will use the criteria and procedures as provided under the appropriate core law.

11. The Department enforces the provisions of the permits it grants and the laws it administers.

(See Appendix 12d for Memorandum of Agreement between the State Planning Office and the Department of Environmental Protection.)

9.6 THE LAND USE REGULATION COMMISSION

The Land Use Regulation Commission is a bureau within the Department of Conservation. The Department of Conservation is a line agency in the Executive branch of Maine government. The Land Use Regulation Commission is responsible for planning, zoning, and processing applications for land use activities, including development, road building, and some forest and agricultural management activities, in the unorganized areas of the state. In general, decisions regarding zoning and permits are made by the Land Use Regulation Commission. The Commission and its powers and duties were established by the Maine Legislature in 1969. (12 M.R.S.A. § 681) The Commission consists of seven public members appointed by the Governor, four of whom must be knowledgeable in at least one of the following areas: commerce and industry, fisheries and wildlife, forestry, and conservation.

By far, the largest portion of the unorganized area lies in the northwestern part of the state. There are, however, several unorganized towns, plantations, and numerous islands in the coastal area which fall under Land Use Regulation jurisdiction. Altogether, the unorganized areas comprise about 5% of the coastal area. (See map in Section 7.5; more information on the Land Use Regulation Commission can be found in Section 7.5 and Appendix F5b - F5d.) The most important roles of the Land Use Regulation Commission in the Coastal Program are as follows:

1. Update the Comprehensive Plan for the unorganized areas.

2. Adopt permanent zoning for the unorganized areas. This zoning divides these areas up into development, management, and protection districts and related subdistricts.

3. Considers applications for land uses in the unorganized areas and decides whether a permit should be granted.

4. In conjunction with the Board of Environmental Protection, and under the administrative direction of the State Planning Office, administers the Shoreland Zoning Law at the state level. This involves serving on the Shoreland Zoning Task Force.

5. The Commissioner of the Department of Conservation serves as a member of the Committee on Coastal Development and Conservation.

6. It will review the consistency determination of federal agencies regarding federal activities which may have significant impact on the coastal area and forward their recommendations to the State Planning Office.

7. Enforces the provisions of the permits it grants and the laws and regulations it administers.

(See Appendix I 2c for Memorandum of Agreement between the State Planning Office and the Land Use Regulation Commission.)

9.7 THE DEPARTMENT OF MARINE RESOURCES

The Department of Marine Resources is a line agency in the Executive branch of Maine government. The Department was established to conserve and develop marine and estuarine resources of the State.

This responsibility is generally carried out by conducting and sponsoring scientific research, promoting and developing the Maine commercial fishing industry, and by advising governmental agencies concerned with development or activity in coastal waters. The Commissioner is empowered to conserve and develop the marine resources and to enforce the laws relating to marine resources. The Marine Resources Advisory Council, composed of nine members engaged in commercial activities or industries based on marine resources, is appointed by the Governor and meets regularly to advise the Commissioner and discuss current issues.

The roles of the Department and its Commissioner and advisory council which directly relate to Maine's Coastal Program include:

1. The Commissioner serves as a member of the Committee on Coastal Development and Conservation

2. Enforce relevant sections of the Wetlands Control Law (38 MRSA § 471)

3. Advise state and federal agencies on the ecological effects of dredging, filling, and otherwise altering coastal wetlands

4. Cooperate, consult and advise with other appropriate state agencies on all interrelated matters involving the coast and its marine resources

5. To close contaminated shores, waters, and flats

6. The Commissioner administers the Fisheries Management Act, making regulations to assure the conservation of marine resources in any of the coastal waters or flats of the state (12 MRSA § 3504)

7. The Department will examine Federal activities and actions to determine if they are consistent with the laws that it administers and forward their recommendations to the State Planning Office.

8. The Department enforces the laws it administers and the permits it grants.

9.8 THE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

The Department of Inland Fisheries and Wildlife is a line agency within the Executive branch of the Maine government established to ensure that all species of wildlife and aquatic resources in the State are maintained and perpetuated for their intrinsic and ecological values, for their economic contribution and for their recreational, scientific and educational use by the people of the State.

The Department is composed of fifteen divisions as well as an Advisory Council, composed of seven members which advises the Commissioner . Among its many programs, the Department is responsible for the coordination, administration, and legal functions associated with applications to alter waters under the jurisdiction of the Stream Alteration Act.

The Department's activities most directly involved with Maine's Coastal Program include:

1. The Commissioner and Department administer the Stream Alteration Act which requires a permit prior to dredging, filling, and most construction activities affecting streams, rivers, and brooks in the state above head of tide.

2. The Commissioner and Department review relevant projects falling within the jurisdiction of the Site Location of Development, Coastal Wetlands, and Land Use Regulation Commission laws.

3. Consult, advise, and cooperate with other appropriate state agencies on all interrelated matters involving the state's wildlife and fisheries resources.

4. The Department will review the consistency determination of federal agencies regarding those federal activities which may have significant impact on the coastal area and forward their recommendations to the State Planning Office.

5. The Department enforces the laws it administers and the permits its grants.

9.9 THE REGIONAL PLANNING COMMISSIONS AND COUNCILS OF GOVERNMENT

The regional planning commissions are established under Maine law. (30 MRSA § 1301 and § 4511-4516.) They are voluntary organizations consisting of representatives of the towns and counties within their districts. The purpose of the regional planning commissions is to "promote cooperative efforts toward regional development, prepare and maintain a comprehensive regional plan, coordinate with state and Federal planning and development programs, and to provide planning assistance to municipalities".

The Councils of Governments are established in Maine law by 30 MRSA §§ 1981-1986. They may be formed by agreement between two or more municipalities for the purpose of studying common problems, promoting cooperative arrangements and making recommendations to members and other public agencies.

There are seven regional planning commissions and one Council of Governments in Maine's coastal area; (these are shown on the map on the next page.)

1. Southern Maine Regional Planning Commission
2. The Greater Portland Council of Governments
3. Southern Midcoast Regional Planning Commission
4. Southern Kennebec Valley Regional Planning Commission
5. Eastern Midcoast Regional Planning Commission
6. Penobscot Valley Regional Planning Commission
7. Hancock County Planning Commission
8. Washington County Regional Planning Commission

The most important roles of the regional planning commissions and the Portland Council of Governments are as follows:

1. Assist towns in solving their own resource planning and management problems.

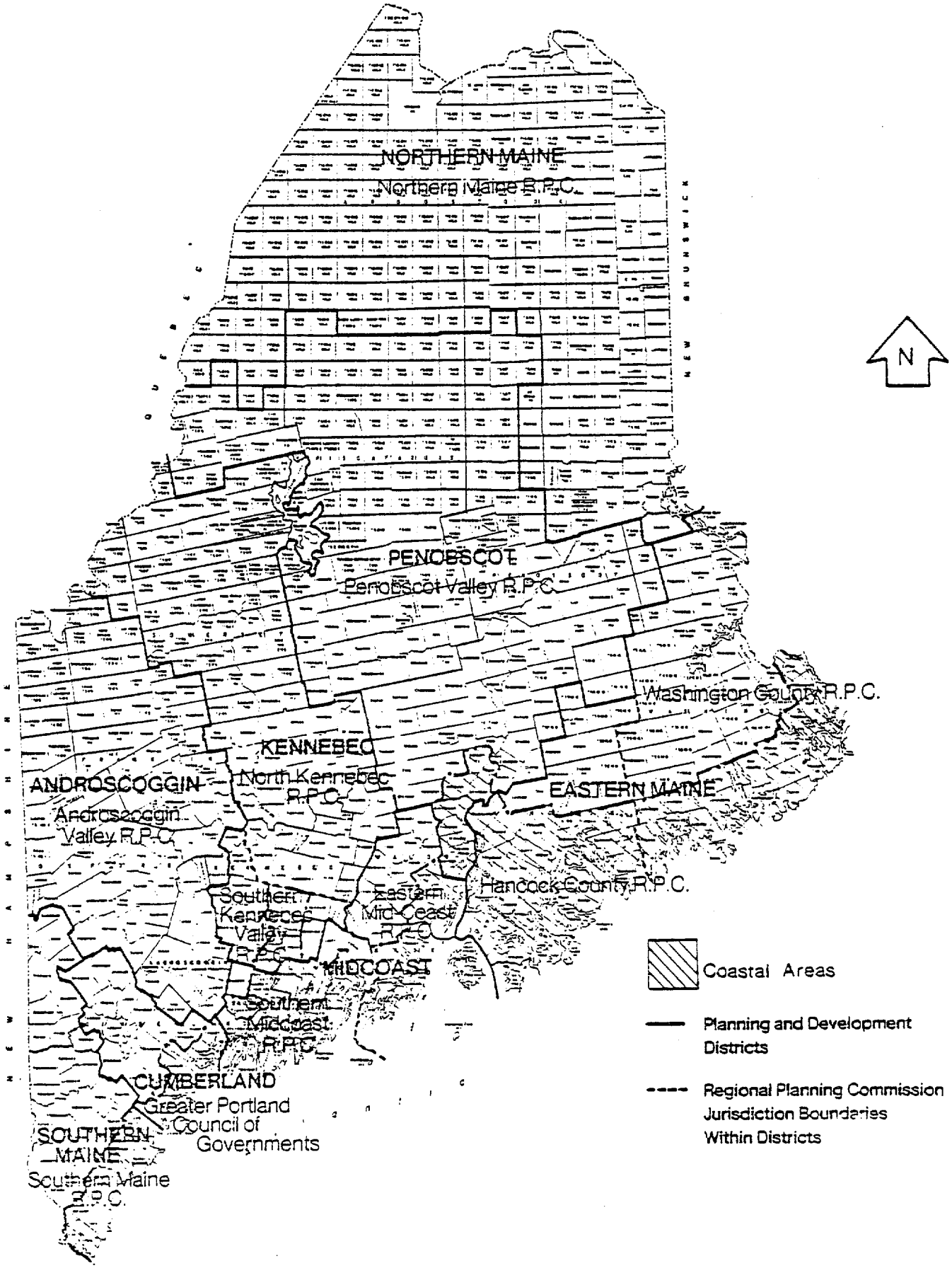
2. Identify and work on resolving regional resource planning and management problems.

3. Promote cooperative efforts among towns by encouraging them to work together to resolve problems of mutual concern.

4. Designate a representative to serve as a member of the Committee on Coastal Development and Conservation.

5. Review work programs and the results of work accomplished and comment from the various regional perspectives.

6. Since the regional planning commissions are the areawide clearinghouses under the A-95 review system, they will receive notices of activities which may be reviewed for federal consistency. The regional planning commissions may advise the State Planning Office or core law agencies of (1) projects which may be subject to consistency review, and (2) their evaluation of projects which are being reviewed for consistency.


NORTHERN MAINE
Northern Maine R.P.C.
PENOBSCOT
Penobscot Valley R.P.C.
Washington County R.P.C.
KENNEBEC
North Kennebec R.P.C.
ANDROSCOGGIN
Androscoggin Valley R.P.C.
EASTERN MAINE
Hancock County R.P.C.
Southern Kennebec Valley R.P.C.
Eastern Mid Coast R.P.C.
MIDCOAST
Southern Midcoast R.P.C.
CUMBERLAND
Greater Portland Council of Governments
SOUTHERN MAINE
Southern Maine R.P.C.
N
Coastal Areas
Planning and Development Districts
Regional Planning Commission Jurisdiction Boundaries Within Districts

9.10 THE PUBLIC

Because the role of the public is central to Maine's entire Coastal Program, it is somewhat artificial to consider this a separate topic within this section on "Organization".

The public has been involved extensively in developing Maine's existing land use programs. The laws were adopted and amended by the Legislature after public hearings. Private citizens serve on the Committee on Coastal Development and Conservation, the Board of Environmental Protection, the Land Use Regulation Commission, the town planning boards, the regional planning commissions, and many other groups that play a role in Maine's Coastal Program.

The Committee on Coastal Development and Conservation and the State Planning Office have held over 35 public meetings with coastal residents from Calais to Ogunquit to determine what direction Maine's coastal residents want the Coastal Program to go. Several thousand copies of newsletters have been mailed out over the last year. Over a thousand draft program descriptions have been circulated and comments requested and received. Hundreds of questionnaires have been circulated and tabulated. For a more detailed account of public involvement in the development of Maine's Coastal Program, see Section 3.

Opportunities for public involvement in Maine's developing program will continue to be offered through these same avenues.

Appendix A

CROSS REFERENCE

1 Cross reference between OCZM's requirements and Maine's program 235

CROSS REFERENCE BETWEEN OCZM'S REQUIREMENTS AND MAINE'S PROGRAM

(The numbers in this table refer to Sections of the Act, the Federal Register, and Maine's Coastal Program (letters refer to Appendix, numbers to Text.))

CZM ACT	FEDERAL REGISTER	MAINE'S COASTAL PROGRAM
Boundaries, 305(b)(1)	923.31, 923.32, 923.33, 923.34	B
Uses subject to management, 305(b)(2)	923.11, 923.12	6, 7, B, C
Areas of particular concern, 305(b)(3)	923.21, 923.23	C
Means of control, 305(b)(4)	923.41	7, F
Guidelines on priorities of uses, 305(b)(5)	923.22	C
Organizational structure, 305(b)(6)	923.45	9
Full participation, 306(c)(1)	923.58, 923.51 923.55, 923.3	G, H
Plan coordination and continuing consultation, 306(c)(2)(a) & (b)	923.56, 923.57	I
Public hearings, 306(c)(3)	923.58	G
Gubernatorial review and approval, 306(c)(4)	923.47	Governor's letter
Designation of recipient agency, 306(c)(5)	923.46, 923.47	Governor's letter
Organization, 306(c)(6)	923.45, 923.47	9, Governor's lette
Authorities, 306(c)(7)	923.41, 923.47	F
Adequate consideration of national interests, 306(c)(8)	923.52	E
Areas for preservation and restoration, 306(c)(9)	923.24	D
Regulation administration, development control conflict resolution, 306(d)(1)	923.41	7, F
Powers of acquisition, 306(d)(2)	923.41	F

CROSS REFERENCE BETWEEN OCZM'S REQUIREMENTS AND MAINE'S PROGRAM

C Z M ACT	FEDERAL REGISTER	MAINE'S COASTAL PROGRAM
Technique of control over land and water uses, 306(e)(1)	923.41, 923.42	7, C, F
Uses of regional benefit, 306(e)(2)	923.13, 923.41, 923.43	E
Adequate consideration of Federal agency reviews, 307(b)	923.51	H
Incorporation of air and water quality requirements, 307(f)	923.44	J

Appendix B

BOUNDARIES

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ALTERNATIVE APPROACHES FOR DEFINING THE EXTENT OF MAINE'S COASTAL PROGRAM

The coastal area was chosen after a number of alternative approaches were tested and rejected by the public and the Coastal Planning staff. Following is a partial listing of some of those alternative approaches and some of the reasons why they were found to be unacceptable:

Approach to Extent of Coastal Area	Reason for Rejection
1. Regional or County boundaries and territorial sea	Both would include large areas of the state distant from the coast. Both are not as politically strong as municipal units. This approach was not supported by a majority of coastal residents.
2. River Basins and territorial sea	Not supported by majority of coastal residents. Might include 3/4 of State; puts unequal emphasis on different areas; i.e. some basins within 25 miles of coast, others 100 miles away. Contains overlapping administrative areas.
3. Uniform setback demarcated by physical and cultural features and territorial sea.	Difficult to administer, politically unacceptable as it splits towns and leads to uneven funding distribution.
4. Areas within 250' of high tidal water and territorial sea.	Excludes large projects close to coast, but not within this narrow zone, that will have significant impact.
5. Combinations of the above.	Difficult to manage because of inconsistencies between areas; not equitable results in differential treatment to adjacent towns.

THE SEAWARD BOUNDARY OF MAINE'S COASTAL AREA

The seaward boundary of Maine's Coastal Area is the outer limit of the U. S. territorial sea. This is mandated by Section 304(a) of the Coastal Zone Management Act. However, it should be noted that one or more of the eleven laws which constitute Maine's Coastal Program apply beyond this boundary.

A LISTING OF EXCLUDED FEDERAL LANDS IN THE COASTAL AREA (1/21/77)

(All federal lands are excluded, however, only those 10 acres or more are listed here.)

COASTAL PLAN AREA	LOCATION	NAME PROPERTY	ACREAGE	AGENCY	CONTACT
9-2	Calais	St. Croix Island National monument	22.2	Dept. of the Interior National Park Service	Keith Miller, Superintende Acadia National Park, RFD #1 Box 1, Bar Harbor, ME 04609 288-3338
4-1 4-2 4-3	Bar Harbor	Acadia National Park	34,378.0		
1-3	East Orland	Craig Brook National Fish Hatchery	134.7	Dept. of the Interior Fish and Wildlife Service	Michael Hendrix, Craig Brook National Fish Hatchery, East Orland, ME 469-2803
4-2	Ellsworth	Green Lake National Fish Hatchery	128.9		Bernard Dennison, Green Lake National Fish Hatcher Ellsworth, ME 04605 667-9531
2-3	Matinicus	Seal Island National Wildlife Refuge	65.0		Dept. of the Interior, Fish and Wildlife Service Moosehorn National Wildlife Refuge, Daring, ME 454-3521
6-1	Popham Beach	Phippsburg-Pond Island Wildlife Refuge	10.0		William Koch, Acting Refuge Manager, Parker River National Wildlife Refuge, Newburyport, MA 01950 617-465-5753
9-2	Baring, Calais	Moosehorn National Wildlife Refuge	16,065.0	Dept. of the Interior Fish and Wildlife Service	Refuge Manager, Moosehorn National Wildlife Refuge Calais, ME 04619 454-3521

COASTAL PLAN AREA	LOCATION	NAME PROPERTY	ACREAGE	AGENCY	CONTACT
9-1	Edmunds		6,665.49		
	York County	Rachel Carson National Wildlife Refuge	1,406.4		William Koch, Acting Manager, Parker River N.W.R., Newburyport, MA 01950 617-465-5753
11-1		a. Brave Boat Harbor Division	233.26		
11-2		b. Goose Rocks Division	308.50		
11-2		c. Little River Division	105.10		
11-1		d. Moody Division	170.54		
11-2		e. Mousam River Division	24.0		
11-1, 11-2		f. Upper Wells Division	185.20		
11-1		g. Lower Wells Division	367.26		
10-1		h. Spurwink River Division			
2-1	Friendship	Franklin Island National Wildlife Refuge	12.0		Refuge Manager, Moosehorn National Wildlife Refuge, Calais, ME 04619 454-3521
7-1	Steuben	Petit Manan National Wildlife Refuge	1,562.0		
1-2	Belfast	Monitoring Station	138.3	Federal Communication Commission	Federal Communication Cor Route 137, PO Box 470 Belfast, ME 04915 338-4088
2-1	St. George	Whitehead Light Station	11.1		First Coast Guard District 150 Causeway Street Boston, Mass. 02114
2-1	Vinalhaven	Heron Neck Light Station	10.0		
3-1	Long Island Plt.	Great Duck Island Light Station	10.1		
4-1	Mount Desert Rock	Mount Desert Rock Light	10.0		
6-1	Georgetown	Seguin Island Light Station	10.0		
8-1	Machiasport	Libby Island Light Station	45.0		
8-2	Cutler	Little River Light Station	15.0		
10-1	South Portland	South Portland Base	11.0		

COASTAL PLAN AREA	LOCATION	NAME PROPERTY	ACREAGE	AGENCY	CONTACT
6-1 6-1	Brunswick a. Harpswell	Brunswick Naval Air Station Casco Bay Fuel Farm	3,472.0 (fee) 70.4	Navy	Commanding Officer Brunswick Naval Air Sta. Bath Road Brunswick, ME 04011 921-1110
6-2	d. Topsham		(fee) 43.35 (easement) 11.0		
8-2	Cutler	Cutler Radio Station	2,988.0		Commanding Officer, U.S. Naval Radio Station, Cut ME 259-8551
5-1	South Bristol	Industrial Reserve Plant Rep. Office	15.0		
11-1	Kittery	Portsmouth Naval Shipyard Seavey Island	277.0		Commanding Officer, Port mouth Naval Shipyard, Kittery, ME 439-1000
4-3 4-3 4-3	a. Winter Harbor b. Gouldsboro c. Winter Harbor d. Winter Harbor	Security Group Activity Housing Security Group Activity Operations Security Group Activity Housing Security Group Activity	465.0 177.0		Commanding Officer Security Group Activity Navy Base Winter Harbor, ME 963-5534
12	Winterport	Land Utilization Project	260.0	U. S. Dept. of Agriculture Forest Service	Forest Supervisor White Mountain Nat'l Forest P O Box 628 Laconia, N.H. 03246 (603) 524-6450
2-2	Thomaston	Subsurface Mineral Rights	18.6	U.S. Department of the Interior, Bureau of Land Management	Dept. of the Interior Bureau of Land Management Eastern States Office 7981 Eastern Avenue Silver Spring, MD. 20910

COASTAL PLAN AREA	LOCATION	NAME PROPERTY	ACREAGE	AGENCY	CONTACT
8-1	Machiasport	Bucks Harbor Air Force Sta.	87	Air Force	Commanding Officer, Bucks Harbor A.F.S., Bucks Harbor, ME 255-8316 .
1-2	Searsport	P.O.L. Retail Distribution Sta.	1,266	Air Force	Petrol Dept. U.S.A.F. Depo Searsport, ME 548-2201
12	Bangor	Bangor Housing Site 3	59	Air Force	309 CSG/DE Pease AFB ME
12	Bangor	Bangor International Airport	379	ANG	Commanding Officer
12	Bangor	Bangor Ammunition Storage Annex	713	ANG	Air National Guard (ANG)
10-1	South Portland	South Portland ANG Station	12	ANG	947-0571

INVENTORY STATUS

The status of various inventories of coastal resources undertaken by the State Planning Office with the use, in part, of 305 OCZM funds. For an explanation of the Area and Map numbers, see the map that follows:

Complete

Data being collected

Area	1			2			3			4			5			6		7		8		9		10		11		12	13
Map	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	1	2	1	2	1	2	1	2	1	2		
Soils																													
Watersheds																													
Legal Water Classification																													
Recreation Facilities																													
Public Access																													
Historic Sites																													
Intertidal Communities																													
Prime Agricultural Soils																													
Surficial Geology																													
Land Cover Types																													
Bedrock Groundwater																													
Marine Environments																													
Wildlife Resources																													
Slopes																													
Archaeological Sites																													
Marine Resources																													

All maps are available at the State Planning Office. They may be viewed there or specific maps will be mailed upon request.

MAP STATUS

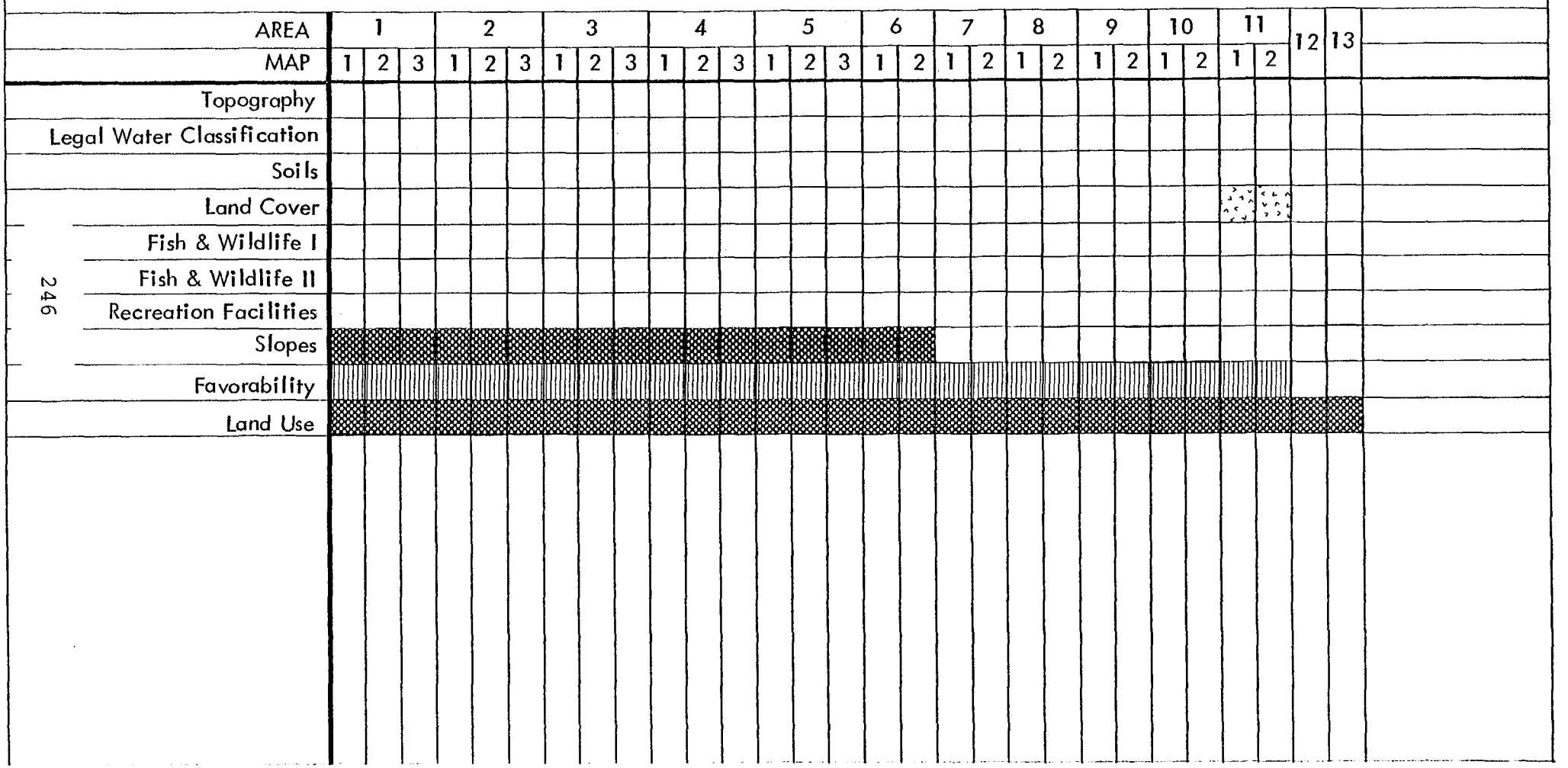
Maps shown as available can be obtained from the State Planning Office, 184 State Street, Augusta, Maine, 04333.

Data being collected

Currently Available

Being Printed

Being prepared for printing



COASTAL TOWN POPULATION, SHORELINE MILES, AND AREAS

		1975 Population (# Persons)	Shoreline Miles	Area In Square Miles
1.1	Northport	745	11.00	24.7
	Islesboro	451	61.45	15.6
	Brooksville	779	55.50	33.8
1.2	Belfast	6495	10.50	34.0
	Searsport	2070	16.75	29.9
	Stockton Springs	1156	15.75	19.9
	Prospect	361	9.50	18.7
	Castine	1266	17.45	7.9
	Penobscot	361	20.80	42.2
1.3	Frankfort	773	5.00	25.3
	Bucksport	4398	11.25	54.2
	Verona	623	12.00	6.6
	Orland	1621	11.00	51.6
2.1	Friendship	952	44.52	12.7
	Cushing	546	40.81	20.7
	St. George	1786	106.89	23.1
	So. Thomaston	913	24.21	13.8
	Owls Head	1417	48.90	8.8
2.2	Warren	2223	3.03	49.6
	Thomaston	2908	12.50	11.3
	Rockland	8899	30.90	12.9
	Rockport	2260	16.60	22.8
	Camden	4289	4.75	19.6
	Lincolnville	1085		39.1
2.3	North Haven	550	56.81	11.6
	Vinalhaven	1151	122.45	22.1
	Matinicus	100	22.80	25.5
3.1	Swans Island	422	65.22	11.1
	Long Island Plt.	61	25.50	2.4
3.2	Isle au Haut	62	48.26	11.5
	Stonington	1256	51.47	8.5
	Deer Isle	1311	125.65	29.0

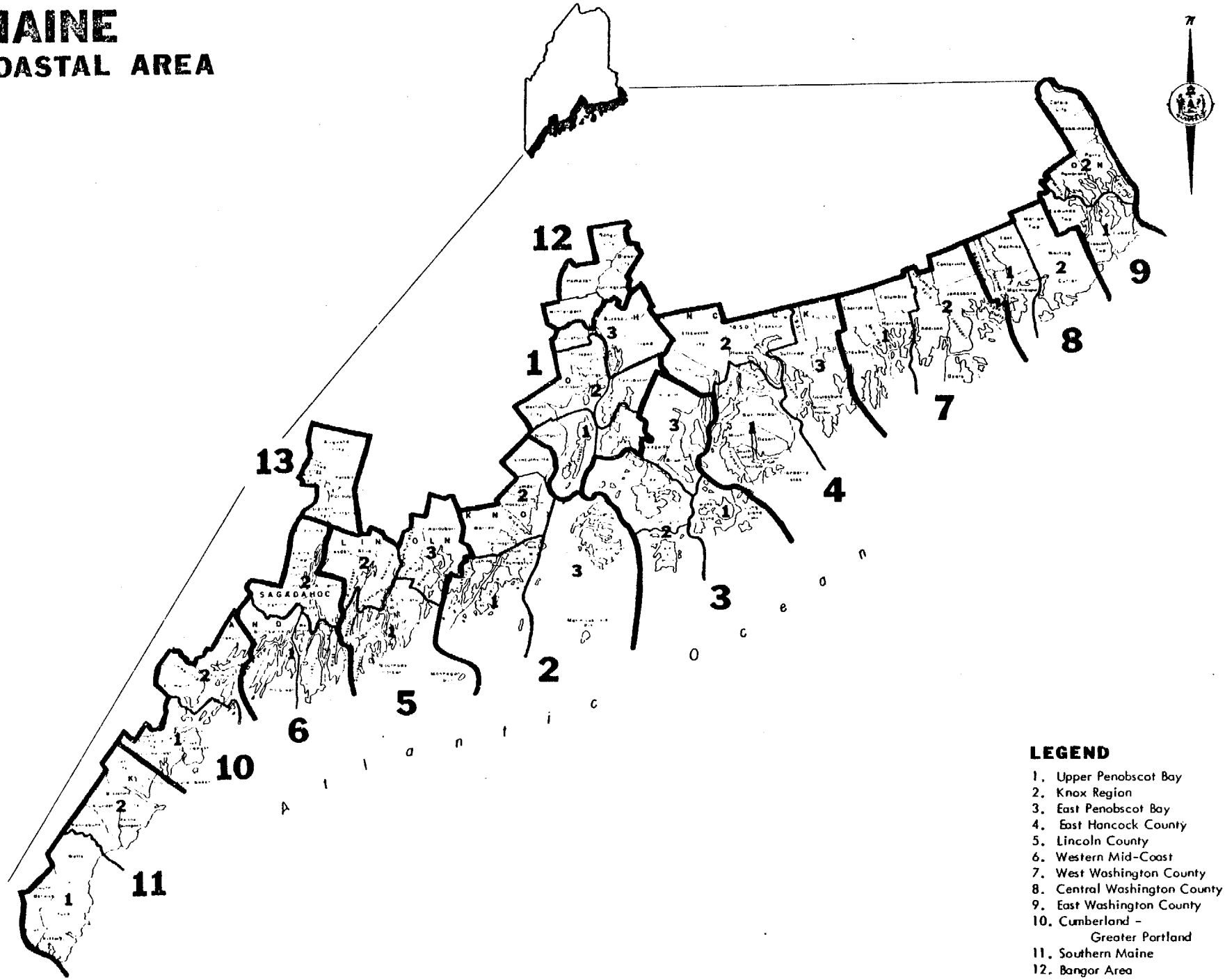
Note: Numbers in left margin refer to the accompanying map which locates each town in the coastal area. Shoreline miles are derived from "Conservation Priorities Plan," 1971-72, State Planning Office. These figures are not final, they will be confirmed by the towns prior to using them in determining formula allocation.

		1975 Population (# Persons)	SHORELINE MILES	Area In Square Miles
3.3	Sedgewick	648		27.6
	Blue Hill	1603	16.75	56.7
	Brooklin	686	42.10	18.5
			37.41	
4.1	Tremont	1265		16.1
	Southwest Harbor	1815	41.20	13.8
	Mt. Desert	1744	14.65	40.1
	Cranberry Isles	202	53.10	3.1
	Trenton	658	20.45	19.5
	Lamoine	726	20.25	20.0
	Bar Harbor	3564	28.25	44.4
			33.80	
4.2	Surry	623		39.2
	Ellsworth	4785	24.10	93.3
	T8 SD	110	16.50	16.8
	Hancock	1308		31.2
	Franklin	847	28.25	39.1
			18.00	
4.3	Winter Harbor	1239		12.5
	Sorrento	337	29.90	4.0
	Gouldsboro	1352	15.50	50.3
	Sullivan	820	58.71	28.0
	T7 SD	9	9.75	26.8
	T9 SD	NA	NA	9.6
	T10 SD	4	NA	42.4
			NA	
5.1	Monhegan	63	5.60	.78
	South Bristol	758	54.75	12.2
	Bristol	1543	46.60	35.5
	Southport	442	27.85	4.7
	Boothbay Harbor	2196	18.55	5.6
	Boothbay	1938	77.55	20.4
	Westport	307	37.35	8.9
5.2	Wiscasset	2527	23.25	25.7
	Dresden	928	11.50	32.2
	Alna	381	9.11	22.6
	Newcastle	1152	26.00	31.8
	Edgecomb	645	21.75	18.5
5.3	Damariscotta	1250	10.63	13.9
	Bremen	529	36.25	16.3
	Nobleboro	933	4.15	23.7
	Waldoboro	3637	43.37	74.9

		1975 Population (# Persons)	SHORELINE MILES	Area In Square Miles
6.1	Harpswell	2694	184.89	21.9
	Brunswick	17,003	50.25	49.7
	West Bath	1102	52.90	12.3
	Arrowsic	217	21.74	8.8
	Phippsburg	1284	87.58	30.9
	Georgetown	500	62.51	19.6
6.2	Bath	10,029		9.8
	Topsham	6262	19.43	33.1
	Bowdoinham	1559	35.00	36.9
	Perkins Twp.	6	34.96	2.6
	Richmond	2447	10.30	30.8
	Woolwich	1841	6.23	37.6
			60.75	
7.1	Steuben	846	52.83	45.4
	Cherryfield	809	6.20	45.8
	Milbridge	1248	75.29	24.7
	Harrington	607	67.91	22.9
	Columbia	176		36.6
7.2	Addison	795	88.82	44.0
	Columbia Falls	445		22.0
	Beals	666	43.65	5.5
	Jonesport	1504	87.20	24.3
	Roque Bluffs	336	25.33	11.7
	Jonesboro	555	15.25	37.7
	Centerville	20		44.4
8.1	Machiasport	1057	67.80	22.2
	Machias	2588	9.09	14.3
	Whitneyville	240		14.7
	Marshfield	273	4.50	18.8
	East Machias	1216	8.43	45.2
8.2	Cutler	797	53.41	45.7
	Whiting	257	3.79	52.4
	Marion	32		42.9
9.1	Trescott	219	66.06	29.2
	Lubec	1910	92.87	37.4
	Edmunds	241	29.78	39.4

		1975 Population (# Persons)	SHORELINE MILES	Area In Square Miles
9.2	Dennysville	273	5.30	15.0
	Pembroke	1009	47.06	29.3
	Perry	1061	36.74	34.5
	Eastport	2172	20.11	4.3
	Robbinston	384	7.58	29.9
	Calais	3933	11.74	37.0
	Pleasant Point	575 est.		0.2
10.1	Scarborough	9291	22.64	48.9
	South Portland	23,641	8.71	12.9
	Cape Elizabeth	8091	23.11	14.4
	Portland	63,373	52.14	19.1
10.2	Falmouth	6177	15.53	31.0
	Cumberland	4177	28.58	23.2
	Yarmouth	5247	29.08	12.5
	Freeport	5166	36.29	37.0
11.1	Kittery	10,958	31.49	18.5
	Eliot	3848	10.99	20.3
	South Berwick	3907	6.06	32.9
	York	6149	42.23	56.1
	Wells	5029	34.83	61.9
11.2	Kennebunkport	2207	41.44	21.4
	Kennebunk	6005	18.94	35.9
	Arundel	1543	0.95	24.1
	Biddeford	19,826	35.33	30.7
	Saco	12,306	18.46	38.8
	Old Orchard	5878	5.40	7.5
12	Winterport	2287	8.50	36.0
	Hampden	4933	8.10	38.3
	Orrington	2828	8.00	26.6
	Brewer	9258	4.41	15.2
	Bangor	32,330	5.93	34.5
13	Gardiner	6547	6.29	15.9
	Pittston	1989	22.49	32.6
	Randolph	1967	1.96	2.0
	Farmingdale	2510	3.0	11.3
	Chelsea	2808	4.47	19.5
	Hallowell	2673	2.86	5.7
	Augusta	21,614	4.31	57.3

MAINE
COASTAL AREA



LEGEND

1. Upper Penobscot Bay
2. Knox Region
3. East Penobscot Bay
4. East Hancock County
5. Lincoln County
6. Western Mid-Coast
7. West Washington County
8. Central Washington County
9. East Washington County
10. Cumberland – Greater Portland
11. Southern Maine
12. Bangor Area
13. Augusta Area

Appendix C

GEOGRAPHIC AREAS OF PARTICULAR CONCERN

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2	Operational Definition of Direct and Significant Impact	262
3	Permissible Land and Water Uses	263

GEOGRAPHIC AREAS OF PARTICULAR CONCERN

Maine's Coastal Program considers all land areas within 250 feet of the normal high water of any great pond, river, or salt water body, as geographic areas of particular concern.

The Shoreland Zoning Law and Land Use Regulation Commission, in its jurisdiction, provide the state with means to control and guide development in these areas assuring that their value is not unreasonably diminished.

Priorities for uses in geographic areas of particular concern are established in Shoreland Zoning ordinances and Land Use Regulation Commission land use standards.

NATURE OF CONCERN

This geographical area is considered critical because of the biological and cultural use, values, and interrelated impacts converging in the land and water interface. While each value or each use may be found to occur elsewhere, it is the often simultaneous and potentially conflicting uses and values that make the 250 foot zone an area of public concern and responsibility.

On the one hand these areas are of natural resource value because, in general, they contain scarce, fragile, or vulnerable natural habitat, and essential links in ecologically significant food chains. On the other hand these areas are of cultural significance to man because they have high recreational value, provide access, and are highly scenic. Further, if developed, the shorelands may be areas of significant hazard from storms, slides, floods, and erosion. Erosion is an example which has both natural and cultural causes and impacts. Soil loss and sudden erosion causes great hardship to people's homes and reduces the economic value of the land; at the impact end it causes sedimentation and siltation which interferes with the natural intertidal or fresh water wetland, river, or lake biota.

Because of man's attraction to water for economic livelihood through fisheries, residential attractiveness, and recreational use for boating, sport fishing, and swimming, there are many development pressures which depend on the use of or access to coastal waters. Urban areas and areas under high growth pressure are already exhibiting the effects of competitive uses.

While water acts as a focus for development, water related activities in turn have a negative impact on the water quality, wildlife habitat, as well as the aesthetic resources in these areas. It is this irony that is the basis for these areas being of concern. The very natural resources which form the basis of man's biological, economic, and, yes, recreational well being are the same which attracts man's use. These activities, in turn, when unchecked, may ultimately diminish or damage the values sought.

This recognition and the existing trends in southern and midcoast Maine for increased pressure and growth have led to passage of legislation providing for planned reasonable use of those areas not yet developed and for more careful land use practices in already developed shorelines.

The intent of the legislature was to provide a mechanism to protect the irreplacable natural resources which man is ultimately dependent upon and at the same time allow for conflict resolution by channeling uses to appropriate areas.

CONTROLS UNDER EXISTING LAWS

Shoreland Zoning

The Shoreland Zoning law and model ordinances provide protection for areas within 250 feet of the water by:

- designating particularly fragile areas as Resource Protection Districts
- requiring permits for land use activities which have the potential for damage
- setting performance standards for allowed acitivities carried on in the 250 foot area. These standards provide protection for the resources in the area.

District Designation

Resource Protection Districts include areas in which development would adversely affect water quality, productive habitat, biotic systems, or scenic and natural values. It further specifies that the following areas within 250 feet of water shall be designated Resource Protection Districts:

1. Inland or coastal wetlands (any swamp, marsh, bog, beach, flat or other land above extreme low water which is subject to tidal action).

2. Flood plains as defined by the 100 year flood or the flood of record, or in the absence of these, by soil types identifiable as recent flood plain soils.

3. Areas having sustained slopes greater than 25%, or unstable soil subject to slumping, mass movement, or severe erosion, when these areas are two acres or more in size.

These are minimum standards, municipalities may indicate other areas such as natural sites of significant scenic or aesthetic value, areas designated by federal, state, or municipal governments as natural areas of significance to be protected from development.

The other two districts are Limited Residential and General Development. General Development District identifies areas where development depends on use of or access to coastal waters and provides for such development. Limited Residential allows for residential use. All districts are subject to performance standards.

It should be emphasized that not all land within this geographic area of concern is zoned Resource Protection.

As the Governor's letter to the oil industry in Appendix E indicates, several Maine communities have indicated interest in having onshore support facilities for offshore oil activities. These towns have zoned a portion of their waterfront areas (the land area within 250 feet of the water) as areas to be developed for industrial uses. The zoning maps are available upon request at the State Planning Office.

The City of South Portland has an extensive industrial zone at the coastal portion of the Eastern Peninsula, encompassing an existing industrial use, with approximately fifteen acres still vacant.

The City of Searsport is extremely interested in attracting a major cargo port facility as well as other industrial projects. Accordingly, it has zoned all the shoreland area on Sears Island, and 7,000 feet frontage on Long Cove; 6,000 feet frontage at Kidder Point; and 2,000 feet at Stockton Harbor, as Industrial Zone.

Similarly the Town of Stockton Springs has Industrial Zones as well as General Development Districts within its Shoreland Zone area.

The Town of Kittery has zoned Seavey Island and Clarks Island, both in Shoreland Area, as Industrial.

The City of Portland, has a number of categories of Industrial Zoning, each with their own standards. More details are available from the City Planning Department. In fact, the majority of Portland's waterfront on the harbor and along Fore River are zoned Industrial.

This listing of Industrial Zoning does not imply that the proposal would not be subject to the performance standards and required permits, only that the cities have expressed their interest to entertain development which is appropriate to an Industrial Zone.

Permit Requirements

The permit requirements under shoreland zoning provide control over permissible uses. The use chart in Section 7.43 provides quick reference to permissible uses in each district.

All districts require permits for the following uses:

- Residential, Commercial, Industrial structures
- Campgrounds
- Permanent docks and wharves
- Public utilities, including sewage collection and treatment

In Resource Protection Districts:

Uses prohibited are:
- Residential, commercial, and industrial structures
- Commercial campgrounds

Uses requiring a permit are:
- Timber harvesting
- Agriculture
- Road construction
- Park development
- Piers and docks
- Public utilities
- Earth moving

Limited Residential-Recreation Districts:

Uses prohibited are:
- Industrial and commercial structures

Uses requiring a permit are:
- Residential structures
- Campgrounds
- Piers and docks
- Public utilities and sewers
- Filling or other earthmoving greater than 10 acres

In General Development Districts:

No uses are prohibited.

Uses requiring a permit are:
- Residential, commercial or industrial structures
- Campgrounds

- Piers and docks
- Public utilities
- Filling or earthmoving activities of more than 10 acres.

The following table summarizes the controls under each district by showing the permissibility of some uses in the 250 foot shoreland area under Shoreland Zoning Law and the Land Use Regulation Commission.

	Residential Dwelling Units	Commercial Structures	Timber Harvesting	Campgrounds (commercial, not individual)	Road Construction (land management roads)
Shoreland Districts					
Resource Protection	No	No	Permit	No	Permit
Limited Residential	Permit	No	Yes, standards	Permit	Yes, standards
General Development	Permit	Permit	Yes, standards	Permit	Yes, standards
LURC Districts					
Development	Permit	Permit	Permit	Permit	Permit
Great Ponds - P-GP	Permit	Spec. excep.	Yes, standards	Spec. excep.	Yes, standards
Recreation - P-RP	No	No	Permit	No	Yes, standards
Shoreland - P-SL	Permit	No	Yes, standards	Permit	Yes, standards
Wetland - P-WL	No	No	Yes, standards	No	Permit

* This table is not intended to be used as legal guidelines. Full tables are in Section 7 of the Text and Section F of the Appendix.

** All uses must meet applicable performance standards.

*** Before permits are issued, granting authority must judge that criteria on acceptability are satisfied.

The Planning Board or Code Enforcement Officer uses the following criteria in evaluating proposed activities requiring a permit. These criteria assure protection for these areas.

The proposed use:

- will not result in unsafe or unhealthful conditions
- will not result in erosion or sedimentation
- will not result in water pollution
- will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat
- will conserve shoreland vegetation
- will conserve visual points of access to water as viewed from public facilities
- will conserve actual points of public access to waters
- will conserve natural beauty
- will avoid problems associated with flood plain development and use.

Performance Standards

A significant means of preventing degradation in the 250 foot shoreland protection area are the performance standards for carrying out the following activities in all districts: Agriculture, beach construction, campgrounds, clearing of trees, mineral exploration, piers and docks, residential dwelling construction, road construction, sanitary waste disposal, signs, and timber harvesting.

These standards generally reflect the best available guidance for land use activities, usually referring to standard reference. For example, a standard for the agricultural activity of manure spreading is:

> "All spreading or disposal of manure shall be accomplished in conformance with the 'Maine Guidelines for Manure and Manure Sludge Disposal on Land' published by the University of Maine and the Maine Soil and Water Conservation Commission, in July 1972 or subsequent revisions thereof."

For more details on the Shoreland Zoning law and its administration please see Section 7.4 of the Text and Section F4 of this Appendix.

Land Use Regulation Commission

The provisions under the Land Use Regulation Commission's law are not described in as great detail because they cover only 5% of the coastal area. The full description of this law is found in Section 7.5 of the Text.

Similar to Shoreland Zoning, Land Use Regulation Commission designates the 250 foot land area of any pond, river, or salt water body as a protection district or if already developed, general development district.

Shoreland areas may be included under a number of zones, each of which have standards for use: The General and Industrial/Commercial Districts provide, in part, for areas where development depends on use of or access to coastal waters and developments. Flood Plain, Soil and Geology, and Wetlands Protection Districts establish effective use regulation to assure protection of resources in these areas.

Shoreland and Great Pond Protection Subdistricts, many of which apply to coastal islands, regulate land use in areas within 250 feet of water that are not in more protective subdistricts.

Just as under shoreline Zoning, the law provides for land use control by permit requirements and performance standards for land uses of activities.

GUIDELINES FOR PRIORITY OF USES

Under both the Shoreland Zoning Law and the Land Use Regulation Commission law the priority of uses varies from district to district, with priorities of use established by designating the district.

For example, in General Development Districts the priority is on commercial and industrial uses, while in Resource Protection Districts these uses are prohibited and the priority is on nonintensive uses such as outdoor recreation, wildlife management, etc. Thus, the priorities of use vary from one area of the coast to another according to existing uses and natural resource and cultural conditions.

Further, within these districts the priorities among permitted uses are determined by the realtionships between these uses and conditions on the site. In making decisions, the permitting authority evaluates each use proposed according to the criteria listed earlier and decides whether or not it should be allowed to take place. These criteria specify what kinds and levels of impacts are acceptable and must be interpreted in light of the cultural and natural conditions that exist on the site.

OPERATIONAL DEFINITION OF "DIRECT AND SIGNIFICANT IMPACT"

For the purposes of defining which land and water uses have a direct and significant impact upon coastal waters, Maine has taken a broad approach that includes all uses that occur in state tidal waters of the coast, in intertidal areas, in coastal town fresh waters and in those coastal land areas within 250 feet of normal high water. All projects occurring in coastal towns that are subject to the Subdivision and Site Location Laws are also considered to have direct and significant impact.

The assumption underlying the decision to include all these uses is that any activity occurring seaward of the 250 foot "line" can, potentially, have adverse impact upon coastal waters and that larger projects (as defined in the language of the above-mentioned two laws), beyond this imaginary line but within coastal towns, can likewise have an adverse impact.

This does not imply that activities beyond the bounds of coastal towns (and thus the coastal area) could not have direct and significant impact; they do, however, the same laws that apply in the coastal area apply to these uses. Maine has simply had to establish the limits of its coastal area on the basis of other factors, so as to keep it within reasonable bounds. (See Section 5.4.)

In summary, Maine's Coastal Program approach is inclusive and broad; the burden of proof rests with the person(s) proposing a project to show that the use is permissible in terms of applicable laws and that it will not have significant adverse impact.

PERMISSIBLE LAND AND WATER USES

Maine's Coastal Program establishes what land and water uses are permissible within the coastal area by adopting 11 existing laws; as a "system" the laws act to achieve the goals of Maine's program and the objectives of the Coastal Zone Management Act. The laws either establish what is permissible by evaluating individual project proposals, through a permit procedure, or by zoning.

The laws Maine has chosen to use as the basis for its program, define areas or projects that the state considers to have "direct and significant impact on the coastal waters." These area or project limits are explained in the following table. Basically all development uses within Tiers 1, 2, & 3 of the coastal area are subject to control - an area that includes the territorial sea, inter-tidal areas and land within 250' of high water.

The priority of uses in particular areas in Maine's coastal area is also established by the districting or zoning pursuant to Shoreland Zoning and the L.U.R.C. law. Districts are distinguishable by the uses which are given priority within them. By designating a district "General Development" under Shoreland Zoning it is intended to give commercial and industrial uses high priority than residential or other less intensive uses. Conversely, the highest priority use in a Resource Protection district is wildlife habitat presentation or open space for recreational purposes.

As mentioned, the procedure for defining permissible uses depends on the applicable law or laws. Uses subject to the Protection of Waters, Coastal Wetland, Stream Alteration, Subdivision, Air, Solid Waste Management, and Site Location Laws are judged on a case-by-case basis. They are evaluated by the technical staff of the Department of Environmental Protection and the decision as to acceptability rests with the Board of Environmental Protection; the laws themselves establish the procedure and standards of performance that must be met for approval. Stream alteration permits are granted by the Commissioner of the Department of Inland Fisheries and Wildlife. Subdivision decisions rest with the local planning board.

The procedures for establishing permissable uses in Shoreland areas and in areas within the L.U.R.C.'s jurisdiction are established through zoning. The full range of permissable uses, districts and use standards that apply in these areas can only be evaluated by studying, at least, the minimum "State of Maine Guidelines for Municipal Shoreland Zoning Ordinances" and the L.U.R.C.'s "Land Use Districts of Standards"; (Chapter X of the Commissions Rules and Regulations). Summary charts of uses for these areas of the coast are included herewith. (Also see Sections 7.43 and 7.53 in main report.)

Permissible uses of the State's marine resources are established by state and local regulations and those regulations authorized by the Conservation of Marine Species Act. Regulations are enforced by the Department of Marine Resources after adoption by the Commissioner, once it is determined that conservation measures are necessary.

TABLE H MAINE'S COASTAL PROGRAM Land & Water Use Control Laws	How The Laws Meet The Section 306 CZM Requirements PERMISSABLE LAND AND WATER USES
1. Protection and Improvement of Waters Title 38 § 361-A	- All direct or indirect pollution discharge, and facilities related thereto, in Maines tidal waters and fresh waters of the Coastal area, have a "direct and significant impact." - All of the States waters have been inventoried and classified. - Any use (or facility) that discharges pollutants must be licensed by, (or get a permit from) the Department of Environmental Protection; conditions may be applied to permit or licenses. - Suitability of use is judged on case-by-case analysis and pollutants must not lower the classification of the water; "best practicable treatment" is required and min. standards for discharges are set. Discharge facilities must have min. impact on existing uses and may be required to be moved.
2. Alteration of Coastal Wetlands Title 38 § 471	- Any use in a Coastal Wetland will have a direct and significant impact; all uses proposed for these areas must be approved by a permit procedure. - Coastal Wetlands are not inventoried specifically (or mapped); their extent is described fully in the Act by referring to vegetation and the extent of tidal action, etc. - The suitability of any use is judged by the Department of Environmental Protection staff and Board, on a case-by-case basis, giving consideration to the standards of "reasonableness" described in the Act, conditions may be attached to a permit. - A permissable use is a use that meets prescribed standards and conditions, that does not threaten the integrity of the wetland.
3. Mandatory Zoning and Subdivision Control (Shoreland Zoning) Title 12 § 4811	- Kind of use permitted depends on designation of area where use is proposed. There are 3 designated zones: (1) Resource Protection; (2) Limited Residential Recreational and (3) General Development. (1) Protection zones include areas that would be adversely affected by development; they include water fowl areas, 100 yards flood plains, slopes of +25% and may include other wildlife habitat, scenic areas etc..no intensive development allowed. (2) Areas not in (1) or (3) are for limited Res/Recreation development (3) Areas of + 2 acres devoted to intensive development. - These three zones are mapped (or described) by every coastal town - (all are within 250' of tidal high water). - Suitability of use determined by adopted "permitted use" table. Most development uses require permit; most land use activities must conform to applicable land use standards.

TABLE H (continued)	How The Laws Meet The Section 306 CZM Requirements
MAINE'S COASTAL PROGRAM Land & Water Use Control Laws	PERMISSIBLE LAND AND WATER USES
4. Land Use Regulation (Commission) L.U.R.C. Title 12 § 681	- LURC deals with permissible uses through zoning. Districts are established on the basis of resource characteristics and the resources ability to absorb development. Resource (and thus district) capabilities to withstand different use activities are established from research, precedent..etc. and standards prescribe what is permitted, what requires a permit and what is prohibited in each district. - All districts are mapped; the districts in which different uses will have most direct and significant impact on coastal waters are; Wetland, Flood prone, Soil and Geology and Shoreland Protection districts
5. Subdivision Law Title 30 § 4956	- The "Guidelines" established by this Act provide a procedure whereby a municipality can determine if the uses proposed are permissible , given the constraints of the proposed site; the decision (when the proposal is not within a Shoreland (250') area and when only minimum state Guidelines are followed) as to suitability and capability rests with the interpretation given to the following: - - The subdivision must not cause undue air and water pollution; has sufficient water available; will not burden water supply; will not cause erosion or unsafe highway conditions; has adequate sewage disposal; will not have adverse effect on scenic beauty. - These are minimum requirements, stricter standards may be set.
6. Site Location of Development Title 38 § 481	- Projects proposed under this Act are considered "permissible " when it can be shown that: (on a case-by-case basis.) - the developer has financial and technical capability, meets State pollution standards, provides for adequate solid waste disposal, and has sufficient and healthful water supplies; - adequate provision is made for traffic movement; - the project fits harmoniously into the natural environment and will not adversely affect existing uses, scenic character or natural resources. - the site soil types are suitable for the undertaking. - The burden of proof rests with the developer; each project is evaluated by the Department of Environmental Protection staff and Board as to its suitability for the site and resources affected.

TABLE H (Continued)	How The Laws Meet The Section 306 CZM Requirements
MAINE'S COASTAL PROGRAM Land & Water Use Control Laws	PERMISSIBLE LAND AND WATER USES
7. Protection and Improvement of Air Law Title 38 M.R.S.A. §§ 582-608	- All direct emissions into the ambient air and facilities responsible for those emissions have an indirect impact. - Air quality regions have been designated for the state. - Any facility that emits air contaminants must be licensed by the Department of Environmental Protection; conditions may be applied to the license. - Case-by-case analysis of air contamination sources is undertaken by DEP and the emissions from those sources must not lower the quality of the air; "best practicable treatment" is required and emission standards are set. Air contamination sources are subject to the conditions of the license.
8. Solid Waste Management Title 38 § 1302 & Regulations	- The regulations established pursuant to this Act define permissible solid waste disposal activities on the basis of their ability to: - provide adequate protection to ground and surface waters - reuse and recover valuable resources - reduce solid waste volume - Permissibility is determined by the Department of Environmental Protection staff and Board, on a case-by-case basis, through a permit procedure and approval of management plans.

TABLE H (Continued)	How The Laws Meet The Section 306 CZM Requirements
MAINE'S COASTAL PROGRAM Land & Water Use Control Laws	PERMISSIBLE LAND AND WATER USES
9. Alteration of Rivers, Streams, and Brooks Title 12 M.R.S.A. §§ 2206-2212	- All activities requiring dredging, filling, and the construction of permanent structures above the head of tide which will have a direct and significant impact on the watercourse require a permit. - Rivers, streams and brooks protected by this law are not inventoried or mapped specifically; however, they are defined by the type of bed and existing vegetation, etc. - Each application for a permit is studied individually, and if found by the Commissioner to be consistent with the purposes of the law, is permitted, or permitted with conditions. - A permitted activity does not unreasonably degrade the quality of the water or the existing uses of the watercourse.
10. Oil Discharge Prevention and Pollution Control Title 38 M.R.S.A. §§ 541	- Unlicensed discharges of oil to the waters and adjoining lands of the state are prohibited. - Oil transfer and oil conveyance operations are permissible uses only under licenses with safety operating conditions obtained from the Department of Environmental Protection.
11. Regulations for the Conservation of Marine Species Law Title 12 M.R.S.A. §§ 3504	- Harvesting of marine species is permissible when done in accordance with any regulations regarding that harvesting. - Regulations are promulgated under this Law when it is found that conservation or propogation promotion measures are necessary for any of the marine resources within state waters or flats. - The Regulations may limit the time, method, number, weight, length, and/or location of harvesting. - Conservation measures derived from species management plans may be implemented through the regulatory authority of this Act.

Appendix D

AREAS FOR PRESERVATION OR RESTORATION

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2 Procedures for Designation 273

3 Maine's Critical Areas Program 275

AREAS FOR PRESERVATION OR RESTORATION

Criteria for Designating Areas for Preservation or Restoration

Maine's Coastal Program considers Class A waters, resource protection districts within 250 feet of shoreline and certain specified protection districts under Land Use Regulation Commission (LURC's) jurisdiction as areas for preservation or restoration. These areas have been designated under existing state law for the purpose of preserving or restoring them for their conservation, recreational, ecological, or aesthetic values.

The criteria for designating these areas are either found in the statutes under description of the area to be protected, or are further specified in model ordinance or promulgated standards.

- Waters classified A are suitable for water supply and in coastal waters the SA claffification indicates waters suitable for harvesting and propagating shellfish and/or fish and wildlife habitat. Waters are classified A where the dissolved oxygen content is not less than 75% saturation and SA when the median numbers of coliform bacteria shall not be in excess of 70 per 100 ml; and fecal coliform shall not exceed 14 per 100 ml. (38 M.R.S.A. § 363, 364.)

- Within 250 feet of high water mark:
  - Coastal Wetland which is any swamp, marsh, bog, beach, flat, or other land above extreme low water which is subject to tidal action.
  - Areas rated as moderate to high-value waterfowl areas by the Department of Inland Fisheries and Wildlife, as of January 1, 1973.
  - Flood plains as defined by the 100 year flood or the flood of record or, in the absence of these, by soil types identifiable as recent flood plain soils.
  - Areas having sustained slopes greater than 25%, or unstable soil subject to slumping, mass movement, or severe erosion when these areas are two acres or more in size.

  It is suggested but not required that the following be also included:
  - Significant wildlife habitat
  - Natural sites of significant scenic or aesthetic value
  - Areas designated by Federal-State or municiapl governments as natural areas of significance to be protected from development. (Guidelines for Municipal Shoreland Zoning Ordinances.)

- Coastal Areas in LURC's Jurisdiction

  In 5% of the coastal areas under LURC's jurisdiction certain areas have been designated as "Protection Districts." The criteria for such districts are defined first by statute and then more specifically by regulations pursuant to a comprehensive planning process. The standards for protection districts are:

"A. Protection districts: Areas where development would jeopardize significant natural, recreational, and historic resources, including but not limited to flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region of the state." (38 M.R.S.A. § 685 A-1.)

The protection districts are further defined in the regulations as follows:

- Highly permeable soil and geologic areas that connect to public groundwater supplies (acquifer recharge areas).
- Significant fish spawning, deer wintering, and coastal nesting islands.
- Areas over 2700 feet or below with high mountain characteristics.
- Significant trails, canoeing streams, and remote fishing ponds.
- Areas of more than 100 acres with greater than 60% slope of unstable soil and geology.
- Areas with 100 year flood plain.
- Areas 250 feet from tidal or flowing waters.
- Important historic, scenic scientific, and aesthetic areas.
- Areas below high water, coastal, and inland waters greater than 100 acres

PROCEDURES FOR DESIGNATING AREAS FOR PRESERVATION AND RESTORATION

1. Class A Waters

The Board of Environmental Protection has classified all water bodies within the state. The Board may raise the classification after careful consideration, public hearings and in consultation with appropriate state and federal agencies.

The classification remains in effect until ninety days after adjournment of the Legislature, unless the Legislature adopts the classification by legislative enactment.

2. Areas Designated Resource Protection by the Shoreland Zoning Act, Within 250 Feet of High Water Mark

The steps and procedures required by the Shoreland Zoning Act of each municipality in order to have an approvable ordinance are explained in detail in Section 7.42. Upon completion of these steps the State reviews the ordinance to check that areas required to be designated for preservation and restoration, the Resource Protection Districts, are in fact so designated.

As specified in the Shoreland Zoning Guidelines, ordinances may be amended by a majority vote of the municipal governing body. Such amendments can also include redistricting to meet changing land use needs and to designate additional sensitive areas needing preservation or restoration into resource protection districts.

3. Areas for Resource Protection Under LURC's Jurisdiction

The Land Use Regulation Commission (LURC) is required by statute to designate protection areas. Shortly after passage of the Act the Commission established interim standards for eleven different protection districts. There was extensive public debate (and controversy) prior to the adoption of these standards.

LURC then zoned its jurisdiction according to the interim standards, designating on a map the various protection, management and development districts. This interim zoning procedure was accompanied by a series of public hearings held in locations convenient to the public.

The protection districts were somewhat changed and further refined to reflect the completed comprehensive plan. A major element of the comprehensive plan deals with policies regarding environmentally sensitive areas to be protected. Public hearings were also held on the Comprehensive Plan.

The final (permanent) standards for the protection districts have been adopted after public hearing. The permanent zoning is now in process.

The Land Use Regulation Commission may initiate, or any state or federal agency, or any property owner or leassee, may petition for a change in the boundary of any land use district or for amendments to any land use standard. Within 45 days of receipt of the petition, the Commission will approve or deny the proposed amendment or schedule a public hearing.

No change in a district boundary shall be approved unless there is substantial evidence that the change would be consistent with the standards for district boundaries in effect at the time; the comprehensive land use plan; the purposes, intent, and provisions of the law, and that changes in conditions have made the present classification unreasonable. No amendments to land use standards shall be approved, unless there is substantial evidence that the change would better serve the purpose, intent, and provisions of this chapter and would be consistent with the comprehensive land use plan.

MAINE'S CRITICAL AREAS PROGRAM

In addition to the above areas which are designated and regulated under the core laws, the Coastal Program will support Maine's Critical Areas Program.

This program is supportive of the goals and policies of Maine's Coastal Program and of the process of designating Areas of Preservation and Restoration specified above.

Enacted by the Legislature, the State Register of Critical Areas (5 M.R.S.A., §§ 3310-3314) gives the State Planning Office the responsibility to develop a Critical Areas Program for the purpose of identifying, documenting, and encouraging the conservation of critical areas.

Critical areas are officially designated areas which contain natural features of state significance, either highly unusual natural features, or outstanding examples of more common features.

Critical areas, on both public and private land, may include rare and/or exceptional plant or animal habitat, areas of geological or historical interest, and outstanding scenic areas. Examples include colonial bird nesting sites, naturally occurring rhododendron stands, significant fossil deposits, and scenic gorges and waterfalls.

Procedures

The registration process begins with the identification of subjects for investigation. Planning reports are prepared on each subject or type of area on a priority basis. The planning report includes a complete listing of all known critical areas, a description of the type of area, the significance to humans, its distribution and frequency, and documentation of its criticalness in terms of uniqueness and sensitivity to outside influences.

Recommendations for registration of specific areas may be made to the Critical Areas Advisory Board. The staff notifies the landowner at least 60 days prior to the Board's consideration for registering an area. Upon review of the planning reports and evaluation of landowner response, the Board votes to accept the designated area for inclusion on the Register.

Registration identifies the area as being significant and desirable for conservation. By maintaining a close relationship with the owners of critical areas, the State Planning Office has been successful in enlisting the voluntary cooperation of the landowners. Sometimes implementation may involve management agreements and the sale or donation of critical areas.

Critical areas registered in the coastal area include the following: colonial bird nesting areas, bedrock features, fossils, and rare plants, and marine zoology areas.

Appendix E

NATIONAL INTEREST, FEDERAL CONSISTENCY, AND USES OF REGIONAL BENEFIT

1 National Interest and the Maine Coast 279

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3 Uses of Regional Benefit 301

NATIONAL INTEREST AND THE MAINE COAST

Identification of National Interest

In passing the Coastal Zone Management Act, Congress found that certain resources and activities are in the national interest. For example, Congress found that:

- "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone."
- "The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation." (Section 302 (a) and (b).)

- The management program must provide for "adequate consideration of the national interest involved in the planning for, and in the siting of, facilities (including energy facilities,...) which are necessary to meet requirements which are other than local in nature." (Section 306 c 8)

The Act and NOAA's regulations thus require states to incorporate these and other national interest concerns into their programs. Maine, therefore, recognizes that certain activities are in the national interest and seeks to assure the balance between protection and development that Congress identified by giving full consideration for siting in the coastal area to all facilities of national interest and requiring that environmental concerns be fully considered as well.

Maine has sought to identify national interests in the coastal area through meetings with Federal agencies, statements issued by NOAA, correspondence with other Federal agencies, reports and studies by state coastal management agencies and Federal agencies, and policy statements from the President's National Energy Plan. After careful review of a more comprehensive list of facilities and resources that may be in the national interest, the Coastal Program has identified the following facilities and resources that are particularly relevant to the Maine coast. These facilities and resources will continue to receive full consideration during program implementation.

A. National Defense and Aerospace

The state considers military bases and installations, defense manufacturing facilities and aerospace facilities to be defined as facilities meeting this national interest.

To determine the national interest in national defense and aerospace, the following agencies and entities were consulted among others:

- Commandant, First Naval District
- Office of the Assistant Secretary of Defense
- Offices of the Army, Navy, and Air Force

Major objectives of the national interest in national defense and aerospace are:

- To ensure the sovereignty of the nation and protect its citizens against physical harm or expropriation.
- To establish and maintain those facilities necessary to carry out the first objective.

Maine's Coastal Program recognizes national defense and national security as important facets of the national interest. In fact, without this basic recognition of the need for security, all other parts of this program become meaningless. The state acknowledges that a negative consistency decision on its part may be overturned by the Secretary of Commerce in the interest of national security. (See Appendix E2.1.)

B. Energy Facilities

The following subsection reviews portions of the Coastal Zone Management Act, as amended, and NOAA regulations pertaining to national interest considerations in energy facility siting and discusses how Maine is dealing with energy facilities cited in the National Energy Plan, issued by the President in 1977.

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

"The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such State's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the State has given such consideration to any applicable interstate energy plan or program." (Section 306(c)(8).

The Coastal Zone Management Act sets forth broad balancing factors that shall guide the evaluation leading to adequate facility siting consideration. These factors include:

- Congressional findings (Section 302(a)(g) that stress a major need to balance the demands for, and adverse impacts of, development;

- The thrust of the Act, to balance development with resource conservation, is reflected in its acknowledgement of "beneficial uses," resource development, and financial assistance to meet State and local needs resulting from new or expanded energy activity under Section 308; and

- The summation of the Act's concern for balance is expressed in the national policy which seeks to achieve wise use of the land and water resources of the coastal zone while giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development.

The above factors and the National Energy Plan and its recommended policies are important sources for weighing national interests in facility siting and the balancing of alternative use of the coastal area.

In general, the following guidance is provided by the National Energy Plan:

"The U. S. has three overriding energy objectives:

- as an immediate objective that will become even more important in the future, to reduce dependence on foreign oil and vulnerability to supply interruptions;

- in the medium term, to keep U. S. imports sufficiently low to weather the period when world oil production approaches its capacity limitation; and

- in the long term, to have renewable and essentially inexhaustible sources of energy for sustained economic growth." (Plan Overview, p. IX).

"The salient features of the National Energy Plan are:

- conservation and fuel efficiency;
- rational pricing and production policies;
- reasonable certainty and stability in Government policies;
- substitution of abundant energy resources for those in short supply; and
- development of nonconventional technologies for the future." (Plan Overview pp. IX - X)

Maine recognizes the national interest in energy facilities through policy statements on development and ports, proposed studies, and statements regarding conservation, oil refineries, nuclear power, liquefied natural gas and pipelines, and particularly for considering onshore facilities related to offshore outer continental shelf development. This commitment is demonstrated by the Governor's "Open Letter to the Offshore Oil Industry" (enclosed). These are especially important because of the increased interest and activities resulting from the Department of the Interior's leasing of OCS areas for petroleum and gas exploration and extraction.

Elements of the National Energy Plan with particular application to the Maine Coastal Area are as follows:

(1) Conservation - "The conerstone of the National Energy Plan is conservation." (p. 35 of the Plan).

Comment - Maine's Energy Policy document, as adopted by the Governor, has as a prime objective the conservation of energy "through the reduction or elimination of processes that waste energy." Conservation related policies call for, for example: public education; mandatory conservation where necessary; incentives and penalties; public funding to improve energy efficiency in production, etc.

An Open Letter to the Offshore Oil Industry...

June, 1977

The first lease sale on Georges Bank is not far off. We wish to encourage you to think of Maine as a potential site for basing your onshore service activities.

In September, 1975, I stated my administration's basic policy on OCS development: "Where significant new business opportunities are identified which on balance would produce more gains than losses, the State will seek to work in partnership with oil and gas development interests and coastal communities to bring these opportunities to reality."

In December, 1975, I followed up that statement with a letter to leaders of the offshore industry encouraging them to consider Maine for locating OCS facilities and to cooperate with us in developing projects which will be profitable and which also will meet our environmental standards and help advance economic goals of the State.

I believe service and supply bases would be economically beneficial, compatible with the character of the Maine Coast and consistent with its seafaring traditions. Maine also has much to offer the offshore service industry:

Our many harbors are less congested than counterparts in Southern New England, and are actually closer to eastern tracts on Georges Banks.

There are privately owned facilities in these ports which would make excellent temporary bases and also numerous sites which could accommodate development of permanent installations.

Maine's shipbuilding and repair facilities, including the world famous Bath Iron Works, have a reputation for delivering high quality work, on time. I am sure these companies will develop services and schedules to respond to your needs for good fast work.

And most importantly, our coastal labor force has a depth of experience in the maritime industries. The graduates of the Maine Maritime Academy have an outstanding reputation for skill and job longevity. We can also point with pride to the recent example of the Searsport stevedores who responded quickly and efficiently to a tremendous increase in their workload caused by potato shipments to drought stricken Europe.

This administration has placed a high priority on improving the climate for business expansion in Maine and these efforts are succeeding. We have encouraged an affirmative partnership between government and industry and stand ready to help you in any way we can. In return we ask only that you observe the following public interest guidelines while developing plans to locate in Maine.

1) Inform local officials as early as possible of your intentions and what the impacts will be on their communities. Several Maine communities including Kittery, South Portland, Portland, Bath, Rockland, Belfast and Searsport have notified me of their desire to attract service and supply bases to their harbors. You will find material on these ports enclosed. These local initiatives have my full support.

2) Contact state and local officials, especially directors of the Vocational-Technical Institutes to design programs for training and hiring as much Maine labor as possible.

3) Communicate specifications of your material and service needs to suitable Maine companies either directly or through the State or municipal development offices.

4) Work with representatives of the fishing industry and the Department of Marine Resources to identify and resolve potential conflicts with our fishing fleet.

Hadley Atlass, the State Development Director, will furnish you with further information on Maine. Local contacts are also listed in the enclosed brochures describing some of Maine's port communities.

Welcome to our State.

Sincerely yours,

James B. Longley

James B. Longley
Governor

(2) Oil Refineries

Comment - Maine recognizes that Congress has said in the CZM that the siting of energy related facilities such as oil refineries may be in the national interest. Applications for siting such facilities are handled in the same way as other large projects. They are subject to existing applicable laws, especially the Site Location Act, and are acceptable to the state provided they meet environmental controls. More explicit policies regarding refinery siting may result if the Governor and Legislature choose to adopt the recommendations of a study of heavy industry that is currently in progress.

(3) Outer Continental Shelf - "Oil and gas under Federal ownership on the Outer Continental Shelf (OCS) are important national assets. It is essential that they be developed in an orderly manner, consistent with national energy and environmental policies. The Congress is now considering amendments to the OCS Lands Act, which would provide additional authorities to ensure that OCS development proceeds with full consideration of environmental effects and in consultation with states and communities. These amendments would require a flexible leasing program using bidding systems that will enhance competition, ensure a fair return to the public, and promote full resource recovery." (p. 56, Plan)

Comment - OCS related development is permitted in Maine's coastal area subject to applicable laws. The Governor has committed the state to taking the lead in assisting coastal communities to prepare for onshore facilities related to OCS development and the State intends to use future Coastal Zone Management funds to assist in this endeavor. Maine has made known its concerns relating to OCS boundary settlement and the effect of some leases on the Maine fishery.

(4) Nuclear Power - "The United States will need to use more light-water reactors to help meet its energy needs. The Government will give increased attention to light-water reactor safety, licensing, and waste management so that nuclear power can be used to help meet the U. S. energy deficit with increased safety." (p. 70 of the Plan).

"In addition, the President is requesting that the (Nuclear Regulatory) Commission develop firm siting criteria with clear guidelines to prevent siting of future nuclear plants in densely populated locations, in valuable natural areas, or in potentially hazardous locations. Finally, the waste generated by nuclear power must be managed so as to protect current and future generations." (p. 72 of the Plan).

Comment - Maine's Energy Plan states that it is the policy of the State: "To take no action which would preclude the development of nuclear electric generating facilities in Maine. However, questions regarding disposal of nuclear wastes, the future availability of nuclear fuels, and the general safety of nuclear facilities must be resolved at the Federal level before

new nuclear plants are built in Maine." This appears to be in line with the comment noted above on energy facilities.

(5) Liquefied Natural Gas - "Due to its extremely high costs and safety problems, LNG is not a long-term secure substitute for domestic natural gas. It can, however, be an important supply option through the mid-1980's and beyond, until additional gas supplies may become available." (p. 57 of the Plan)

"The previous Energy Resources Council guidelines are being replaced with a more flexible policy that sets no upper limit on LNG imports. Under the new policy, the Federal Government would review each application to import LNG so as to provide for its availability at a reasonable price without undue risks of dependence on foreign supplies. This assessment would take into account the reliability of the selling country, the degree of American dependence such sales would create, the safety conditions associated with any specific installation, and all costs involved." (p. 57 of the Plan).

Comment - The Federal Power Commission is currently considering a site on the Maine coast as an alternative LNG port terminal in a draft EIS on the effects of the proposed Tenneco gas pipeline. Such a facility, if proposed, would be considered under the Site Location Law and other applicable laws. See Section E.4 below for an example of how this process would operate.

(6) Pipelines - "It is clear that the energy transportation routes built in the first half of the century will have to be supplemented by new routes." (pp. 58-59)

Comment - Maine recognizes that Congress has said that the siting of energy related facilities such as pipelines may be in the national interest. Applications for siting such facilities are handled in the same way as other large projects. As mentioned above, a trans-state gas pipeline that would cross much of the coastal area is presently under consideration by the Federal Power Commission and the State. Proposed by Tenneco, the pipeline would transport 1 billion cubic feet/day for use in states to the south of Maine. Recent legislation enacted in Maine permits the speeded-up review of this proposal by the Department of Environmental Protection because of the national energy situation. Thus pipelines are allowed and are subject to applicable laws.

C. Recreation

In determining the national interest in Recreation, the State will be guided by the following documents, legislation, and federal agencies:

- The Nation-Wide Outdoor Recreation Plan
- Historic Preservation Act-Public Law 89-665
- Land & Water Conservation Fund Act
- State Comprehensive Outdoor Recreation Plan (SCORP)
- Bureau of Outdoor Recreation

- National Parks Service
- Fish and Wildlife Service
- Soil Conservation Service (USDA)
- Forest Service (USDA)

The State considers national seashores, state-owned parks and forestlands, large and outstanding beaches, and recreational waterfronts to be in the national interest.

A review of these documents reveals that the major objectives of the national interest in recreation are:

- Recreation should be considered as an equal among competing uses of the coastal region;
- To provide high quality recreational opportunities to all people of the United States while protecting the coastal environment;
- Increase public recreation in high density areas;
- Improve coordination and management of recreation areas;
- Protect existing recreation areas from adverse contiguous uses;
- Accelerate the identification and no-cost transfer of surplus and under-utilized federal property.

Comment

The Maine coast is clearly a national recreation resource with visitors attracted from throughout the nation. The Maine Coastal Program has incorporated the recreational policy "to improve and expand opportunity for Maine people and visitors to the state for outdoor recreation on the coast through coordinated planning, conservation of visual qualities, open space preservation and land acquisition."

The 34,000-acre Acadia National Park is located in the mid-coast area. Implementation funds, after 306 approval, would be available to surrounding communities to address planning and management issues of joint interest with the National Park Service. The SPO has reviewed the State Comprehensive Outdoor Recreation Program (SCORP) and has found it consistent with the coastal program and will work to assure continued consistency. See the Recreation and Access description in Coastal Issues, Section 4, for more information.

D. Transportation

In determining the national interest in transportation, the State will be guided by the following documents and Federal Agencies' contacts:

- Department of Transportation Act (49 U.S. 1651, et. seq.)
- Railway Safety Act of 1970 (45 USC 421)
- Coast Guard, Primary Duties (14 USC 2)
- Department of Transportation
- Maritime Administration
- Interstate Commerce Commission
- U.S. Army Corps of Engineers

A review of these documents and previous contacts with the agencies reveals that the major objectives of the national interest in transportation are:

- To develop a balanced national transportation system including well articulated and integrated surface, air, water, and subsurface modes.
- To provide fast, safe, efficient and convenient access via one or more modes of transportation for the movement of people, goods, and services to, from, and through the coastal region.

The State has defined Interstate highways and airports to be facilities in which there may be a national interest in coastal location. The coastal program has incorporated these interests as described in the Memorandum of Agreement with the State Transportation Department. (See more in Appendix I)

E. Living Marine Resources

In determining the national interest in living marine resources, the State will be guided by the following documents, specific legislation, and agencies:

- A Compilation of Federal Laws relating to Conservation and Development of our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography. The Library of Congress, Congressional Research Service. January, 1975.

- A Marine Fisheries Program for the Nation. U.S. Department of Commerce. July, 1976.

- Fishery Conservation and Management Act of 1976. (P.L. 94-265)

- Fish and Wildlife Service

- Army Corps of Engineers

- National Marine Fisheries Service

A review of these documents reveals that the major objectives of the national interest in living marine resources as expressed are as follows:

> To conserve, enhance, and manage in a rational manner commercial fishing which constitutes a major source of employment and contributes significantly to the food supply, economy, and health of the nation.
>
> To strengthen the contribution of marine resources to recreation and other social needs.
>
> To develop and protect all species of wildlife, resources thereof and their habitat, and to control losses by damage to habitat areas through coordination with other features of water resource development programs.

The salient features of the national interest in living marine resources are, therefore:

- emphasis on commercial fisheries
- relationship of marine resources to recreation
- protection of marine resources
- protection of wildlife habitat

The Maine Coastal Program recognizes the important and unique role the State provides in the protection, development, and harvesting of living marine resources.

The nation's need for ample supplies of protein will place more emphasis on the ocean as a vital source of food. The fish, shellfish, and other living marine resources of Maine's coast are important to the nation and are recognized as such in Maine's program. The policy statements on ports, fishing, water quality maintenance, wetland conservation, and marine fishery habitats all bespeak the importance the state places on these resources. See Section 4 for a description of the issues, Section 5 for relevant policies, and Section 8 for how living marine resources projects will receive funding after 306 approval.

F. Wetlands

In determining the national interest in wetlands the state will be guided by the following documents and contacts with federal agencies.

- Section 404 of the Federal Water Pollution Control Act,
- The National Environmental Policy Act of 1969 (42, U.S.C. 4321)
- The May 24, 1977 Executive Order - Protection of Wetlands
- Fish and Wildlife Service
- U.S. Army Corps of Engineers
- Soil Conservation Service

A review of the document reveals that the major objectives of the national interest in Wetlands are:

- To protect basic values of wetlands as habitat and food sources for waterfowl and aquatic life;
- To protect the functioning of wetlands for flood prevention, storm buffering, water supply, nutrient exchange, and as a recreational resource;
- To regulate alteration of wetlands and the disposal of dredged materials in U.S. waters and associated wetlands.

In concurrence with the President's Executive Orders on wetlands and flood plains the Maine Coastal Management Program places a priority interest in these resources and considers their sound management essential in assuring their long-term natural and economic benefit.

Policies relating to maintaining fisheries, water quality and particularly coastal wetlands as well as the discussion of coastal issues provide further information on how this interest will be protected.

Consideration of National Interest During Program Development

During the process of program development, the State carefully evaluated the relevant statutory criteria to determine whether they provided a reasonable balance between the national interest in the resources protected and that in siting facilities in the coastal zone. In all cases, the answer was yes.

The Land Use Regulation Commission's Comprehensive Plan for the unorganized areas of the coast also provides guidelines to direct development. First, it is the policy of the Plan to encourage new development in, or adjacent to, existing developed areas and, second, to allow for large well-planned "Planned Development" in other areas, provided they meet strict performance standards. The detailed standards are in Chapter X of the Land Use Regulation Commission's Rules and Regulations, entitled "Land Use Districts and Standards."

All projects of national significance (as well as all other projects) in Maine must meet national water and air pollution control standards. Maine's Coastal Program incorporates these standards by reference to the state's air and water pollution acts. (The State's Protection of Waters Act specifically references to the Federal Water Polluation Control Act, as amended, in Title 38 M.R.S.A. § 414A 3.)

Maine's Clean Air Act is based on national Clean Air Act (CAA) standards and either meets those standards or sets standards higher than those established in the federal CAA. The State Department of Environmental Protection is responsible for regulating all existing and future air pollution discharges with the exception of motor vehicle emission standards which are a Federal responsibility.

The Department of Environmental Protection likewise administers the states' water pollution controls. Again, the controls meet or surpass the federal standards established by the Federal Water Pollution Control Act (F.W.P.C.A.)

Maine has a Federally approved State Air Implementation Plan and, in the coastal area, there are only three known ambient air quality standard violations. First, there are photochemical oxidant violations along much of the coast, caused probably by industry in coastal states to the south of Maine; second and third, there are particulate and carbon monoxide violations of ambient air quality standards in Bangor. Maine has no violations caused by new source emissions and no violations of its hazardous air pollution emission standards. The above mentioned violations are currently under study by the Department of Environmental Protection in conjunction with the E.P.A.

The Process of Resolving Conflicts Between National Interest Facilities and Resources and for Continued Consideration of Identified National Interests

Maine believes that its laws provide a rational balance between the national interest in resource conservation and that in facility siting. Therefore, the application of these laws to proposed projects provides an adequate process for

continued consideration of the national interest. For example, energy facilities, whether they serve only the state or an area outside the state may be established under the State laws.

In some cases the effect of implementing the criteria will be highly restrictive, for example for a tank farm proposing to locate on a wetland. Here the criteria of both the Alteration of Coastal Wetlands Act and the Site Location Act would apply and would bar the project if it would lower water quality, cause unreasonable soil erosion, do unreasonable harm to fish or wildlife or cause a variety of other impacts. For all practical purposes, a wetland must be considered "off limits" to such a proposal, but this is to be expected because of the strong national and state interest in wetlands preservation as expressed by the Department of the Interior. In other words, with ample more suitable sites available, the national interest is better served by preserving wetlands than by locating a large tank farm in a wetland area. Thus, both the national interest in maintaining energy supplies and interest in maintaining the quality of the environment can be served.

In other areas the restrictiveness of Maine's laws vary and the state is not aware of any case where the restriction appears out of proportion to the national interest to be served in resource protection.

In assuring continued consideration of the national interest in siting major facilities Maine will use the permit process associated with the Site Location of Development Act. All facilities identified in the program as in the national interest are subject to the law and the procedures established by the state place the primary authority for considering the impacts from siting such facilities on the Board of Environmental Protection in carrying out the law. As described in the expanded sections on authorities and the additional materials added to Appendix F in considering an application for a permit, the Board uses detailed guidelines and criteria related to each of the tests established in §§ 484 (Title 38). In addition to receiving testimony on the effects of a proposal on the environment and its threat to public health, safety, or general welfare the Board is authorized under §§ 484 to receive testimony on the economic effect of such development. Because national interest considerations are often expressed as well in terms of economic effects as in terms of environmental effects, the Board will rely on the full scope of its authority in this section to receive information to consider the national interest as it has commited itself to do in the Memoranda of Agreement in Appendix I. Such information can include matters relating to products costs, importation and balance of payments policies, transportation consideration, and marketing. The procedural guidelines of the Board specifically provide for all interested parties, including federal agencies, to present their views in this regard. It is beyond question that the Board's consideration of such factors does not alter its authority to protect the environment from anything more than minimal destruction.

The State Planning Office, in its coordinating role (see Section 8.2 of text) will offer its leadership to insure that the national interest is given full consideration, and will encourage the examination of all feasible alternatives so that activities in the national interest can be accommodated with minimum harm.

AN EXAMPLE OF HOW MAINE'S COASTAL PROGRAM WILL GIVE FULL CONSIDERATION TO NATIONAL INTEREST

The following describes the procedural steps that may apply to a major oil refinery project proposed for the Maine coast. It describes how the national interest in providing such facilities will be given full consideration. The description is purposefully brief and should be viewed as a broad outline; it makes many assumptions and should be used only as a rough guide. Any serious proposal should be discussed with the Department of Environmental Protection (or the Land Use Regulation Commission, if the project is in unorganized territory). Approval of the project by the Department of Environmental Protection would satisfy the State Planning Office that the project is consistent with Maine's Coastal Program.

ASSUMPTIONS

For the purposes of this example the following assumptions have been made:

Type of Project: 200,000 barrel per day oil refinery and marine terminal proposed by major oil company.

Description of Project: 300 acre shoreline site with oil processing/refining units, storage tanks, ancillary energy generation and waste disposal facilities, and a single pier to serve berthed tankers, cargo, and service vessels.

Location of Project: Sheltered deep water cove in organized town in coastal area. Served by rail and major coastal highway.

PROCEDURE

Very generally, a project of this magnitude would proceed in the following way:

Step 1. Applicant determines which State laws apply

Step 2. Applicant prepares and files appropriate information with relevant State Agency(ies)

Step 3. State agency notifies applicant that information filed is complete or incomplete

Step 4. State agency reviews complete proposal and schedules public hearing

Step 5. Testimony on project is presented and heard at public hearing.

Step 6. Agency reaches decision to approve, approve with conditions, or deny the proposed project.

APPLICABLE STATE LAWS

Because of the size and nature of this hypothetical project, it would be subject to a number of State laws and would require various licenses and permits,[1] most of which are administered by the Board of Environmental Protection. That agency's regulations for the processing of applications states that the Commissioner may require that an applicant requiring one license, submit all other required applications before any application is processed. In practice this discretionary requirement has not been applied to large projects and the Department of Environmental Protection has advised applicants to proceed with a Site Location of Development application, recognizing that satisfying the other applicable license and permit requirements that they administer could be a condition of approval or that these applications could be made later in the process. For the purpose of this example the latter procedure will be assumed. This example assumes that a Shoreland zoning permit would be required of the local town and lease agreement for use of submerged state lands is required of the Bureau of Public Lands. When these requirements are met is left to the discretion of the applicant, but the lease agreement is needed as part of the review process.

APPLICATION REQUIREMENTS

The Department of Environmental Protection has a standard application form for Site Location of Development project proposals (See Appendix F for sample form). The applicant is required to complete this form and supply such information as the Commissioner deems necessary in order to obtain all the information relevant to the permit. Within 10 working days of receipt of the application the Department of Environmental Protection must notify the applicant if the application is complete or not. In practice on a major project, the Department may require considerable additional information, before the application is considered complete. Especially important is the need for the applicant to prove title, right or interest in the project site.
By law, should the proposed project require any other environmental permits issued by other State agencies (e.g. Stream Alteration Law), the Department of Environmental Protection is required to coordinate and assist the applicant so as to reduce delay and duplication of effort (See 38 M.R.S.A. § 341 as amended during the 1977 Regular Session).

Footnote 1: Licenses and permits required would include the following, the first 7 of which are subject to statutes administered by the Board of Environmental Protection:

1. Site Location of Development permits (38 M.R.S.A. § 483)
2. Waste discharge licenses (38 M.R.S.A. § 413 and 414)
3. Wetlands alteration permits (38 M.R.S.A. § 471)
4. Oil contaminated waste discharge licenses (38 M.R.S.A. § 543)
5. Oil terminal licenses (38 M.R.S.A. § 545)
6. Anchorage of Oil carrying vessels (38 M.R.S.A. § 560)
7. Air Emission license (38 M.R.S A. § 590)
8. Shoreland Zoning permit (12 M R.S.A. § 4811)
9. Submerged and Intertidal Waters lease from Bureau of Public Lands (12 M.R.S.A. § 287, 514A)

AGENCY REVIEW OF APPLICATION AND PUBLIC HEARING

Upon notice to the applicant that the application is complete the Department of Environmental Protection staff undertakes to evaluate the project. Their review, review by other concerned state agencies, including the State Planning Office, (under Federal consistency requirements,) and subsequent review by the Board of Environmental Protection is to be undertaken as expeditiously as possible. However, on a large project the review may take more than the 30 days and a public hearing would probably be needed. 30 M.R.S.A. § 344 requires that a final decision on an application not take more than 180 days. Again, however, extenuating circumstances relating to a project on the magnitude of a refinery, could cause the review period to extend more than 6 months. Such extension would have to be approved by the Board.

It can be assumed that the Board of Environmental Protection would call for a public hearing on an oil refinery project. The hearing must be advertised to assure public notification and, according to the law, the Board "shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety, or general welfare." It is the applicant's responsibility to affirmatively demonstrate that the project meets the established review criteria and that the public's health, safety, and welfare is assured. Under the wording of the law the BEP can consider broad regional, state, and national needs and interests in making decisions about the acceptability of development proposals.

THE DECISION TO APPROVE OR DENY

Within 30 days of a public hearing the Board of Environmental Protection is required to make findings of fact and issue an order to approve, approve with conditions, or deny a project. Such findings must be based on criteria in the law relating to the applicant's financial and technical ability to meet air and water pollution standards, adequately dispose of waste, provide for reasonable traffic movement, not adversely effect the natural environment, and build on suitable soil types.

Other important findings must show the applicant has a valid submerged land lease agreement (for the marine terminal) and that all other state permits and licenses have been or can be reasonably obtained. The refusal of any one state agency to issue a permit, for which it has responsibility, is sufficient to stop the project. In other words, the Board of Environmental Protection cannot overrule another agency decision.

Upon finding that a project meets the above requirements the Board must issue an approval. However, it is quite possible that because of the magnitude of this type of project, the approval could be conditioned on the need for further study, and the receipt of other necessary permits. Detailed plans are often necessary to insure that general proposals meet the environmental standards of the Site Location Law. The imposition of such conditions prior to final approval is an established procedure of the Board designed to treat the applicant fairly and protect the public interest.

Final construction may not begin until all conditions of approval are met, there may be instances where the conditions allow construction but withhold the right to operate the facility until certain requirements are met.

FEDERAL CONSISTENCY

The Federal consistency provisions of the Coastal Zone Management Act provide a significant opportunity to insure that Federal activities significantly affecting the coastal area are consistent with Maine's Coastal Program. The State intends to utilize these provisions without creating burdensome or unnecessary administrative responsibilities for Federal agencies or for applicants for Federal licenses, permits or assistance.

The Federal consistency regulations establish four types of activities that must be evaluated for consistency with Maine's Coastal Program; in other words they must be found to comply with the laws that have been adopted as the core of the State's 306 management program. The four types are:

1. Federal activities (including development projects) that significantly affect the coastal area;

2. Non-Federal activities which significantly affect land and water uses in the coastal area, that require Federal licenses or permits;

3. Planned exploration, development, or production activities proposed pursuant to the O.C.S. Lands Act that require Federal licenses or permits and that significantly affect land and water uses in the coastal area; and

4. State and local government activities involving Federal assistance that significantly affect the coastal area.

The following sections describe, for each of the four types of activities identified above: how the activity is identified; how the state is notified of a consistency determination; what the state's role will be in developing its consistency review; how the state will respond; and what procedures are available for dispute settlement.

1. FEDERAL ACTIVITIES THAT SIGNIFICANTLY AFFECT THE COASTAL AREA

Federal agencies are responsible for determining whether federal activities have a significant effect on the coastal area and whether they are consistent, to the maximum extent practicable, with Maine's Coastal Program. Federal activities outside of the coastal area (on excluded federal lands, on the outer continental shelf, landward of the coastal area) are subject to federal agency review to determine whether they significantly affect the coastal area.

Consistency determinations, including the necessary information outlined in the NOAA Federal Consistency regulations, will be submitted to the State Planning Office as the designated coastal agency. The following federal activities will require federal consistency determinations by Federal agencies and review by the State.

- Army Corps of Engineers:

  - proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment, dams;

  - proposed acquisitions.

- Department of Commerce:

  - fisheries management proposals.

- Department of the Interior:

  - proposed National Park Service acquisitions;

  - proposed U.S. Fisheries and Wildlife acquisitions.

- Department of Defense:

  - location and design of new or enlarged defense installations.

- Department of Transportation:

  - location and design of new or enlarged Coast Guard stations, bases, and lighthouses;

  - location and design of aviation communication and air navigation facilities.

- General Services Administration:

  - location and design of proposed Federal government property acquisition and building construction;

  - disposal of surplus Federal lands

Those federal activities which do not appear on the above list will be monitored through the A-95 process by the State agencies for consistency with the core laws of the Coastal Program. In cases where a consistency determination and review for unlisted federal activities is desirable, the State Planning Office will notify the federal agency.

Review Procedures

The review for consistency shall be performed by the governmental organizations responsible for administering the respective core laws. These agencies will make consistency findings by using the same procedures and standards as they use to evaluate permit and license applications or management programs under the core laws and accompanying regulations.

The State Planning Office will notify the federal agency of the State's agreement or disagreement with the federal agency's consistency determination at the earliest practicable time. Notification of the State's consistency evaluation will be forwarded to the appropriate federal agency within 45 days of receipt of their consistency determination. Where it deems it appropriate the State may seek a 15 day extension.

State Agency Disagreement

In the event the State disagrees with the Federal agency determination, the State shall accompany the response with the reasons for the disagreement and supporting information. If the State's disagreement is based upon a finding that the Federal agency has not submitted sufficient information for a consistency evaluation, the State Planning Office will inform the federal agency of the information needed for an adequate consistency review. A copy of the State's response will be forwarded to the Assistant Administrator.

If the State disagrees with the federal agency consistency determination, resolution may be sought through negotiations; if agreement cannot be reached, mediation attempts by the Secretary of Commerce in cooperation with the Executive Office of the President may be undertaken. The State reserves the right to seek judicial resolution of disagreements, if appropriate and necessary.

2. ACTIVITIES WHICH REQUIRE FEDERAL LICENSES OR PERMITS

Activities, whether occuring inside or outside of Maine coastal area, which have a significant effect on that area are subject to this section of the federal consistency provisions. Activities in this grouping shall be divided into two categories 1) listed activities requiring a federal license or permit, and 2) unlisted activities requiring a federal license or permit. The way that Maine deals with these two categories is described below.

Listed Activities

The State will review all activities listed below which occur within the coastal area, or which are located outside of the coastal area but which have a significant affect on the area. This will include activities on excluded federal lands or which occur in the area of the Gulf of Maine including George's Banks.

- U.S. Army Corps of Engineers

  Section 404, Federal Water Pollution Control Act, permit discharges of dredged or fill materials in waters of the U.S. and their adjacent wetlands.

  Section 10, Rivers and Harbor Act of 1899 permit for structures or work in or affecting navigable waters of the United States.

Section 103, Marine Protection, Research, and Sanctuaries Act, permit for transportation of dredged material for the purpose of dumping in ocean waters.

- U.S. Coast Guard:

  Permit for construction or modification of bridge structures across navigable waters of the United States.

  Deepwater Port License

- Environmental Protection Agency:

  National Pollution Discharge Elimination System (NPDES) permit.

  Ocean Dumping permit (authority exercised jointly with Army Corps of Engineers).

- Department of the Interior:

  Permits for pipeline rights of way for oil or gas transmission on Outer Continental Shelf.

- Department of Energy - Federal Energy Regulatory Commission:

  Licenses required for non-federal hydro-electric projects and associated transmission lines under Section 4(e) of the Federal Power Act.

  Certificates authorizing construction, extension, acquisition or operation of pipelines, terminals or facilities for transportation or storage of natural gas for interstate commerce.

  Permission and approval for the abandonment of natural gas pipeline facilities under Sec. 7(b) of the Natural Gas Act.

- Department of Energy - Economic Regulatory Administration:

  Opinions and orders for permission for the delivery of imported liquified natural gas.

- Nuclear Regulatory Commission:

  License for construction and operation of a nuclear power plant.

Review Procedure for Listed Activities

The following consistency certification, "The proposed activity complies with Maine's approved coastal management program and will be conducted in a manner consistent with such program, "shall accompany the permit application for the appropriate core law(s). For activities taking place inside the coastal zone, this certification and the core law permit application will constitute the necessary information for a consistency review. The consideration of core law permits will constitute the State consistency review. Approval of all core law permits with attached conditions shall constitute the State's consistency concurrence.

For listed activities which occur outside the coastal zone the certification including the necessary information outlined in the NOAA federal consistency regulations will be required. In reviewing the certification, the state will make its consistency findings based on the core law and accompanying regulations using the same procedures and standards as they use to evaluate permit and license applications. Public notification and hearings will be held for consistency review pursuant to the provisions of the core laws. In cases where both federal and state agencies determine that a hearing is necessary, joint public hearings will be encouraged.

The State Planning Office will notify the federal agency and the applicant of its consistency determination at the earliest practicable time, usually within 60 days, but no later than six months after initiation of the consistency review. As prescribed under National Oceanic and Atmospheric Administration regulations, no federal license or permit will be granted until the State has concurred with the consistency certification or concurrence is presumed after the time allowed by law.

Unlisted Activities

State agencies will monitor all activities not listed above which occur within the coastal area, or which are located outside of the coastal area but which have a significant affect on the area. This will include activities on excluded federal lands or which occur in the area of the Gulf of Maine including Georges Banks.

Federal agencies should notify the State Planning Office of these activities through the A-95 process in order to assist the State in its monitoring effort. In response to a request by one or more the core law agencies, the State Planning Office shall inform the federal agency, permit applicant, and the Assistant Administrator of the Office of Coastal Zone Management, of the State's desire for a consistency review. Within 30 days after receiving notice from the federal agency, the State Planning Office will notify the above parties of the State's decision to make a consistency determination for the proposed activity.

Review Procedures for Unlisted Activities

In instances where a consistency review is requested, certification as specified above will be required. For activities occurring inside the zone the consideration of core law permits will constitute the State's consistency review. For unlisted activities occurring outside the zone, the certification including the necessary information defined in the NOAA federal consistency regulations, the State will make its consistency findings

using the same procedures and standards as they use to evaluate permit and license applications under the core law and accompanying regulations. Public notification and hearings will be held for consistency review pursuant to the provisions of the core laws. In cases where both federal and State agencies determine that a hearing is necessary, joint public hearings will be encouraged.

The State Planning Office will notify the federal agency and the applicant of its consistency determination at the earliest practicable time, usually within 60 days, but no later than six months after initiation of the consistency review. As prescribed under National Oceanic and Atmospheric Administration regulations, no federal license or permit it will be granted until the State has concurred with the consistency certification or concurrence is presumed by the State's law.

3. OUTER CONTINENTAL SHELF ACTIVITIES THAT REQUIRE FEDERAL LICENSES AND PERMITS

Federal license or permit activities described in detail within O.C.S. plans will be evaluated for consistency with Maine's Coastal Program (i.e., the core laws) by appropriate State agencies coordinated by the State Planning Office. The procedures for developing a consistency certification and public notice and hearings are the same as those for activities in 2 above.

Upon a decision, the State Planning Office will notify the Secretary of Commerce and the Secretary of the Interior. Appeals or negotiations are likewise handled as described in 1 and 2 above. Similarly, no Federal license or permit may be granted until State consistency objections, if any, are satisfied or overturned.

4. STATE AND LOCAL GOVERNMENT ACTIVITIES INVOLVING FEDERAL ASSISTANCE

The State will monitor federally assisted activities in the coastal area, and geographic area outside of the coastal area as defined earlier in this section, for consistency with the core laws of the Coastal Program. Those activities which will ultimately involve meeting the requirements of the core laws, may be selected for State consistency review at the time of application for federal assistance, in order to prevent expenditure of funds for projects which as proposed cannot meet the permit requirements of the appropriate core laws. Applicants for projects already provide notice of their intent to apply for federal assistance through A-95 procedures. Unless otherwise notified by the State Planning Office, State consistency review will normally be conducted upon receipt of the application for core law permits. If, however, earlier consistency review is requested by one or more of the core law agencies, the State Planning Office shall inform the federal agency, applicant, and the Assistant Administrator of the Office of Coastal Zone Management, of the State's desire to conduct a consistency review within 30 days after receiving notice through A-95.

Consistency review of an application for federal assistance will be performed by the core law agencies using the same procedures and standards as they use to evaluate permit and license applications or management programs under the core laws and accompanying regulations.

Applicants for federal assistance may appeal State consistency objections to the Secretary of Commerce.

No federal assistance may be granted until State consistency objections, if any, are satisfied or overturned.

USES OF REGIONAL BENEFIT

Maine's Coastal Program defines uses of regional benefit to be uses, activities, or facilities in the coastal area that serve a large, diverse and geographically dispersed population living in an area that includes at least three coastal towns. Uses of regional benefit are therefore limited to the following:

1. Electric Generating Facilities (of 1 KV or greater used by a public service corporation).
2. Electric High Voltage Transmission Lines (of 5 KV or greater).
3. Natural Gas Pipelines.
4. Large-scale parks, preserves, wildlife refuges, and historic preserves in state or federal ownership.
5. State and interstate transportation facilities, including highways and airports.
6. Offshore Oil and Gas Wells.
7. Defense and Coast Guard Installations.

The Coastal Zone Management Act requires that Maine's Program "ensure that local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit." This requirement in the Act derives from a concern that public facilities that serve a number of local governments not be excluded by localities arbitrarily. Neither the legislative history nor American Law Institute's Model Land Development Code (from which the concept was derived) appear to provide a basis for including industrial facilities which are essentially private investment decisions not tied to an extensive public planning process.

The following table shows that the zoning enabling statutes, the authorities of the Public Utilities Commission, and the Department of Transportation allow Maine to meet the requirements of the Act.

The description of authority and statutes cited follows the table.

	Use	Provisions that Assure Against Arbitrary Local Restrictions
1.	Generating Facility	Public Utilities Commission (P.U.C.) has power to exempt such facilities from local zoning, after public hearing, if for the "public welfare". 30 MRSA § 4962 (C).
2.	Transmission Lines	Comment above applies, and P.U.C. may authorize use of eminent domain (by public service corporation where no alternative route exists. 35 MRSA § 2306 & 2534.
3.	Natural Gas Pipeline	Above comments apply.
4.	Large-scale parks, preserves, wildlife refuge, and historic preserves in state or federal ownership	Any zoning ordinance is advisory with respect to the State. (30 MRSA § 4962) Federal lands are excluded from the coastal area (by definition).
5.	State and Interstate Transportation Facilities, Including Highways and Airports	Any zoning ordinance is advisory with respect to the State. (30 MRSA § 4962) Additionally, the Department of Transportation has the powers of eminent domain for highways and airports.
6.	Offshore Oil and Gas Wells	Not subject to local regulations because they occur outside the territorial jurisdiction of town boundaries.
7.	Defense and Coast Guard Installations	Not subject to local regulation.

AUTHORITY BY WHICH MAINE ASSURES AGAINST ARBITRARY EXCLUSION OF USES OF REGIONAL BENEFIT

Zoning Enabling Statutes

Maine's Homerule and Planning and Zoning laws have two provisions which assure against arbitrary local restrictions. According to the provisions of 30 MRSA § 4962:

> "1. Terms. Any zoning ordinance, or provisions thereof, adopted pursuant to the homerule power granted to all municipalities under the Constitution, Article VIII-A and Chapter 201-A, specifically Section 1917 shall be subject to the following:
>
> > ...C. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing, the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience... (30 MRSA § 4962, Subsection C)."

This provision allows the PUC, after due process and public hearings, to exempt generating facilities, transmission lines, natural gas pipelines, from local zoning requirements.

Additionally, Section E continues:

> "E. Any zoning ordinance shall be advisory with respect to the State" (30 MRSA § 4962 Subsection E).

This assures that while the State will take into consideration the views of the local residents, local zoning is not binding on the State in acquiring or developing large-scale parks, preserves, and transportation facilities owned by the State.

The Public Utilities Commission

The Public Utilities Commission in addition to its authority to exempt public utility facilities from local zoning may authorize the use of eminent domain by corporations regulated by the PUC. It has these powers for transmission lines:

> "Corporations organized ... for the purpose of making, generating, selling, distributing and supplying electricity for lighting, heating, or other public purposes are authorized and empowered to take and hold by right of eminent domain such lands and easements as may be necessary for the proper location of their transmission lines which are designed to carry voltages of 5,000 volts or more and of necessary appurtenances thereto..." 35 MRSA § 2306.

The PUC has similar powers for eminent domain for gas pipelines:

"Such corporation shall be authorized and empowered to take any hold by right of eminent domain such lands or rights therein as may be necessary in the safe, economical and efficient operation of the pipeline or pipelines and in rendering adequate service to the public..." 35 MRSA Section 2534.

The Department of Transportation

The power of eminent domain of the Department of Transportation allows it to assure against arbitrary local restrictions on the location of state and state aid highways and the building of airports.

Roads:

"The State Highway Commission (now named Department of Transportation cf note under 22 MRSA s 2) on behalf of the State of Maine, may take over and hold for the State of Maine such property as it may deem necessary to:

1. State and state aid highways. Lay out and establish, construct, improve or maintain, or to provide a change of location or alignment of, or to provide drainage for state and state aid highways.

2. Roadside development. Provide rest areas, parking strips, roadside and landscape development for the preservation and development of natural scenic beauty... .

4. Materials. Secure materials, with necessary ways and access thereto, for the construction, improvement and maintenance of State and state aid highways... .

5. Automobile graveyards. Secure the relocation, removal or disposal of automobile graveyards and junkyards... ." (23 MRSA § 153)

Airports:

"1. Land. Private property needed by a city, town, county or authorized state agency for an airport or landing field or for expansion of an airport or landing field may be acquired by gift, purchase, lease or other means... . As a matter of public exigency a city or town may take land for use as an airport or landing field... ." (6 MRSA § 122)

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Executive Order

OFFICE OF
THE GOVERNOR

NO. 10 FY 75/76
DATE February 4, 1976

GOVERNOR'S ADVISORY COMMITTEE ON COASTAL DEVELOPMENT AND CONSERVATION

WHEREAS, there exist in Maine many potential opportunities for coastal development together with the continuing need to conserve essential qualities of the Maine coast; and

WHEREAS, many coastal communities would benefit substantially from sustained diversified economic development; and

WHEREAS, the coastal area, including the offshore environment, contains natural and cultural characteristics of great economic, social and environmental value to the people of Maine; and

WHEREAS, the coastal area faces heavy industrial and residential development pressure, including the potential construction of facilities required to support the development of oil and gas resources of the Outer Continental Shelf (OCS); and

WHEREAS, a forum within which state, local and private interests can participate in development of policy for use of the coastal area is desirable.

NOW, THEREFORE, I, JAMES B. LONGLEY, Governor of the State of Maine, do hereby modify the membership and charge of the Governor's Advisory Committee on Coastal Development and Conservation.

The Committee Shall consist of the following members:

- the Commissioner of the Department of Conservation
- the Commissioner of the Department of Environmental Protection
- the Commissioner of the Department of Marine Resources
- the Director of the State Development Office
- the Director of the State Planning Office
- the Director of the Office of Energy Resources
- the Attorney General
- a member of the Senate
- a member of the House of Representatives
- six residents at large, to be appointed by the Governor, at least four of whom shall reside in towns within the coastal area
- the Vice-President for Research and Public Services of the University of Maine
- one representative of Regional Planning Interests within the coastal area to be appointed by the Governor from nominees submitted by the coastal Regional Planning Commissions

A Chairperson shall be appointed by the Governor from within the membership of the Committee.

The Committee's overall responsibility shall be to advise the Governor and state agencies on issues of coastal planning and use, including development and conservation policies and any work performed pursuant to the Federal Coastal Zone Management Act of 1972. A principle function of the Committee shall be to coordinate an effective program of community and individual citizen participation in coastal planning activities.

Although not limited to the following responsibilities, the Committee shall:

1. Monitor activities relating to the development of Outer Continental Shelf oil and gas reserves, including a consideration of the potential consequences of these activities to the State of Maine, and make appropriate policy recommendations.

2. Evaluate alternate policies and strategies and make recommendations for coastal economic development, the conservation of important coastal natural resources, and the siting of energy and heavy industrial facilities.

3. Evaluate in consultation with affected interests, Maine's land use regulatory system relevant to the coastal area including rules, regulations, and procedures as well as legislation and recommend administrative and legislative action, if any is needed, to improve service to applicants.

4. Suggest priorities for coastal and marine research.

5. Recommend to the Governor how integrated coastal and marine policy could best be developed in the future.

The Committee shall have the authority to form subcommittees for purposes of studying particular subjects and may seek advice from other persons in such matters.

Support for the Committee's operation shall be provided by the State Planning Office.

JAMES B. LONGLEY
Governor

PROTECTION AND IMPROVEMENT OF WATERS

§ 361. Organization; compensation; meetings; duties

The Board of Environmental Protection, as heretofore established and hereinafter in this subchapter called the "board," shall consist of 10 members appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature and the Commissioner of Environmental Protection ex officio. The Commissioner of Environmental Protection shall be a nonvoting member of the board. Members of the board shall be chosen to represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the board is charged with the duty of administering. The members shall be appointed for a term of 3 years and until their successors are appointed and duly qualified.

The members appointed by the Governor shall receive $40 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the board or for any other travel in connection with the official business of the board and under the specific authority of the board, which traveling expenses shall be paid out of the General Fund.

Meetings of the board shall be held at such time and place as shall be determined by the board but not less than 2 meetings per year shall be held. The board shall in October of each year elect a secretary who need not be chosen from among the members of the board. Six members of the board shall constitute a quorum, except for the purpose of conducting any hearing.

The Commissioner of Environmental Protection with the prior approval of the board may obtain the services of consultants on a contractual basis or otherwise as may be necessary to carry out this subchapter.

It shall be the duty of the board, exercising the police power of the State, to control, abate and prevent the pollution of the air, waters, coastal flats and prevent diminution of the highest and best use of the natural environment of the State. The board shall make recommendations to each subsequent Legislature with respect to the classification of the waters and coastal flats and sections thereof within the State, based upon reasonable standards of quality and use.

The board shall make recommendations to each Legislature with respect to the control, abatement and prevention of pollution of the air, waters, coastal flats and other aspects of the natural environment within the State for the benefit of the citizens of this State.

The board shall consult with and advise the authorities of municipalities, persons and businesses having, or about to have, systems of drainage, sewerage or industrial wastes except purely storm water systems located in or on or draining from public ways, as to the best methods of disposing of the drainage, sewage or industrial wastes with reference to the existing and future needs of the municipality, other municipalities, persons or businesses which may be affected thereby. It may consult with and advise with persons or corporations engaged or intending to engage in any manufacturing or other business whose drainage, sewage or industrial wastes may tend to pollute any waters under the jurisdiction of the board, as to the best methods of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage, sewage and industrial wastes. Municipalities, sewer districts, quasi-municipal corporations, firms, persons, state agencies and other legal entities shall submit to said board for its advice and approval the plans and specifications for any proposed new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State, except purely storm water systems located in or on or draining from public ways and any alterations in existing facilities. The board shall establish and enforce reasonable standards for the operation and maintenance of municipal, industrial, commercial and private waste treatment facilities.

The board is authorized to establish and conduct a continuous planning process in cooperation with appropriate federal, state, regional and municipal officers and agencies, consistent with the requirements of the Federal Water Pollution Control Act, as amended.[1]

The board after a public hearing may adopt, amend and repeal such reasonable fees not to exceed $500 for licenses, permits and approvals that require continuing surveillance.

At such time as the State applies for and receives authority to issue permits under the appropriate provisions of the Federal Water Pollution Control Act, as amended, no person may serve as a board member who receives, or during the 2 years prior to his appointment has received, a significant portion of his income directly or indirectly from license or permit holders or applicants for a license or permit.

§ 361-A. Definitions

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings:

1. **Discharge.** "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

1-A. **Coastal streams.** "Coastal streams" means those waters of the State which drain directly or indirectly into tidal waters, except portions of streams subject to the rise and fall of the tide and those waters listed and classified in sections 368 and 370.

2. **Fresh surface waters.** "Fresh surface waters" means all waters of the State other than tidal waters.

3. **Municipality.** "Municipality" means a city, town, plantation or unorganized township.

4. **Person.** "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

4-A. **Pollutant.** "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

4-B. **Surface waste water disposal system.** "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

5. **Tidal waters.** "Tidal waters" means those portions of the Atlantic Ocean within the jurisdiction of the State, and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 368 and 370.

6. **Transfer of ownership.** "Transfer of ownership" means a sale, a lease, a sale of over 50% of the stock of a corporation to one legal entity or a merger or consolidation where the surviving corporation is other than the original licensee.

7. **Waters of the State.** "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through, or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

§ 362. Authority to accept federal funds

The board is designated the public agency of the State of Maine for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The board is authorized, subject to the approval of the Governor, to accept federal funds available for water pollution control, water resources and air pollution studies and control and meet such requirements with respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving federal funds. The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of water pollution control, water resources and air pollution studies and control, and the State Controller shall authorize expenditures therefrom as approved by the board.

§ 362-A. Experiments and scientific research in the field of pollution and pollution control

Notwithstanding any other law administered or enforced by the department, the department is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the department or its designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section shall be subject to such terms and conditions as the department deems necessary in order to protect the public's health, safety and general welfare, and may be terminated by the department at any time upon 24 hours' written notice.

§ 363. Standards of classification of fresh waters

The commission shall have 4 standards for the classification of fresh surface waters.

Class A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection.

The dissolved oxygen content of such waters shall not be less than 75% saturation or as naturally occurs, and contain not more than ~~100~~ 20 fecal coliform bacteria per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which impart color, turbidity, taste or odor other than that which naturally occurs in said waters, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters or contain chemical constituents which would be harmful or offensive to humans or which would be harmful to animal or aquatic life. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other wastes into water of this classification and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely, except that existing licensed discharges into water of this classification will be allowed to continue until practical alternatives exist, but no new discharges will be permitted after the effective date of this section.

Class B, the 2nd highest classification, shall be divided into 2 designated groups as B-1 and B-2.

B-1. Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment and for a fish and wildlife habitat. The dissolved oxygen of such waters shall be not less than 75% of saturation, and not less than 5 parts per million at any time. The fecal coliform bacteria shall not exceed 60 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class.

No radioactive matter or substances shall be discharged to these waters which will raise the radionuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

B-2. Waters of this class shall be acceptable for recreational purposes including water contact recreation, for industrial and potable water supplies after adequate treatment, and for a fish and wildlife habitat. The dissolved oxygen of such waters shall not be less than 60% of saturation, and not less than 5 parts per million at any time. ~~The fecal coliform bacteria shall not exceed 1,000 per 100 milliliters.~~ The fecal coliform bacteria is not to exceed 200 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life, or which adversely affect any other water use in this class. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range.

No radioactive matter or substance shall be discharged to these waters which will raise the radionuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class C waters, the 3rd highest classification, shall be of such a quality as to be satisfactory for recreational boating and fishing, for a fish and wildlife habitat and for other uses except potable water supplies and water contact recreation, unless such waters are adequately treated.

The dissolved oxygen content of such waters shall not be less than 5 parts per million, except in those cases where the board finds that the natural dissolved oxygen of any such body of water falls below 5 parts per million, in which

case the board may grant a variance to this requirement. In no event shall the dissolved oxygen content of such waters be less than 4 parts per million. ~~The total coliform bacteria not to exceed 5,000 per 100 milliliters.~~ The fecal coliform bacteria is not to exceed 1,000 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion content of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive material or substance shall be discharged to these waters which will raise the radionuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class D waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation and industrial process waters after adequate treatment. Dissolved oxygen of these waters shall not be less than 2.0 parts per million. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the commission, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the commission may take such actions as may be appropriate for the best interest of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

§ 363-A. Standards of classification of great ponds

The board shall have 2 standards for the classification of great ponds.

Class GP-A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection. Such waters shall have a Secchi disk transparency of not less than 2.0 meters or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters. Total phosphorus concentration shall not exceed 15 parts per billion, and chlorophyll A concentration shall not exceed 3 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse, floating solids, oils, grease and scum. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other wastes into waters of this classification except as provided in section 371-A and no deposits of materials on the shores or banks thereof in a manner that could permit drainage or leaching from the material into the waters.

Class GP-B, the 2nd highest classification, shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment, and for a fish and wildlife habitat. The fecal coliform bacteria count is not to exceed 60 per 100 milliliters. The total phosphorus concentration shall not exceed 50 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse and floating solids, such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the "pH" of these waters to fall outside of the 5.5 to 8.5 range. There shall be no disposal of any substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents, including, but not limited to, solids, color, turbidity, taste, odor and toxic material, such that these treated wastes will not cause any violation of water quality standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or cause it to be dangerous for human consumption. There shall be no additional discharge of phosphorus to waters of this classification, which discharge does not employ the best available technology for phosphorus removal.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification, either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters which are assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.7 to 8.5 range. There shall be no disposal of matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material or which interferes with the propagation of fish or shellfish if indigenous to the area.

Class SB-2 shall be suitable for recreational usages, including water contact, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish, for a fish and wildlife habitat, and suitable for industrial cooling and process uses. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 15 per 100 milliliters, nor shall more than 10% of the samples exceed 50 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 500 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 150 per 100 milliliters, nor shall more than 10% of the samples exceed 200 fecal coliform bacteria per 100 milliliters. There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combination with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific

Tidal or Marine Waters

The commission shall have 5 standards for classification of tidal waters:

Class SA, shall be suitable for all clean water usages, including water contact recreation, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area or non-shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 220 coliform bacteria per 100 milliliters.

The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area or non-shellfish growing area shall not be in excess of 14 per 100 milliliters, nor shall more than 10% of the samples exceed 43 fecal coliform bacteria per 100 milliliters.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other waste or heated liquids discharged to waters of this classification either singly or in combinations with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof; and otherwise none in sufficient amounts to make the waters unsafe or unsuitable for bathing or impair the waters for any other best usage as determined for the specific waters assigned to this class. There shall be no discharge which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.7 to 8.5 range.

There shall be no disposal of any matter or substances that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to the area.

Class SB-1 shall be suitable for all clean water usages including water contact recreation, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish, and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters.

The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of ~~15~~ 14 per 100 milliliters, nor shall more than 10% of the samples exceed ~~50~~ 43 fecal coliform bacteria per 100 milliliters.

In a non-shellfish growing area the median numbers of coliform bacteria in a series of samples representative of the waters shall not exceed 240 per 100 milliliters, nor shall more than 10% of the samples exceed 500 coliform bacteria per 100 milliliters. In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 50 per 100 milliliters, nor shall more than 10% of the samples exceed 150 fecal coliform bacteria per 100 milliliters.

waters assigned to this class. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of the receiving waters to fall outside of the 6.7 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish or shellfish if indigenous to this area.

Class SC, the 4th highest classification, shall be of such quality as to be satisfactory for recreational boating, fishing and other similar uses except primary water contact. Such waters may be used for the propagation of indigenous shellfish to be harvested for depuration purposes, for a fish and wildlife habitat, and for industrial cooling and process uses. The dissolved oxygen content of such waters shall not be less than 5 parts per million at any time. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 700 per 100 milliliters, nor shall more than 10% of the samples exceed 2,300 coliform bacteria per 100 milliliters. The median numbers of fecal coliform bacteria in any series of samples representative of waters in the shellfish growing area shall not be in excess of 150 per 100 milliliters, nor shall more than 10% of the samples exceed 500 fecal coliform bacteria per 100 milliliters. In a non-shellfish growing area the median number of coliform bacteria in a series of samples representative of the waters shall not exceed 1,500 per 100 milliliters nor shall more than 10% of the samples exceed 5,000 coliform bacteria per 100 milliliters.

In a non-shellfish growing area the median numbers of fecal coliform bacteria in a series of samples representative of the waters shall not exceed 300 per 100 milliliters, nor shall more than 10% of the samples exceed 1,000 fecal coliform bacteria per 100 milliliters.

There shall be no floating solids, settleable solids, oil or sludge deposits attributable to sewage, industrial wastes or other wastes, and no deposit of garbage, cinders, ashes, oils, sludge or other refuse. There shall be no discharge of sewage or other wastes, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic materials, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

There shall be no toxic wastes, deleterious substances, colored or other wastes or heated liquids discharged to waters of this classification either singly or in combinations with other substances or wastes in such amounts or at such temperatures as to be injurious to edible fish or shellfish or to the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, or odor thereof or impair the waters for any other usage ascribed to waters of this classification. There shall be no waste discharge which will cause the hydrogen-ion concentration or "pH" of the receiving waters to fall outside the 6.7 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affects any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animals or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

Class SD waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation, industrial process waters or cooling waters, and for migration of fish. Dissolved oxygen of these waters shall not be less than 3.0 parts per million at any time. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the commission, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the commission may take such actions as may be appropriate for the best interests of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

§ 365. Classification procedure repealed.

§ 366. Cooperation with other departments and agencies

The commission is authorized to cooperate with other departments or agencies of this State and with any other state or states and with the Federal Government for the purpose of carrying out this subchapter relating to air, and rivers and waters which run through this State and any other state or states. Said commission is authorized to cooperate with the Federal Government for the purpose of carrying out this subchapter relating to any and all rivers and waters which, in whole or in part, are located in or run through this State.

§ 367. Classification of surface waters

The surface waters in sections 368 to 371 shall be classified in accordance with this subchapter.

The commission may, after careful consideration, public hearings and in consultation with other state agencies and, where appropriate, federal and interstate water pollution control agencies, and the municipalities and industries involved, classify or raise the classification of any fresh surface or tidal waters, or portions thereof, and such classification or new classification shall thereafter be the classification applicable to such fresh surface or tidal waters, or portions thereof, until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such new classification.

[Sections 368 through 371 are not included. They are a listing of the classifications accorded inland and marine waters throughout the state. (For example: § 368.13 Meadow Brook (Oxford and Poland) – Class B-2).

§ 411. State contribution to pollution abatement

The department is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction. State grant-in-aid participation under this section shall be limited to grants for waste treatment facilities, interceptor systems and outfalls. The word "expense" shall not include costs relating to land acquisition or debt service.

All proceeds of the sale of bonds for the construction and equipment of pollution abatement facilities to be expended under the direction and supervision of the Department of Environmental Protection shall be segregated, apportioned and expended as provided by the Legislature.

§ 412. Grants by State for planning

1. Grants by State for planning. The Department of Environmental Protection is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in preliminary or final planning of a pollution abatement program in the form of a grant. Such amount may not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with preliminary or final planning of a pollution abatement program, as appropriate.

A. Preliminary planning. For the purposes of this section, "preliminary planning" means engineering studies which include analysis of existing pollution problems; estimates of the cost of alternative methods of waste treatment, studies of areas to be served by the proposed facilities and estimates of the cost of serving such areas; preliminary sketches of existing and proposed sewer and treatment plant layouts; and estimates of alternative methods of financing, including user charges, and other studies and estimates designed to aid the municipality or quasi-municipal corporation in deciding whether and how best to proceed with a pollution abatement program.

B. Final planning. For the purposes of this section, "final planning" means the preparation of engineering drawings and specifications for the construction of waste treatment facilities, interceptor systems and outfalls or other facilities specifically designated in departmental regulations. All proceeds from the sale of bonds for the planning of pollution abatement facilities to be expended under the direction and supervision of the Department of Environmental Protection shall be segregated, apportioned and expended as provided by the Legislature.

§ 413. Waste discharge licenses

1. License required. No person shall directly or indirectly discharge or cause to be discharged, any pollutant without first obtaining a license therefor from the board.

1-A. License required for surface waste water disposal systems. No person shall install, operate or maintain a surface waste water disposal system without first obtaining a license therefor from the board.

2. Exemption. No person shall be deemed to be in violation of subsection 1 for any discharge as it existed on October 3, 1973 provided that application has been made for a license for such discharge on or before December 31, 1973. The exemption provided by this subsection shall expire upon final administrative disposition of such application or 180 days after the date of such application, whichever occurs first.

2-A. Exemptions; pesticide permits. The Board of Environmental Protection may by regulation exempt holders of a pesticide permit, issued by the Board of Pesticides Control, from the need to obtain a license under this section for the activity covered by the regulation, when it finds that the exempted activity would leave no significant adverse effect on the quality of the waters of the State.

3. Transfer of ownership. In the event that any person possessing a license issued by the board shall transfer the ownership of the facility or structure which is the source of such licensed discharge, the license granted by the board shall upon such transfer be extinguished and void and the new owner thereof shall be required to obtain a license in the manner required by this subchapter.

4. Repealed. 1973, c. 470, § 10.

5. Repealed. 1973, c. 470, § 10.

6. Unlicensed discharge. If after investigation the board finds any unlicensed discharge, it may notify the Attorney General of the violation without resorting to the hearing procedures of section 454, ~~subsection~~ § 347. The Attorney General shall proceed immediately under section 454 348.

7. Tidal waters and subtidal lands. In connection with a license under sections 414 and 414-A, whenever issued, the board may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of such license in, on, above or under tidal waters or subtidal lands of the State. Such permit may be issued upon such terms and conditions as the board deems necessary to insure that such facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the board may find necessary, to insure removal of such facilities. In the event that such facilities are no longer necessary in order for such licensee or successor thereof to comply with the terms of its license, the board may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of such facilities from the tidal waters or subtidal lands. Such removal may be ordered if the board determines that maintenance of such facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of such removal will not create an undue economic burden on such licensee or successor.

§ 414. Applications for licenses

1. Administration. repealed

2. Terms and conditions of licenses. Licenses shall be issued by the board for a term of not less than 3 years nor more than 5 years. With respect to licenses granted by the commission prior to September 23, 1971 which have been in effect and the rights of which have been exercised for more than 3 years, the commission may upon 60 days' notice to the licensee order the licensee to reapply for a new license under this subchapter.

3. Inspection and records. Authorized representatives of the commission and the Attorney General shall have access to the premises of a licensee at any reasonable time for the purposes of inspection, testing and sampling. The commission may order a licensee to produce any records relating to the handling, treatment or discharge of waste and may require any licensee to keep such records relating thereto it deems necessary.

4. [repealed]

5. **Unlawful to violate license.** After the issuance of a license by the commission it shall be unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

6. **Conduct of hearings.** The board may establish reasonable fees for the reproduction of materials in its custody including parts of an application submitted to the board and parts of the records of a hearing held by the board under this section. All such fees collected by the board may be retained by it to reimburse expenses incurred in reproducing such materials. Any records, reports or information obtained under this subchapter shall be available to the public, except that upon a showing satisfactory to the board by any person that such records, reports or information, or particular part thereof, other than effluent data, to which the board has access under this subchapter would, if made public divulge methods or processes of such person which are entitled to protection as trade secrets, such records, reports or information shall be confidential and not available for public inspection or examination. Such records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on such terms as the board may prescribe in order to protect such confidential records, reports and information, provided that such disclosure is material and relevant to any issue under consideration by the board.

2. **Schedules of compliance.** The board may establish schedules of compliance, within the terms and conditions of licenses for discharges existing on October 3, 1973, including such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. Such schedules shall be as short as possible and shall be based upon a consideration of the technological and economic impact of the steps necessary to attain such standards: provided that in any event such schedules shall require complete compliance with subsection 1 not later than October 1, 1976.

3. **Federal law.** At such time as the Administrator of the United States Environmental Protection Agency determines to cease issuing permits for discharges of pollutants to waters of this State pursuant to his authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended,[1] the board shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after such determination shall contain such provision, including effluent limitations, which the board deems necessary to carry out the purposes of this subchapter and any such federal laws or regulations.

1973, c. 450, § 15.

[1] 33 U.S.C.A. § 1342(c)(1).

§ 414-A. Conditions of licenses

1. **Generally.** The board shall issue a license for the discharge of any pollutants only if it finds that:

A. **Classified waters.** The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. **Unclassified waters.** The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

C. **Waters of higher quality.** The discharge either by itself or in combina- of water, unless upon an affirmative showing by the applicant the board finds that such lowering is a result of necessary economic and social development; and

D. **Effluent limitations.** The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including but not limited to effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of waste, including process methods, for a category or class of discharge sources which the board determines are best calculated to protect and improve the quality of the receiving water. In determining best practicable treatment for each such category or class, the board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.

§ 414-B. Publicly owned treatment works

1. **Definition.** "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

2. **Pretreatment standards.** The board may establish toxic effluent and pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with such treatment works.

3. **User charges.** The board may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

§ 415. Appeals repealed

§ 416. Discharge of oil prohibited repealed.

§ 417. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity shall place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow or leach into such waters, any of the following, except as otherwise provided by law:

A. **Forest products refuse.** Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

B. **Potatoes.** Any potatoes or any part of parts thereof;

C. **Refuse.** Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section shall not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the Board of Environmental Protection pursuant to the requirements of chapter 13 and the regulations adopted thereunder.

§ 418. Log driving and storage

1. Prohibition. No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State after October 1, 1976 for the purpose of driving the same to pulp mills, lumber mills or any other destination.

No person, firm, corporation or other legal entity shall place logs or pulpwood on the ice of any inland waters of this State after October 1, 1976.

No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State after October 1, 1976 for the purpose of storage or curing the same, or for other purposes incidental to the processing of forest products, without a permit from the commission as described in subsection 2.

2. Storage; permit. Whoever proposes to use the inland waters of this State after October 1, 1976 for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, shall apply to the commission for a permit for such use. Applications for such permits shall be in such form and require such information as the board may determine.

Within 45 days of receipt of an application, the commission shall either grant the application or hold a public hearing thereon as provided.

If the commission is able to find, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct such use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 3 years, with such terms and conditions as, in its judgment, may be necessary to protect such quality, standards and rights.

In the event the commission deems it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application. Notice of the hearing shall also be given to the applicant at least 21 days before the date of the hearing.

At such hearing the commission shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of such use. If after hearing the commission determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct such use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 3 years, with such terms and conditions, as in its judgment, may be necessary to protect such quality, standards and rights.

§ 419. Cleaning agents containing phosphate banned

1. Definitions.

A. Dairy equipment. "Dairy equipment", as used in this section, means equipment used by farmers or processors for the manufacture or processing of milk and dairy products.

B. Food processing equipment. "Food processing equipment", as used in this section, means equipment used for the processing and packaging of food for sale, except that equipment used at restaurants and similar places of business shall not be included within the meaning of "food processing equipment."

C. High phosphorous detergent. "High phosphorous detergent", as used in this section, means any detergent, presoak, soap, enzyme or other cleaning agent containing more than 8.7% phosphorous, by weight.

D. Industrial equipment. "Industrial equipment", as used in this section, means equipment used by industrial concerns which concerns are located on any brook, stream or river.

E. Person. "Person", as used in this section, means any individual, firm, association, partnership, corporation, municipality, quasi-municipal organization, agency of the State or other legal entity.

2. Prohibition. No person shall sell or use any high phosphorous detergent after June 1, 1972.

3. Exception. Subsection 2 shall not apply to any high phosphorous detergent sold and used for the purpose of cleaning dairy equipment, food processing equipment and industrial equipment.

§ 420. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the inland or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters, any of the following substances:

1. Mercury. Mercury, and any compound containing mercury, whether organic or inorganic, in any concentration which increases the natural concentration of mercury in the receiving waters.

A. Exception. Any person, firm, corporation or other legal entity who, on January 1, 1971, was discharging any of the substances mentioned in this subsection in connection with an industrial process shall not be deemed in violation of this subsection if on or before December 31, 197[illegible] it shall file with the commission a statement indicating the amount of such substance so discharged on said date.

B. Emergency prohibitions. Notwithstanding paragraph A, whenever the commission shall find that a concentration of 10 parts per billion of mercury or greater is present in any waters of this State, or that danger to public health exists due to mercury concentrations of less than 10 parts per billion in any waters of this State, it may issue an emergency order to all persons discharging to such waters prohibiting or curtailing the further discharge of mercury, and compounds containing mercury, thereto. Such findings and order shall be served in manner similar to that described in section 593, and the parties affected by such order shall have the same rights and duties with respect thereto as is described in section 593.

2. **Toxic or hazardous substances.** Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

3. **Radiological, chemical or biological warfare agents.** Radiological, chemical or biological warfare agents or high level radioactive wastes.

§ 421. Solid waste disposal areas; location

No boundary of any public or private solid waste disposal area shall lie closer than 300 feet to any classified body of water.

If the Environmental Improvement Commission shall determine that soil conditions, groundwater conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of water, it may, after notice to and a hearing with the affected party, order the relocation of such boundaries and the removal of any solid waste, previously deposited within the original boundaries, to the confines of the new boundaries.

Any person, corporation, municipality or state agency establishing a solid waste disposal area after September 23, 1971 may apply to the commission for a determination that the boundaries of the proposed area are suitably removed from any classified body of water.

Any solid waste disposal area whose boundary is closer than 300 feet to any classified body of water shall be discontinued in conformity with this section prior to December 1, 1973.

Notwithstanding this section, if the Board of Environmental Protection shall determine from an examination of soil conditions, groundwater characteristics, climatic conditions, topography, the nature and amount of the solid waste and other appropriate factors, that the deposit of solid waste within an area less than 300 feet from any classified body of water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of water, it may, after notice and hearing, permit the deposit of solid waste within such area, upon such terms and conditions as it deems necessary. Permits issued pursuant to this section shall be for a term of not more than 2 years but may be renewed for successive 2-year terms after reexamination pursuant to this chapter.

§ 422. Dredging permits

The Board of Environmental Protection may grant permits for construction and maintenance of causeways, bridges, marinas, wharves and permanent structures, for dredging or for deposit of fill, in, on or over any great pond or on the land adjacent to any great pond in such a manner that any dredged spoil, fill or structure may fall or be washed into such waters.

The board may, pursuant to the Administrative Code, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as it deems necessary to properly administer this section. Fees collected shall accrue to the board and shall be expended by it for expenses incurred in carrying out its duties, prescribed by this section.

If the applicant for the permit demonstrates that the proposed activity will not unreasonably interfere with existing recreational, navigational, scenic and aesthetic uses; nor otherwise unreasonably interfere with or harm the natural environs of the great pond or tributary, river or stream; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor create or cause to be created unreasonable noise or traffic of any nature; nor unreasonably harm any fish or wildlife habitat; nor lower the quality of any waters, to the satisfaction of the board, the board shall grant the permit upon such terms as it deems necessary to insure that the proposed activity will comply with the foregoing standards.

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or removes or causes to be dredged or removed any materials from, or who erects, maintains or causes to be erected or maintained any causeway, bridge, marina, wharf, dock or permanent structure, or deposits or causes to be deposited fill in, on or over any great pond or on the land adjacent to any great pond in such a manner that any dredged spoil, fill or structure may fall or be washed into the great pond, without a permit from the board as provided in this section shall be punished by a fine of not more than $200 for each day of such violation.

In the event of the violation of this section, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

For the purposes of this section "great pond" shall include any inland body of water which in its natural state has a surface area in excess of 10 acres, and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons, firms, corporations or other legal entities.

§ 423. Discharge of waste from watercraft

No person, firm, corporation or other legal entity shall discharge, spill or permit to be discharged sewage, garbage or other waste material from watercraft, as defined in Title 12, section 2061, subsection 17, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

Any watercraft, as defined in Title 12, section 2061, subsection 17, including houseboats, operated upon the inland waters of this State and having a permanently installed sanitary waste disposal system shall have securely affixed to the interior discharge opening of such sanitary waste disposal system a holding tank or suitable container for holding sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

§ 424. Voluntary water quality monitors

The Commissioner of Environmental Protection may appoint voluntary water quality monitors to serve at the will and pleasure of the commissioner.

Such monitors are authorized to take water samples and tests of the waters of this State at such times and at such places and in such manner as the commissioner shall direct and to forward such water samples and test results to the commissioner for analysis.

The commissioner is authorized to provide such monitors with such sampling materials and equipment as he deems necessary, provided that such equipment and materials shall at all times remain the property of the State and shall be immediately returned to the commissioner upon his direction.

Such monitors shall not be construed to be employees of this State for any purpose.

The commissioner or his representative shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

§ 451. Enforcement generally

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it shall be unlawful for any person, firm, corporation, municipality, association, partnership, quasi-municipal body, state agency or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, in such manner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere lower the quality of said waters below the minimum requirements of such classifications, or where mixing zones have been established by the commission, so lower the quality of said waters outside such zones, notwithstanding any exemptions or licenses which may have been granted or issued under sections 413 and 414.

The commission may establish a mixing zone with respect to any discharge at the time application for license for such discharge is made pursuant to section 414, and when so established shall be a condition of and form a part of the license issued.

The board may, after hearing in accordance with section 343, establish by order a mixing zone with respect to any discharge for which a license has heretofore been issued pursuant to section 414, or for which an exemption has been granted by virtue of section 413, subsection 2.

Prior to the commencement of any enforcement action to abate a classification violation, the commission shall establish, in the manner above provided, a mixing zone with respect to the discharge sought to be thereby affected.

The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of wastes with the receiving waters before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be by it established under this section, the commission may require from the licensee testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the commission's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof shall vary in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of discharges to, the waterway.

Where no mixing zones have been established by the commission, it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of said waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to 415.

1969, c. 431, § 6; 1970, c. 390, § 72, eff. Feb. 10, 1970; 1971, c. 461, § 6.

1. Time schedule. A municipality, sewer district, person, firm, corporation or other legal entity shall not be deemed in violation of any classification or reclassification adopted on or after January 1, 1967, at any time or times prior to October 1, 1976, with respect to those classifications if by such time or times he or it with respect to any project necessary to achieve compliance with the applicable classification shall have completed all steps required to then be completed by the schedules set forth in this subchapter.

A. Preliminary plans and engineers' estimates shall be completed and submitted to the Water and Air Enviromental Improvement Commission o or before October 1, 1969.

B. Arrangements for administration and financing shall be completed o or before October 1, 1971. This period, in the case of municipalities, shall encompass all financing including obtaining of state and federal grants.

C. Detailed engineering and final plan formulation shall be completed o or before October 1, 1972.

D. Review of final plans with the Water and Air Environmental Improvement Commission shall be completed and construction commenced on or before October 1, 1973.

E. Construction shall be completed and in operation on or before October 1, 1976.

However, a reclassification adopted on or after January 1, 1967 shall not be deemed to exempt any municipality, sewer district, person, firm, corporation or other legal entity from complying with the water quality standards of the last previous classification, as such standards existed on Decembe 31, 1966, and enforcement action may be maintained for noncompliance therewith; provided, however, that in the event that a time schedule fo compliance with the standards of such last previous classification was in existence on December 31, 1966 and the municipality, sewer district, person, firm, corporation or other legal entity was on that date in compliance with such time schedule, then no such enforcement action may be maintained, no shall any further compliance with such time schedule be required.

After notice to and a hearing with the affected parties, the commission may issue to any municipality, sewer district, person, firm, corporation or other legal entity, special orders directing such operating results as are necessary to achieve any of the interim goals set out in the above timetable.

Notwithstanding the foregoing timetable, if the commission shall determin that any municipality, sewer district, person, firm, corporation or other legal entity can reasonably complete any or all of the foregoing steps at an earlier date or dates than herein provided, the commission, after notice and hearing may order completion of any such steps according to an accelerated schedule

In determining any such time, or times, to be allotted under the foregoin provision for an accelerated schedule, the commission shall consider, but not necessarily be limited to the following factors: The availability of municipal, quasi-municipal, state, federal or other funds, of technical and engineering advice and services, of machinery, construction materials and manpower neces sary to construct any proposed abatement facility, and the state of the art o pollution abatement technology.

1969, c. 429, §§ 11, 12.

2. Revocation, modification or suspension of licenses. repealed.

§ 451-A. Time schedule variances

1. Power to grant variances. The Board of Environmental Protection shall grant a variance from any statutory water pollution abatement tim schedule to any municipality or quasi-municipal entity, hereinafter called t "municipality," upon application by it. The board shall grant a variance only upon a finding that:

A. Federal funds for the construction of municipal waste water treatme facilities are not available for the project; and

B. The municipality has demonstrated that it has completed preliminar plans acceptable to the Department of Environmental Protection for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municip treatment plant when that plant first begins operations; and

C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system which has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs shall include but not be limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon shall be invested and expended pursuant to Title 30, chapter 241.[1]

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement shall be determined by agreement between the municipality and the discharger.

Variances shall be issued for a term certain not to exceed 3 years, and may be renewed, except that no variance shall run longer than the time specified for completion of the municipal waste treatment facility. Upon notice of the availability of federal funds, the municipality shall present to the Department of Environmental Protection for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

2. **Exemptions.** Any person, other than a municipality, maintaining a discharge subject to the requirements of sections 413, 414 and 414-A shall be exempt from the requirements of section 414-A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

3. **Failure to comply with agreement.** Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and dischargers included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414-A, subsection 1, paragraph D, and all other requirements of sections 414 and 414-A.

4. **Pretreatment systems.** Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before discharge into the municipal system pursuant to any requirement of state or federal law, such pretreatment system shall be installed not later than October 1, 1976.

5. **Fees.** Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11,[3] and Title 30, chapters 235[3] and 237.[4]

6. **Power to grant variances to owners of private dwellings.** The Board of Environmental Protection may grant a variance from any statutory water pollution abatement time schedule for a time certain terminating on or before June 1, 1977 to the owner of a structure which:

A. Is located on any Maine coastal island not connected to the mainland by a bridge, road or causeway;

B. Has been used as his dwelling place either year round or seasonally prior to the effective date of this Act; and

C. Is maintaining a discharge subject to the requirements of sections 413, 414 and 414-A if the following conditions exist and requirements are met:

(1) compliance will cause an undue economic burden;

(2) the water quality of the receiving waters will not be seriously impaired;

(3) the discharge will not differ in kind or be greater in quantity from that which occurred prior to the effective date of this Act on a year round basis or seasonally;

(4) the applicant presents to the department and receives approval of a written contract for installation of an alternate system providing best practicable treatment; and

(5) the approved system in subparagraph (4) shall be completed and operating prior to June 1, 1977.

An application for a variance under this subsection must be submitted prior to September 1, 1976. No applicant for a variance under this subsection shall be in violation of any time schedule during the period following application and prior to the Board of Environmental Protection's final action on the application.

7. **Power to grant variances to owners of a single family dwelling.** The Board of Environmental Protection may grant a variance for a time certain from any statutory water pollution abatement time schedule upon receipt of an application from the owner of a single family dwelling which:

A. Has been used as his dwelling place year round prior to October 1, 1977;

B. Is maintaining a discharge subject to the requirements of sections 413, 414 and 414-a and if the following conditions exist and requirements are met:

(1) The discharge, in the opinion of the Board of Environmental Protection, is not creating a significant danger to the public health, safety and welfare;

(2) The discharge will not differ in kind or be greater in quantity from that which existed prior to October 1, 1977;

(3) The owner of the single family dwelling has a valid waste discharge license;

(4) The owner of the single family dwelling has obtained a certificate of eligibility from a local, county, regional, state or federal agency stating that the applicant is eligible for an existing program of financial assistance where eligibility is based on income and assets; and

(5) The applicant agrees to seek funds from public agencies or private lending institutions to install an approved wastewater disposal system;

and

C. Variances shall be issued for a term certain not to exceed 3 years and may be renewed, except that no variances shall run beyond July 1, 1987. Upon notice of the availability of funds, the licensee shall present to the Department of Environmental Protection for approval an implementation schedule for construction of the required treatment facilities.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the licensee to obtain adequate funding for the required system.

§ 451-8. Variances

The Board of Environmental Protection may grant a variance from any statutory water pollution time schedule to any industrial licensee, upon application by any industrial licensee, if the board finds that:

1. **Seventy-five percent completion of treatment facility.** Actual construction of an approved industrial project deemed necessary in achieving statutory water quality classifications and regulatory requirement is at least 75% completed.

An approved project shall include but not be limited to a new manufacturing facility which will replace the source of the licensee's existing discharge;

2. **Contractual and financial commitments.** Contractual and financial commitments to complete the approved project have been made; and

3. **Cause for the failure.** The cause for the failure to have completed the approved project in time to meet the statutory time schedule is not directly attributable to the licensee and shall include but not be limited to acts of God, labor disputes, failure of 3rd parties to deliver ordered construction materials, equipment or services on time.

Variances shall be issued for a term certain, not to extend past July 1, 1977, and the board shall modify any existing license to make it consistent with this variance.

---

§ 452 Forms filed; right of entry; furnishing information

Persons, firms, corporations, quasi-municipal corporations, municipalities, state agencies and other legal entities shall file with the commission such information relative to their present method of collection, disposal, composition and volume of all wastes discharged by them into any waters of the State, in such manner and on such forms as the commission may by regulation prescribe, within 30 days of receipt of such forms.

1971, c. 527, § 6.

§ 453. Penalties repealed.

§ 454. Injunctions, civil and criminal actions repealed

TITLE 38
ARTICLE 5
ALTERATION OF COASTAL WETLANDS
1975, c. 595

§ 471. Prohibitions

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, drain or cause to be drained, fill or cause to be filled or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland without first obtaining a permit therefor from the Board of Environmental Protection or a municipality acting under the provisions of sections 473 and 474; nor shall any action be taken in violation of the conditions of such permit, once obtained.

§ 472. Definition

For the purposes of this subchapter, coastal wetland is defined as all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

§ 473. Permit granting authority

All permits shall be issued by the Board of Environmental Protection, except that a municipality may apply, on forms provided by the board, to the Board of Environmental Protection for authority to issue such permits. The board shall grant such authority if it finds that the municipality has:

1. **Planning board.** Established a planning board;

2. **Adopted zoning ordinance.** Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, chapter 424;

3. **Notice.** Made provision by ordinance or regulation for prompt notice to the board and the public upon receipt of application and written notification to the applicant and the board of the issuance of or denial of a permit stating the reasons therefor; and

4. **Application form.** The application form shall be the same as that provided by the Board of Environmental Protection.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality may be failing to exercise its permit granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in section 474, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment thereon. Following such hearing, if it finds such deficiencies, it may revoke the municipalities permit granting authority. The municipality may reapply for authority at any time.

§ 474. Permits; standards

If the applicant for the permit demonstrates to the satisfaction of the board or municipality as appropriate, that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

Within 30 days after receipt of a completed application for a permit, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearing, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied either by the municipality or the board, the applicant may request a hearing before either of the above with reasonable public notice given.

The board shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by said municipality.

No permit issued by a municipality shall become effective until 30 days subsequent to its issuance, but if approved by the board in less than 30 days then the effective date shall be the date of approval. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review such permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the receipt of the permit by the municipality shall constitute its approval and the permit shall be effective as issued.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of such fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral fill or cause to be filled, dredge or cause to be dredged, drain or cause to be drained or otherwise alter such coastal wetland.

§ 475. Penalties

A violation is defined as any filling, dredging, draining, depositing, altering, erecting or removal of materials which takes place in coastal wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this subchapter or without knowledge of this subchapter undertaken. Any such filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such coastal wetlands.

§ 476. Enforcement

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003 shall enforce this subchapter.

§ 477. Repealed

§ 478. Exemptions

The Board of Environmental Protection may by rule or regulation exempt from this subchapter certain activities including, but not limited to, repairs and maintenance of existing structures or waive such procedural requirements as it deems not inconsistent with the purposes of this subchapter. Nothing in this subchapter shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland or normal maintenance or repair of presently existing ways, roads or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 233, abutting or crossing said coastal wetlands, provided no watercourse is substantially altered.

LEGAL ANALYSIS OF THE ALTERATIONS OF COASTAL WETLANDS LAW

I. INTRODUCTION

This legal analysis of the Alteration of Coastal Wetlands Act was prepared by the federal Office of Coastal Zone Management in cooperation with the State to provide additional guidance to reviewers of this document, coastal users, and other citizens in understanding how this act will help to implement the Maine Coastal Program. The following discussion describes how the Board of Environmental Protection has interpreted the five performance standards used to evaluate projects subject to the Alterations of Coastal Wetlands Act. Section two discusses case law related to the Wetlands Act, section three identifies Board regulations that guide implementation of the Act, and section four presents the results of an in-depth investigation of the permit review process. This analysis demonstrates that the standards in the Wetlands Law are adequately specific and provide sufficient predictability to satisfy the requirements of the Coastal Zone Management Act.

The Alterations of Coastal Wetlands Law 38 M.R.S.A. §§471 et seq. requires that any individual desiring to dredge, drain, fill, or erect a permanent structure in or over any wetland, must first obtain a permit from the Board of Environmental Protection. The Law (§§ 474) provides that the Board shall grant the permit, "upon such terms as are necessary, "if the applicant demonstrates that:

1. "The proposed activity will not unreasonably interfere with existing recreational and navigational uses,"
2. "nor cause unreasonable soil erosion,
3. "nor unreasonably interfere with the natural flow of any waters,
4. "nor unreasonably harm wildlife on freshwater, estuarine, or marine fisheries,
5. "nor lower the quality of any waters."

The Board's geographical jurisdiction under this law extends from the state's territorial limits landward so far as to include "all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt habitat, and any swamp, marsh, bog, beach, flat, or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity."

II. JUDICIAL INTERPRETATIONS OF THE ALTERATION OF COASTAL WETLANDS LAW

No cases interpreting Maine's coastal wetland statutes have been decided since 1975 when the Alteration of Coastal Wetlands Law was passed replacing the Wetlands Control Act. Nevertheless, cases arising under the earlier law are of assistance in interpreting the judicial attitude in Maine towards wetlands regulation. In Maine v. Johnson, 265 A. 2d 711 (Me. 1970) the court refused to enjoin filling of a wetland after the Wetlands Control Board had denied a permit for such activity where defendant's property, absent addition of fill, had no commercial value. It appears uncertain whether today the court would apply as strict a construction of the constitutional prohibition against "taking" of property, especially in light of more recent cases upholding the Maine Site Location Law, for example In re Maine Clean Fuels 310 A. 2d 736 (Me. 1973), In re Spring Valley Development 300 A. 2d 736 (Me. 1973). 1973). Despite the specific holding in Maine v. Johnson, supra at 716, the court did find that the standards used to evaluate the proposal under the Wetlands Control Act were not unconstitutionally vague. Since these earlier standards were more general than those in the Alterations of Coastal Wetlands Law, this decision indirectly supports the constitutionality of the present standards.

III. REGULATIONS

A. The Application Form

The application form for a wetlands alteration requires the submission of various information used by the Board in determining whether the proposed project satisfies the statutory performance standards. The application solicits certain general information such as a description of the location and size of the project, and evidence establishing title, right, or interest of the applicant in the site. Also, the application includes questions on the length and nature of the altered shoreline, the volume and location of any dredging or filling, and a description of measures that will be taken to protect the surrounding area from the adverse affects of the project. Information on the present use of the affected as well as adjacent wetlands is particularly useful in determining whether the project will "unreasonably interfere with existing recreational and navigational uses."

B. Regulations

The following description of adopted Department of Environmental Protection regulations provides additional guidance on the types of projects subject to the Alteration of Coastal Wetlands Law and identifies types of activities for which special exemptions or waiver procedures are available.

a. Exemptions for Certain Procedures Under the Wetlands Control Act (§ 320, effective January, 1978): This regulation exempts the deposition of treated sanitary sludge and the construction of sewage outfall lines from single family residences from the normal permitting process. These project may be undertaken provided only that the applicant write a letter to the Department of Environmental Protection fully describing the project and the applicant receives a response indicating that the project appears to be covered by this regulation.

b. Waiver of Procedural Requirements for Wetland Control Act (§1.8(c)(3), effective February, 1978): If circumstances occur on or adjacent to the wetlands area of the state which constitute an emergency requiring immediate action by the Board, the Commissioner may issue a declaration of emergency setting forth the facts creating the emergency and a statement of the likely consequences if the Department were to follow the normal processing procedures. When a declaration of emergency is issued, the normal requirements are abbreviated to permit speedy Board action.

c. Exemptions of Repair and/or Replacement (§ 322, effective January, 1978): The repair and/or replacement of structures located in wetlands that were in existence and in active use within the preceeding twelve month period are exempt from the permit requirements of the law, provided that the structure does not result in an encroachment into the wetland any greater than that of the previously existing structure, the final structure is not significantly different from that of the previously existing structure, and all repairs will be completed within 60 days of their commencement.

d. Exemption of Snow Dumping Areas (§ 323, effective January, 1978): The dumping of snow and attendant material from storm cleanup operations directly into a tidal area is exempt from the permit requirements of the law.

e. Regulations Interpreting "Permanent Structure," in Alteration of Coastal Wetlands Act (§ 350, effective January, 1978): The law requires that a permit be obtained for any "causeway, bridge, marina, wharf, dock, or other permanent structure" in wetlands. This regulation specifically provides that "permanent structure" shall not include floating structures located in the water less than seven months per year, or temporary structures which are in place less than seven months per year (e.g. rafts, houseboats, tents, removable blinds, ice houses, etc.)

f. Exemption for Small Boat Moorings (§ 351, effective January, 1978): The construction and operation of fish weirs and small boat moorings in waters below the low tide line are exempt from the permit requirements of the law, provided that "normal practices with regard to navigational safety are followed."

g. Seawalls: On May 24, 1978, the Board adopted a policy prohibiting most new seawall construction in sand dune or sand beach areas. This policy is intended to reduce physical obstruction of the intertidal zone, prevent steep slopes along the shore, and minimize soil erosion.

IV. ADMINISTRATIVE HISTORY

Since 1975, the year in which the Wetlands Control Act was replaced by the Alterations of Coastal Wetlands Law, the Board has processed over six hundred project applications. The permitting history since 1975 is shown on the attached table. Over the last four years approximately 92% of all applications have been approved.

In order to further evaluate the permitting process the records of the one-hundred most recent Board orders were reviewed in detail. The information collected was used to identify the types of projects subject to the permitting process, the criteria relied on, and the factors considered in determining whether the projects complied with the five performance standards in the Law, and what conditions were imposed on the development to further insure compliance with the statutory standards.

The types of projects included among the one-hundred Board orders were as follows:

Rip-rap, Seawalls	34
Piers, Wharves	72
Dredging, Filling	16
Roads, Bridges	9
Boat Ramps	6
Sand Replacement	5
Utilities	4
Miscellaneous	4

This is believed to be a representative sample of the types of projects subject to the permit requirements of the law, with the possibility that an unusual number of shoreline stabilization projects designed to repair winter storm damage were included.

Fifty of the one hundred Board orders included one or more special conditions designed to insure compliance with the criteria of the law. (No standard conditions are attached to Board wetlands orders.) The following discussion of these permit conditions is organized according to the five statutory criteria.

a. "nor unreasonably interfere with existing recreational and navigational uses": This criterion is relied on to insure that wetland development does not interfere with water traffic or block water access by adjacent landowners, and to protect significant natural recreational resources. Several Board orders reviewed either denied the application

Summary of Alterations of Coastal Wetlands Permits Processed

(Fiscal Years)

Year	Processed	Approved	Withdrawn	Denied	Hearing Held
1975	132	115	0	16	3
1976	150	138	4	8	2
1977	154	144	4	6	4
1978	168	160	*	8	*

Source: Maine Department of Environmental Protection

* Information not available

or attached conditions to insure that navigation was not restricted or to protect specific navigational access routes. An application for a pile-supported pier in Jonesport (No. 03-4127, 3/8/77) was denied since the "pier is located directly on the applicant's lot line and will interfere with the neighbor's use of her land." To protect recreational resources one application (No. 03-4231, 6/28/78) was denied on the ground that the proposed fill "would eliminate approximately 250 feet of shoreline from public fishing access and... eliminate approximately 11,150 square feet of water area from small craft navigation, "and a second (No. 03-4039, 11/30/77) was denied since the proposed filling of marshland would "discourage viewing of waterfowl as well as other marine activities."

b. "nor cause unreasonable soil erosion": The primary concern of the Board with respect to this criterion is to control soil erosion on the project site during and after construction. Numerous Board orders were conditioned to provide for this, including design specifications for the construction of rip-rap and seawalls, surface water diversion methods during the construction phase, and requirements for reseeding and fertilizing exposed areas after construction. This criterion was also relied on to preserve natural beach areas in two cases.

In a relatively few cases the Board also concerns itself with possible erosion impacts beyond the site itself. In one case (No. 03-4231, 6/28/78) an application was denied, in part, because the proposed fill "could lead to stream currents causing erosion and scour both adjacent to the bulkhead and downstream in the area of the beach." A second application (No. 03-4201, 4/12/78) was approved "provided the seawall is constructed in the same location as the previously existing wall to eliminate a concentration of wave energy on the properties to the north."

c. "nor unreasonably interfere with the natural flow of any waters": In several cases permit conditions requiring that wetlands not be filled were based, in part, on this criterion. This standard has also been interpreted to require that construction does not prevent the natural movement of fish. For example, one application (No. 03-4276, 6/14/78) was approved with the condition that a proposed culvert be placed on an elevation that allows passage of fish and that the proposed rip-rap match the exiting stream bed elevation.

d. "nor unreasonably harm wildlife or freshwater, estuarine, or marine fisheries": This criterion has been interpreted as requiring the restriction of development that would destroy productive salt marsh and other critical habitat areas. Four of the Board orders reviewed were denials of applications to fill extensive salt marsh areas. Another application (No. 03-4231, 6/28/78) was denied on the ground that the proposed fill would "eliminate approximately 6,175 square feet of subtidal area which is a valuable spawning area for the rainbow smelt."

This criterion was also relied on to require that construction activities be timed so as to avoid seasonal fish runs (No. 03-4065, 12/28/77), (No. 03-4108, 2/8/78), and bird nesting seasons (No. 03-4189, 3/22/78).

The protection of clam beds is also subsumed under this criterion. A variety of permit conditions are frequently imposed to insure that construction activities do not disturb or fill clamming areas. In one case (No. 03-4282, 6/14/78), an applicant was required to restore clam beds by routinely maintaining a culvert to insure that debris is removed, thus preventing any unnatural impoundment of water above the culvert. Several orders included conditions barring the taking of any fill material from the subtidal areas in order to protect this valuable habitat.

e. "nor lower the quality of any waters": This criterion insures that activities in wetlands will not result in the deterioration of coastal water quality. Several projects were approved under this standard with the specific proviso that the applicants comply with the specifications of waste water discharge licenses issued by the Department of Environmental Protection. In the one case involving dredge spoil disposal (No. 03-4090, 2/8/78), the applicant was required to submit a bottom sediment analysis to insure that dredged material is not already contaminated. In another case (No. 03-4039, 11/30/77) project approval was denied, in part, because there was a "reasonable assurance" that silt from the proposed fill site would lower water quality.

Instructions

WETLANDS APPLICATION

1. Fill out the application completely. *Incomplete applications will be returned.*

2. Obtain the appropriate USGS topographic map (available at most sporting goods, book, hardware, stationery stores, etc.). Indicate the location of your project on the map, and attach it to the application.

3. Publish a copy of the Public Notice (last page of this application) in the legal notice section of a newspaper circulated in the area where the project is located.

4. Send a copy of the NOTICE form attached to this application to the owners of property abutting the land upon which the project is located. Their names and addresses can be obtained from town tax maps or local public officials. (See item 16)

5. The applicant shall send a copy of this application, together with all exhibits, to the municipal offices. If the land does not lie within an organized municipality, the applicant shall send a copy of this application, together with exhibits, to the office of the County Commissioners. The applicant shall also send a copy of the NOTICE attached to this application to the Chairman of the Planning Board, if any, and the chief municipal officer, if any.

6. Applicant will provide one photograph of the wetland area involved.

NOTE

Be sure to send your application well in advance of the date on which you plan to start the project. Processing may require 30 to 45 days.

Wetlands permits require approval of the Department of Environmental Protection. All permits issued under this statute will expire three (3) years from date of issuance.

The activity which you propose may also require a U.S. Army Corps of Engineers permit. To determine this you should write to the U.S. Army Corps of Engineers, Trapelo Road, Waltham, Mass. The telephone number is 617-894-2400.

The activity which you propose may require local, federal or other state permits. Any dredging, fill or other construction or alteration below mean low water mark requires an easement or conveyance from the Department of Conservation, Bureau of Public Lands. This will be taken care of automatically upon receipt of your application.

The Department does not require that the application or plan be prepared by professionals. However, past experience indicates that professional advice and assistance is helpful in expediting your request.

Maine Dept. of Environmental Protection
Bureau of Land Quality Control
State House
Augusta, Maine 04333
Telephone: 289-2111

APPLICATION NO. _____

APPLICATION FOR WETLANDS ALTERATION PERMIT
(38 MRSA § 474)

AND

WATER QUALITY CERTIFICATION
(P.L. 92-500)

PLEASE TYPE OR PRINT

Name of Applicant: _____

Address: _____

Telephone Number: _____

Local Contact (Name & Tel. No.) _____

Location of Activity

Street or Route No.: _____

Municipality or Township: _____

County: _____

By signing this application the applicant certifies that he has (1) published the public notice once in a newspaper circulated in the area where the project is located, (2) sent a copy of the notice form to the owners of property abutting the land upon which the project is located, (3) sent a copy of the public notice form to the chief municipal officer and chairman of the municipal planning board, and (4) sent a duplicate of this application to the municipal office.

APPLICANT'S NAME:

DATE: _____ _____

_____
(If other than applicant, attach letter of agent authorization)

IF APPLICANT IS A CORPORATION ATTACH
CERTIFICATE OF GOOD STANDING FROM THE SECRETARY OF STATE OF MAINE.

3/77

PROJECT SUMMARY–WETLANDS ACT & CERTIFICATION

TO BE FILLED IN BY DEP

Applicant: _____

City/Town: _____ County: _____

Name of Project: _____

Project No.: _____

1. Description of Project: _____

2. Attach copy of deed, lease, purchase agreement, or other legal document establishing title, right or interest of applicant in the site.

3. Length of shoreline on the coastal wetland owned or controlled by the applicant.

4. Indicate nature of shoreline and tidal area (grassy, mud, rock, etc.)

5. Check below any other permits required for the project. Indicate with an asterisk (*) those permits already obtained.

   U.S. Army Corps of Engineers (Tidal Waters) ☐

   Waste Discharge (DEP) ☐

   Other (Explain) ☐ _____

6. Actual physical dimensions of project:

   Length (Out into wetland): _____

   Width (Along shore): _____

   Height: _____

7. Description of present use of the wetland: _____

8. Description of present use of the adjacent wetland: _____

9. List power equipment to be used in construction of the project: _____

10. Submit a scale drawing of the coastal wetland to be affected by the project, which shows the project in detail, the landowner's property boundary lines, the *low-water mark* and *high-water mark*. For your convenience, sample sketches and blank graph paper are attached. Applicants may submit larger drawings or blueprints, but if they exceed 8½" X 11" eleven copies are required.

11. State, in detail, the measures you propose to take to protect the surrounding area from the adverse affects of your project: _____

12. If this project is part of a larger project describe below:

13. If dredging or filling indicate number of cubic yards: _____

14. Indicate location for deposition of dredged material: _____

15. Detailed directions for finding the site. (Include sketch map.)

16. The applicant shall set forth below the names and addresses of the owners of *abutting* property, by signing this application the applicant certifies that he has provided each with a copy of the notice similar in form to that which is attached to this application.

NAME	ADDRESS

NOTE: Use this form or one containing identical information

NOTICE

(To owners of abutting property, municipal officials and newspapers)

Please take notice that _____
(Name of Applicant)

_____
(Address of Applicant)

is filing an application for a Wetlands Alteration Permit with the Maine Department of Environmental Protection pursuant to the Provisions of 38 MRSA, Section 474 and P.L. 92-500 to _____

_____
(State specifically what is to be done)

_____

_____

_____

_____

_____

in, on or under a coastal wetland located in the town of _____
(Name of Municipality)

The application will be filed for public inspection at the Department's Office in Augusta and at the municipal offices on _____, 19____.

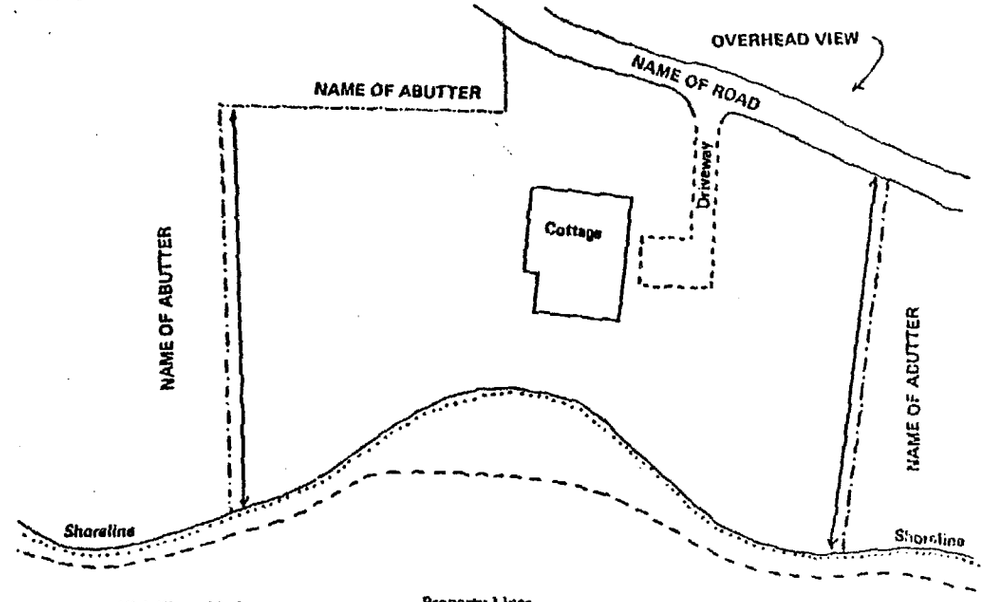
Written comments from any interested person must be sent to the Department of Environmental Protection within 14 days of filing of the application to receive consideration.

Applicant's Name: _____

Scale: _____

Date: _____

Example Cottage Description
- *Blue roof
- *Gray siding
- *Brown shutters



..... High Water Mark

_____ Low Water Mark

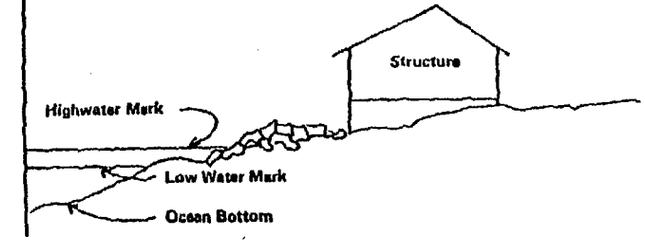
_____ Property Lines

Locate the Proppsed Project on Your Site Plan.

Information Required On Drawings

1. High Water Mark
2. Low Water Mark
3. Dimensions
4. Property Lines
5. Property Owners Names
6. Existing Structures
7. Location of Project

SIDE VIEW



TITLE 12
CHAPTER 424
MANDATORY ZONING AND SUBDIVISION CONTROL

§ 4811. Shoreland areas

To aid in the fulfillment of the state's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas defined as land within 250 feet of the normal high water mark of any pond, river or salt water body be subjected to zoning and subdivision controls. The purposes of such controls shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

§ 4811-A. Definitions

For purposes of this chapter, pond shall include any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing. A river is defined as any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The State Planning Office shall prepare and publish a list of such rivers for the use of the municipalities no later than November 1, 1973.

§ 4812. Municipal control

Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone and control the subdivision of land. With respect to the shoreland areas defined in section 4811, cities and towns, hereafter called municipalities, shall adopt zoning and subdivision control ordinances according to the following schedule.

1. Prior to July 1, 1973. Prior to July 1, 1973 the municipal officers of each city or town shall have appointed an appropriate municipal body with responsibility for preparing such ordinances as are necessary for compliance with this chapter and shall certify such appointment to the State Planning Office.

2. Prior to July 1, 1974. Prior to July 1, 1974 each municipality shall have:

A. Prepared a comprehensive plan adequate to comply with the requirements of Title 30, section 4961 and this chapter and notified the State Planning Office;

B. Adopted shoreland protection, subdivision and zoning ordinances adequate to comply with the requirements of this chapter for shoreland protection and filed a copy of said ordinances with the State Planning Office.

In order to aid municipalities in meeting the requirements of this chapter, the Department of Inland Fisheries and Game shall, prior to January 1, 1973, identify all of those areas in municipalities which it finds to be areas of moderate to high waterfowl breeding areas. Any or all areas within a municipality which are subject to nonmunicipal zoning controls may be exempted from the operation of this section upon a finding by the Bureau of Environmental Protection and the Maine Land Use Regulation Commission that the purposes of this chapter have been accomplished by such nonmunicipal zoning.

§ 4812-A Requirements

In addition to controls required by this chapter, municipalities may adopt zoning and subdivision controls applicable to other bodies of water as required to protect the public health, safety and welfare and further the purposes of this chapter.

Zoning ordinances adopted pursuant to this chapter shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted pursuant to this chapter need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 to the contrary, it being the intention of the Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However, the provisions of ordinances, which zone shoreland areas only, must relate solely to measures necessary to protect and enhance water quality, preserve and enhance the aesthetics of water bodies and views therefrom, protect shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies.

Any other law notwithstanding, when a zoning ordinance adopted in conformance with this section requires a written report of soil suitability for subsurface waste disposal or commercial or industrial development, such report shall be prepared and signed by the person who has made the evaluation of soil properties. Persons qualified to prepare such reports shall be persons certified by the Department of Health and Welfare, including: Maine State Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience specifically in the recognition and evaluation of soil properties and can provide proof of such training and experience in a manner specified by the department. The Department of Health and Welfare may promulgate rules and regulations for the purpose of establishing training and experience standards required by this paragraph.

§ 4812-B. Federal flood insurance

In addition to controls required by this chapter, municipalities may extend or adopt zoning and subdivision controls beyond the limits established by this chapter in order to protect the public health, safety and welfare and to avoid problems associated with flood plain development.

Zoning ordinances adopted or extended pursuant to this section shall be pursuant to and consistent with a comprehensive plan.

Zoning ordinances adopted or extended pursuant to this section need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 to the contrary, provided such ordinances are required for entrance of the municipality into the Federal Flood Insurance Program. Ordinances or amendments adopted by authority of this section shall not extend beyond an area greater than that necessary to comply with the requirements of the Federal Flood Insurance Program.

§ 4813. Municipal failure to accomplish purposes

If any municipality fails to adopt ordinances as required by section 4182 [1] for shoreland areas as defined in section 4811 or if the Board of Environmental Protection and the Maine Land Use Regulation Commission determine that particular municipal ordinances because of their laxity and permissiveness do not adequately prevent and control water pollution, protect wildlife habitat, conserve shore cover or otherwise fail to accomplish the purposes outlined in section 4811, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall, following consultation with the State Planning Office, with respect to these shoreland areas, adopt suitable ordinances for these municipalities, which ordinances the respective municipalities shall then administer and enforce. The Department of Environmental Protection and the Maine Land Use Regulation Commission shall with respect to these shoreland areas adopt said suitable ordinance by January 1, 1976.

The Department of Environmental Protection and the Maine Land Use Regulation Commission, acting pursuant to the administrative direction of the State Planning Office, shall by December 15, 1973 adopt minimum guidelines for the protection of shoreland areas reflecting considerations of preventing and controlling water pollution, protecting spawning grounds, fish, aquatic life, bird and other wildlife habitat, location and size of structures and signs and conserving shore cover. The incorporation of such guidelines into a municipal regulatory ordinance shall be deemed sufficient to meet the requirements of this section.

[1] Probably should read "4812".

§ 4814. Cooperation; enforcement

The Board of Environmental Protection and the Maine Land Use Regulation Commission, municipalities and all state agencies shall mutually cooperate to accomplish the objectives of this chapter. To that end, the board and the commission shall consult with the governing bodies of municipalities and to whatever extent necessary with other state agencies to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor. The State Planning Office shall be responsible for coordinating the efforts and responsibilities of the Board of Environmental Protection and the Maine Land Use Regulation Commission acting pursuant to this chapter.

If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies, requiring the municipal officials to enforce such zoning ordinance. The Attorney General shall be made a party to all civil and criminal actions in which the pleadings challenge the legality of any ordinance or portion thereof adopted pursuant to the guidelines promulgated under section 4813.

STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

DECEMBER 15, 1973

Adopted by the Board of Environmental Protection and the Land Use Regulation Commission Pursuant to the Administrative Direction of the State Planning Office.

INTRODUCTION

The guidelines contained in the following pages were adopted by the Board of Environmental Protection (BEP) and the Land Use Regulation Commission (LURC), pursuant to the mandatory shoreland zoning and subdivision control act, Title 12 M.R.S.A. Sections 4811-4814, under the administrative direction of the State Planning Office.

Implementation of shoreland zoning would best be fulfilled by intensive examination and consideration of conditions at the local level by municipal officers and planning boards, with a maximum of citizen input. Recognizing the burden this may place on towns which have limited experience in planning or full-time personnel, BEP and LURC, under the direction of the State Planning Office, have prepared these guidelines in model ordinance form. A municipality could adopt this guideline ordinance to govern the 250-foot shoreland area. The reasons for putting the guidelines in ordinance format are:

1) The ordinance format is comparatively simple, relative to other alternatives;

2) It gives communities a clear and decisive indication of what the State expects in local ordinances, as well as the ordinance which would be imposed if a municipality failed to act; and

3) Towns which have had relatively little experience with ordinances can concentrate more heavily on the map portion of the ordinance, which includes dividing the shoreland area into the various districts.

The guidelines ordinance is the minimum ordinance that will be acceptable to the State in terms of fulfilling the purposes of the law. Communities may adopt more stringent ordinances, or ordinances which are completely different from the guidelines provided that such ordinances are equally or more effective in achieving the purposes of the law. Communities may want to go beyond the minimum, and are encouraged to do so. Examples of desirable provisions which could be added to the guidelines ordinance include:

1) A section on fees, to cover the costs of any hearings that may become necessary;

2) A list of conditions that could be attached to permits (see Section 12 B.7, page 12);

3) A section on conflicts between the guidelines ordinance and any other ordinance, law, or regulation, stating that, where conflicts exist, the more stringent provisions would apply (such a provision would cover any future differences between the sanitary standards, Section 11 (J), page 7, and the State Plumbing Code, which is currently being revised); and

4) A requirement that a report be prepared by a Registered Professional Engineer, relating to such soil properties as bearing strength, subsidence, and slope stability, for proposed commercial, industrial, or other intensive land uses (see Section 11 (L), page 9).

The State Planning Office-Southern Maine Regional Planning Commission Model Zoning Ordinance, and the Extension Service Model Zoning Ordinance, are good examples of models that contain some of the above provisions, as well as additional provisions which are not directly related to the purposes of the law, but which would improve the overall effectiveness of the local ordinance.

While the guidelines ordinance is a minimum ordinance, allowances will be made for changes aimed at fitting local conditions. For example, many communities may choose to establish several districts in place of or in addition to the 3 contained in this ordinance. The following are examples of additional changes that would be permissible, if justifiable reasons for such changes were submitted in writing to the State Planning Office. These changes would be subject to review by the BEP and LURC.

1) Permits could be issued by a board of appeals, rather than the planning board, particularly in those instances where a community did not have a planning board prior to September 23, 1971, and had not established one by ordinance or under charter provisions since that time.

2) Cities with substantial development in the flood plain may choose to establish flood proofing provisions, rather than to prohibit any additional construction or reconstruction in a flood plain area already committed to development. Communities with no flood plain area (i.e., no rivers which require shoreland zoning) may choose not to include flood plain standards in their ordinances.

3) Coastal communities may choose to maintain the existing character of harbor villages by not requiring a set-back, or permitting structures to be built upon wharves (this could be accomplished by putting such areas in a general development district, where the set-back provision does not apply, or by establishing a harbor district or similar district specifically designed for such areas).

4) Waterfront communities along the coast and on major rivers may choose to reduce the minimum lot requirement for areas served by public sewers, to allow planned unit developments or an apartment complex in limited areas where density already exceeds the lot standards for these sewered areas.

5) The wording of various sections of the ordinance may be changed if the modified version is equally effective in fulfilling the purposes of the law.

Additional questions concerning these guidelines may be directed to your regional planning commission, your municipal lawyers, the State Planning Office, or the Maine Municipal Association.

Shoreland Zoning Ordinance for the Town of _____

Section 1. Purposes

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

Section 2. Applicability

The Ordinance applies to all land areas within 250 feet, horizontal distance, of the normal high water mark of any pond, river or salt water body as defined.

Section 3. Effective Date

The effective date of this Ordinance is _____. A certified copy of this Ordinance shall be filed with the County Register of Deeds, according to the requirements of State law.

Section 4. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

Section 5. Amendments

This Ordinance may be amended by a majority vote of the governing body. The State Planning Office shall be notified by Certified Mail, of amendments to this Ordinance, prior to the effective date of such amendments. A file of return receipts from such mailings shall be maintained as a permanent record.

Section 6. Districts and the Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map:

1. Resource Protection District

2. General Development District

3. Limited Residential-Recreational District

The Official Shoreland Zoning Map, and all future amendments thereto, is hereby made part of and incorporated into this Ordinance.

Section 7. Interpretation of District Boundaries

Unless otherwise set forth in the Official Shoreland Zoning Map, District boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to exact location of District boundary lines, the Board of Appeals shall be the final authority as to location.

Section 8. Non-Conforming Uses

A. Any lawful use of building, structures, premises, land or parts thereof existing at the effective date of this Ordinance or amendments thereto and not in conformance with the provisions of this Ordinance shall be considered to be a non-conforming use.

B. Any non-conforming use may continue and may be maintained, repaired and improved. No such non-conforming use may be expanded, changed to another non-conforming use, or renewed after it has been discontinued for a period of 12 calendar months or more, without a permit from the Planning Board in accordance with the provisions of Section 12-B subsection 6, paragraphs a-i of this Ordinance.

C. Any non-conforming lot of record existing before the effective date of this Ordinance and not adjoined by other land of the same ownership may be used in accordance with State law and section 10 of this Ordinance.

Section 9. Criteria for Establishing Districts

A. Resource Protection District

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biotic systems, or scenic and natural values. This district shall include:

1. Inland or coastal wetlands as defined in Section 13, and specifically areas rated as moderate to high-value waterfowl areas by the Department of Inland Fisheries and Game, as of January 1, 1973.

2. Flood plains as defined by the 100 year flood or the flood of record or, in the absence of these, by soil types identifiable as recent flood plain soils.

3. Areas having sustained slopes greater than 25%, or unstable soil subject to slumping, mass movement, or severe erosion, when these areas are two acres or more in size.

This District may also include:

4. Other significant wildlife habitat;

5. Natural sites of significant scenic or esthetic value.

6. Areas designated by Federal, State or municipal governments as natural areas of significance to be protected from development; and

7. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance.

B. General Development District

The general development district includes the following types of areas:

1. Areas of two acres or more devoted to intensive residential, recreational, commercial or industrial activities or combinations of such activities, including, but not limited to:

   a. Transportation rights of way;
   b. Communication and utility rights of way;
   c. Areas used for the extraction or processing of mineral resources;
   d. Areas devoted to: manufacturing, fabricating, wholesaling, warehousing or other commercial activities;
   e. Areas devoted to retail trade and service activities;
   f. Areas devoted to intensive recreational development and activities;
   g. Areas devoted to residential dwelling units at a density of 3 or more per two acres.
   h. Areas devoted to mixed or combined patterns of a through g above.

2. Areas otherwise discernable as having patterns of intensive residential, recreational, commercial, or industrial uses.

C. Limited Residential-Recreational District

The Limited Residential-Recreational District includes areas other than those included in the Resource Protection District, and which are used less intensively than those included in the General Development District.

Section 10. Uses

Land Uses permitted in each District, in conformance with the land use standards of this Ordinance, are shown below:

KEY: Yes - Allowed (no permit required)
No - Prohibited
BP Permit - Requires permit issued by the Planning Board
CEO Permit - Requires permit from Code Enforcement Officer
* - Subject to specific Land Use Standards, Section II

Land Uses	DISTRICT: Resource Protections	Limited Residential-Recreational	General Development
1. Non-intensive recreational uses not requiring structures, such as hunting, fishing and hiking	yes	yes	yes
2. Motorized vehicular traffic on roads and trails, and snowmobiling	yes	yes	yes

DISTRICT - cont'd

Land Uses	Resource Protection	Limited Residential-Recreational	General Development
3. Forest management activities except for timber harvesting	yes	yes	yes
4. Timber harvesting *	CEO permit	yes	yes
5. Fire prevention activities	yes	yes	yes
6. Wildlife management practices	yes	yes	yes
7. Soil & water conservation practices	yes	yes	yes
8. Mineral exploration *	yes	yes	yes
9. Surveying and Resource analysis	yes	yes	yes
10. Emergency operations as defined	yes	yes	yes
11. Harvesting of wild crops	yes	yes	yes
12. Agriculture *	PB permit	yes	yes
13. Principal structures *			
Residential dwelling units	no	PB permit	PB permit
Commercial structures	no	no	PB permit
Industrial structures	no	no	PB permit
14. Structures accessory to permitted uses	CEO permit	CEO permit	yes
15. Road construction *	PB permit	yes	yes
16. Small non-residential facilities for educational, scientific or nature interpretation purposes	PB permit	yes	yes
17. Public and private parks and recreation areas involving minimal structural development	PB permit	yes	yes
18. Campgrounds	no	PB permit	PB permit
19. Piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 ft. in length, and uses projecting into water bodies.			
Temporary	CEO permit	CEO permit	CEO permit
Permanent	PB permit	PB permit	PB permit
20. Clearing for approved construction	CEO permit	yes	yes
21. Essential services accessory to permitted uses	yes	yes	yes
22. Private sewage disposal systems	no	CEO permit	CEO permit
23. Public utilities, including sewage collection & treatment facilities	PB permit	PB permit	PB permit
24. Signs *	yes	yes	yes
25. Filling or other earth-moving activity of less than 10 cubic yds	CEO permit	yes	yes
26. Filling or other earth-moving activity of more than 10 cubic yds	PB permit	CEO permit	CEO permit
27. Uses similar to permitted uses	CEO permit	CEO permit	CEO permit
28. Uses similar to uses requiring a CEO permit	CEO permit	CEO permit	CEO permit
29. Uses similar to uses requiring a PB permit	PB permit	PB permit	PB permit

Section 11. Land Use Standards

All land use activities shall conform to the following applicable land use standards:

A. Agriculture

1. All spreading or disposal of manure shall be accomplished in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land" published by the University of Maine and the Maine Soil and Water Conservation Commission, in July 1972 or subsequent revisions thereof.

2. There shall be no tilling of soil within 50 feet of the normal high water mark of any lake or pond whose shorelands are covered by this Ordinance.

3. Where soil is tilled in a Resource Protection District, or where soil in excess of 20,000 sq. ft. lying either wholly or partially within the area covered by this Ordinance is tilled in a General Development District or a Limited Residential-Recreational District, such tillage shall be carried out in conformance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the appropriate Soil and Water Conservation District. The number of the plan shall be filed with the Planning Board. Nonconformance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

B. Beach Construction

Beach construction on any great pond or coastal wetland shall require a permit from the Department of Environmental Protection. Beach construction on any river, stream, or brook capable of floating watercraft shall require approval from the Commissioner of the Department of Inland Fish & Game, as required by law.

C. Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Camping areas shall contain a minimum of 5,000 square feet of suitable land, not including roads and driveways, for each site.

2. The area intended for placement of the recreational vehicle, tent, or shelter and utility and service buildings, shall be set back a minimum of 75 feet from the normal high water mark of any pond, river, or salt water body as defined.

D. Clearing

Clearing of trees and conversion to other vegetation is permitted for approved construction and landscaping. Where such clearing extends to the shoreline, a cleared opening or openings not greater than 30 feet in width for every 100 feet of shoreline (measured along the normal high water mark) may be created in the

strip extending 50 feet inland from the normal high water mark and paralleling the shoreline. Where natural vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding erosion and preserving natural beauty.

E. Erosion and Sedimentation Control

Filling, grading, lagooning, dredging, earth-moving activities, and other land use activities shall be conducted in such manner to prevent to the maximum extent possible, erosion and sedimentation of surface waters. To this end, all construction shall be accomplished in conformance with the erosion prevention provisions of "Environmental Quality Handbook Erosion and Sediment Control", published by the Maine Soil and Water Conservation Commission.

F. Mineral Exploration

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.

G. Piers, Docks, Wharves, Breakwaters, Causeways, Marinas, Bridges over 20 feet in length, and Uses Projecting into Water Bodies.

In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

2. The location shall not interfere with developed beach areas.

3. The facility shall be located so as to minimize adverse effects on fisheries.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

H. Residential Lot Standards

1. Lots shall meet or exceed the following minimum requirements:

Without Sanitary Sewers	With Sanitary Sewers
20,000 square feet	10,000 square feet

2. If more than one residential dwelling unit is constructed on a single parcel, the minimum lot size requirement shall be met for each additional dwelling unit.

3. A lot abutting a lake, pond, river, stream or tidal water shall have a minimum shore frontage of 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water elevation.

4. Structures shall not cover more than 20% of any lot.

I. Road Construction

1. Roads shall be located, constructed, and maintained in such a manner that minimal erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters. All roads shall be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management" published by the Division of State and Private Forestry, Forest Service Northeastern Area, U.S. Department of Agriculture in 1973 or subsequent revisions thereof.

2. Additionally, all roads constructed shall conform with the following standards:

   a. Road crossings of watercourses shall be kept to the minimum number necessary;
   b. Bottoms of culverts shall be installed at streambed elevation;
   c. All cut or fill banks and areas of exposed mineral soil shall be revegetated or otherwise stabilized as soon as possible; and
   d. Bridges or culverts of adequate size and design shall be provided for all road crossings of watercourses which are to be used when surface waters are unfrozen. The requirement for a bridge or culvert may be waived by obtaining a permit from the Planning Board.

J. Sanitary Standards

1. Subsurface Sewage Disposal

   A. Soil Conditions

      1. All subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size.

      2. All subsurface sewage disposal systems shall be located in soils having characteristics allowing them to be rated as having "slight" or "moderate" limitations for the proposed use in the current "Statewide Set of Maine Soil Descriptions and Interpretations" published by the U.S. Department of Agriculture, Soil Conservation Service.

      3. The determination of soil suitability shall be based on a soils report prepared by a State-certified soil scientist or geologist, based on an on-site investigation and soil observation to a minimum depth of five feet. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by on-site factors such as depth to water table and depth to refusal.

B. Setbacks

The minimum setback for underground sewage disposal facilities from the normal high water mark of a waterbody shall be no less than 100 horizontal feet. Where daily sewage flow exceeds 2,000 gallons, the minimum setback shall be 300 feet from any shoreline. All other setback requirements of the State Plumbing Code shall be met in full. Setbacks from shorelines for all subsurface sewage disposal facilities shall not be reduced by variance.

2. Privies

Privies may be permitted in areas not served by community sewer facilities under the following conditions:

A. No plumbing of any kind shall be connected to or discharged into the privy pit.

B. The privy shall be located at a minimum horizontal distance of 100 feet from the normal high water mark of a waterbody.

C. The bottom of the privy pit shall be at least two feet above bedrock and the ground water table at its highest point during the year or have a water-tight vault.

D. Privies shall not be permitted on recent flood plain soils.

3. Other Systems

Other systems of sanitary waste disposal may be permitted after approval by the Maine Department of Health and Welfare, and after a permit has been issued by the Planning Board.

K. Signs

The following provisions shall govern the use of signs in the Resource Protection and Limited Residential-Recreational Districts:

1. Signs and billboards relating to goods and services sold on the premises shall be permitted, provided such signs shall not exceed six (6) square feet in area, and shall not exceed two (2) signs per premises. Billboards and signs relating to goods and services not rendered on the premises shall be prohibited.

2. Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be permitted without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

5. No sign shall extend higher than twenty (20) feet above the ground.

6. Signs may be illuminated only by shielded, non-flashing lights.

L. Soils

1. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report, prepared by a State-certified soil scientist or geologist based on an on-site investigation. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by on-site factors such as depth to water table and depth to refusal.

M. Structures

1. All principal structures in the Resource Protection and Limited Residential-Recreational Districts shall be set back at least 75 feet from the normal high water mark of any pond, river, or salt water body as defined.

2. The first floor elevation or openings of all buildings and structures shall be elevated at least two feet above the elevation of the 100 year flood, the flood of record or, in the absence of these, the flood as defined by soil types identifiable as recent flood plain soils.

N. Timber Harvesting

1. No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any pond, river, or salt water body as defined. At distances greater than fifty (50) feet from the normal high water mark of such waters and extending to the limits of the area covered by this Ordinance, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.

2. Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of any pond, river, or salt water body as defined. The width of this strip shall vary according to the average slope of the land as follows:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

3. Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

4. Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.

5. Harvesting activities shall not create single openings greater than seven thousand five hundred (7,500) square feet in the forest canopy.

6. In any stand, harvesting shall remove not more than forty (40) percent of the volume of trees in any ten (10) year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions, to be identifiable as a homogeneous and distinguishable unit.

7. Timber harvesting operations not in conformance with 2, 4, 5, and 6 above may be allowed by the Planning Board upon approval of a permit granted in accordance with the provisions of Section 12-B subsection 6, paragraphs a-i upon a clear showing by the applicant that such an exception is necessary for proper timber management.

O. Water Quality Protection

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

Section 12. Administration

A. Creation of Administering Bodies and Agents.

1. Code Enforcement Officer

A Code Enforcement Officer shall be appointed by the Municipal Officers.

2. Board of Appeals

There is hereby created the Board of Appeals of the Town of _____ pursuant to the provisions of State law.

B. Permits

1. Permits Required

After the effective date of this Ordinance no person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing non-conforming use, or renew a discontinued nonconforming use without first obtaining a permit.

2. Permit Application

Applications for permits shall be submitted in writing. The Code Enforcement Officer or Planning Board may require the submission of whatever information is necessary to determine conformance with the provisions of this Ordinance.

3. Plumbing Permit Required Prior to Building Permit

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a permit for such facilities has been secured by the applicant or his authorized agent, according to the requirements of this Ordinance.

4. Approval of Permits

Permits shall not be denied if the proposed use is found to be in conformance with the provisions of this Ordinance. All permits shall either be approved or denied within 60 days of receipt of a completed application, including all information requested.

5. Permits Issued by Code Enforcement Officer

The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in Section 10. Approval shall be granted only if the proposed use is in conformance with the provisions of this Ordinance.

6. Permits Issued by Planning Board

The Planning Board shall approve or deny those applications on which it is empowered to act as stated in this Ordinance. The Planning Board may, after the submission of a complete application including all information requested, grant a permit if it makes a positive finding based on the

information presented to it that, except as specifically exempted in this Ordinance, the proposed use:

a. Will not result in unsafe or unhealthful conditions;
b. Will not result in erosion or sedimentation;
c. Will not result in water pollution;
d. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
e. Will conserve shoreland vegetation;
f. Will conserve visual points of access to waters as viewed from public facilities;
g. Will conserve actual points of public access to waters;
h. Will conserve natural beauty;
i. Will avoid problems associated with flood plain development and use; and
j. Is in conformance with the provisions of Section 11, Land Use Standards.

7. Conditions

Permits granted under this Section may be made subject to reasonable conditions to ensure conformity with the purposes and provisions of this Ordinance.

C. Appeals and Variances

1. Variances

A copy of all variances granted by the Board of Appeals shall be submitted to the State Planning Office. The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the Ordinance under the following conditions:

a. The strict application of the terms of this Ordinance would result in undue hardship to the applicant;
b. The hardship is not the result of action taken by the applicant or a prior owner; and
c. The Board of Appeals, based on clear and convincing evidence presented to it, makes a finding that the proposed use would meet the provisions of Section 12-B, subsection 6, paragraphs a-i.

A variance is authorized only for lot area, lot coverage by structures, and setbacks. A variance shall not be granted to permit a use or structure otherwise prohibited.

2. Appeals to Board of Appeals

The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this Ordinance. Such hearings shall be held in accordance with State laws. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

3. Appeal to Superior Court

An appeal may be taken within thirty days after any decision is rendered by the Board of Appeals, by any party to Superior Court in accordance with State law.

D. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

4. Fines

Any person who continues to violate any provision of this Ordinance after receiving notice of such violation shall be guilty of a misdemeanor subject to a fine of up to $100.00 for each violation. Each day such a violation is continued is a separate offense.

Section 13. Definitions

Terms not defined herein shall have the customary dictionary meaning. As used in this Ordinance, the following definitions shall apply:

Water Related Terms

A. Pond

Any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely

surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing.

B. River

Any free flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

C. Normal High Water Mark of Coastal Waters

That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

D. Normal High Water Mark of Inland Waters

That line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups - water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sasparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method.

Forest Management Terms

E. Forest Management Activities

Timber cruising and other forest resources evaluation activities, management planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting and other forest harvesting, regeneration of forest stands, and other similar associated activities, but not the construction or creation of roads.

F. Timber Harvesting

The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Road Terms

G. Road

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

Wetland Terms

H Coastal Wetland

Any swamp, marsh, bog, beach, flat or other land above extreme low water which is subject to tidal action.

I. Inland Wetland

Areas enclosed by the normal high water mark of inland waters and areas otherwise identified on the basis of soils, vegetation, or other criteria as inland wetlands including but not limited to swamps, marshes or bogs.

Structure Terms

J. Structure

Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

K. Principal Structure

The structure in which the primary use of the lot is conducted.

L. Accessory Structure

A structure of a nature customarily incidental or subordinate to that of the principal structure or the primary use to which the premises are devoted.

M. Residential Dwelling Unit

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family. The term shall include mobile homes.

N. Piers, Docks, Wharves,Breakwaters, Causeways,Marinas, Bridges Over 20 Feet in Length, and Uses Projecting Into Water Bodies.

Temporary: Structures which remain in the water for less than seven months in any period of twelve consecutive months.

Permanent: Structures which remain in the water for seven months or more in any period of twelve consecutive months.

O. Aggrieved Party

A person whose land is directly or indirectly affected by the grant or denial of a permit or variance under this Ordinance, a person whose land abuts land for which a permit or variance has been granted, or a group of five or more citizens of the municipality who represent an interest adverse to the grant or denial of such permit or variance.

P. Emergency Operations

Emergency operations shall include operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Q. Recent Flood Plain Soils

Recent flood plain soils include the following soils as described and identified by the National Cooperative Soil Survey:

Alluvial land
Hadley silt loam
Limerick silt loam
Ondawa fine sandy loam
Podunk fine sandy loam
Rumney fine sandy loam
Saco silt loam
Suncook loamy sand
Winooski silt loam

R. Privy

A pit in the ground into which human excrement is placed.

S. Essential Services

Gas, electrical, communication facilities, steam, fuel or water supply, transmission, or distribution systems.

TITLE 12, M.R.S.A., CHAPTER 206-A
LAND USE REGULATION

§ 681. Purpose and scope

The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use of the water in these areas; and to preserve ecological and natural values.

In addition, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State, to encourage the well planned and well managed multiple use of land and resources and to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

§ 682. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. **Unorganized and deorganized areas.** Unorganized and deorganized areas shall include all areas located within the jurisdiction of the State of Maine, except areas located within organized cities and towns, and Indian reservations.

2. **Subdivision.** A subdivision is a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing.

No sale or leasing of any lot or parcel shall be considered a subdivision, if such lot or parcel is not less than 40 acres in size, except where the intent of such conveyance is to avoid the objectives of this statute.

3. **Building.** Building shall mean any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

4. **Structure.** Structure shall mean anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, walls, fences, billboards, signs, piers and floats.

5. **Accessory use or accessory structure.** Accessory use or accessory structure shall include a use or structure subordinate to a permitted or conditional use or structure and customarily incidental to the permitted or conditional use of the structure.

6. **Person.** Person shall mean an individual, firm, association, organization, partnership, trust, company, corporation, state agency or other legal entity.

7. **Development.** Development shall mean any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources, excluding, however, such specific uses or classes and categories of uses as the commission may by regulation determine do not need regulating to achieve the purpose, intent and provisions of this chapter.

8. **Land use district.** Land use district shall mean the area located within the boundaries of air, land or water delineated vertically or horizontally by the commission for distinct categories of use.

9. **Nonconforming structure.** Nonconforming structure shall mean a structure, lawfully existing at the time of adoption of district regulations or subsequent amendment made thereto, that does not conform to the district regulations.

10. **Nonconforming use.** Nonconforming use shall mean a use of air, land, water or natural resources or a parcel of land, lawfully existing at the time of adoption of district regulation or subsequent amendments made thereto, that does not conform to the district regulations.

§ 683. Creation of Maine Land Use Regulation Commission

To carry out the purposes stated in section 681 there is created, within the Department of Conservation, the Maine Land Use Regulation Commission, hereinafter in this chapter called the "commission." The commission is charged with implementing this chapter in all of the unorganized and deorganized areas of the state. The commission shall consist of 7 public members, none of whom shall be state employees, who shall be appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature, for staggered 4-year terms. Among the public members, there shall be 4 who shall be knowledgeable in at least one of the following areas: Commerce and industry; fisheries and wildlife; forestry; and conservation.

Of the initial appointees, 2 shall be appointed for one-year terms, 2 shall be appointed for 2-year terms and 2 shall be appointed for 3-year terms. Thereafter appointees shall be appointed to serve 4-year terms. One of the members shall be elected annually by the members as chairman.

§ 684. Commission officers, meetings and rules; hearings

The commission shall elect annually, from its own membership, a secretary and such other officers it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than ½ of the membership. Such public meetings shall be held at least once a month. The commission may adopt whatever rules it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the commission, which minutes shall be a public record available and on file in the office of the commission. Members of the commission, except state employees, shall receive $40 per day for their services at meetings or hearings and all members shall receive necessary traveling expenses for attending any meetings of the commission or for any travel in connection with the official business of the commission and under specific authority of the commission, which traveling expenses shall be paid out of the General Fund. A quorum of the commission for the transaction of business shall be 4 members. No action shall be taken by the commission unless upon approval by a vote of 4 members.

Whenever the commission is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by the commission or by any member of the commission or by any qualified employee or representative of the commission as the commission chairman may determine. If the hearing is conducted by a single commission or qualified employee or representative, such commissioner, employee or representative shall report his findings of fact and conclusions to the commission together with a transcript of the hearing and all exhibits. Such findings of fact and conclusions shall become a part of the record. The commission shall not be bound by such findings or conclusions when acting upon such record, but shall take such action, issue such orders and make such decisions as if it had held and conducted the hearing itself.

§ 685. Commission budget, financing and executive director

The Commissioner of Conservation shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The Commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such requirements in respect to the administration of such funds, not inconsistent with this sub-chapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The Commission shall give public notice of all contributions, in the State paper, stating the source, the amount and the purpose of such contributions. The Commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks.

The Commissioner of ~~the Department of~~ Conservation, with the ~~approval of the Governor~~ consent of a majority of the commission, shall appoint a director who shall be the principal administrative, operational and executive employee of the commission. The director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The director with the approval of the Commissioner of the Department of Conservation may hire whatever competent professional personnel and other staff he deems necessary and he may obtain office space, goods and services as required.

§ 685-A. Land use districts and standards

1. **Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized portions of the State that fall into land use districts and designate each area in one of the following major district classifications: Protection, management and development. The commission shall enact regulations for determining the boundaries of each major type of district in accordance with the following standards.

A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State.

B. Management districts: Areas which are appropriate for commercial forest product or agricultural uses and for which plans for additional development are not presently formulated nor additional development anticipated.

C. [Blank]

D. Development districts: Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use, or commercial removal of minerals or other natural resources, and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be deemed necessary and desirable to carry out the intent of this chapter.

2. **Interpretation of district boundaries.** Where uncertainty exists as to the boundaries of districts as shown on the official land use maps the following shall apply:

A. Boundaries indicated as approximately following center lines of public or private roads shall be construed to follow such center lines.

B. Boundaries indicated as following railroad lines shall be construed to be midway between the 2 outermost rails.

C. Boundaries indicated as approximately following property lines, township or county lines shall be construed as following such lines.

D. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in event of natural change in the shorelines, shall be construed as moving with the normal high water mark; boundaries indicated as following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such natural center lines.

E. Boundaries indicated as approximately following ridge lines or specific contour lines shall be construed to follow such lines.

F. Boundaries indicated as parallel to or as extensions of features indicated in paragraphs A to E shall be so construed.

G. Where physical or cultural features existing on the ground are at variance with those shown on the official land use maps or in other circumstances not covered by paragraphs A to F, the commission shall interpret the district boundaries.

3. **Land use standards.** The commission, acting on principles of sound land use planning and development, shall prepare land use standards prescribing the standards for the use of air, lands and waters.

In addition to the purposes set forth in section 681, the land use standards shall:

A. Encourage the most desirable and appropriate use of air, land and water resources consistent with the comprehensive land use plan;

B. Protect public health by reduction of noise, air pollution, water pollution and other environmental intrusions;

C. Protect and preserve significant natural, scenic and historic features where appropriate, beneficial and consistent with the comprehensive land use plan;

D. Advise and assist the Department of Transportation and other concerned agencies in transportation planning and operation;

D-1. Provide for safe and appropriate loading, parking and circulation of land, air and water traffic;

E. Encourage minimal adverse impact of one use upon the use of surrounding areas by setting standards of performance describing desirable and acceptable levels of operation in connection with any use and its relation to surrounding areas, including provisions for the eventual amelioration of existing adverse impact;

F. Reflect a consideration of the availability and capability of the natural resources base, including soils, topography or sufficient healthful water supplies.

4. **Land Use Standards Considered As Minimum Requirements.**

Land use standards shall be interpreted and applied by the Commissior as minimum requirements, adopted to reasonably and effectively prom health, safety and general welfare and insure compliance with state pl and policies.

Whenever the requirements of the adopted land use standards are a variance with the requirements of any other lawfully adopted rules, reg tions, standards, ordinances, deed restriction or covenants, the more p tective of existing natural, recreation and historic resources shall govern

Any portion of a land use district which subsequently becomes an organized municipality or part of an organized municipality or any plantation wh adopts planning, zoning and subdivision control as provided in Title 30, s tion 5621, shall continue to be regulated by the Land Use Regulation Commission pursuant to this chapter until such time as the municipality or plantation of which the regulated district is then a part, shall adopt land use plans and regulations not less protective of the existing natural, recreatio or historic resources than those adopted by the commission. Any revisi or amendments to the adopted plan and regulation that are less protective than those in the adopted plan shall be submitted to the Land Use Regulation Commission for approval.

Any municipality organized after September 23, 1971, or any plantation wh adopts planning, zoning and subdivision control as provided in Title 30, section 5621, may submit to the commission and receive the approval of the commission of the following:

A. A comprehensive land use plan for such plantation or proposed c or town;

B. Standards for determining land use district boundaries and uses permitted within such districts in such plantation or proposed city or town;

C. A land use district boundary map for such plantation or proposed city or town;

D. Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter; and

E. Upon request of the municipality or plantation, the commission shall prepare such plans, maps, regulations and standards as it may deem necessary to meet minimum planning and zoning standards for its approval thereof.

Upon obtaining the foregoing approval, the plantation, city or town shall thereafter adopt, administer and enforce such approved plans, maps, regulations and standards.

5. **Considerations, application and exemptions.** No land use standard shall deprive any owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of said standard. Year-round and seasonal single family residences and operating farms in existence and use as of September 23 1971, while so used, and new accessory buildings or structures or renovations of such buildings or structures which are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses shall be exempt from the requirements of section 683-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

6. **Interim district boundaries and land use standards.** Prior to the adoption of permanent district boundaries and land use standards as provided in subsections 1 and 3, the commission shall by January 1, 1975 adopt and enforce interim land use standards for temporary districts whose boundaries shall be determined and delineated on interim land use maps.

Interim districts and land use standards shall be delineated and related, insofar as practicable and reasonable, to reflect existing uses and conditions.

Interim districts and land use standards shall be adopted after public hearings as provided in subsection 7.

Interim districts and land use standards shall be effective no more than 48 months from the date first adopted. The adoption of permanent districts or land use standards shall supersede interim districts or standards.

In addition to the criteria stated in paragraph A of subsection 1, no boundaries for any protection district or subdistrict relating to deer wintering habitat may be adopted unless the following requirements are met:

A. The Department of Inland Fisheries and Game has met with the landowner for the purpose of reaching agreement as to the areas to be designated. The terms of any such agreement shall be reported to the commission by the department. If the parties were unable to agree, the substance of and reasons for such disagreement shall be reported to the commission by the department and the landowner;

B. In absence of agreement, in addition to the other requirements of this subchapter, a wildlife biologist of the Department of Inland Fisheries and Game shall substantiate the proposed protection district or subdistrict for wintering habitat, by the results of on-the-ground observation during a period of winter conditions when such areas are used for cover by the deer.

If the foregoing provisions work an undue hardship on the Department of Inland Fisheries and Game so that they are unable to substantiate these areas as deer wintering habitats, said areas shall continue to be designated as interim P-4 districts or subdistricts until the required on-the-ground observations are conducted.

7. **Hearings and procedures.** Within 45 days after the proposed land use district boundaries or standards are prepared or received by the commission, the commission shall hold a public hearing at a time and place convenient to persons affected by the proposal.

At least 30 days prior to holding a public hearing on proposed land use district boundaries, the commission shall give notice of said hearing to the owners of directly affected lands by mail, according to their names and addresses as shown on the records of the Bureau of Taxation and plantation tax assessors.

Such notices shall state the purpose, time and place of the hearing and shall indicate the time and place where copies of the proposed maps and standards thereof may be inspected or obtained prior to the hearing.

At least 30 days prior to all hearings held under this subsection, notices shall be sent to appropriate state and federal agencies. Public notice shall be given by 3 publications in the state paper and such other daily papers published in the State as is determined will bring the proposals to the attention of interested parties; the date of the first publication to be at least 30, and the last publication to be at least 3, days prior to the hearing.

At hearings, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the public hearing to file written statements with the commission. The commission shall adopt, and may amend and repeal rules for the conduct of public hearings held under this section, including adjournments and continuations thereof. A complete verbatim recording shall be made of all hearings held pursuant to this section.

The land use district boundaries or standards shall be adopted within 45 days from final adjournment of the hearing.

Land use maps and standards so adopted shall become effective 15 days after their adoption by the commission and shall be on file and available for inspection by any interested party in the office of the commission and in the appropriate registry of deeds for each county.

Permanent land use standards so adopted shall be effective immediately, but shall be submitted to the next regular or special session of the Legislature for approval or modification. If the Legislature fails to act, such standards shall continue in full force and effect.

8. Amendments to district boundaries and standards. The commission, of its own accord, may initiate and any state or federal agency, or any property owner or lessee, may petition for a change in the boundary of any land use district or for amendments to any land use standard.

The commission shall, within 45 days of receipt of such petition, either approve the proposed amendment, deny the proposed amendment or schedule a public hearing thereon in the manner provided in subsection 7.

No change in a district boundary shall be approved, unless there is substantial evidence that:

A. The change would be consistent with the standards for district boundaries in effect at the time; the comprehensive land use plan; the purposes, intent and provisions of this chapter; and changes in conditions have made the present classification unreasonable.

No amendment to land use standards shall be approved unless there is substantial evidence that:

A. The change would better serve the purpose, intent and provisions of this chapter and would be consistent with the comprehensive land use plan.

9. Periodic review of district boundaries and land use standards. At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of appropriate state agencies shall be secured in making this review and public hearings shall be held in accordance with the requirements set forth in subsection 7.

10. Special exceptions and variances. The commission may approve the issuance of a special exception permit in strict compliance with this chapter and the regulations and standards adopted pursuant thereto. The commission may grant a variance where the commission finds that strict compliance with the regulations and standards adopted by this commission would cause unusual hardship or extraordinary difficulties because of exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site, that the proposed development is in keeping with the general spirit and intent of this chapter and the public interest is otherwise protected.

11. Public service corporation exemptions. Real estate used or to be used by a public service corporation may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition to the Public Utilities Commission and after a hearing, the said commission determines that such exemption is necessary or desirable for the public welfare or convenience.

§ 685-B. Development review and approval

1. Review and approval required.

A. No structure or part thereof shall be erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form other than normal maintenance or repair, without a permit issued by the commission.

B. No person shall commence development of or construction on any lot or parcel within any subdivision or sell or offer for sale any interest in any lot or parcel within any subdivision without a permit issued by the commission.

C. No person shall commence any construction or operation of any development without a permit issued by the commission.

The commission may waive the requirement of a hearing for any person having received approval by the Board of Environmental Protection pursuant to the Site Location of Development Law, Title 38, sections 481 to 488.

Approval by the commission that the proposed development meets the requirements of subsection 4, and of the land use standards, rules and regulations adopted by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the development meets the requirements of the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422 or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply. Disapproval by the commission shall be a sufficient basis to support, but shall not require, a finding by the administering agency that the proposed development does not meet th requirements of the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G, the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422, or the Stream Alteration Law, sections 2206 to 2212 and the rules and regulations adopted with respect to any of such statutes, as any of such statutes, rules or regulations may apply.

The commission may establish standards within which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted hereunder. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members.

The commission shall establish coordination and assistance procedures for all land use permits issued by agencies of the State for proposed development within the unorganized townships and plantations. Such procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning such land use permits; the provision of assistance to applicants in obtaining such permits from such agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by applicants and the issuing agencies. Such permit issuing agencies shall cooperate with the commission in the development and effectuation of such coordination and assistance procedures.

2. Application for approval. The application forms for approval, as provided by the commission, shall be completed and signed by the applicant and shall be accompanied by the following:

A. A plan of the proposed structure, subdivision or development showing the intended use of the land, the proposed change, the details of the project and such other information as may be required by the commission to determine conformance with applicable land use standards;

B. The fee prescribed by the commission rules, such fee to be the greater of $10 or 1/10 of 1% of the total construction costs;

3. Hearings and procedures. Any person aggrieved by a decision of the commission or its staff concerning any matter upon which no hearing was held may petition the commission for a hearing, within 30 days of such decision.

If the commission determines to hold a hearing on an application, it shall hold such hearing within 45 days of receiving the application. At least 15 days prior to the hearing, notices of the date, time and place thereof shall be sent to the applicant and to appropriate state and federal agencies. Public notice shall be given 3 publications in the state paper and such daily papers published in the State as is determined will bring the proposals to the attention of all interested parties; the date of the first publication to be at least 10, and the last publication to be at least 3, days prior to the hearing.

The commission shall adopt, and may amend and repeal, rules of conduct of hearings and shall make a complete verbatim recording of all hearings held pursuant to this section.

Within 45 days after the commission adjourns any hearing held under this subsection, it shall make findings of fact and issue an order granting or denying approval to the applicant to construct, develop or operate the structure, subdivision or development as proposed or granting such approval upon such reasonable terms and conditions as the commission may deem appropriate.

If no hearing has been requested or ordered pursuant to this subsection, no hearing need be held by the commission. In such an event, within 30 days of receipt of an application for approval, the commission shall approve with such terms and conditions as deemed necessary or disapprove each application.

In the event of a decision for disapproval, the commission shall notify the applicant and specify the grounds of disapproval and inform him of any right he may have to request a hearing.

4. Criteria for approval. In approving applications submitted to it pursuant to this section, the commission may impose such reasonable terms and conditions as the commission may deem appropriate.

The commission shall approve no application, unless:

A. Adequate technical and financial provision has been made for complying with the requirements of the state's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the Site Location of Development Law, Title 38, sections 481 to 488, the Minimum Lot Size Law, sections 4807 to 4807-G; the Wetlands Law, Title 38, sections 471 to 478, the Great Ponds Law, Title 38, section 422, and the Stream Alteration Law, sections 2206 to 2212, for solid waste disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies, and

B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods, and

C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal and

D. Uses of topography, soils and subsoils meet standards of the current soil suitability guide for land use planning in Maine, or which are adaptable to the proposed use pursuant to said guide and will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water, and

E. The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto.

F. In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected.

5. Limitation, expiration, transfer and revocation of approval. Commission authorization pursuant to this section shall permit only the arrangement and construction set forth in the approval as issued. Change in use, arrangement or construction shall be considered a violation of this chapter and punishable as provided in this chapter.

An approval may be suspended or revoked by the commission in the event of violation of any condition attached to an approval or change in authorized use, arrangement of construction from those approved.

6. **Recording of approved proposals.** A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the land lies.

A register of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide land located within the unorganized and deorganized lands of the State, unless the commission's approval is evidenced thereon.

The grantee of any conveyance of unrecorded subdivided land or subdivided land recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

7. **Nonconforming uses and nonconforming structures.** To achieve the purposes set forth in this chapter after the adoption of permanent district standards and permanent districts, the commission may regulate and prohibit expansion and undue perpetuation of nonconforming uses. Specifically the commission may regulate and prohibit:

A. Changes in nonconforming uses to another nonconforming use;

B. Extension or enlargement of nonconforming uses or nonconforming structures;

C. Resumption of nonconforming uses, by prohibiting such resumption if such use is discontinued for 2 years or abandoned; and

D. Movement or enlargement of a nonconforming structure or of a structure containing a nonconforming use.

The commission may also provide for the termination of commercial or industrial nonconforming uses by specifying in land use standards the period or periods in which nonconforming uses shall be terminated and by adjusting such compulsory terminations so as to allow reasonable time for the conversion of such nonconforming uses and reasonable schedules for the amortization of investment.

Any use for which a special exception has been granted by the commission, as provided for in section 685-A, subsection 10, shall not be deemed a nonconforming use, but shall be deemed a conforming use in such district.

8. **Certificates of compliance.** It shall be unlawful to use or occupy or permit the use or occupancy of any land, structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form, requiring subsequent review and approval pursuant to this subchapter, until a certificate of compliance has been issued therefor by the commission stating that the requirements and conditions of approval have been met.

A certificate of compliance may contain such terms and conditions as will protect the health, safety and general welfare of the occupants, users and the public.

The commission may establish standards within which authority shall be delegated to its staff, to issue or deny certificates of compliance. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission members within 30 days of such decision.

9. Repealed.

§ 685-C. Miscellaneous provisions

1. **Comprehensive land use guidance plan.** Not later than January 1, 1975 the commission shall adopt an official comprehensive land use plan for the unorganized and deorganized townships of the State.

Such plan shall guide the commission in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.

The plan may consist of maps, data and statements of present and prospective resource uses which generally delineate the proper use of resources, and recommendations for its implementation.

The commission may hold public hearings to collect information to be used in establishing the land use guidance plan. The public hearings will be conducted according to commission rules adopted in accordance with procedures for the establishment of rules and regulations pursuant to Title 5, sections 2351 to 2354.

The commission may, on its own motion or petition of any state agency or regional planning commission, hold such other hearings as it may deem necessary from time to time for the purpose of obtaining information helpful in the determination of its policies, the carrying out of its duties, or the formulation of its land use standards or rules and regulations.

The commission shall adopt no plan or portion of a plan, unless:

A. The tentative plan has been submitted to each regional planning commission and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days, and

B. The tentative plan has been submitted to the State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its comments and recommendations, if any, to the commission within 30 days, and

C. The commission has considered all such comments.

Upon adoption of the official land use plan by the commission, it shall submit the plan to the Governor for approval. The Governor shall approve or disapprove the plan, plans or any portion of a plan within 30 days of receipt. If the Governor fails to act, the plan shall be deemed approved. This subsection shall also apply to any alteration in the comprehensive plan.

2. Land use guidance and planning manual. The commission shall prepare, maintain and distribute from time to time a land use guidance and planning manual setting forth:

A. A copy of this chapter, together with all amendments thereof and other applicable legislation;

B. Examples of land use planning policies, standards, maps and documents prepared in conformance with the purposes of this chapter;

C. An explanation and illustrative examples of the land use standards and procedures authorized in this chapter;

D. Other explanatory material and data which will aid landowners in the preparation of their plans in conformance with the procedures, rules and standards authorized in this chapter.

The commission shall, from time to time, confer with interested parties with a view toward insuring the maintenance of such manual in the form most useful to those making use of it.

Sections of this manual may be cited in any plan or standard in the same manner as citations of this chapter, and may be incorporated by reference in any plan, standard, rule or regulation.

3. Schedule of fees. The commission shall establish and amend a schedule of reasonable fees for the administration of this chapter. The fees shall be adopted and amended, in accordance with procedures for the establishment of rules and regulations pursuant to Title 5, sections 2351 to 2354.

No approval, certificate, special exception or variance shall be issued, unless or until such fees established by the commission have been paid in full, nor shall any action be taken on proceedings before the commission, unless or until preliminary fees have been paid in full.

4. Conservation easements. repealed.

5. Additional powers and duties. In order to implement this chapter, the commission may, in addition to its powers and duties previously authorized in this chapter:

A. Adopt rules to interpret and carry out this chapter in accordance with Title 5, sections 2351 to 2354, unless otherwise provided by this chapter;

B. Have the power to compel attendance of witnesses, and require production of evidence;

C. Designate or establish such regional offices as it deems necessary;

D. Designate or request other appropriate agencies to receive application, provide assistance, investigations and make recommendations;

E. By rule allow joint hearings to be conducted with other appropriate agencies;

F. Execute contracts and other agreements to carry out its purposes.

6. Adjustments of assessing practices. Upon adoption of district boundaries and land use standards, a certified copy of each official land use guidance map, delineating district boundaries, and associated land use standards shall be filed with the State Tax Assessor.

7. Time periods. In computing the period of time to perform any act under these rules, the first day on which an act may be performed shall not be included but the last day of the period shall be included, unless it is a Saturday, Sunday or holiday in which event the period shall be extended until the next business day.

A holiday is any day appointed as such by the President or Congress of the United States, or the Governor or Legislature of the State of Maine.

8. Enforcement, inspection and penalties for violations. Standards, rules, regulations and orders issued by the commission pursuant to this chapter shall have the force and effect of law. No development may be undertaken, except in conformance with this chapter, the standards, rules, regulations and orders enacted or issued pursuant to this chapter, and any real estate or personal property existing in violation of such shall be a nuisance. For the purposes of inspection and to assure compliance with standards, orders and permits issued or adopted by the commission, authorized commission staff or consultant personnel may conduct such investigations, examinations, tests and site evaluations deemed necessary to verify information presented to it, and may obtain access to any lands and structures regulated pursuant to this chapter.

A violation of any provision of this chapter or the rules promulgated hereunder is punishable by a fine of up to but not more than $500 for each day of the violation.

In addition to the other penalties provided, the commission may, in the name of the State of Maine, institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation hereof or orders or of the standards, rules or regulations promulgated hereunder.

A person who willfully or knowingly falsifies any statement contained in the certification required, shall be punished by a fine of up to but not more than $500.

§ 689. Appeal to Superior Court

Except where otherwise specified by statute, any person aggrieved by any order or decision of the commission in regard to any matter upon which there was a hearing before the commission and of which a transcript of that hearing is available, may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court of Kennebec County by filing a notice of appeal stating the points of appeal with the clerk of the court and the director of the commission. Hearing of the appeal shall be ordered by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commission. The court's review shall be limited to questions of law and to whether the commission acted regularly and within the scope of its authority and the commission's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commission's decision for further proceedings. Appeals from all other orders or decisions of the commission, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

LAND USE REGULATION COMMISSION JURISDICTION WITHIN THE COASTAL AREA

The following is a list of Coastal Islands in the Commission's jurisdiction and their Coastal Island Registry Numbers (map and island numbers). The list of unorganized islands is based on information in the 1973 Maine State Valuation, as published by the Bureau of Taxation, Property Tax Division. Excluded from that list are government-owned or tax exempt islands. The list of coastal islands within island plantations was compiled from U.S.G.S. maps.

UNORGANIZED ISLANDS

HANCOCK COUNTY

Bald Island 20G - 803
Bar Island 20E - 724, 731
Barred Islands 20G - 774, 5, 7, 8, 9, 80, 1, 3
Beach Island 20D - 687
Bear Island 20G - 791
Birch Island 20E - 703
Bradbury's Island 20G - 771
Compass Island 20G - 790
Dirigo or Butter Island 20G - 776
Eagle Island 20G - 793
Eaton Island 20E - 714
Fling Island 20G - 794
Hardhead Island 20G - 782
Hog Island 20D - 679
Horsehead Island 20G - 770
Inner Porcupine Island 20G - 799
Little Marshall Island 91A - 470
Little Spruce Head Island 20G - 772
Marshall Island 7C - 981
Outer Porcupine Island 20G - 800, 801
Pickering Island 20E - 682
Pond Island (near Little Deer Isle) 20D - 676, 7, 8
Pumpkin Island 20E - 702
Resolution Island 20D - 686
Scott Island 2-E (707) (709) (706)
Scrag Island 20G - 788
Sheep Island 20E - 710
Spectacle Island 20D - 673
Great Spruce Head Island 20G - 773
Western Island 20D - 675

LINCOLN COUNTY

Bar Island 9E - 197
Haddock 9E - 200
Hungry Island 9E - 083
Indian Island 9E - 183
Marsh Island 9E - 190
Muscongus Island (Loudville) 9E - 185
Thief Island 9E - 186

KNOX COUNTY

Andrews Island 8B, 8E - 432
Bar Island 8E - 633
Birch Island 8B - 428
Camp Island 8B - 426
Crow Island 8E - 651
Dix Island 8B - 427
Fisherman's Island 8B - 402
Flagg Island 8E - 632
Gooseberry-Nob Island 8B - 417
Graffam (Grafton) Island 8E - 634
Green Island 8E - 655
Hewett Island 8E - 627, 628
High Island 8B - 422
Inner Pond Island 8B - 423
Lasell's Island 19J - 331

Little Green Island #1 8B - 418
Little Green Island #2 8E - 654
Little Hurricane Island 8E - 626
Metinic Island 8E - 584
Metinic Green 8E - 585
Hog Island 8E - 588
Knubble Island 8E - 586
Mink Island 8E - 646
Clam Ledges 8B, 8E - 438, 439
Nettle Island 8E - 622
Otter Island 8B - 410
Oak Island 8B - 421
Outer Pond (Woodsey) Island 8B - 430
Pleasant Island 8E - 647
Poverty Nub Island 8E - 441
Ragged Island (Criehaven) 7D - 930
Saddle Island 19J - 338

WALDO COUNTY

Little Bermuda Island 19J-077

ISLAND PLANTATIONS

LONG ISLAND PLT: Placentia (438); Black (437); Little Black (443); Green (446); Drum (444); No Name (445); Little Duck (439); Green Duck (440); Crow (448); Dry Money Ledge (449); Harbor (450); (ALL OF THE ABOVE ARE ON MAP 21H). Long Island (451) - MAP 91B. Pond (347); Lamp (346) - MAP 21G.

MATINICUS ISLE PLT: Matinicus (903); Two bush (901); No Man's Land (900) Wheaton (914); Tenpound (920); E. Black Ledge (913); W. Black Ledge (911); Little Is. (907); Cato Ledge (921); Black Rocks (937); Wooden Ball Island (917, 918, 919) (ALL ON MAP 7D).

MONHEGAN PLT: Monhegan Is. (317); Manana (323); Smutty Nose (314, 315); Duck Rocks (310, 311, 312); Eastern Duck Rock (313); Inner Duck Rock (316); No Names (318, 319, 320, 321, 322). (ALL ON MAP 9J).

TOWNSHIPS

T 8 SD	Perkins	These eight townships comprise 5.5% of the Coastal Area.
T 7 SD	Marion	
T9 SD	Trescott	
T10 SD	Edmunds	

No. 1306

LAND USE REGULATION COMMISSION and DEPARTMENT OF ENVIRONMENTAL PROTECTION JURISDICTION

The Board discussed the tabled memorandum from the Land Use Regulation Commission regarding the overlap of Land Use Regulation Commission and Department of Environmental Protection jurisdiction as regards to wildlands activities. After some discussion, the Board voted to accept the concept of the memorandum and to so notify the Chairman of the Land Use Regulation Commission. Some caution was raised with regard to difficulty that could occur from joint hearings as called for in the memorandum, but it was felt that these could be worked out in an acceptable manner by the staff. A copy of the concept containing the Land Use Regulation Commission memorandum is attached.

1-4157 BUREAU OF LAND QUALITY CONTROL

TO: William Adams, Jr., Department of Environmental Protection
FROM: John L. Martin, Chairman, Land Use Regulation Commission
SUBJECT: Proposed administrative alternative to current overlapping jurisdictions of DEP and LURC
DATE: August 16, 1972

The Land Use Regulation Commission has instituted procedures to fully administer § 685-B of the Land Use Regulation Law, which requires permits for all construction, subdivision, and commercial or industrial development in the unorganized territories and plantations. § 685-B overlaps the jurisdiction of the Bureau of Land Quality Control, DEP, in three areas:

1. Site Location
2. Great Ponds
3. Mining

Such overlapping of jurisdictions causes a duplication of effort by the state and by developers, as it necessitates the acquisition by a developer of two different permits from two different state agencies which have essentially the same concerns. Some way should be found to eliminate such duplication of effort as much as possible.

The Land Use Regulation Commission offers the following administrative alternative to resolve the problem:

1. That a developer requiring both Site approval and a LURC permit be routed first to the Land Use Regulation Commission.
2. That the Land Use Regulation Commission act upon the developer's LURC application with the review of the DEP. If the Land Use Regulation Commission disapproves the application, the process ends, and a copy of the disapproval is sent to the DEP. If, however, the LURC approves the application, then
3. That the Land Use Regulation Commission send a complete copy of the developer's LURC application to the DEP along with a copy of the LURC approval.
4. That the DEP accept the developer's LURC application as an application for Site Location approval, and accept the LURC approval as prima facie evidence of accord with the criteria of the Site law.

The Land Use Regulation Commission agrees that if the Department of Environmental Protection requests in a review of a project falling within both jurisdictions that a public hearing be held, the LURC will grant such request. In any case, whenever the LURC determines to hold a public hearing on a project falling within both jurisdictions, the DEP will be invited to participate in a joint hearing, and the transcript will be made available to both agencies.

Regarding Great Ponds permits, the LURC thinks that DEP consideration and action on proposals also within LURC jurisdiction will adequately satisfy the criteria of the Land Use Regulation Law. The LURC would like to continue to be a review agency for Great Pond applications in the unorganized territories and plantations, but will not require a separate LURC permit in cases where a Great Ponds permit is necessary.

Regarding Mining permits, the LURC understands that the DEP has authority to review only rehabilitation plans. Such being the case, the LURC would like to exercise its independent authority over mining developments in the unorganized territories and plantations.

We ask for the concurrence of the Department of Environmental Protection in these matters.

5. Subdivision Law
Title 30 § 4956

TITLE 30

§ 4956 Land subdivisions

1. DEFINED. A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise, provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of said first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a 3rd lot, unless both such dividings are accomplished by a subdivider who shall have retained one of such lots for his own use as a single family residence for a period of at least 5 years prior to such 2nd dividing. Lots of 40 or more acres shall not be counted as lots.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

2. MUNICIPAL REVIEW AND REGULATION

A. Reviewing authority. All requests for subdivision approval shall be reviewed by the municipal planning board, agency or office, or if none, by the municipal officers, hereinafter called the municipal reviewing authority.

B. Regulations. The municipal reviewing authority may, after a public hearing, adopt additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of such hearing.

C. Record. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

C-1. Upon receiving an application, the municipal reviewing authority shall issue to the applicant a dated receipt. Within 30 days from receipt of an application, the municipal reviewing authority shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional material needed to make a complete application. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

D. Hearing; order. In the event that the municipal reviewing authority determines to hold a public hearing on an application for subdivision approval, it shall hold such hearing within 30 days of receipt by it of a completed application, and shall cause notice of the date, time and place of such hearing to be given to the person making the application and to be published in a newspaper of general circulation in the municipality in which the subdivision is proposed to be located, at least 2 times, the date of the first publication to be at least 7 days prior to the hearing.

The municipal reviewing authority shall, within 30 days of a public hearing or within 60 days of receiving a completed application, if no hearing is held, or within such other time limit as may be otherwise mutually agreed to, issue an order denying or granting approval of the proposed subdivision or granting approval upon such terms and conditions as it may deem advisable to satisfy the criteria listed in subsection 3 and to satisfy any other regulations adopted by the reviewing authority, and to protect and preserve the public's health, safety and general welfare. In all instances the burden of proof shall be upon the persons proposing the subdivisions. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the foregoing criteria.

3. GUIDELINES. When promulating any subdivision regulations and when reviewing any subdivision for approval, the planning board, agency or office, or the municipal officers, shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

A. Will not result in undue water or air pollution. In making this determination it shall at least consider:

The elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;

B. Has sufficient water available for the reasonably forseeable needs of the subdivision;

C. Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;

D. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

E. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;

F. Will provide for adequate sewage waste disposal;

G. Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;

I. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;

J. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any; and

K. The subdivider has adequate financial and technical capacity to meet the above stated standards.

L. Whenever situated in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

4. ENFORCEMENT. No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and recorded in the proper registry of deeds, nor sell or convey any land in such approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes but is not limited to the following: A granite monument, a concrete monumemt, an iron pin or a drill hole in ledge. No subdivision plat or plan shall be recorded by any register of deeds which has not been approved as required. Approval for the purpose of recording shall appear in writing on the plat or plan. No public utility company of any kind shall install services to any lot in a subdivision for which a plan has not been approved.

Any person, firm, corporation or other legal entity who sells, leases, or conveys for consideration, offers or agrees to sell, lease or convey for consideration any land in a subdivision which has not been approved as required by this section shall be punished by a fine of not more than $1,000 for each such sale, lease or conveyance for consideration, offering or agreement. The Attorney General, the municipality, the planning board of any municipality or the appropriate municipal officers may institute proceedings to enjoin the violations of this section and if a violation is found by the court, the municipality, municipal planning board or the appropriate municipal officers may be allowed attorney fees.

5. EXEMPTIONS. This section shall not apply to proposed subdivisions approved by the planning board or the municipal officials prior to September 23, 1971 in accordance with laws then in effect nor shall it apply to subdivisions as defined by this section in actual existence on September 23, 1971 that did not require approval under prior law or to a subdivision as defined by this section, a plan of which had been legally recorded in the proper registry of deeds prior to September 23, 1971. The division of a tract or parcel as defined by this section into 3 or more lots and upon all of which lots permanent dwelling structures legally existed prior to September 23, 1971 is not a subdivision.

The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this section, shall not become subject to this section by the subsequent dividing of said tract or parcel of land or any portion thereof, however, the municipal reviewing authority shall consider the existence of such previously created lot or lots in reviewing a proposed subdivision created by such subsequent dividing.

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATTERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

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State Planning Office

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 30, 1977

To: Allen Pease, Director, State Planning Office

From: Joseph E. Brennan, Attorney General

Subject: Attorney General's Role in Enforcing the Subdivision Law (30 M.R.S.A. §4956)

This opinion is in response to your question concerning the Subdivision Law. The question posed was "If a town consistently disregards the standards contained in the Subdivision Law (30 M.R.S.A. §4956), and further, if these deviations are considered to be significant, does the Attorney General have the legal authority to require towns that consistently and substantially disregard the standards set out in 30 M.R.S.A. §4956 to conform to the law in their review of subdivisions.

The Attorney General in Maine inherited common law power from England. Withee v. Land & Libby Fisheries Co., 120 Me. 121 (Me. 1921). As the chief law enforcement officer of the State he has wide authority to protect the interests of the State and its citizens:

> ". . . . as the chief law officer of the State, he may, in the absence of some express restriction to the contrary, exercise all such power and authority as public interest may from time to time require, and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights. Withee, p. 23.

The Court in Withee called the Attorney General's powers "numerous" and "varied," Id. at 23.

In Lund Ex Rel Wilbur v. Pratt, 308 A.2d. 554 (Me. 1973), the Law Court expressly recognized that the Attorney General is a constitutional officer deriving this status from Article IV, Section 11. The Court, stressed that he has the power, absent an express statutory prohibition to the contrary, to maintain actions and proceedings to preserve order and protect the public's right. The Attorney General has the power to protect the entire community when an injury is shared by all equally. Von Tiling v. City of Portland, 268 A.2d. 888 (Me. 1970). In fact, he is the only person authorized to bring such suits. He has this authority because he is the representative of the people. A 1975 Massachusetts case, Secretary of Administration and Finance v. Attorney General, 326 N.E. 3d. 334 (Mass. 1975), stressed this basis for his power.

> "The Attorney General represents the commonwealth as well as the Secretary . . . who requests his appearance. He also has a common law duty to represent the public interest. Id at 338.

The Maine courts concur:

> "The chief law officer represents the whole body politic, or all the citizens and every member of the State. Only a few of the duties of the Attorney General are specified by statute; that official is, however, clothed with common law powers. It is for him, in instances like these to protect and defend the interests of the public." In Re Maine Central Railroad Co. et al., 134 Me. 217 (Me. 1936).

I. Attorney General's Power to Bring Mandamus Action.

One of the common law powers of the Attorney General is the power to proceed against public officials in order to protect the best interests of the State. The cases in Maine and elsewhere have recognized that the Attorney General has the power to institute mandamus proceedings. The mandamus action is a proceeding to require the official or officials to do something they are required by law to do. Rogers v. Brown, 134 Me. 88 (Me. 1935).

It is generally conceded that a mandamus action by the Attorney General is authorized by his common law powers. Although Maine has abolished the writ of mandamus (a procedural device) the substantive cause of action remains and may be brought pursuant to Rule 80B Me. R. Civ.P. In determining whether mandamus must be had however, recourse must be made to the common law. Young v. Johnson, 161 Me. 64, 69 (1965).

In Kelley v. Curtis, 287 A.2d. 427 (Me. 1972), the Law Court had before it a mandamus action brought under Rule 80B, Me. R. Civ. P. The Plaintiff, a petition sponsor, sought to require the Governor of Maine to issue a proclamation of special election within a reasonable time after presentation to the Legislature of a petition seeking a ballot reform. The Legislature, before it adjourned, determined the reform measure was validly initiated. The Governor had not issued an order for six months following the adjournment, and suit was filed. By law, the Governor was required to call a special election "within a reasonably short time" after adjournment. The Court apparently had no problem with the 80B process. Both the Superior Court and the Law Court entertained the proceeding initiated under 80B. The Court did express some concern over the standing of the petitioner to proceed, but since it did not need to reach the standing issue, it was not discussed. In Farris, ex rel Dorsky v. Goss, 143 Me. 227 (1948), the Court allowed a private group to use the Attorney General's unique position of standing to bring a mandamus action to compel the Secretary of State to place an "initiated measure" as well as the enacted measure on the ballot so the voters could decide which they preferred. The Court had no problem with allowing the Attorney General to bring such an action.*/

The power of the Attorney General to bring mandamus actions has been recognized in other jurisdictions. In Attorney General v. Trustees of Boston Elevated Railroad, 67 N.E. 2d. 676,685 (Mass. 1946), the Supreme Judicial Court of Massachusetts recognized the Attorney General's power to proceed against public officers by manadamus. A Texas Court, in Yolt v. Cook, 281 S.W. 837,843 (Tex. 1926), recognized that the "ancient and modern rules of common law," allowed the State and Attorney General the power to use mandamus proceedings in supervising municipalities.

The mandamus action serves a very specific purpose. Its use is restricted to cases in which it is clearly shown that an official has neglected or refused to do something required by law. In Littlefield v. Newell, 85 Me. 246 (Me. 1893), the Maine Attorney General filed a mandamus action against the mayor and aldermen of Lewiston to force them to comply with the town's charter and ordinances.

> "It is a well-settled rule that mandamus extends to all cases of neglect to perform an official duty clearly imposed by law when there is no other adequate remedy. If the officers are required to act in a judicial or deliberative capacity, the court cannot it is true, control their official discretion, but may by its mandate compel them to exercise it. It cannot direct them in what manner to decide, but may set them in motion and require them to act in obedience to law. p. 111.

See also, Rogers v. Brown, supra and Mitchell v. Boardman, 10 A. 542 (Me. 1887), on protecting public rights.

II. Attorney General's Power to Appeal Local Administrative Decision.

The Subdivision Law (30 M.R.S.A. §4956 subsection 5) permits the Attorney General to enforce the law although it is generally envisioned that the Attorney General will only do so under extraordinary circumstances and hopefully with the aid of the municipality. In a joint memorandum filed by the Attorney General and the Maine Municipal Association, dated March 2, 1972, this office felt an 80B appeal under the Maine Rules of Civil Procedure would be available to those affected by decisions of the municipal authority. It seems clear that nothing prohibits the Attorney General from enforcing the law by requiring the municipality to abide by its requirements. The Attorney General's principal function is to protect the public interest and to maintain all suits and proceedings to enforce the laws of the State. Withee v. Libby Fisheries Company, supra at p. 123. Should he not carry out these functions, he would be violating his responsibilities

*/ In McCaffrey v. Gartley, 377 A.2d.1367 (Me. 1977), a similar action was brought without invoking the Attorney General's powers.

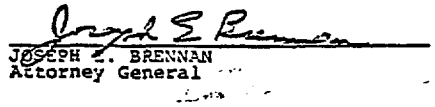
to the public. If a decision by the municipal authority in a subdivision case was so contrary to the dictates of the statute, the Attorney General might appeal from such a determination. Apparently, the exact question has not been ruled upon in Maine, although it is presently in front of the Law Court in Central Maine Power Co. v. Public Utilities Commission, (Law Ct. Docket No. Ken 73-43).

Other states have recognized that the Attorney General has the power to appeal from the decisions of agencies when the public interest is involved. In a Nebraska case, In Re Equalization of Assessment of Natural Gas Pipe Lines v. State ex re Soreman, 242 N.W. 609 (Neb. 1932), the power of the Attorney General to petition for a writ of error in the Supreme Court from a tax board's decision was recognized. And in a New Jersey case, Attorney General v. Delaware & B. B. R. Co., 27 NJEq. 631, the court held:

> "In equity, as in the Law Court, the Attorney General has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called 'civil information' for their protections. The state is not left without redress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing in its behalf and enriching the judgment of the Court on such questions of public moment. Id. p. 610.

Other cases in accord, Petition of Public Service Coordinated Transport et al., 74 A.2d. 580, 586 (N.J. 1950) and State ex rel Olsen v. Public Service Commissioner, 283 P.2d. 594 (Mont. 1955).

There seems little question that the Attorney General can bring suit against a recalcitrant town to require it in the future to apply the Municipal Subdivision Law or challenge subsequent decisions which substantially deviate from it. We would note that the Attorney General retains discretion with regard to bringing any particular action, and the decision on bringing an action would relate to the seriousness of the violation of law and the availability of resource of the Department to properly prosecute the action.



JOSEPH E. BRENNAN
Attorney General

JEB/bls

TITLE 38
CHAPTER 3
SUBCHAPTER I
ARTICLE 6.
SITE LOCATION OF DEVELOPMENT

§ 481. Findings and purpose

The Legislature finds that the economic and social wellbeing of the citizens of the State of Maine depend upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

§ 482. Definitions

As used in this subchapter:

1. Commission. "Commission" means the Environmental Improvement Commission.

2. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or under water where the area affected is in excess of 60,000 square feet, or which is a structure; but excluding state highways, state aid highways, and, borrow pits for sand, fill or gravel, of less than 5 acres or when regulated by the Department of Transportation.

No person shall construct or cause to be constructed or operate or cause to be operated, or in the case of a subdivision sell, offer for sale, or cause to be sold, any development requiring approval under section 483 without first having obtained approval for such construction, operation or sale from the Board of Environmental Protection.

3. Natural environment of a locality. "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination.

4. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

5. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5 year period if such lots make up an aggregate land area of more than 20 acres except for the following:

A. All the lots are at least 10 acres in size;

B. All the lots are at least 5 acres, and the municipality has adopted additional regulations governing subdivisions pursuant to Title 30, section 4956, and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access; or

C. All the lots are at least 5 acres, but do not make up a total of more than 100 acres and the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each a rectangle measuring 200 feet and 300 feet, which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

6. Structure. A "structure" shall mean:

A. A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet, or

B. Parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated which causes a total project, including any buildings to occupy a ground area in excess of 3 acres.

§ 483. Notification required; commission action; administrative appeals

Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, together with such information as the commission may by regulation require. The commission shall within 30 days of receipt of such notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the commission has issued an order without a hearing may request, in writing, within 30 days after notice, a hearing before the commission. Such request shall set forth, in detail, the findings and conclusions of the commission to which such person objects, the bases of such objections and the nature of the relief requested. Upon receipt of such request, the commission shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be scheduled in accordance with section 484.

§ 484. Hearings; orders; construction suspended

In the event that the board determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given.

At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The board may at such hearing also receive testimony on the economic effect of such development.

The commission shall approve a development proposal whenever it finds that:

1. Financial capacity. The developer has the financial capacity and technical ability to meet state air and water pollution control standards, and has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

2. Traffic movement. The developer has made adequate provision for traffic movement of all types out of or into the development area.

3. No adverse effect on the natural environment. The developer 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 in the municipality or in neighboring municipalities.

4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 125 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsections 1 to 4, shall also have been approved by the Public Utilities Commission under Title 35, section 13-A.

In the case of a transmission line carrying 100 kilovolts or more or a gas pipeline, a permit under this chapter may be obtained prior to any acquisition of lands or easements therefor to be acquired by purchase and such permit shall be obtained prior to any acquisition of land by eminent domain.

Any person making application for site location of development approval pursuant to section 481, et seq., for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to section 483, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or a transmission line by registered mail, postage prepaid at the land owner's last known address as contained in the applicable tax assessor's records and shall file with the town clerk of each municipality through which the pipeline or a transmission line is proposed to be located, a map demonstrating the intended approximate location of the pipeline or a transmission line within the municipality. The applicant shall not be required to provide notice of his intent to construct a gas pipeline or a transmission line other than as set forth in this paragraph. The board shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of subsections 1 to 4 have been met, the board, in the case of such transmission line or pipelines, shall consider whether any proposed alternatives to the proposed location and character of such transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The board may approve or disapprove all or portions of such proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs thereby caused.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

Within 30 days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

Any person who has notified the commission, pursuant to section 483, of his intent to construct or operate a development shall immediately defer or suspend construction or operation with respect to such development until the commission has issued its order.

Any person securing approval of the commission, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

§ 485. Failure to notify commission; hearing; injunction; orders

The commission may at any time with respect to any person who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, schedule and conduct a public hearing with respect to such development.

§ 486. Repealed

§ 487. Repealed

§ 488. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying ~~125~~ 100 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

§ 489. Municipal review of subdivisions

1. A municipality may apply to the Board of Environmental Protection, on forms provided by the board, for authority to substitute permits issued pursuant to Title 30, section 4956 for permits required by section 483 for subdivisions more than 20 acres but less than 100 acres. The board shall grant such authority if it finds that the municipality has:

A. Established a planning board;

B. Developed a suitable application;

C. Made provisions by ordinance or regulation for prompt notice to the board upon receipt of the application, written notification to the applicant and the board of the issuance of or denial of a permit, stating the reason therefor, public notice and satisfactory hearing procedures.

In the event that the board finds that a municipality has failed to satisfy one or more of the above listed criteria, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the board determines that a municipality has failed to exercise its permit granting authority in accordance with its approved procedures or the purposes of this Article as embodied in the standards set forth in section 484 and Title 30, section 4956, it shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality, to solicit public or official comment thereon. Following such hearing, if it finds that such deficiencies will persist, it shall revoke the municipality's permit granting authority.

In the event that a municipality has the authority granted by this Act revoked by the board, it may reapply to the board for such authority at any time.

2. Within 30 days after receipt of a completed application for a permit for a subdivision, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order, for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearings, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor.

LEGAL ANALYSIS OF THE SITE LOCATION LAW

I. Introduction

This Legal Analysis of the Site Location Law was prepared by the Federal Office of Coastal Zone Management in cooperation with the State to provide additional guidance to reviewers of this document, coastal users and other citizens in understanding how the Site Law will help to implement the Maine Coastal Zone Management Program. The following disucssion focuses on how Maine courts and the Board of Environmental Protection have interpreted the four performance standards used to evaluate projects subject to the Site Law. Section two examines significant cases interpreting the Site Law, section three identifies Board policies and regulations that guide implementation of the law, and section four presents the results of an in-depth investigation of the permit review process. This analysis demonstrates that the standards in the Site Law are adequately specific and provide sufficient predictability to satisfy the requirements of the Coastal Zone Management Act.

The Site Location Law (38 M.R.S.A. §§481 et seq.) was enacted "to provide a flexible and practicable means by which the State... may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such development will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings." The law states that the Board of Environmental Protection (the Board) shall approve a development proposal whenever it finds that:

> 1. Financial capacity. The developer has the financial capacity and technical ability to meet state air and water pollution control standards, and has made adequate provision for solid waste dispoal,,the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.
>
> 2. Traffic movement. The developer has made adequate provision for traffic movement of all types out of or into the development area.
>
> 3. No adverse effect on the natural environment. The developer 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 in the municipality or in neighboring municipalities.

> 4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

Thus, the law creates a process for the review of major development proposals using specific performance standards while affording wide latitude to the applicant in the choice of the type and location of development. The process may be contrasted with the predesignation of sites for development, or zoning based on a comprehensive plan. As stated by the Maine Supreme Court in In re Spring Valley Development Inc., 300 A.2d 736, 753 (Me. 1973) the Site Location Law.

> is not concerned with where a development takes place in general but only that the development takes place in a manner consistent with the needs of the public for a healthy environment. It did not grant the Commission /now, Board/ the authority to determine where the location of a development can be but rather it gave the Commission authority to measure the proposal and location against statutory standards and to apply reasonable terms and conditions which the proposed must meet in order that it may be 'located in a manner which will have a minimal adverse impact on the environment.'

The Law does not require an applicant to evaluate several alternative locations and select the best option. In In re Ryerson Hill Solid Waste Disposal Site, 379 A.2d 384, 391 (Me. 1977) the Maine Supreme Court implicitly upheld the interpretation of the Board that its authority precluded the consideration of alternative sites.

II. JUDICIAL INTERPRETATION OF THE SITE LOCATION LAW

A. In assessing whether the Law itself complies with basic constitutional standards and whether the Board acted properly in deciding specific permit applications (See 4 M.R.S.A. §11007), the courts have provided important guidance in interpreting the Site Location Law.

The legislation itself has been found to be constitutional in several cases. Specifically, the Maine Supreme Court has held that the Site Location Law is a valid police power regulation, that it is not unconstitutionally vague, and that it does not deny the applicant equal protection of the law. In re Spring Valley Development supra. In In re Maine Clean Fuels, Inc., 310 A.2d 736 (Me. 1973), involving a denial of an application for development of a coastal oil refinery, the Supreme Court held the Board's order did not constitute a taking of property without compensation, and that the procedural rules relied on in making the decision did not violate due process.

The most complete judicial exploration of the meaning of the four performance standards was presented in In re Spring Valley Development, supra. The plaintiff developer complained that the Act was unconstitutionally vague and impossible of compliance. Specifically, he argued that a subdivider who is not also the builder of the development "cannot control the future adequacy of provisions relating to pollution control and maintenance of healthful water supplies" Id. at 750. The Court held that the burden was not unreasonable in light of the objectives served:

> To be sure, the Act imposes on the developer- including the mere subdivider-responsibilities which he has not had in the past. The Legislature has determined that an owner of a large tract of undeveloped land may no longer subdivide it, sell the lots and then walk away from the transaction indifferent to the local catastrophe that may result when construction and occupancy reveal the incapacity of the environment to withstand the impact of the development. The duty is no doubt more burdensome as the land is less suitable and it may be impossible of compliance if the environment is of a type incapable of sustaining the proposed development. In the latter situation the public welfare demands that the land be used for another purpose or that the impact of the same use be diminished. Id. at 750.

The Court felt "that there can be no serious question" that the Legislature may require that development not be built on soil types which are unsuitable and that adequate provision be made for parking and traffic movement. Id. at 750-51. The requirement that there be no adverse effect on the natural environment, the Court stated, "is the very substance of the Legislature's effort, to reduce despoilation of the environment to a minimum." Id. at 751. The Court provided important guidance in interpreting this requirement:

> While most...developments may be expected to 'affect' the environment adversely to the extent that they add to the demands already made upon it, it is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the Commission to measure the nature and extent of the proposed use against the environment's capacity to tolerate the use; Id. at 751.

The Court also stated that:

> The Legislature has declared the public interest in preserving the environment from anything more than minimal destruction to be superior to the owner's rights in the use of his land and has given the Commission adequate standards, under which to carry out the legislative purpose. Id. at 751.

B. Cases reviewing specific permit decisions provide help in describing the types of information and activities required to meet the performance standards of the law.

In the Maine Clean Fuels case the court held that there was "substantial evidence" for the Board's findings that the applicant lacked the financial capacity and technical ability to meet applicable pollution control standards, that there was inadequate provision for sufficient water supplies and for traffic movement from the site onto public roads, and that the project would have an adverse effect on the environment. Id. at 740-41. Specifically, with respect to water supplies, the court upheld the Board's determination that underground sources of water would be insufficient for anticipated needs, and that the three alternative water sources proposed by the applicant were insufficiently documented to permit a reasoned decision. The court also accepted the finding that the applicant lacked adequate financial and technical ability to meet applicable air and water standards in that no firm financing commitment for the project had been secured and since certain cost estimates were either inaccurate or speculative. Finally, the court upheld the finding that the project would adversely effect the natural environment in that the refinery would increase marine traffic in Penobscot Bay, oil spills would necessarily occur as a result of such an operation, and the affected coastal waters were classified for "clean water usages," which specifcally excluded the discharge of oil.

The Supreme Court has also upheld Board orders approving proposed developments against claims that the applicant failed to meet one or more of the four statutory performance standards. In In re Reyerson Hill Solid Waste Disposal Site, supra, an organization of property owners in the vicinity of the proposed dump challenged the Board order on the ground that there was insufficient evidence to establish compliance with any of the four standards. The court found that the Board had acted properly in making undisputed findings that the project would generate no solid waste and that the water supplies were adequate, since the disposal of solid waste does not itself generate solid waste, and since no water was required on the site. Also, the court found that the Board had reasonably concluded that the proposed sludge disposal trucks would not pose a significant traffic problem in that the truck route had been redesigned to avoid the local village. The finding that no adverse impact on the environment would result was supported by the mitigating measures required by the Board, including preservation of a Natural Buffer Strip, an erosion control plan, a monitoring system to minimize the likelihood of leachate entering surrounding watercourses, and reforestation of the site after the dump is closed. Finally, the court found that the soils criterion of the Act was met although the on-site soil was unsuitable in its native state since an extensive drainage system would eliminate the major limitations of the soil.

In re Belgrade Shores, Inc., supra. also involved a challenge to a Board order approving a development application, in this case for a proposed residential subdivision. The financial capacity standard was met, the court ruled, although the applicant stated it would incur no cost, since any costs associated with the project would, in fact, be "minimal". The court also held that the Board properly concluded that the applicant had met the traffic and no adverse environmental impact standards after the application was revised to include common docking and parking facilities for the entire subdivision. Lastly, the Court concluded that the Board did not act erroneously by relying on local controls to ensure adequate sewage disposal, or in failing to require more than one test boring per lot.

C. The Maine Supreme Court has upheld several times the authority of the Board to impose a variety of conditions on approved permit applications. This substantially expands the ability of the Board to implement the goal of a "flexible and practical means" for protecting the environment.

In In re Ryerson Hill Solid Waste Disposal Site, supra, the court held that the Board did not exceed or abuse its authority in imposing the following conditions on the approval of the waste disposal site:

> construction of an all-weather section of the site, construction of a sedimentation-retention basin to collect surface run-off and effluent from the drainage system, development of an intensive monitoring program by the applicant Paris under close supervision of the Department of Environmental Protection, submission of a detailed erosion control and reforestation plan, and production of affirmative on-site evidence of ability to lower and maintain the water table at an acceptable level prior to the placement of the sludge and installation of permanent peripheral drains to maintain that capacity over time. Id. at 387

In re Belgrade Shores, Inc., supra, upheld a variety of permit conditions prohibiting the erection of private permanent docks and requiring the construction of a common beach, docking facilities and automobile parking areas for the subdivision.

These decisions establish that the board has the authority to impose appropriate permit conditions to insure compliance with the four performance standards specified in the Law.

III. REGULATIONS

A. The application form

The application submitted to the Department of Environmental Protection (the Department) provides the basic information for evaluating a proposed development against the four statutory performance standards. The Board has ruled that all of the questions on the application form must be answered in order to arrive at a reasoned judgment of a proposed development In re Black Horse Acres, Application No. §1-0005 (Aug. 6, 1970) (See also, "Regulations for the Processing of Applications," §1, effective January 1978.) Thus, the informational requirements of the application provide a consistent basis for Site Location Law permit review.

The application requries certain basic data such as the location and size of the development and evidence of the applicant's "title, right or interest" in the site. In addition, the application requires specific information related to each performance standard. In order to satisfy the financial capacity criterion the applicant must submit detailed cost information, as well as identify how water will be supplied to the site, how sewage will be disposed of, and, if the project is other than a residential subdivision, the means for disposal of solid waste. To insure that adequate provision is made for traffic movement the applicant must describe the condition of public access routes, indicate the nature of the interior roads and parking system within the proposed project, and estimate the traffic volume that will be generated. Information related to the no adverse effect on the environment standard includes the existing use of the site, description of signs on similar devices which might have an impact on the surrounding environment, identification of adjacent waterbodies, and, if the project is other than a subdivision, a description of landscaping plans. Soil information must include the results of on-site soil investigations, a description of surface drainage characteristics of the site, and measures which will be followed to control erosion and sedimentation.

B. Adopted Board Policies and Regulations

Review standards and policies of the Board of Environmental Protection provide detailed guidance for applicants seeking Site Location Law permits. Where appropriate this discussion of each regulation or policy is related to the appropriate review criterion.

1. Title, Right and Interest (§ 1.4(d), effective February, 1978): On 3/26/74, an Attorney General's Opinion was presented to the Commissioner of the Department of Environmental Protection stating that in order to have jurisdiction in any case under the Site Law, the Board must find that "the applicant has sufficient 'title, right, or interest' in the property proposed for development." To establish such interest, the applicant must demonstrate "that it has control over the site and that the site can be developed by the applicant as proposed within a reasonable period of time." This standard could be met, the Attorney General stated, not only ownership in fee, "but also by some lesser interest, including a contract or option to purchase or other contractual

agreement to acquire a right to develop land, which right is enforceable by way of specific performance." The Attorney General did not limit the manner in which such interest may be established, but stated that a "mere oral representation" relating to a contract or option is insufficient to establish standing.

2. Regulations for Parking Lots (§366, effective February, 1978): A Site Law application must include plans for landscaping and traffic control in large parking lots. This regulation was adopted to reflect the Board's "growing concern for the safety and the aesthetic impact of large parking areas." Specific evaluation criteria require convenient, well defined traffic and pedestrian circulation systems and landscaping that will reduce the visual impact of large scale parking areas, particularly as they effect adjacent properties. In addition, the Board has adopted detailed Design Objectives for Parking Lot Development as "recommended guidelines" to be used by applicants in laying out parking areas.

These regulations and guidelines assist the applicant in satisfying the traffic and effect on the natural environment criteria of the Law.

3. Application for Approval of Mining and Excavation Activity Under Site Location of Development Law and Mining and Rehabilitation of Land Law;

Additional review criteria are provided for gravel pits over 5 acres not regulated by the Maine Department of Transportation, and fill projects in excess of 60,000 sq. feet where a substantial change in land contour will result. The applicant is required to provide certain information in addition to that required by the basic application:

a. Area to be mined
b. Fill areas or topsoil storage areas
c. Drainage
d. Entrance and exits
e. Any natural vegetation to be left for screening the operation.
f. Gates or other means for controlling access to the site.
g. Slopes and vegetation for protecting adjacent structures such as buildings, cemetaries, roads, etc.
h. Location of structures on the site, if any.

To meet these special informational requirements, the Board has adopted a special-application form for mining and excavation project.

The objective of these regulations is to insure "that unreasonable adverse effects on the natural environment will not occur and that, where

possible, mined land will be reclaimed," that is, to meet the third criterion of the Site Law.

4. Regulations for Natural Buffer Strips (§370, effective February, 1978): The Board may, as a condition of approval of any development, require the establishment of a natural buffer strip, defined as "an area of land immediately adjacent to and running along with the normal high water line of any lake, pond, river, stream, intermittent stream, marsh, bog, or tidal wetland". Within the Buffer Strip, Department permission is required for "activities which may impact adversely on the body of water including but not limited to, construction, removal of live trees, sewage disposal, removal of stumps or root systems which hold soil in place, and the displacement of rocks, topsoil and similar activities which would raise or allow increased soil erosion." The width of the Buffer Strip is determined by the Board on a case by case basis. In projects involving property transfers to the general public, such as residential subdivisions, the Buffer Strip restriction is required to be incorporated in deed covenants running with the land.

These regulations for Natural Buffer Strips are designed to insure that development subject to the Site Law will have "no adverse effect on the natural environment."

5. Regulations for Septic Tank Sludge Disposal on Land (§420, effective February, 1978): The basic criteria for review of applications seeking approval of sludge disposal sites are contained in Maine Guidelines for Septic Tank Sludge Disposal on the Land, which has been adopted as regulations by the Board. Acceptable methods for disposal of sludge identified in the "Guidelines" include waste water treatment plants and spreading, irrigation, and lagooning. The basic standards governing all sludge disposal are as follows:

> 2.3 inches of sludge (62,500 gallons) per acre per year was determined as the maximum application rate on a well-drained soil if surface and ground water quality are to be protected. These are approximately 500 lbs. of nitrogen in 62,500 gallons of septic tank sludge. The maximum application rate on a moderately well-drained soil is 37,000 gallons of septic tank sludge per acre per year. There are approximately 300 lbs. of nitrogen in 37,000 gallons of septic tank sludge.

More specific disposal rate standards for seven day periods keyed to soil classifications and slope are also provided. Maine Guidelines for Manure and Manure Sludge Disposal on Land, adopted as "guidelines" only, provide additional standards for the disposal of septic tank sludge.

The sludge disposal regulations require the applicant to submit detailed soils information, reflecting the particular importance of soil

suitability for this activity. Also, "/t/he Department may recommend disapproval of sites due to geological sensitivity such as proximity to major aquifiers, public water supplies and bedrock factors." Discontinued sites are required to be plowed under and revegetated within six months, or, if the site is wooded, it must be properly posted and the public excluded for a period of two years.

These regulations are designed primarily to insure that sludge disposal sites are located on suitable soils and that this activity will not adversely effect the natural environment.

6. Policy on Soils Data: The Board has adopted a policy of requiring intensive soils information based upon test pits and/or borings done by a qualified professional to fulfill the requirements of the soil types standard of the Site Law.

7. Soil Suitability for Site Location Statute: The Board has accepted the Soil Suitability Guide for Land Use Planning in Maine as the official basis for judgment on the soil performance standards, with the provision that the Board "will make a reasonable allowance to allow for proper engineering to compensate for soil limitations".

IV. ADMINISTRATIVE HISTORY

The Site Location Law was enacted in 1970. Since that time over 1200 project applications have been reviewed by the Board. Table I provides basic information on the outcome of the permitting process in the last five fiscal years. Since 1976, approximately 96% of all permit applications have been approved.

In order to further evaluate the permitting process the records of the one-hundred most recent permit decisions were reviewed in detail. The information collected was utilized to identify the types of projects subject to the permitting process, the criteria relied on and the factors considered in determining whether the projects compiled with the four performance standards, and what conditions were imposed on the development to insure compliance with the statutory standards.

Fifty-seven of the applications were for some form of residential development, mostly single-family subdivisions. Fourteen applications were related to waste treatment, including solid waste disposal sites, septic waste and sludge disposal sites, or sewage treatment facilities. Ten applications were for commercial facilities, nine for industrial facilities, six for mining projects and the remaining four for various miscellaneous activities. This listing is believed to be a representative sample of the types of projects subject to the law.

Ninety-seven of the one hundred permit applications were approved. Eighty of the ninety-seven approvals had one or more special conditions

TABLE I

SUMMARY OF APPLICATIONS PROCESSED UNDER THE SITE LOCATION LAW
(fiscal years 74-78)

YEAR	PROCESSED	APPROVED	WITHDRAWN	DENIED	HEARING HELD
'74	189	152	5	32	7
'75	257	235	1	21	11
'76	142	138	2	3	10
'77	150	145	2	3	8
'78	204	192	*	12	*

Source: Maine Department of Environmental Protection

*Information not available

attached to the Board order. In addition, every Board order includes a standard set of eight conditions, compliance with which is required in order to meet the statutory performance standards. Briefly, these eight standard conditions provide that:

1. Variation of approved development plans is subject to Board review and approval. Further subdivision of lots in approved developments is prohibited.

2. The applicant shall comply with all applicable government laws and regulations.

3. The applicant shall submit all reports and information requested by the Board.

4. Any advertising relating to the development must state that approval was granted with conditions.

5. The applicant shall not transfer title to the development without Board review and approval, except in the case of individual lots in an approved subdivision.

6. The applicant shall use "best efforts" to enforce restrictive deed conditions.

7. The applicant shall take "all necessary measures" to prevent erosion of soils on the site.

8. If the applicant does not comply with conditions of approval or develops the site other than as described in the application, the terms of approval shall be considered void.

The following discussion of the types of special conditions imposed on Board orders, and the criteria relied on and factors considered in reviewing the project is organized according to each of the four performance standards.

1. Financial Capacity: This standard of the Act involves, in practice, three issues: 1) the financial ability of the developer to finance the development, including pollution control measures, 2) assurance that pollution control measures will be adequate, and 3) adequate provision for solid waste disposal, control of offensive odors, and sufficient water supplies.

The Board's interpretation of the statute as authorizing review of total financing for a project, not merely for pollution control devices, is justified by the case of In re Maine Clean Fuels, Inc., supra

at 755, stating "that it is clear that the ability to finance the cost of meeting pollution standards /is/ inexorably a part of the ability to obtain total financing." Sufficient evidence of financial ability may be supplied in a variety of forms, including a corporate annual report, a letter from a financial institution stating that project financing has been approved or that a line of credit is available, copies of bank statements, or by proof that no significant costs will be incurred. Additional guidance is supplied by those cases in which the Board found that the applicant failed to satisfy this performance standard. The Board ruled in In re Westgate Commons (No 87-4109, 2/22/78) that a Market Analysis Letter from H.U.D. relating to a proposed apartment project did not represent a firm commitment to finance. In In re Anderson Sanitary Landfill Dump (No. 07-4047, 12/21/77) the Board found inadequate evidence of financial capacity in that bank financing was contingent upon the applicant securing contracts with the municipality. The Board approved the project with the condition that prior to construction the applicant submit information establishing adequate financial capacity.

The requirement of adequate pollution control devices is generally satisfied by the standard condition that the applicant comply with all other applicable laws and regulations, including acquisition of any necessary pollution control permits. If sewage from the proposed development will be treated at a municipal waste water treatment facility, the capacity of the facility to accomodate additional discharges must be established by the applicant. Where existing capacity is not adequate the project is delayed until the Board reviews and approves additional information indicating that the problem has been resolved (In re Pagona Hill Subdivision(No. 86-4145, 3/8/78)). Where on-site disposal of wastes is planned the suitability of soils for this activity is evaluated under the soil types standard.

In In re The Pittston Company (No. 29-1466, 3/12/75) the Board established the principle that in evaluating the applicant's financial capacity and technical ability the Board may consider whether the "character of the applicant" indicates that he will use these resources responsibly:

> Examinations of an applicant's prior conduct is a measure of the likelihood of it satisfying Maine's environmental standards. Adequate technical and financial capacity is predicated upon the willingness of an applicant to use the same.

Adequate provision for solid waste disposal and water supplies is generally satisfied by a letter from the appropriate utility or sanitary district, or from a licensed well driller, indicating that sufficient capacity exists. When such assurances cannot be provided the project is either modified or conditioned. For example, in In re

Harmon's Harbor Development (No. 86-2958, 6/14/78) citizen concerns about the adequacy of water supplies for each lot in the proposed subdivision led the Board to impose the condition that a central well be installed prior to the sale or development of any lot. In re Medway Subdivision (No. 86-3940, 9/16/77) approval of the subdivision was conditioned on the applicant arranging for adequate water service with the local utility. Submission of additional information on solid waste disposal methods was made a condition for approval in In re Airport Commercial Industrial Park (No. 39-2979, 10/26/77). The control of offensive odors is rarely an issue in the permit review process, except in the case of industrial or waste disposal projects. In In re Airport Commercial Industrial Park, supra, the Board required the applicant to submit additional information concerning odors and methods of treatment.

2. Traffic Movement: This criterion applies to "traffic movement of all types," including automobiles, pedestrian circulation, as well as ship traffic, "out of or into the development area." In evaluating if proposed developments satisfy this standard the Board relies heavily on expert review comments prepared by the Department of Transportation (DOT).

In the case of residential developments the Board is primarily concerned with on-site traffic movement and access to and from adjacent access roads. The Board generally requires eighteen foot wide interior roads in residential subdivisions. Ten of the Board orders reviewed included the condition that lots bordering on interior roads enter and exit onto interior roads rather than major access roads in order to improve traffic safety. Although sidewalks are not generally required, the Board did impose such a condition at the request of a municipality in In re Pine Ridge Estates (No. 86-4030, 10/21/77) and to meet DOT concerns that adequate access be made for school children in In re Medway Subdivision (No. 96-3940, 10/26/77). To insure safe access from the development site onto major access roads, applicants may be required to locate driveways at the crest of access roads, to clear brush from entranceways to insure sight distances of at least two hundred and fifty feet in both directions, or to install traffic warning signs.

Large scale projects are evaluated to identify possible off-site traffic impacts. In In re Westgate Commons, supra, involving a 100 unit apartment complex, the Board denied the application, in part, on the ground that "additional information will be needed to determine if the existing traffic patterns can handle the increased amounts of traffic which will be generated by the project".

Commercial projects including large parking lots are reviewed in light of the Departmental Regulations for Parking Lots. To insure compliance with these regulations one applicant was required to landscape interior parking areas, (In re Shaws Shopping Center, No. 59-

4332, 6/28/78) and another was required to install divider strips in the parking lot (In re Shaws Shopping Center, No. 59-3952, 10/9/77).

In the Pittston decision the Board imposed a variety of conditions relating to the size, time and manner of operation of tankers transhipping oil at the proposed facility at Eastport. No vessel of greater than 70,000 dead weight tons is permiited to carry oil or refined products to or from the marine terminal. A Harbor Control Officer must be appointed by the Board prior to operation of the project. In addition, a number of operational practices and technical safeguards were required in order to insure safe navigation.

3. No Adverse Effect on the Natural Environment: In applying this criterion the Board is primarily concerned with protecting natural features and processes on the site itself, and with screening adjacent properties from the adverse effects of large-scale development.

Fourteen of the Board orders reviewed required preservation of Natural Buffer Strips to prevent damage to natural water bodies. The buffers ranged from ten to two hundred and fifty feet in width, with the majority either fifty or one hundred feet. Buffer strips of natural vegetation were required to be maintained adjacent to all property lines in several mining projects.

Several residential, commercial and industrial projects were conditioned to require additional measures to prevent soil erosion and sedimentation. In other than residential developments landscaping of the site is required to insure that the projects fit "harmoniously into the existing natural environment."

Inventories of critical wildlife habitat areas maintained by the Department of Inland Fisheries and Game are relied on to identify such areas and require measures for their protection. Three projects were conditioned to require buffer strips or relocation of development to avoid interference with listed Deer Wintering Areas. Important waterfowl nesting areas have also been identified by Fisheries and Game.

Applicants for waste disposal sites are generally required to conduct continuing monitoring programs to insure that leachate from the site will notcontaminate groundwater.

The approved Pittston order recognizes that this criterion also encompasses possible adverse impact on places of "historic importance"; this issue was not raised in the review of other permit applications, however. In In re Harmons Harbor Development, supra, the Boa rd conditioned approval on the preservation of a graveyard of

importance to local citizens.

In the case of developments with the potential for resulting in major adverse impacts, the Board considers effects on the general environment of the project. In the Pittston order the Board evaluated whether the proposed refinery would interfere with the development of a tidal power facility in the Bay of Fundy and what impact the influx of a major workforce would have on the local community. In In re Westgate Commons, supra, the Board denied the application for an apartment complex in Portland, in part, because the 7.8 acre site was found to be a "unique piece of habitat for small game and birds" in an extensively developed area. Finally, In re Stearns Mountain Recreational Area (No. 85-3920, 2/8/78) denied the applicant's proposal to develop a 300 site recreational vehicle compground largely because so intensive a development was found to be incompatible with the rural atmosphere and scenic character of the areas.

4. Soils Types: Soil types are a primary concern in evaluating the suitability of proposed sites for residential subdivisions with individual septic disposal systems. The Division of Health Engineering in the Department of Human Services evaluates whether the soils on each lot are appropriate for subsurface disposal systems based on the State Plumbing Code. This information provides the basic standard for the Board's determination whether to allow development of each lot. If lots do not meet the Plumbing Code or if the soils information supplied by the applicant is inadequate, deed covenants are imposed either prohibiting on-site disposal or requiring Board review of adequate soils information prior to installation of such systems. To insure safe sewage disposal, the Board may require that several of the proposed lots be combined or that a specific type of subsurface disposal system be employed. In In re Atwater Subdivision (No. 86-3982, 10/26/77) the Board approved the proposed subdivision only after the applicant arranged for the disposal of sewage on adjacent property that was suitable for subsurface disposal systems. The Board also considers the suitability of particular soil type/land use combinations using the Soil Suitability Guide for Land Use Planning in Maine.

In order to satisfy this standard an applicant is also required to provide for the control of soil erosion and sedimentation both during and after construction. Fifteen of the permit orders reviewed imposed conditions requiring additional design specifications for drainage ditches and requiring the application of seed and fertilizer to stabilize disturbed soil.

Conditions are imposed on orders approving waste disposal sites to insure that the projects comply with the regulations for sludge disposal sites including appropriate application rates for

the site soil classification, and groundwater and soil water monitoring programs. Applicants for solid waste disposal sites are required to insure that a prescribed distance, generally four or five feet, is maintained between the waste material and groundwater.

Maine Department of Environmental Protection
Bureau of Land Quality Control
State House
Augusta, Maine 04333
Telephone: 289 2111

Applic. No. _____
(To be filled in by DEP)

APPLICATION FOR PROJECT APPROVAL UNDER THE SITE LOCATION OF DEVELOPMENT LAW (38 MRSA § 481-488)

PLEASE TYPE OR PRINT:

Name of Applicant: _____

Address: _____

Telephone Number: _____

Local Contact (Name & Tel. No.) _____

Location of Activity

Name of Project: _____

Street or Route Number: _____

Municipality or Township: _____

County: _____

By signing this application the applicant certifies that he has (1) published the public notice once in a newspaper circulated in the area where the project is located, (2) sent a copy of the notice form to the owners of property abutting the land upon which the project is located, (3) sent a copy of the public notice form to the chief municipal officer and chairman of the municipal planning board, and (4) filed a duplicate of this application in the municipal office.

DATE: _____ NAME: _____

TITLE: _____
(If other than applicant, attach letter of agent authorization)

IF APPLICANT IS A CORPORATION ATTACH CERTIFICATE OF GOOD STANDING FROM THE SECRETARY OF STATE OF MAINE

(Revised 3/77)

INSTRUCTIONS

SITE LOCATION APPLICATION

1. *Fill out the application completely. Incomplete applications will be returned.*
2. Publish the public NOTICE once in a newspaper circulated in the area where the project is located. (A form is provided for this and is attached to this application.) The notice should appear in the paper during the week the application is filed with this department
3. Send a copy of the NOTICE form attached to this application to the owners of property abutting the project. Their names and addresses can be obtained from town tax maps or local public officials. Abutters should receive notice during the week the application is filed with this department.
4. Send a copy of the NOTICE form attached to this application and a duplicate of the application to the Municipal Office, or if the project is located in an unorganized area send the duplicate to the Office of the County Commissioners.
5. Attach a complete copy of deed, lease, purchase option, or other evidence of your title, right or interest in the property.
6. If any site plans, drawings, soils maps, or other data are on sheets larger than 8½ X 14", 11 copies must be submitted. If information is on 8½ X 14" sheets, or smaller, only one copy is needed.
7. Send the application along with all attachments to: The Department of Environmental Protection, Bureau of Land Quality Control, State House, Augusta, Maine 04333. If any item is missing, the application will be returned.

NOTE

Be sure to send your application in well in advance of the date on which you plan to start the project. Processing may require 30 to 45 days.

The Department does not require that the application or plan be prepared by professionals. However, past experience indicates that professional assistance is helpful and in many instances this advice can be used to overcome site limitations through proper design.

1. State below the objectives of the project as proposed, including, as appropriate, number of lots, si. buildings, parking lots, etc.

_____

_____

_____

_____

2. If the project is an expansion of an existing project or facilities, submit a brief summary of all perti aspects of the existing facilities and/or the larger project.

_____

_____

3. a. State approximate date for start of construction_____

   b. State approximate date for completion of construction_____

4. Insert below the number of acres:

   Included in the project _____

   Owned _____

   Leased _____

   Optioned _____

   Other (Explain_____

5. What is the existing use of the site (farmland, wood lot, commercial, etc.)? _____

_____

6. a. State below the estimated total cost of the project, as proposed in this application, and itemize n categories, including estimated costs of activities to be devoted to minimizing or preventing ad effects on the surrounding environment during construction and/or operation of this project.

Legal	_____	Water Supply	_____
Surveys	_____	Landscaping	_____
Roads	_____	Erosion Control	_____
Sewers	_____	Other	_____
Structures	_____	TOTAL	_____

   b. Attach a statement as to how you plan to finance the project. If the costs involve more than nc legal fees and surveying, personal or corporate financial statements or a specific letter from a bar other reliable financing source are required.

7. Describe below the surface drainage characteristics of the site.

   Does it abut or include a water body _____

   What is the water body (name) _____

   Nature of shoreline (rocky, sandy, wooded) _____

   Will changes in surface drainage affect other properties (explain) _____

_____

   General slope of ground in area (flat, steep, etc.) _____

   Any portion of site subject to flooding or ponding (describe) _____

_____

_____

8. Submit the appropriate U.S.G.S. topographic map which includes the project site. Indicate on the map:

   (a) Location of boundaries of the project as proposed.

   (b) Location of boundaries of all property involved in a larger project of plan, if any.

9. Submit 11 copies of site plans, drawn to a scale sufficient to show all details and be entirely ledgible: (Recommended Scale 1" = 100')

   (a) Location, function and ground area of all structures and facilities.

   (b) Location, ground area of parking lots and length of all roads.

   (c) The nature and extent of any site work such as filling, grading, drainage, dredging, etc.

   (d) The nature and extent of any proposed construction or facilities related to the project.

10. Attach the results of an on-site soil investigation done by a qualified evaluator including a soils map to the same scale as the site plan. If it does not interfere with other information, the soils designations, lines of demarcation and test pit locations may be shown directly on the site plan. If the application is for a subdivision test pits must be made and reported on each proposed lot. All other applications should have test pits made in areas of proposed subsurface sewage disposal and/or construction location.

11. Attach plans and statements indicating measures which will be followed to control erosion and sedimentation during both the construction phase and after completion of the project. These should include, but not be limited to the following:

   (a) Drainage and slope data to include location and size of culverts, areas to be riprapped, location and typical cross-section of drainage ditches.

   (b) For areas to be seeded indicate seed mixture by percent, type of fertilizer, application rates (pounds/100 square feet) of seed, fertilizer and lime.

   (c) Areas to be mulched and type of mulch.

   (d) Sedimentation pond location and appropriate engineering data where applicable.

   (e) Schedule of approximate dates for implementation for a. through d. above.

12. Check how water is to be supplied to the site:

_____ Individual wells (by lot owners)

_____ Central well(s) with distribution lines (by applicant)

_____ Off site utility company or public agency

_____ Other (explain) _____

13. If water is to be supplied by a method other than individual wells, state the name and address of the person or agency responsible for the quality and maintenance of such supply and the installation schedule. Provide a letter assuring that proper service is, or will be, available. _____

_____

14. If the water supply is to come from a well(s) attach data establishing that a sufficient quantity and quality of water is available for the estimated needs. (For example, a letter from a local well driller or data from a test well.)

15. Check how sewage is to be disposed of:

_____ Individual septic tanks (by lot owners)

_____ Central on site disposal with collection lines (by applicant)

_____ Off site utility company or public agency

_____ Other

16. If sewage disposal is to be provided by a method other than individual septic tanks, state the name and address of the person or agency responsible for the maintenance of such system and the installation schedule. Provide a letter assuring that proper service is, or will be, available. _____

_____

_____

17. (a) If the proposed project will discharge any liquid waste from any commercial or industrial processing, or any sewage, into any stream, river, pond, lake or other body of water, including tidal waters, provide the following information:

BODY OF WATER	TYPE OF DISCHARGE	QUANTITY (Gal/Day)

(b) Has a waste discharge license been applied for from the Department of Environmental Protection, Bureau of Water Quality Control? Check One. YES ☐ NO ☐

18. If other than residential subdivision, state below the volume and nature of all solid waste products (rubbish, garbage, storrgage, etc.) to result from the proposed project and indicate method of collection and location of ultimate disposal.

_____

_____

19. State below the present condition of the public access routes to the proposed project, including the type, condition, and width of road surface and number of travel lanes.

_____

_____

_____

_____

20. State below the nature of the interior roads and parking system within the proposed project, including the type and width or road surface, length of roads, number of lanes, parking areas and capacity, the width of right-of-way, and the estimated completion schedule. If roads are to be built "to town standards" attach a copy of these standards. Plans must include a typical cross section of roads proposed.

_____

_____

_____

_____

_____

21. Attach statement of road and/or parking lot maintenance responsibility. (If the road(s) are to be dedicated as a town road, indicate who will maintain the road until the town accepts responsibility.)

22. If project is other than a subdivision, state plans for landscaping and show details on site plan or a separate landscaping plan. Landscape plans should include as a minimum: species type and location of trees and/or shrubs, size of trees and/or shrubs, planting dates.

23. If other than residential subdivision state below the estimated average number of vehicles per day anticipated on or using the site.

_____

24. If other than residential subdivision, state below the manner in which police and fire service requirements of the proposed project will be provided.

_____

_____

_____

25. Check or add to the list below, all environmental or land use licenses, permits or authorizations which are or may be, required from any governmental agency. Indicate those now held with an asterisk. (*)

Building Permit	_____	Local Subdivision Approval	_____
Plumbing Permit	_____	Highway Entrance Permit	_____
Zoning Variance	_____	Other	_____
Air Emission License	_____	_____	
Waste Discharge License	_____	_____	

26. State below whether the proposed development will require the installa . of advertising signs, display lighting, or any similar device which might have an impact on the surrounding environment.

Check One: Yes ☐ No ☐ (If yes, explain)

_____

27. Attach a copy of any deed covenants, restrictions and/or association agreements to be imposed on prospective purchasers and/or occupants of the development.

28. List below the names and addresses of the owners of abutting property.

NAME	ADDRESS

CHECK APPLICATION FOR COMPLETENESS

NOTE: Use this form or one containing identical information.

NOTICE

(To owners of abutting property, municipal officials and newspapers)

Please take notice that _____
(Name of Applicant)

_____
(Address of Applicant)

is filing an application for a Site Location Permit with the Maine Department of Environmental Protection pursuant to the Provisions of Title 38 MRSA Sec. 481-489 to: _____

_____
(State specifically what is to be done)

_____

_____

_____

_____

_____

in the town of _____
(Name of Municipality)

The application will be filed for public inspection at the Department's Office in Augusta and at the municipal offices on _____, 19____.
(Date)

Written comments from any interested person must be sent to the Department of Environmental Protection within 14 days of filing of the application to receive consideration.

CHAPTER 4

PROTECTION AND IMPROVEMENT OF AIR

Cross References

Solid waste management act, regulations not to exceed standards authorized by this chapter, see § 1304, subsec. 1 of this Title.

§ 581. Declaration of findings and intent

The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing.

The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.

Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.

1969, c. 474, § 1.

Amendments:

—1969. Chapter new.

§ 582. Definitions

As used in this chapter:

1. "Air contaminant" includes, but is not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

2. "Air contamination source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores; heating and power plants and stations; building and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings; garages and vending and service locations and stations, railroad locomotives, ships, boats and other water-borne craft; portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and pil and all machinery, equipment, stack, conduit, flue, duct, vent, chimney or oc apparatus leading out of any of the foregoing.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics an duration as to be injurious to human, plant or animal life or to property, which unreasonably interfere with the enjoyment of life and property throu out the State or throughout such areas of the State as shall be affected the by; excluding, however, all air conditions subject to the requirements of employer-employee contracts, and state or local labor laws and industrial codes insofar as these excluded air conditions are confined to and exist solely wit the property boundaries of the person giving rise to that air condition.

4. "Air pollution control apparatus" means and includes any means, meth process or equipment which removes, reduces or renders less noxious the emission of air contaminants into ambient air.

5. "Ambient air" means all air outside of buildings, stacks or exterior du

5-A. Best practical treatment. "Best practical treatment" means t method which controls or reduces emissions of air contaminants to the low possible level considering:

A. The then existing state of technology;

B. The effectiveness of available alternatives for reducing emissi from the source being considered;

C. The economic feasibility for the type of establishment involved.

6. "Commission" means the Water and Air Environmental Improvement Commission.

7. "Emission" means a release of air contaminants into ambient air.

7-A. Emission source. "Emission source" means any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.

7-B. Fuel-burning equipment. "Fuel-burning equipment" means any f nace, boiler, apparatus, stack and all appurtenances thereto, used in the pr ess of burning fuel for the primary purpose of producing heat or power by indirect heat transfer.

7-C. Fugitive dust. "Fugitive dust" means solid air-borne particula matter emitted from any source other than a flue or stack.

7-D. General process source. "General process source" means any em sion source, except fuel-burning equipment, incinerators, mobile sources, ope burning sources and sources of fugitive dust.

7-E. Incinerators. "Incinerators" means any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire a material or substance, and shall be classified as follows:

A. Class I. Portable, packaged, completely assembled, direct fed inc erators 5 to 15 cubic feet primary chamber volume or a burning rate of 25 to 100 pounds per hour of type 1 or type 2 waste or a burning rate of 25 to 75 pounds per hour of type 3 waste;

B. Class I-A. Portable, packaged or job assembled, direct feed inci ators with 5 to 14 cubic feet primary chamber volume or a burning r of 25 to 100 pounds per hour of type 1 or type 2 waste or a burning rate of 25 to 75 pounds per hour of type 3 waste;

C. Class II. Flue-fed, single chamber incinerators with more than square feet burning area, for type 2 waste. This type of incinerator served by one vertical flue functioning both as a chute for charg waste and to carry the products of combustion to atmosphere;

D. Class II-A. Chute-fed multiple chamber incinerators, with more than 2 square feet burning area, suitable for type 1 or type 2 was This type of incinerator is served by a vertical chute for charging was

from 2 or more floors above the incinerator and a separate flue for carrying the products of combustion to the atmosphere;

E. Class III. Direct-fed incinerators with a burning rate of 100 pounds per hour and over, suitable for type 3 waste;

F. Class IV. Direct-fed incinerators with a burning rate of 75 pounds per hour or over, suitable for type 3 waste;

G. Class V. Municipal incinerators suitable for type 0, type 1, type 2 or type 3 wastes, or a combination of all 4 wastes, with a rated capacity expressed in tons per 24 hours;

H. Class VI. Crematory and pathological incinerators, suitable for type 4 waste;

I. Class VII. Incinerators designed for specific by-product wastes, type 5 or type 6.

7-F. Modification. "Modification" means any physical change to or change in the method of operation of any emission source which increases the amount of any air pollutant, to which a standard applies, emitted by such facility or which results in the emission of any air pollutant, to which a standard applies, not previously emitted, except that:

A. Routine maintenance, repair and replacement shall not be considered physical changes and

B. The following shall not be considered a change in the method of operation:

(1) An increase in production rate, if such increase does not exceed the operating design capacity of the emission source of any component thereof;

(2) An increase in hours of operation;

(3) Use of an alternative fuel or raw material if, prior to the date any standard under this chapter becomes applicable to such emission source, such source is designed to accommodate such alternative use.

8. "Municipality" includes, for purposes of enacting an air pollution control ordinance, only cities and organized towns.

8-A. Opacity. "Opacity" means the degree of light obscuring capability of nonblack visible air contaminant expressed as a percentage. Complete opacity shall be expressed 100%.

8-B. Open burning. "Open burning" means the burning of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

9. "Person" means any individual, partnership, corporation, whether private, public or quasi-municipal, municipality, state governmental agency or other legal entity.

9-A. Process weight rate. "Process weight rate" means the average total weight of all materials, not including any gaseous or liquid fuels or combustion air, introduced into any manufacturing, industrial or combustion process that may result in the emission of particulate matter to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

10. "Region" means air quality regions established pursuant to section 583.

Additional words, terms and phrases, whether used in this chapter or not, may be defined for purposes of this chapter by the commission by regulation, but in no case may a definition established by this section be altered by commission regulation.

11. Ringelmann Chart. "Ringelmann Chart" shall mean the chart published and described in the U. S. Bureau of Mines Information Circular 8333, on which are illustrated graduated shades of gray for use in estimating the light obscuring density or opacity of any black emissions or any other such device which may be approved by the board.

12. Waste. "Waste" means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source which shall be classified as follows:

A. Type 0. Trash, a mixture of highly combustible waste such as paper, cardboard cartons, woodboxes and combustible floor sweepings from commercial and industrial activities. The mixtures contain up to 10% by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps. This type of waste contains about 10% moisture and 5% incombustible solids and has a heating value of approximately 8500 B.T.U. per pound as fired.

B. Type 1. Rubbish, a mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings from domestic, commercial and industrial activities. The mixture contains up to 20% by weight of restaurant or cafeteria waste, but contains little or no treated papers, plastic or rubber wastes. This type of waste contains about 25% moisture and 10% incombustible solids and has a heating value of approximately 6500 B.T.U. per pound as fired.

C. Type 2. Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to 50% moisture, 7% incombustible solids and a heating value of approximately 4300 B.T.U. per pound as fired.

D. Type 3. Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to 70% moisture and up to 5% incombustible solids and has a heating value of approximately 2500 B.T.U. per pound as fired.

E. Type 4. Human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds and similar sources, consisting of up to 85% moisture, 5% incombustible solids and having a heating value of approximately 1000 B.T.U. per pound as fired.

F. Type 5. By-product waste, gaseous, liquid or semi-liquid, such as tar, paints, solvents, sludge, fumes, etc., from industrial operations. B.T.U. values must be determined by the individual materials to be destroyed.

G. Type 6. Solid by-product waste, such as rubber, plastics, wood waste, etc., from industrial operations. B.T.U. values must be determined by individual materials to be destroyed.

1969, c. 474, § 1; 1973, c. 433, §§ 1 to 6.

Amendments:
—1973. Added subsecs. 5-A, 6-A, 7-A to 7-F, 8-A, 8-B, 9-A, 11 and 12.
—1969. Enacted this section.

Changes of name. Water and Air Environmental Improvement Commission as meaning Environmental Improvement Commission: and latter as meaning Board of Environmental Protection, see note under § 361 of this Title.

§ 583. Establishment of air quality regions

The commission may establish reasonable air quality regions within the State for the purposes of conducting air quality studies, and establishing reasonable ambient air quality standards and emission standards therein.

The following air quality regions, established by the commission are adopted:

1. Metropolitan Portland Air Quality Region. The Metropolitan Portland Air Quality Region shall consist of the Counties of York, Cumberland, Sagadahoc and the municipalities of Brownfield, Denmark, Fryeburg, Hiram and Porter in the County of Oxford.

1-A. Portland Peninsula Air Quality Region. The Portland Peninsula Air Quality Region shall consist of that section of the City of Portland bordered on the west by Interstate 95, on the south and east by the Fore River and on the north by Casco Bay and the inlet to Back Bay.

[*See 1973 Supplementary Pamphlet for text of 2 to 5*]

1975, c. 669, § 1.

Amendments:
—1975. Subsection 1-A: Added by c. 669.

2. **Central Maine Air Quality Region.** The Central Maine Air Quality Region shall consist of the Counties of Androscoggin, Kennebec, Knox, Lincoln and Waldo; of the municipalities of New Portland, Embden, Solon, Athens, Harmony, Cambridge, Ripley and all other municipalities in Somerset County to the south of these; of the municipalities and unorganized territory of Township No. 6, Phillips, Salem Township, Freeman Township and all other municipalities and unorganized territory in Franklin County to the south of these; and of the municipalities and unorganized territory of Stow, Batchelder, Grant, Gilead, Riley T. A. No. 1, Grafton T. A. No. 2, Andover North Surplus, Byron and all other municipalities in Oxford County to the south and east of these with the exception of those municipalities within the Metropolitan Portland Air Quality Region.

3. **Downeast Air Quality Region.** The Downeast Air Quality Region shall consist of the Counties of Hancock and Washington; of the municipality of Stacyville, the unorganized territory of T. 3, R. 7, W.E.L.S., T. 3, R. 8, W.E.L.S. and all other municipalities and unorganized territory in Penobscot County to the south of these; and of the municipalities and unorganized territory of Blanchard Plantation, Monson, Willimantic, Bowerbank, Barnard Plantation, T. 6, R. 8, W.E.L.S. (Williamsburg Township), Brownville, Lake View Plantation and all other municipalities and unorganized territory in Piscataquis County to the south of these.

4. **Aroostook Air Quality Region.** The Aroostook Air Quality Region shall consist of all municipalities and unorganized territory in Aroostook County not included within the Northwest Air Quality Region.

5. **Northwest Maine Air Quality Region.** The Northwest Maine Air Quality Region shall consist of the municipality of Upton, the unorganized territory of C Surplus Township, C Township and all other municipalities and unorganized territory in Oxford County to the north of these; the municipalities and unorganized territory of D Township, E Township, Madrid, T. 4, R. 1, B.K.P., W.K.R., Kingfield and all other municipalities and unorganized territory in Franklin County to the north of these; of the municipalities and unorganized territory of Lexington Plantation, Concord Township, Bingham, Brighton Plantation and all other municipalities and unorganized territory in Somerset County to the north of these; of the municipalities and unorganized territory of Shirley, Elliottsville Plantation, T. 7, R. 9, W.E.L.S., T. 6, R. 9, W.E.L.S. (Katahdin Iron Works), T. 5, R. 9, W.E.L.S., T. 4, R. 9, W.E.L.S. and all municipalities and unorganized territory in Piscataquis County to the north of these; of the municipality of Patten, the unorganized territory of T. 4, R. 7, W.E.L.S., T. 4, R. 8, W.E.L.S., and all other municipalities and unorganized territory in Penobscot County to the north of these; and the municipality of St. Francis, the unorganized territory of T. 16, R. 9, W.E.L.S., T. 15, R. 9, W.E.L.S., T. 14, R. 9, W.E.L.S., T. 13, R. 9, W.E.L.S., T. 12, R. 9, W.E.L.S., T. 11, R. 9, W.E.L.S., and all other municipalities and unorganized territory in Aroostook County to the west of these.

1969, c. 474, § 1; 1971, c. 346.

§ 583-A. Repealed. 1977, c. 300, § 39

The repealed section, relating to regulations for hearing and applications, was derived from 1975, c. 282, § 1.

§ 584. Establishment of ambient air quality standards

The commission shall establish and may amend reasonable standards, herein called "ambient air quality standards," within a reasonable air quality region regulating and limiting the amount and types of air contaminants which may exist in the ambient air of such region. Such standards shall be designed to preserve or enhance the quality of ambient air within such region and to prevent air pollution.

Prior to the establishment or amendment of ambient air quality standards, the board shall conduct a public hearing in some municipality within the region, and shall give public notice of its intent to establish standards for the region.

At such hearing the commission shall solicit and consider testimony concerning the existing quality of the ambient air within the region; the recreational, industrial and residential uses of land within the region; the effects of existing air contaminants and air pollution upon such uses; the availability and effectiveness of air pollution control apparatus designed to control and reduce such existing air contaminants and air pollution; the expense of purchasing and installing the same, and such other evidence as in the commission's judgment will enable it to determine and establish the standards of air quality necessary to prevent air pollution within the region.

After hearing the commission shall by order establish or may amend reasonable ambient air quality standards for the region, regulating and limiting the amount and type of air contaminants which may exist in the ambient air of such region, which standards shall be designed to achieve the purposes set forth in the first paragraph of this section. The order shall state the date upon which such standards, or any of them, become effective, and such regions and standards shall thereafter be in effect until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such air quality regions and standards.

In establishing such effective date, the commission shall consider the degree of air pollution existing within the region, the length of time necessary to inform persons affected by the establishment of such standards of their existence, the time needed by the commission to implement effective controls, and the time needed by persons affected to design and install air pollution control apparatus to comply with such standards.

1975, c. 282, § 2.

Amendments:

—1975. In 2nd paragraph, deleted from end "and of the date, time and place of the hearing by publication in some newspaper of general circulation throughout the region, or if none, in the state paper; the date of the first publication to be at least 45, and the date of last publication to be at least 3, days before the date of the hearing".

United States Supreme Court

Georgia. Approval of state plans for achieving federal ambient air quality standards, see Train v. Natural Resources Defense Council, Inc., 1975, 95 S.Ct. 1470.

§ 584-A. —Enactment

The ambient air quality standards set forth in this section, which are expressed in terms of 25° centigrade and 760 millimeters of mercury pressure, shall apply in all air quality regions:

1. **Particulate matter.**

A. Particulate matter concentration for any 24-hour period at any location shall not exceed 100 micrograms per cubic meter.

B. The annual geometric mean of the 24-hour particulate matter concentrations at any location shall not exceed 50 micrograms per cubic meter.

2. **Sulfur dioxide.**

A. Sulfur dioxide concentration for any 3-hour period at any location shall not exceed 1150 micrograms per cubic meter.

B. Sulfur dioxide concentration for any 24-hour period at any location shall not exceed 220 micrograms per cubic meter.

C. The annual arithmetic mean of the 24-hour average sulfur dioxide concentrations at any location shall not exceed 57 micrograms per cubic meter.

3. **Carbon monoxide.**

A. Carbon monoxide concentration for any 8-hour period at any location shall not exceed 10 milligrams per cubic meter, except once per year.

B. Carbon monoxide concentration for any 1-hour period at any location shall not exceed 40 milligrams per cubic meter, except once per year.

4. **Photochemical oxidant.** Photochemical oxidant concentration for any 1-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

5. **Hydrocarbon.** Hydrocarbon concentration for any 3-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

6. **Nitrogen dioxide.** The annual arithmetic mean of the 24-hour average nitrogen dioxide concentration at any location shall not exceed 100 micrograms per cubic meter.

1972, c. 570.

Amendments:

—1972. Enacted this section.

Cross References

Solid waste management act, regulations not to exceed standards authorized by this chapter, see § 1304, subsec. 1 of this Title.

§ 585. Establishment of emission standards

The commission may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable.

Prior to the establishment or amendment of emission standards, the commission shall conduct a public hearing in some municipality within the region. At such hearing the commission shall solicit and consider testimony concerning the ambient air quality standards of the region; the existing emissions of air contaminants within the region, their nature, amount and sources; the effect of such emissions upon the ambient air quality standards of the region; the availability, effectiveness and cost of air pollution control apparatus designed to prevent and control air pollution caused by such emissions, and such other evidence as in the commission's judgment will enable it to determine and establish emission standards for the region which will achieve and maintain the ambient air quality standards therein.

§ 585-A. Establishment of standards

The commission may, after the establishment of ambient air quality standards and emission standards, establish and amend reasonable standards and regulations to implement ambient and emission standards established by the commission. Such standards and regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and the prevention of air pollution.

Prior to the establishment or amendment of such standards and regulations the commission shall conduct a public hearing thereon. At such hearing the commission shall solicit and receive testimony concerning applicable ambient air quality and emission standards; the availability, effectiveness and cost of any air pollution control apparatus designed to prevent or control air pollution or violations of ambient air quality or emission standards which would be required by any proposed standards or regulations; and such other evidence as in the commission's judgment will enable it to determine and establish standards and regulations adequate to maintain applicable ambient air quality and emission standards.

After hearing the commission shall by order establish or amend reasonable standards and regulations which shall be designed to achieve the purposes set forth in the first paragraph of this section. The order shall state the date upon which such standards and regulations or any of them, become effective, and such standards shall thereafter be in effect until 90 days after the date of adjournment of the next regular or special session of the Legislature unless such next regular or special session shall adopt by legislative enactment such standards.

1977, c. 300, § 41.

Amendments:
—1977. Chapter 300, § 41 repealed the 2nd sentence of the 2nd paragraph.

§ 586. Subpoena power

The commission may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any commission hearing.

If any person served with such subpoena claims, at or before the hearing that the production by him of books, records or other data under his control is sought, that such production may disclose secret processes, formulae or methods used by him or under his direction, such information from such books, records or other data shall be disclosed at a nonpublic portion of the hearing and the record thereof shall be confidential.

If any person refuses to obey a subpoena issued by the commission under this section, the commission may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. Such justice may issue such order and may punish failure to obey the same as a contempt thereof.

1969, c. 474, § 1.

§ 587. Variances

Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the commission for a variance from ambient air quality standards or emission standards promulgated under this chapter. The application shall be accompanied by such information and data as the commission may reasonably require. The commission may grant such variance if it finds that:

1. The emissions occurring or proposed to occur do not endanger human health or safety; and

2. Compliance with the rules or regulations from which variance is sought would produce serious hardships.

No variance shall be granted except after a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought.

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the commission may prescribe.

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the commission finds is requisite for the taking of the necessary measures.

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections 1 and 2, it shall be only for such time as the commission considers reasonable.

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commission on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the commission finds that renewal is justified. No renewal shall be granted except on application therefor.

Any person adversely affected by a variance or renewal granted by the commission may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 347, subsection 2, to any person or his property.

1973, c. 682, eff. Feb. 19, 1974; 1975, c. 282, § 3; 1977, c. 300, § 42.

Amendments:
—1977. Chapter 300, § 42 substituted "347, subsection 2," for "593" in the last paragraph.
—1975. Repealed and replaced 2nd paragraph.
—1973. In 1st sentence of 2nd paragraph added at the end ", unless there are * * * within that region".

§ 588. Repealed. 1977, c. 300, § 43

The repealed section, requiring a transcript to be made of all hearings, was derived from 1969, c. 474, § 1.

§ 589. Registration; penalties

The commission may require the registration with it of such persons or air contamination sources of the type it may by regulation prescribe engaged in activities which emit air contaminants, and may also require persons operating stationary air contamination sources to install, maintain and use such reasonable emission monitoring devices as the commission by regulation may prescribe.

The commission may also require such persons to make periodic reports to it containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus, and such other information as the commission may by regulation prescribe.

Failure to register, to install, maintain and use emission monitoring devices or to file reports shall render the failing party liable to the penalties prescribed in sections 348 and 349 for violation of board orders.

1977, c. 300, § 44.

Amendments:
—1977. Chapter 300, § 44 substituted "348 and 349" for "595 and 596" in the last paragraph.

§ 590. Licensing

After ambient air quality standards and emission standards have been established within a region, the commission may by regulation provide that no person shall operate or maintain therein any air contamination source or emit any air contaminants therein without an emission license from the commission.

Application for such licenses shall be made in such form and contain such information relating to the proposed air contamination source and emission of air contaminants as the commission may by regulation prescribe. Within 30 days of receipt of a properly completed application, the commission shall either grant the license, deny the license or order a hearing thereon. Within 10 days after notice of the grant or denial of any application under this section, the applicant may request a hearing thereon. All hearings under this section shall be held in some municipality within the region where the proposed emission is to be located within 30 days of receipt of an application where the commission orders a hearing thereon, or within 30 days of receipt by the commission of a request by the applicant for a hearing. At such hearing, the commission shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which license is sought at the levels required by law; and the expense of purchasing and installing such apparatus. If after hearing the commission shall find that the proposed emission will be receiving the best practicable treatment, will not violate applicable emission standards, or can be controlled so as not to violate the same, and that such proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable conditions thereon as may, in the commission's judgment, be necessary to secure compliance with such standards.

1975, c. 282, § 4.

Amendments:
—1975. Repealed 5th sentence of 2nd paragraph.

Cross References
Delegation of authority by Board of Environmental Protection, see § 361 of this Title.

§ 591. Prohibitions

No person shall discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established by the commission pursuant to section 584 or emission standards so established pursuant to section 585.

Where the commission, pursuant to section 590, has by regulation provided that no person shall operate or maintain within a region any air contamination source or emit any air contaminants without an emission license from the commission, such operation or maintenance without license is prohibited.

1969, c. 474, § 1; 1971, c. 462, § 7.

Amendments:
—1971. In 2nd paragraph, deleted "additional" before "air".
—1969. Enacted this section.

§§ 592 to 596. Repealed. 1977, c. 300, §§ 45 to 48

The repealed sections, relating to violations, appeals, enforcement, and penalties, were enacted by 1969, c. 474, § 1. Prior to repeal, they were amended by:
1971, c. 256, § 6.
1971, c. 618, § 12.
1973, c. 438, § 7.
1975, c. 282, § 5.

Notes of Decisions Under Former Section 594

1. In general
Notwithstanding that attack of public interest and environmental groups upon legality of the board of environmental protection's issuance of a site location of development permit was on grounds involving only control of "air emissions" and "discharge into classified bodies of water", where appeals could be viewed as asserting aggrievements arising from alleged illegalities in issuance of permit under the site location of development law, as said illegalities relating to air emissions and discharge into classified bodies of water were claimed to arise under criteria expressly delineated in the site law, issues raised were cognizable as subject matter appropriate for appeal to the Supreme Judicial Court without prior resort to the superior court. Matter of Intern. Paper Co., Androscoggin Mill Expansion (1976) Me., 361 A.2d 235.

While the Supreme Judicial Court was required to exercise limited appellate jurisdiction over appeal from order of the board of environmental protection which approved major expansion of paper mill and issued, in relation thereto, a "site" permit and "air emission" and "waste discharge" licenses, because of issues under this section where present disposition of merits of issues legitimately raised in appeal under site law did not decide merits of any claims under the air and water pollution control laws within jurisdiction of superior court, Supreme Judicial Court would not exercise a "pendent" jurisdiction to decide air and water law issues. Id.

§ 597. Municipal air pollution control

Nothing in this chapter shall be construed as a preemption of the field of air pollution study and control on the part of the State. Municipalities may study air pollution and adopt and enforce air pollution control and abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard, order or other action promulgated pursuant to this chapter. Local ordinance provisions which touch on matters not dealt with by this chapter or which are more stringent than this chapter shall bind persons residing in the municipality.

1969, c. 474, § 1.

Amendments:
—1969. Enacted this section.

§ 598. Visible emissions

1. Scope. This section shall be effective in all ambient air quality regions in the State of Maine as follows:

A. Immediately for all emission sources, the construction or operation of which begins after January 31, 1972;

B. October 1, 1973 for all existing sources.

2. Prohibition. No person shall emit or cause to be emitted any visible contaminants from any emission source that exceeds a number 2 on the Ringelmann Chart or an opacity of 40% except for periods of not exceeding 5 minutes in any one hour or 15 minutes in any continuous 3-hour period.

3. Exemptions. This section shall not apply to emissions of water vapor, incinerators, air contaminants emitted for the purpose of research training or recreation and so certified by the board and permitted open burning. Existing general process sources which are otherwise granted a longer period of time to comply with section 592 shall be exempt from this section until such time as such standard becomes applicable.

1973, c. 438, § 5.

§ 599. Open burning

1. Prohibitions

A. Open burning of tires or rubber products or by-products is prohibited after July 1, 1972;

B. Except as provided in subsection 2, open burning of waste of any kind at sites other than a municipal solid waste disposal site is prohibited after July 1, 1975.

C. Open burning of solid waste material at a municipal solid waste disposal site serving less than 1,000 persons shall only be prohibited where the Board of Environmental Protection, after investigation and hearing, shows that the continuance of open burning at a specific municipal site is in violation of air quality standards.

D. Open burning of solid waste materials at a municipal solid waste disposal site serving 1,000 or more persons is prohibited after September 1, 1975, unless the owners and lessee of the municipal solid waste disposal site apply for a variance under this section from the Board of Environmental Protection.

While an application for a variance is being processed by the Department of Environmental Protection, open burning at the municipal site in question may continue until the board makes its final decision on the application.

E. Whenever the Board of Environmental Protection shows that open burning at a municipal solid waste disposal site violates air quality standards or whenever the board denies a variance under this section it shall, after consultation with the violator or applicant for a variance, establish a reasonable compliance schedule aimed at bringing about the cessation of open burning at the municipal waste disposal site under consideration. This compliance schedule shall include, but not be limited to, the following:

(1) Arrangements for administration and financing;
(2) Plans and specifications;
(3) Studies and investigations;
(4) Site acquisition;
(5) Purchase of necessary equipment; and
(6) Operational date of the proposed solid waste disposal site.

A compliance schedule established under this section shall be conditioned upon reasonable terms and conditions aimed at achieving air quality standards and shall be for a time of not less than 2 years.

2. Exemptions. Open burning may be permitted for the following purposes provided a permit is obtained pursuant to subsection 3:

A. Open burning for the control or prevention of any disease, virus or similar hazard to public health;

B. Open burning for agricultural purposes such as land clearing, blueberry control or burning for similar prescribed cultural purposes;

C. Open burning for the disposal of any material generated by the demolition of any building or the clearing of any land for the erection, modification, maintenance or construction of any highway, railroad, power or communication line or pipeline, or commercial or industrial or recreational building or development;

D. Open burning for training, research and recreational purposes provided that fires for recreational purposes on a person's own property do not require a permit.

3. Open burning permits. Open burning permits may be granted by the forest ranger or town forest fire warden having jurisdiction over the location where the fire is to be set. Should complicated circumstances warrant, the ranger or warden may refer the person requesting such a permit to the commissioner for approval of paragraph A, B and C. Such permits will be issued if it is determined:

A. There is no local, private or municipal waste collection for such materials nor any reasonably located municipal or private solid waste disposal facility to which such material may be transported or the quantity of material is such that it cannot be reasonably transported;

B. There is no other reasonable method for disposal of such materials that will not create or aggravate a hazard to public health or safety or public or private property nor violate any provision of state or local law or regulation;

C. The existing wind speed and atmospheric stagnating conditions will not create any nuisance conditions;

D. Such burning will not take place within 25 feet of a public way;

E. Such burning will take place under such conditions as will prevent the uncontrolled spread of the fire;

F. The burning will comply with all applicable regulations of the State of Maine Forestry Department and any applicable local fire regulations.

4. Reports. The progress reports listed in this subsection shall be submitted to the board on or before the date indicated by any person using open burning as a method of waste disposal:

A. November 1, 1973: Status report on forms supplied by the department;

B. April 15, 1974: A status report on forms supplied by the department indicating that the necessary studies and investigations and preparation of final plans is progressing to insure compliance with paragraph C.
Such a report should include, but is not limited to, location and method of waste disposal for which final plans are being prepared and name of in-house or contracted person responsible for the preparation of such plans;

C. October 1, 1974: Final plans for proposed waste disposal facilities including detailed engineering plans and necessary site acquisition, said final plans to be subject to board review and approval under applicable laws and regulations;

D. April 15, 1975: Copies of executed contracts or agreements necessary to implement the approved final plans including acquisition of land and acquisition, installation and construction of structures and equipment;

E. July 1, 1975: Certification of Compliance.

1973, c. 438, § 8.

[1] So in enrolled bill.

5. Variances. Any municipality maintaining or leasing an open-burning solid waste disposal site may apply to the board for a variance to the open-burning requirements of this section. The application shall be accompanied by such information and data as the board may require. The staff of the Department of Environmental Protection shall provide air quality technical assistance to municipal applicants for a variance under this section.

Whenever a municipality shows that compliance with the open burning requirements of this section would produce undue hardship, the board shall grant a variance, except that no variance shall be granted when the board shows that the emissions from the open burning endanger human health and safety.

No variance shall be granted under this section unless the municipality causes to be published a public notice of the intent to grant a variance in a newspaper circulated in the area at least 10 days prior to the meeting at which the board is scheduled to act on the variance. The board shall notify the municipality of its intent to grant a variance 20 days before the meeting scheduled to act on the variance.

The Board of Environmental Protection may conduct a public hearing on any variance application under this section if it determines that there is substantial objection to the granting of the variance. The Board of Environmental Protection, if it determines that it will deny the variance applied for, shall at the request of the municipality conduct a public hearing for the municipality which made application, before the denial becomes effective, to give the town the opportunity to show that the emissions from open burning do not endanger human health or safety and compliance with the open burning requirements of this subsection would produce serious hardship and that a variance should be granted.

The board, after granting a variance to a municipality under this section, if it determines that the municipal solid waste disposal facility does not violate air quality standards, shall take all necessary steps to remove that facility from the United States Environmental Protection Agency approved State of Maine Air Quality Implementation Plan.

1975, c. 228, §§ 2, 3, eff. May 5, 1975; 1977, c. 300, § 49.

Amendments:
—1977. Subsection 5: Chapter 300, § 49 repealed the 3rd sentence of the 4th paragraph.
—1975. Subsection 1, B: Repealed and replaced by paragraphs B to E. Subsection 5: Added.

§ 600. Fuel-burning equipment particulate emission standard

1. Scope. This section shall be applicable to all fuel-burning equipment that is fired at a rate of 3 million B.T.U. per hour or greater, regardless of fuel type, and shall be effective in all ambient air quality control regions in the State of Maine as follows:

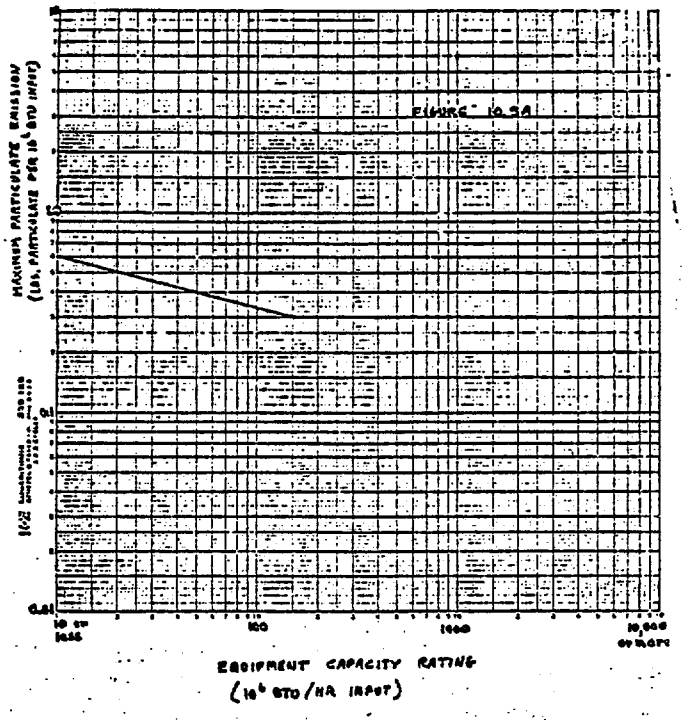
A. Immediately for all fuel-burning equipment, the construction or operation of which begins after January 31, 1972;

B. June 1, 1975 for all existing sources.

2. Emission standard. Any person operating fuel-burning equipment within the scope of this section shall limit the particulate emissions from such fuel-burning equipment in accordance with Figure A during any continuous 2-hour period.

3. Test methods and procedures. Test methods 1 and 5 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulation 60.85 published in the Federal Register, volume 36, number 247, December 23, 1971, or such other methods as are deemed equivalent by the board shall be those used to determine compliance with this section.

FIGURE A



1973, c. 438, § 8.

Amendments:
—1973. Enacted this section.

Library references
Health and Environment ⟹18.
C.J.S. Health § 21.

§ 601. Incinerator particulate emission standard

1. Scope. This section shall be applicable to all incinerators and shall be effective in all regions in the State of Maine as follows:

A. Immediately for all incinerators, the construction or operation of which begins after January 31, 1972;

B. June 1, 1975 for all existing incinerators, except existing wood waste teepee incinerators; and

C. June 1, 1980 for all existing wood waste teepee incinerators.

2. Emission standard. No person shall emit or cause to be emitted any particulate air contaminants from:

A. Any incinerator, darker than a number 1 on the Ringelmann Chart, excluding the emission of water vapor;

B. Any class III, IV, V, VI and VII incinerator having a designed charging rate of 50 tons per day or less, that exceed 0.2 grain per standard cubic foot of dry flue gas during any continuous 2-hour period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel;

Amendments:
—1975. Subsection 1, B: Chapter 669 added ", except existing wood waste teepee incinerators; and".

Subsection 1, C: Added by c. 669.

§ 602. General process source particulate emissions

1. Scope. This emission standard shall be effective in all regions in the State of Maine as follows:

A. Immediately for any process source the construction or operation of which begins after January 31, 1972;

B. June 1, 1975 for any existing general process source.

2. Kraft pulping processes. Any person operating any kraft pulping process shall limit the emission of particulate air contaminants from such emission source as follows:

Four pounds of particulate emissions per air dried ton of kraft pulp from the recovery boiler; one pound of particulate air contaminants per air dried ton of kraft pulp from the lime kiln; 0.5 pound of particulate air contaminants per air dried ton of kraft pulp from the smelt tank during any continuous 2-hour period.

3. Other processes. Any person operating any general process sources, except kraft pulping processes, shall limit the emission of particulate air contaminants from such source according to the following table:

TABLE I

Process Weight Rate (lbs./hr.)	Emission Rate (lbs./hr.)
50	0.36
100	0.55
500	1.53
1,000	2.25
5,000	6.34
10,000	9.73
20,000	14.99
60,000	29.80
80,000	31.19
120,000	33.28
160,000	34.85
200,000	36.11
400,000	40.35
1,000,000	46.72

Interpolation of Table I for process weight rates up to 60,000 lbs./hr. shall be computed by use of the following equation:

$$E=3.59P^{0.62} \qquad P < 30 \text{ tons/hr.}$$

and interpolation and extrapolation of Table I for rates in excess of 60,000 lbs./hr. shall be computed by use of the equation:

$$E=17.31P^{0.16} \qquad P < 30 \text{ tons/hr.}$$

Where E=emissions in pounds per hour and P=process weight rate in tons per hour.

All emissions from all general process sources operated by the same person in the same general location shall be combined in computing the process weight rate.

4. Test methods and procedures. Test methods 1 and 5 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulation 60.85 published in the Federal Register, volume 36, number 247, December 23, 1971 or such other methods as are deemed equivalent by the board shall be used to determine compliance with this regulation.

1973, c. 438, § 8.

§ 603. Low sulfur fuel

1. Prohibitions.

A. In the Central Maine, Downeast, Aroostook County and Northwest Maine Air Quality Regions, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight anytime after November 1, 1973. In the Metropolitan Portland Air Quality Region outside the Portland Peninsula Air Quality Region, no person shall sell, distribute, buy or use any fuel with a sulfur content greater than 2.5% by weight anytime after June 1, 1975.

B. In the Portland Peninsula Air Quality Region, no person shall use any fuel with a sulfur content greater than 1.5% by weight anytime after November 1, 1975.

C. In the Portland Peninsula Air Quality Region, no person shall use any fuel with a sulfur content greater than 1.0% by weight anytime after November 1, 1985.

2. Records. Any person importing residual oil or coal into the State of Maine shall submit to the Department of Environmental Protection a record of the sulfur content of each shipment of such fuel. Any person blending oil for use within the Portland Peninsula Air Quality Region shall submit to the Department of Environmental Protection on a monthly basis a report indicating the total volume and average sulfur content actually supplied.

3. Exemptions.

A. A source that installs one or more sulfur collecting devices that reduce sulfur dioxide emissions to the equivalent level allowed in that air quality region shall be exempt from this regulation.

B. If, during periods of energy crisis or equipment outage, an oil supplier is unable to supply conforming fuel, that supplier may apply for a temporary variance to the Commissioner of Environmental Protection. The commissioner may without hearing issue that variance for a period not to exceed 60 days if the application in his judgment meets the criteria of the applicable statutory variance requirements. Such temporary variance cannot be renewed.

1975, c. 669, § 4.

Amendments:
—1975. Section repealed and replaced by c. 669.

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1975, c. 669, § 4.

§ 604. Sulfur dioxide emission standard for sulfite pulping processes

1. Scope. The emission standard shall apply to all emissions of sulfur dioxide from sulfite pulping processes except sulphur dioxide produced from the burning of coal or petroleum fuels. This emission standard shall become effective in all regions as follows:

A. Immediately for any sulfite pulping process, the construction or operation of which begins after January 31, 1972;

B. June 1, 1975 for all existing sources.

2. Emission standard. No person shall emit or cause to be emitted any sulfur dioxide emissions from any emission source within the scope of this emission standard in excess of 40 pounds per air dried ton of sulfite pulp produced.

3. Test methods and procedures. Test methods 1 and 6 as promulgated by the Administrator of the United States Environmental Protection Agency in Regulations 60.85 as published in the Federal Register, volume 36, number 247, December 23, 1971, or such other methods as are deemed equivalent by the board shall be used to determine compliance with this regulation.

1973, c. 438, § 8.

§ 605. Malfunctions

Any person owning or operating any emission source that suffers a malfunction or breakdown in any component part which malfunction or breakdown causes a violation of sections 508 to 604 shall notify the board in writing within 48 hours.

1973, c. 438, § 8.

§ 606. Nonpoint sources or indirect sources; review of public ways

1. Prohibition. No person, firm, corporation, municipality, state agency or other entity shall commence construction of any highway project of 4 or more lanes in the State unless the Board of Environmental Protection has first determined that the project will not violate the State of Maine Ambient Air Quality Standards. The person or agency proposing to construct a highway resulting in 4 or more lanes shall submit to the Department of Environmental Protection an air quality impact analysis. This analysis shall be conducted in accordance with such mathematic modeling techniques as are mutually acceptable to the department, The Federal Environmental Protection Agency and the Federal Highway Administration.

2. Exemptions. The foregoing shall not apply, however, to highway projects that will have no significant effect on air quality, such as lights, signs, landscaping and resurfacing.

3. Scope. The requirements of this section shall apply in all the air quality regions of the State.

1975, c. 282, § 6.

Amendments:
—1975. Enacted this section.
Effective date. Section 7 of 1975, c. 282 provided: "Section 6 of this Act shall be retroactive to April 10, 1974."

Library References
Health and Environment ⟹25.5.

§ 607. Municipal alternative

1. Cone burners. The provisions of this chapter shall not apply to cone burners constructed or operated by any municipality, group of municipalities, quasi-municipal corporations or district, providing a system of solid waste management for public purposes and for the health, welfare, comfort and convenience of the inhabitants of the district; provided that the population served does not exceed 25,000 people and that proper leachate control, ash sifting and ash disposal is accomplished in a legal manner and provided that the public health, safety and welfare are not adversely affected by the emissions of this type of unit. In determining the effect on public health, safety and welfare and before ordering the closing of any cone burner operation, the Department of Environmental Protection shall show that the operation of the burner violates the standards set forth in section 584-A.

2. Notification. Any municipality, group of municipalities, quasi-municipal corporations or district shall notify the Department of Environmental Protection of its intent to construct and operate a cone burner and may request technical assistance be provided by the department.

1975, c. 570; 1975, c. 770, §§ 211, 212, eff. April 16, 1976.

Amendments:
—1975. Enacted as § 606 by c. 570, without reference to § 606 added by c. 282, § 6. Chapter 770, § 211 repealed § 606 as enacted by c. 570 and § 212 thereof reenacted as this section.

Library References
Health and Environment ⟹28.
C.J.S. Health § 21.

§ 608. Stationary source performance standards

1. Treatment requirement standards. New stationary source of air emissions shall be subject to the best practicable treatment requirements promulgated in 40 Code Federal Regulations Part 60.

2. Federal standards. All stationary sources of hazardous air pollutants shall be subject to the best practicable treatment requirements promulgated in 40 Code Federal Regulations Part 61.

1975, c. 669, § 5.

Amendments:
—1975. Chapter 669 enacted this section.

Library References
Health and Environment ⟹28.
C.J.S. Health § 21.

CHAPTER 13

SOLID WASTE MANAGEMENT

New Sections
1301. Short title.
1302. Declaration of policy.
1303. Definitions.
1304. Department; powers and duties.
1305. Municipalities; powers and duties.
1306. Prohibited acts.
1307. Violations.
1308. Exemptions.

Cross References
Minimum lot size law, see § 4807 et seq. of Title 12.

§ 1301. Short title

This chapter shall be known and may be cited as the "Maine Solid Waste Management Act."

1973, c. 387.

Amendments:
—1973. Chapter new.

Library references
Health and Environment ⟹28.
C.J.S. Health § 21.

§ 1302. Declaration of policy

The Legislature declares it to be the policy of the State of Maine consistent with its responsibility to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution, that it shall encourage solid waste programs, public or private, which will reduce the volume of solid waste production, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare of the citizens nor degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound method of waste disposal is of the highest priority. Municipalities are generating increasing amounts of solid waste with no systematic or consistent methods being used to reduce the volume of waste or to soundly dispose of it. Failure to plan properly for future solid waste may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from present inadequate practices of resource recovery and solid waste disposal.

1973, c. 387.

Amendments:
—1973. Enacted this section.

Library references
Health and Environment ⟹28.
C.J.S. Health § 21.

§ 1303. Definitions

The following words when used in this chapter shall have the following meanings unless the context in which they are used clearly shows a different meaning.

1. **Board.** "Board" means the Board of Environmental Protection.

2. **Commissioner.** "Commissioner" means the Commissioner of the Department of Environmental Protection.

3. **Department.** "Department" means the Department of Environmental Protection.

4. **Municipality.** "Municipality" means a city or town.

5. **Person.** "Person" means an individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity.

6. **Recoverable resources.** "Recoverable resources" means materials that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

7. **Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

8. **Solid waste disposal facility.** "Solid waste disposal facility" means any land area or structure or combination of land area and structures, including dumps, used for storing, salvaging, processing, reducing, incinerating or disposing of solid wastes.

9. **Solid waste management.** "Solid waste management" means purposeful, systematic and unified control of the collection, storage, transportation, processing, salvaging and disposal of solid waste.

1973, c. 387.

§ 1304. Department; powers and duties

1. **Rules and regulations.** The board may adopt, amend and enforce such rules and regulations as it deems necessary governing solid waste management, including the location, establishment, construction and alteration of solid waste facilities. Such regulations shall be designed to encourage logical utilization of recoverable resources, to minimize pollution of the state's air land and water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting such regulations, the board shall also consider economic impact, technical feasibility and such differences between municipalities as are created by population, waste volume and geographic location. Regulations shall be promulgated in the manner provided by section 361. The municipal officers of all municipalities shall be notified, in writing, at least 30 days prior to any hearing. Regulations adopted pursuant to this section shall not become effective until January 31, 1978, thereby affording ample opportunity for the Legislature to modify, expand or reject such regulations as deemed appropriate.

No regulation adopted pursuant to this section shall exceed air quality standards authorized by Title 38, chapter 4.

2. **Site location.** The board may provide by regulation that no person may locate, establish, construct, alter or operate any solid waste disposal facility unless approved by the board under sections 481 to 488.

3. **Municipal status reports.** The department shall review reports submitted by municipalities as required by section 1305. Report forms shall be prepared and distributed by the department. Required information shall include, but not be limited to, the following:

A. Location of solid waste disposal facility sites within the municipality whether publicly or privately owned or operated, their mode of operation and anticipated useful life;

B. Ordinances or regulations adopted by or proposed for the municipality which regulate the use of waste disposal facilities within the municipality;

C. All legal arrangements established by municipalities for providing a solid waste disposal facility for solid waste generated within the municipality;

D. Any plan for solid waste management officially adopted by the municipality.

4. **Technical assistance.** The department is authorized to establish guidelines for effective solid waste management, to provide technical assistance to persons planning, constructing or operating solid waste disposal facilities, and to conduct applied research activities in the field of solid waste management including methods of recycling solid waste items.

5. **Planning grants.** The department is authorized to receive funds, public and private, to use such funds for the administration of this chapter and to make grants from such funds to municipalities and regional planning agencies or their agents as designated by the municipality, for the purpose of planning and implementing solid waste management activities and solid waste disposal facilities pursuant to guidelines established by the board.

1973, c. 387.

§ 1305. Municipalities; powers and duties

1. Disposal facilities. Each municipality shall provide a solid waste disposal facility for domestic and commercial solid waste generated within the municipality and may provide such a facility for industrial wastes and sewage treatment plant sludge.

2. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that such ordinances are not less stringent than or inconsistent with the provisions of this chapter or the regulations adopted thereunder.

3. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of solid wastes.

4. Municipal status reports. The municipal officers of each municipality shall, on or before the first day of November, 1973, and on or before the first day of June each year thereafter, submit on forms prepared by the department, information relating to solid waste management within the municipality.

5. Municipal permits. All permits issued pursuant to Title 30, sections 2451 to 2460 shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules and regulations adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality shall be submitted to the department within 30 days of issue.

1973, c. 387.

Amendments:
—1973. Enacted this section.

Library references
Health and Environment ⟹25.5.

§ 1306. Prohibited acts

It shall be unlawful for any person to establish, construct, alter or operate any waste disposal facility or to store, collect, transport, process or dispose of solid waste contrary to regulations promulgated by the department.

1973, c. 387.

§ 1307. Violations

Any person violating any provision of this chapter or the rules or regulations promulgated thereunder shall be punished by a fine of not more than $500 for each day a violation exists. The Superior Court shall have jurisdiction to enjoin any violation of this chapter or the rules or regulations promulgated thereunder.

1973, c. 387.

§ 1308. Exemptions

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to October 3, 1973. Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this chapter.

1973, c. 788, § 213, eff. April 1, 1974.

STATE OF MAINE

SOLID WASTE MANAGEMENT REGULATIONS

400.1 Preamble

It shall be the purpose of the Department of Environmental Protection, consistent with declared Legislative Policy, to provide through these regulations, effective controls for the management of solid waste.

These regulations are intended to provide necessary health, safety and environmental controls, while at the same time leaving available maximum alternatives for communities, alone or together, to manage solid waste generated within the community. The regulations are intended to provide maximum flexibility to accommodate such differences between Maine municipalities as are created by population, waste volume, and geographic location.

The Department will carry out its solid waste management responsibilities by providing to the maximum of its resources educational, technical assistance, and other cooperative activity.

400.2 Prohibited Acts

After February 1, 1976 no person shall operate a solid waste facility without a plan approval and/or conditional use permit obtained from the Department in accordance with these regulations.

400.3 Site Location of Development

Facilities established after October 3, 1973 and subject to these solid waste management regulations, and facilities proposed for significant expansion of the volume of waste to be accepted shall also be subject to review and approval by the Board of Environmental Protection under Title 38, M.R.S.A., Sections 481 to 488, which concerns Site Location of Development.

400.4 Definitions

Backup equipment - land disposal equipment under contract or by some other means available to the operator within 48 hours of breakdown of the primary equipment.

Board - The Board of Environmental Protection

Boundary, property - property line of total area owned, rented or leased by operator.

Boundary, site - line surrounding area to be developed for the disposal or process facility.

Commissioner - The Commissioner of the Department of Environmental Protection.

Closing operation - the processes of rodent extermination, fire extinguishment, slope stabilization, placing cover material, grading, seeding, etc. for the closing of an existing open dump or disposal facility or one established under this law.

Closing plan - pre-determined method and schedule for completing above operations.

Cover material - any soil material that is well graded, relatively free of organics and stones greater than 6 inches diameter that is used for cov in a landfill operation.

Cover, daily - soil that is used to cover compacted solid waste at the end of each operating day.

Cover, intermediate - this soil material must be placed on filled are where the daily cover will be exposed for more than 14 days.

Cover, final - this soil material must contain a minimum of 15% fines must be placed on each filled area when final elevation has been reached.

Department - The Department of Environmental Protection.

Drainage system, surface water - system of berms, dikes and ditches a culverts arranged so as to minimize the amount of surface water running ov and through the refuse.

Drainage and collection system, leachate - system for draining any po tial leachate from base of disposal facility and collecting it at a predetermined point.

Face slope - this is the slope on which the landfill equipment must w in order to compact and cover the refuse.

Face width - this is the horizontal length of the working face.

Fines - soil material which passes the #200 U.S. Standard Sieve.

Hazardous wastes - any waste having a greater potential as a health or safety hazard or for environmental harm than household or commercial wastes which may include but is not limited to industrial and treatment plant was

Upon request the Department, based on sufficient information supplied by the applicant, will make a determination whether a particular waste is hazardous and whether proposed methods and sites are sufficient for safe disposal of that waste.

Hot loads - any load of refuse which is on fire when delivered on the site.

Incinerator - Any device, apparatus equipment or structure used for destroying, reducing, or salvaging by fire any material or substance.

Incineration - The use of an incinerator to bring about a controlled process by which combustible materials are burned and changed into gases and the residue produced contains little or no combustible material.

Landfill equipment - any equipment on site used for handling refuse cover and for other support activities.

Leachate - liquid which has percolated through solid waste or other medium and has extracted dissolved or suspended materials from it.

Lift - a compacted layer of solid waste and the top layer of cover material.

Lift height - vertical thickness of a compacted volume of solid waste plus thickness of cover material immediately above.

Mottling - the blotched or streaked pattern caused by the dissolution of inorganics, usually iron, indicative of the soil having been in contact with groundwater.

Municipality - A city or town.

Open Burning - "Open Burning" means the burning of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

Overburden - all soil material overlying bedrock.

Person - An individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity.

Potable water supply - any ground or surface water supplies to be used for drinking.

Potable water supply - any ground or surface water supplies to be used for drinking.

Recoverable Resources - Materials that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

Salvaging - controlled removal of reusable waste materials.

Solid waste - Unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

Solid waste facility - Any land area or structure or combination of land area and structures, including dumps, used for storing, salvaging, processing, reducing, incinerating or disposing of solid wastes.

Special wastes - those wastes which may not be considered hazardous but may still require more complex management due to other characteristics such as high moisture content or bulk.

Static water level - that level water seeks when not being pumped; i.e., undisturbed water level.

Stratigraphy - geology of the layered succession of soil and rock deposits.

Surficial units - identifiable differences in overburden. (Boulder units, soil units, gravel, sand, specific till types, etc.).

Vector - a carrier, usually an arthropod, bird, or rodent that is capable of transmitting a pathogen from one organism to another.

White goods - large appliances including but not limited to stoves, refrigerators, freezers, washing machines, clothes dryers, dishwashers and air conditioners.

Zones - The northern zone shall include: Aroostook County; that part of Penobscot County north of and including Medway, TA R7 and Long A; that part of Piscataquis County north of and including TBR10, TBR11, Bowdoin College Grant, Greenville and Little Squaw; that part of Somerset County north of and including Square Town (T2R5), Moxie Gore (T1R5), West Forks Plantation, Lower Enchanted (T2R5), BKPWKR (T3R5), and King & Bartlett (T4R5); and that part of Franklin County north of and including Jim Pond (T1R5), Alder Stream (T2R5), and Seven Ponds (T3R5). The southern zone shall include all of Maine not in the northern zone.

CHAPTER I

401 RESOURCE RECOVERY ACTIVITY

Policy Statement - The Department desires to encourage solid waste programs, public or private, which will reduce the volume of solid waste generated which will reuse and recover valuable resources currently being wasted and which will conserve natural resources. Assistance given to these activities will be of the first priority.

The varied nature of resource recovery activity and the generally sound environmental basis on which they are undertaken preclude the necessity and value of specific regulation. A review of such proposed activity with respect to health, safety and environmental soundness is deemed to be in the best interest of the State. Specific activity may, in the future, be subject to regulation.

* 401.1 Requirements

Each person who owns or operates a facility for long term resource recovery activity shall submit a plan to the Department for approval. Such a plan should include, but shall not be restricted to the following items.

a) nature and volume of material to be recovered
b) disposition of recovered waste
c) disposition of material to be disposed of rather than sold, reprocessed, etc..
d) location of processing facilities
e) location of storage facilities
f) description of transportation network and facilities
g) a financial report of estimated cost/gain balances
h) a description of the facility and/or equipment to be used
i) safety equipment and procedures
j) fire protection facilities

401.2 Disposal of Residual

Any residual from a resource recovery activity which is designated for land disposal shall be subject to regulations promulgated under Chapter IV, Land Disposal. Any effluent disposed in waters of the State shall be subject to Water Quality regulations and licensing criteria.

401.3 Exemptions

Resource recovery activity of a voluntary and intermittent basis such as local paper drives, bottle drives, etc., are not subject to reporting or review requirements.

CHAPTER II

402 INCINERATION

402.1 Emissions

Incinerators or other equipment using burning as a method of waste volume reduction, whether or not in conjunction with resource or energy recovery, are subject to Air Quality Control Regulations.

402.2 Disposal of Residual

Residuals from incineration or similar burning methods which are designated for land disposal are subject to regulations promulgated under Chapter IV, Land Disposal, except for daily cover requirements. Any effluent disposed in waters of the State shall be subject to Water Quality regulations and licensing criteria.

402.3 Plan

Any person owning or operating an incinerator or other equipment using burning as a method of solid waste volume reduction shall submit a plan to the Department for approval showing how the incinerator will be integrated into the solid waste system. Such a plan should include but shall not be limited to the following items.

a) nature and volume of material to be burned
b) disposition of residual
c) location of processing and storage facilities
d) a financial report of estimated costs
e) a description of the facility and/or equipment to be used
f) safety equipment and procedures
g) fire protection facilities

CHAPTER III

403 STORAGE AND TRANSFER FACILITIES

403.1 Review and Approval

Municipal and/or regional storage and transfer facilities including those facilities leased or contracted are subject to Departmental inspection, review, and approval. The storage of all solid waste shall be practiced in such a manner to minimize attraction and harborage of vectors, to prevent health and safety hazard, to minimize odor, unsightliness, environmental impact, and public nuisance.

403.2 Space Requirements

Sufficient facilities and space shall be provided to contain all waste generated during periods between regularly scheduled collection or removal as may be necessary to meet the intent of paragraph 403.1 above.

CHAPTER IV

404 LAND DISPOSAL

Policy Statement - The Department recognizes that for the short term land disposal will remain a common method of waste disposal in Maine. Because it is the necessary final link in the chain of disposal activity, and because there is significant potential for environmental harm to land and ground water resources, in-depth regulation has been determined to be necessary. The following regulations are based on the presumption that significant protection to the environment can be accomplished by controlling water in and around disposal activity. Water supports the biological and chemical activity which produces potentially harmful by-products in the form of leachate. Water is also the primary vehicle which can transport these noxious substances away from the disposal site to ground and surface water resources. In addition, the regulations provide controls for other health, safety, and environmental matters.

Although the following regulations are believed to reflect the best state of the art for land disposal economically accessible to Maine communities, and will provide very much greater protection to land and water resources and to public health when compared with disposal methods now commonly used, it is recognized that compliance with these regulations does not provide an absolute guarantee against pollution. In those special cases where compliance with these regulations proves not to be sufficient, additional requirements may be imposed to provide additional protection to health, safety, and the environment. A variance procedure to enable disposal operation under a "Conditional Use Permit" has been established to allow maximum flexibility in considering sound solid waste activity.

405 CLOSING REQUIREMENTS FOR DISPOSAL FACILITIES

Solid waste facilities in existence before October 3, 1973 which, with alteration, cannot meet the operational requirements promulgated herein are required to be closed.

All land disposal facilities which close after October 3, 1973 are subject to this section. Facilities in operation before October 3, 1973 which, with alteration, can meet the Operational Criteria and which are not in violation of other law are not required to be closed.

405.1 Closing Plan

A closing plan shall be submitted to the Department of Environmental Protection for approval at least 30 days prior to the start of closing operations; which operations begin with 30 days notice to the Public and/or users of the site.

This plan shall include:

a) Schedule for notifying the Public of the closing

b) Rat extermination schedule

c) Method to be used to keep area drained

d) Method to correct any existing leachate or gas problems

e) Fire extinguishment schedule

f) Schedule for placing final cover and seeding

g) Schedule for inspection and maintenance

405.2 Public Notification

The public shall be notified at least 30 days prior to the date the last refuse will be accepted by signs posted at the site and by notification in the local press. The date the last refuse will be accepted at the old site, the address of the new disposal facility, and the hours of operation of the new disposal site shall be included on the signs and in the notification.

405.3 Restricted Access

Restricted access and/or adequate policing shall be provided.

405.4 Final Cover

A minimum final cover of 2 feet after compaction is required on all refuse. For facilities in operation before October 3, 1973, variance to the amount of cover may be given if no direct or indirect discharge of pollutants or harborage of vectors will occur. Cover material shall have a minimum of 15% fines.

405.5 Grading

The top slope of the final cover shall be sufficient to encourage proper drainage. The face shall be stabilized and covered. The maximum face slope shall not exceed 2:1.

405.6 Seeding

The closed area shall be seeded.

405.7 Problem Correction

Leachate and gas problems shall be corrected.

405.8 Inspection

The operator shall request DEP inspection before removing equipment from site so deficiencies may be corrected.

405.9 Certificate of Completion

The site shall be subject to inspection by the Department one year after closing. Any deficiencies found which may have detrimental health or environmental effect shall be corrected. If satisfactory maintenance is being provided, a certificate of completion will be awarded.

406.3 Site Map

The most up-to-date U.S.G.S. Topographic map either 15' or 7 1/2' shall be submitted. The following items, if not shown on the topographic map must be located for the area within a line 1000 feet outside of the site boundary.

a) legal boundaries of the site
b) all buildings
c) all supplies of potable surface and groundwater; municipal and private
d) all commercial-industrial water supplies
e) all surface bodies; ponds and lakes; streams and rivers; swamps and marshes
f) all gravel pits, stone quarries, mines
g) all pipe lines, surface or buried
h) all springs and seeps
i) existing zoning

Keyed to this map:

j) Indicate for wells; where known; depth to bedrock; static water level; yield; total depth
k) Indicate where known, seasonal variation of watertable in gravel pits, quarries, and dug wells

406.4 Hydrologic, Geologic and Soils Information

All hydrologic and geologic information pertinent to the site that is available from state and federal agencies, such as bedrock geology, soils, surficial geology, depth to bedrock, depth to water table, well locations and characteristics, shall be submitted to the Department.

406.5 Boring or Test Pit Logs and Map

A number of test pits or borings sufficient to describe the surficial materials on the site and the proximity of the site to groundwater or bedrock shall be dug and analyzed.

a) A map of scale 1" = 100' (or less) shall be provided to include the following:
   i) legal boundaries of the site.
   ii) area(s) where refuse is to be placed.
   iii) locations of borings and/or test pits.
b) The location and log of a number of borings and/or test pits with approximate elevations sufficient to reasonably indicate groundwater gradient and direction must be shown. Boring and test pit logs shall indicate the following:

406 SITE APPROVAL

406.1 Site Characteristics

The Department recognizes that because the surficial geology of Maine is both complex and varied, a single set of physical conditions cannot be described which would be applicable for safe and economic land disposal throughout Maine. Differences in the amount and type of waste to be dispose at a particular site increase the complexity of appropriate standards.

Because it is desirable to keep the waste dry and to keep it separated from groundwater, the following set of physical conditions are found by the Department to be desirable and, in general, adequate for protection of ground and surface water resources providing the facility is well designed and operated.

a) The surficial material soils, underlying the refuse to a depth of at least 5 feet shall be well graded granular material containing from 15 - 40% fines, and being relatively free of cobbles in excess of 6 inches in diameter.
b) All refuse shall be placed at least five feet above groundwater.
c) The sight should be moderately sloped i.e., less than 15 per cent.
d) The site boundary shall not lie closer to a classified body of water than 300 feet.
e) The site boundary shall not lie closer to the nearest residence or potable water supply than 1000 feet.

Sites not meeting these criteria, but which through good design and operatio can be shown to provide adequate protection to surface and groundwater resources, may be approved by the Board upon proper application. Sites meeting these criteria but which are determined by the Department to provide special danger to a surface or groundwater resource may be either disapproved or approved under more stringent criteria. Such special danger might potentially exist because of the proximity of the site to an aquifer, because o the proposed deposit of special wastes at the site, or because of some oth special physical condition.

406.2

For all proposed sites and for sites proposed for significant expansion of the volume of waste to be accepted the following procedure must be followed. (Normally a 25% increase in waste volume acceptance within one y will be deemed significant. The addition of waste of a hazardous or unusual nature not already accepted at the facility, or expanded acceptance of junked automobiles or white goods shall be sufficient to deem the expansio significant). Other facilities in operation before October 3, 1973, which are not in violation of present law and which, by alteration will meet the operational criteria established herein, are not subject to the procedure site approval.

i) surficial units including at least till, clay, sand, gravel, soil, and bedrock. More detailed descriptions of overburden units may be used.

ii) depth to groundwater.

iii) depth to bedrock if bedrock is reached before groundwater.

iv) surficial units for borrow pit, as in b.1 above.

407 DESIGN APPROVAL

407.1 Design Information

The amount of design information required and the sophistication of engineering and design needed to utilize a site in a way to protect public safety and health and surface and groundwater resources, necessarily varies with both the physical characteristics of the site and the amount and type of waste to be disposed.

The Department will review the plans for their adequacy in describing at least the following:

a) the site as it presently exists

b) the site as it will appear at the time it is closed

c) any drainage system(s) proposed

d) any other features proposed

The Department will review the design to see if it adequately handles at least the following:

e) diversion of surface water away from the site

f) surface drainage of the site

g) grading for bottom drainage of the site

h) for high groundwater areas, for areas shallow to bedrock, and for areas proposed where surficial materials, soils, contain more than 40 percent fines; proper drainage of the bottom of the site

i) for areas where surficial materials, soils, contain less than 15 percent fines; protection of the groundwater from rapid percolation of leachates.

j) protection for public health and safety

k) aesthetic considerations; litter and view from homes, businesses, and roadways

407.2 Detailed Site Map and Plan

A map of the same scale as on the Map of Borings or Test Pits (item 406.5) shall be provided. It shall show the following:

a) area where refuse is to be placed

b) property boundaries

c) access roads

d) area and sequence of site to be developed in first, second, and third year of operation

e) location of test pits, wells, or borings

f) proposed drainage system

g) two foot contours showing:

i) the existing area

ii) proposed final disposal area surface

If the area is sufficiently steep so that 5 foot or some other contour interval will show drainage, the two foot contours should be phased out.

h) location of alternate disposal faces for poor weather operation, special and/or hazardous wastes, and hot loads

i) location of salvage material storage

407.3 Additional Design Map Information

For the proposed area and for the area within 300' outside the site boundary, show the following:

a) all occupied dwellings

b) public water supplies

c) all private wells

d) all surface bodies of water

i) springs

ii) rivers

iii) lakes

iv) ponds

v) swamps

vi) all other pertinent bodies of water

vii) natural drainage area

viii) 100 year flood plain, where applicable

e) all existing roads

f) power lines

g) pipelines

h) public buildings and/or facilities

i) sand and gravel pits

j) proposed final surface drainage system

k) all proposed water quality monitoring points

l) proposed boundary fencing and accesses

m) access roads

n) gas venting devices, if proposed

o) proposed equipment shelter, maintenance area and employee facilities

p) proposed utilities

q) scales and weighing station, if proposed

r) fire and first aid equipment, if proposed

s) proposed siltation basins, where applicable

t) the baseline for x-sections in Section 407.4

u) leachate collection and treatment facilities, if proposed

407.4 Cross Sections

Show the following items in cross sections for every 100 feet along the length of the proposed disposal area. Use a horizontal scale of 1" = 100' or less and same as used above in Design Information, Section 407.2. Use a vertical scale equal to or a multiple of the contour interval shown in Design Information Section 407.2g above. The vertical exaggeration shall not exceed 20:1.

a) bedrock surface (if closer to surface than groundwater)
b) seasonal high water table
c) water drainage features; swales; ditches; tiles, etc.
d) existing land surface
e) base grade
f) proposed lifts
g) proposed cover
h) final grade of completed landfill
i) final elevation of completed landfill

407.5 Qualifications of Persons Preparing Plans

It is recognized that both the description of the site and the sophistication of design and engineering for the facility will vary a great deal, depending on the specific location and the volume and type of waste to be disposed there. It is also recognized that the ability of persons and municipalities to accomplish this type of work varies greatly.

To make sound judgements, the Department needs complete and accurate information.

Therefore:

a) All survey work accomplished and reported must be by a Registered Surveyor.
b) Design plans submitted need not be done by a Professional Engineer but must be complete and accurate.

408 OPERATING CRITERIA

408.1 All normal domestic and commercial wastes shall be accepted.

408.2 Junked vehicles and white goods shall not be incorporated into the disposal area if a reprocessing center is available. A separate storage area may be provided.

408.3 Hazardous wastes may be accepted only if special provisions have been made and approved by the Department of Environmental Protection.

408.4 Salvaging shall be controlled--permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

408.5 An attendant shall be on duty during all operating hours.

408.6 All sites shall provide a method of communication to emergency medical, fire, and law enforcement facilities.

408.7 Fire control facilities shall be provided.

408.8 Fences and gates shall be installed to limit access to the site.

408.9 Final grade shall be compatible with surrounding property.

408.10 An area shall be provided for "hot loads"; these loads shall be extinguished either by the attendant or by the local fire department.

408.11 The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse will be placed in surface water of any type.

408.12 Monitoring wells may be required.

408.13 All-weather access roads are required.

408.14 Litter fencing shall be provided as needed.

408.15 Operating records shall be kept by the operator. These should include estimates of refuse volume or weight, or the rate at which available land is being used, occurrence of fires, need for vector control, equipment maintenance or unusual financial expenditures. Such records shall be available to Department personnel.

408.16 Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

408.17 Equipment shall be provided to:

a) compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the days aggregate of layers subject to daily cover requirements.
b) handle the cover material.
c) grade the base and cover.
d) assist vehicles.
e) build and maintain roads.
f) control dust and vectors.

408.18 Maintenance and backup equipment shall be available within 48 hours after a breakdown.

408.19 Daily cover shall be placed at the end of each working day over the entire refuse cell to a minimum compacted thickness of at least 6 inches. The purpose of daily cover is to minimize rodent and other vector problems and to minimize the possibility of fires.

408.20 Intermediate cover shall be placed to a minimum compacted thickness o one foot, including daily cover, in cases where daily cover is exposed for more than 14 days.

408.21 Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed within 14 days of final refuse placement except during winter operations. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion: final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water

shedding surface. The final cover shall prevent ponding of water at the base of the disposal area and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical. Temporary cover may be placed during winter months provided:

a) snow is removed prior to melt.

b) final cover is placed as soon as realistically possible.

408.22 Operating Manual

An operation manual shall be submitted for approval. The following items shall be included:

a) type of operation (area, trench)

b) face width

c). lift height

d) estimated area to be utilized during each year of operation

e) operating hours

f) type and number of equipment available including standby equipment

g) special procedures for winter operation (stockpiling, pretrenching, etc.)

h) seeding schedule for completed areas of fill

i) erosion control methods (seeding, rip-rap, etc.)

j) safety procedures

k) operating and safety procedures for any area used for temporary storage of junked vehicles, white goods, etc.

l) schedule for removing junked cars, white goods, etc.

m) number of personnel and their specific duties

n) fire prevention and fighting procedures

o) handling and disposal procedures for special wastes

p) fees

q) accounting procedures

r) name responsibility for maintenance of access roads

408.23 Occurrence Reports

Within 48 hours of an unusual or unauthorized occurrence a written report shall be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences:

a) bodily injury at the facility

b) health problems traced to the facility or suspected of being associated with the facility

c) fire

d) disposal of any hazardous waste not previously authorized

e) the breakdown of equipment

f) other unusual occurrences

409 CONDITIONAL OPERATING CRITERIA FOR FACILITIES SERVING LESS THAN 5000 PERSONS

409.01

Upon receiving proper application the Board may authorize, by issuing a conditional use permit, the disposal of domestic and commercial solid waste and small quantities of non-hazardous industrial waste, at facilities serving less than 5000 persons under the following reduced operating criteria. The Board may authorize such reduced operating criteria only for those facilities which, because of their proper siting, provide adequate protection to ground and surface waters.

409.1 All normal domestic and commercial wastes shall be accepted.

409.2 Junked vehicles and white goods shall not be incorporated into the disposal area if a reprocessing center is available. A separate storage area may be provided.

409.3 Salvaging shall be controlled--permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

409.4 An attendant shall be on duty during all operating hours.

409.5 All sites shall provide a method of communication to emergency medical, fire and law enforcement facilities.

409.6 Fire control facilities shall be provided.

409.7 Fences and gates shall be installed to limit access to the site.

409.8 An area shall be provided for "hot loads"; these loads shall be extinguished either by the attendant or by the local fire department.

409.9 The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse shall be placed in surface water of any type.

409.10 All weather access roads are required.

409.11 Litter fencing shall be provided as needed.

409.12 Operating records shall be kept by the operator. These should include estimates of refuse volume or weight, or the rate at which available land is being used, occurrence of fires, need for vector control, equipment maintenance or unusual financial expenditures. Such records shall be available to Department personnel.

409.13 Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

409.14 Equipment shall be provided to:

a) compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the days aggregate of layers subject to daily cover requirements.

b) handle the cover material.

c) grade the base and cover.

d) assist vehicles.

e) build and maintain roads.

f) control dust and vectors.

409.15 Maintenance and backup equipment shall be provided within one week after a breakdown.

409.16 From April 1 through December 15 in the southern zone and from April 16 through November 30 in the northern zone daily cover shall be placed at the end of each working day over the entire refuse cell to a minimum compacted thickness of at least 6 inches. The purpose of daily cover is to minimize rodent and other vector problems and to minimize the possibility of fires.

409.17 Intermediate cover shall be placed to a minimum compacted thickness of one foot, including daily cover, in cases where daily cover is exposed for more than 14 days. It shall meet the same physical conditions as final cover.

409.18 Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed within 30 days of final refuse placement. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion; final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water shedding surface. The final cover shall prevent ponding of water at the base of the disposal area and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical.

409.19 Between September 15 and November 15, a thorough rodent extermination program shall be executed using a single dose poison.

409.20 On a weekly basis from December 16 through March 31 in the southern zone and from December 1 through April 15 in the northern zone refuse shall be pushed into layers two feet thick and then compacted. The aggregate of layers shall not exceed 8 feet in thickness before intermediate cover is placed.

409.21 Before April 1 in the southern zone and before April 15 in the northern zone, snow shall be pushed off the refuse not already having final cover and intermediate cover shall be placed on all exposed refuse to a thickness of 1 foot after compaction.

409.22 Operation Manual - An operation manual as described in item 408.22 shall be submitted for approval.

409.23 Occurrence Reports - Within 48 hours of an unusual or unauthorized occurrence a written report shall be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences:

a) bodily injury at the facility

b) health problems traced to the facility or suspected of being associated with the facility

c) fire

d) disposal of any hazardous waste not previously authorized

e) the breakdown of equipment

f) other unusual occurrences

410 CONDITIONAL OPERATING CRITERIA FOR FACILITIES RECEIVING LESS THAN TEN TONS PER WEEK

410.01 All facilities receiving less than 10 tons per week are granted a conditional use permit to operate under the following reduced operating criteria, unless the Board of Environmental Protection conclude that operation under the reduced criteria would result in increased environmental impact on ground and surface waters, or would pose danger to public health and safety.

410.02 The reduced operating criteria is outlined in sections 410.1 through 410.19:

410.1 Junked vehicles and white goods shall not be incorporated into the disposal area if a reprocessing center is available. A separate storage area may be provided.

410.2 Salvaging shall be controlled--permits shall be issued by the facility administrators. Salvaging shall not be allowed at the operating face.

410.3 The facility may be open only two days consecutively on a weekly basis. Sites open for more than two days per week do not qualify for these reduced operating criteria.

410.4 An attendant shall be on duty during all operating hours.

410.5 Fire control facilities shall be provided.

410.6 Fences and gates shall be installed to limit access to the site.

410.7 The disposal area shall be kept well drained. The base of the disposal area shall have a slope adequate for drainage. This shall apply to the bottom of trenches if a trench method is to be utilized. No refuse will be placed in surface water of any type.

410.8 Litter fencing shall be provided as needed.

410.9 Face width should maximize efficiency, being small enough to maintain, though large enough to handle the traffic.

410.10 Equipment shall be provided to:

a) compact the refuse in a series of layers, each layer not more than 2 feet thick before compaction, the aggregate of layers subject to cover requirements.

b) handle the cover material.

c) grade the base and cover.

d) assist vehicles.

e) build and maintain roads.

f) control dust and vectors.

410.11 Maintenance and backup equipment shall be provided within one week after a breakdown.

410.12 From April 1 through December 15 in the southern zone and from April 16 through November 30 in the northern zone on a biweekly basis, the refuse shall be pushed into layers two feet thick, compacted and covered with 6 inches of soil material having at least 15 percent fines.

410.13 Between September 15 and November 15, a thorough rodent extermination program shall be executed, using a single dose poison.

410.14 Before December 15, all refuse deposited within that year must be covered to a total depth of 1 foot, including previous cover, with soil material containing a minimum of 15% fines, well graded, and free of cobbles greater than 6 inches in diameter.

410.15 From December 16 through March 31 in the southern zone and from December 1 through April 15 in the northern zone refuse may be deposited at the facility without compaction or cover. The total lift height during this period shall not exceed 8 feet.

410.16 Before April 1 in the southern zone and before April 15 in the northern zone, snow shall be pushed off uncovered refuse, the refuse shall be graded and compacted, the face shall be graded to a slope no steeper than 3:1 and compacted, and all uncovered refuse shall be covered by at least 1 foot of soil material containing a minimum of 15 percent fines, well graded, and free of cobbles.

410.17 Final cover shall have a minimum compacted thickness of 2 feet including any previous cover. It shall be placed on areas of the site reaching final grade. Final cover shall minimize infiltration from surface water and shall inhibit settling, cracking and other erosion; final cover shall be well graded, containing a minimum of 15% fines and compactable to a reasonably water shedding surface. The final cover shall prevent ponding of water at the base of the fill and shall be placed in such a manner so to maintain a surface slope sufficient to keep the surface well drained. The final grade of the side slopes shall not be greater than 3:1. The area shall be seeded as soon as practical.

410.18 Operation Manual - An operation manual as described in item 408.22 shall be submitted for approval.

410.19 Occurrence Reports - Within 48 hours of an unusual or unauthorized occurrence a written report shall be submitted to the Department stating the nature of the occurrence. Reports shall be made for at least the following occurrences:

a) bodily injury at the facility

b) health problems traced to the facility or suspected of being associated with the facility

c) fire

d) disposal of any hazardous waste not previously authorized

e) the breakdown of equipment

f) other unusual occurrences

CHAPTER V

411 VARIANCE PROCEDURES AND CONDITIONAL USE PERMITS

411.1 Variance

Any person responsible for solid waste activity may apply to the Board for a variance from regulations promulgated herein. The application may be accompanied by such information and data as the Board may reasonably require. The Board shall grant such variance for whatever period it deems appropriate if it finds that:

a) Proposed activity will not endanger human health and safety.

b) Proposed activity reasonably ensures preservation of environmental quality.

c) Compliance with the rules and regulations from which a variance is sought either:

a) produces serious hardship, or

b) would not provide a greater degree of health, safety, or environmental protection than the proposed alternative.

411.2 Conditional Use Permit

The Board, upon approving a variance, shall issue a Conditional Use Permit for the proposed activity. Such a permit may include such conditions of location, design, and operation as the Board may reasonably require, and may be granted for whatever time period the Board deems appropriate.

411.3 Revocation of Permit

If the construction, operation, and maintenance of the solid waste facility are not according to the terms of the Conditional Use Permit, the permittee shall be given 30 days from the date of mailing of the violation notice by the Commissioner to comply with the conditions of the Conditional Use Permit. The violation notice shall be sent certified mail, return receipt requested. If the operator fails to comply with the conditions of the Conditional Use Permit within the 30 day period, the Board of Environmental Protection may revoke the Conditional Use Permit. In the event of an emergency, as determined by the Commissioner, he may revoke the Conditional Use Permit without giving the permittee 30 days to correct the deficiencies.

THE STREAM ALTERATION ACT

Title 12, Sections 2206 - 2212 as amended by
Chapters 388 and 623, Laws of Maine, 1975

ALTERATION OF RIVERS, STREAMS AND BROOKS

Section 2206. Prohibitions

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, fill or cause to be filled, or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure, above head of tide, in, on or over any river, stream or brook or on the land adjacent to any river, stream or brook in such a manner that any dredged spoil, fill or structure may fall or be washed into such waters, without first obtaining a permit therefor from the commissioner.

Section 2207. Permits; standards

If the applicant for the permit demonstrates to the satisfaction of the commissioner that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm any fish habitat or wildlife habitat; nor lower the quality of any waters, the commissioner shall grant the permit upon such terms as he deems necessary to insure that the proposed activity will comply with the foregoing standards.

In the event the river, stream or brook is utilized by a water company, a municipality or a water district as a source of supply, the applicant for the permit shall at the time of filing an application forward a copy of the application to the water company or water district by certified mail.

Section 2208. Hearings; appeals

In the event that an application for a permit is denied, or that it is granted upon terms objectionable to the applicant, the applicant may, within 30 days of receipt of notice of such decision, file a notice of appeal with the commissioner. The commissioner may then, within 30 days of receipt of such notice of appeal, provide the applicant with the opportunity for a hearing which shall be before him or his designee, and of which a transcript shall be made. Any person aggrieved by an order or decision of the commissioner following such hearing may, within 30 days of receipt of notice of such decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Such appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commissioner. The court's review shall be limited to questions of law and to whether the commissioner acted regularly and within the scope of his authority and the commissioner's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commissioner's decision for further proceedings. Appeals from all other orders or decisions of the commissioner, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

THE STREAM ALTERATION ACT

Section 2209. Administration

The commissioner may, pursuant to the Administrative Code and based upon the standards provided in section 2207, adopt, amend and repeal such regulations, establish such hearing procedures and charge such fees as he deems necessary to properly administer this subchapter. Fees collected shall accrue to the department and shall be expended by it for expenses in carrying out its duties prescribed by this subchapter.

Section 2210. Penalties

Any individual person, firm, corporation, municipality, state agency or other legal entity who dredges or causes to be dredged, fills or causes to be filled or erects or causes to be erected any causeway, bridge, marina, wharf, dock or other permanent structure, above tidewater, in, on or over any river, stream or brook or on the land adjacent to any such river, stream or brook in such a manner that any dredged spoil, fill or structure may fall or be washed into such waters without first obtaining a permit from the commissioner, shall be punished by a fine of not more than $200 for each day of such violation.

Section 2211. Injunction; restoration

In the event of the violation of this subchapter, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

Section 2212. Exemptions

This subchapter shall not apply to river, stream or brook crossings in connection with public works projects which shall alter not more than a total of 300 feet in any mile of shore nor to private crossing or dam projects which shall alter not more than a total 100 feet in any mile of shore. Alterations to both shores of the river, stream or brook shall be combined in arriving at a total shore footage.

This subchapter shall not apply to emergency repairs, maintenance of railroad structures, track, or roadbed within the located right-of-way of any railroad.

Section 2. Application. Chapter 84 of the Resolves of 1973, relative to authorizing the Town of Bingham to remove sand bars at confluence of Austin Stream and Kennebec River, shall be exempt from the provisions of the Act for the duration of the town's authority.

SUBCHAPTER II-A
OIL DISCHARGE PREVENTION AND POLLUTION CONTROL
1969, c. 572, § 1

§ 541. Findings; purpose

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine-related activities; and to the beauty of the Maine coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activites.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Board of Environmental Protection by conferring upon said board the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from such occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

1969, c. 572; 1972, c. 618.

The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the State's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

§ 542. Definitions

The following words and phrases as used in this subchapter shall, unless a different meaning is plainly required by the context, have the following meanings:

1. Barrel. "Barrel" shall mean 42 U.S. gallons at 60 degrees Farenheit.

2. Repealed. 1973, c. 625, § 277.

3. Board. "Board" shall mean the Board of Environmental Protection.

1972, c. 618.

4. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

5. Fund. "Fund" shall mean the Maine Coastal Protection Fund.

6. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

1977, c. 375, § 2.

7. Oil terminal facility. "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 500 barrels, nor any facility not engaged in the transfer of oil to or from waters of the State. A vessel shall be considered an oil terminal facility only in the event of a ship to ship transfer of oil, but only that vessel going to or coming from the place of ship to ship transfer and a permanent or fixed oil terminal facility.

1977, c. 375, § 3.

8. Operate or operator. "Operate or operator" shall mean any person owning or operating an oil terminal facility whether by lease, contract or any other form of agreement.

9. Person. "Person" shall mean any natural person, firm, association, partnership, corporation, trust, the State of Maine and any agency thereof, governmental entity, quasi-governmental entity, the United States of America and any agency thereof and any other legal entity.

1977, c. 375, § 4.

10. Transferred. "Transferred" shall include both onloading and offloading between terminal and vessel and vessel to vessel.

11. Vessel. "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise and shall include barges and tugs.

1970, c. 572, § 1; 1973, c. 625, § 277.

§ 543. Pollution and corruption of waters and lands of the State prohibited

The discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain or other waters of the State is prohibited.

1969, c. 572; 1977, c. 375, § 5.

Notwithstanding the prohibition of this section, the Board of Environmental Protection may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil, petroleum products or their by-products, into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such discharge will not degrade existing quality nor preceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.

In acting upon an application for any such license, the board shall follow the provisions of subchapter I insofar as they are applicable.

1970, c. 572, § 1; 1973, c. 423, § 11.

§ 544. Powers and duties of the Board

The powers and duties conferred by this subchapter shall be exercised by the Department of Environmental Protection and shall be deemed to be an essential governmental function in the exercise of the police power of the State.

1. Jurisdiction. The powers and duties of the board under this subchapter shall extend to the areas described in section 543 and to a distance of 12 miles from the coastline of the State.

2. Licenses. Licenses required under this subchapter shall be secured from the board subject to such terms and conditions as are set forth in this subchapter.

1970, c. 572; 1972, c. 618.

§ 545. Operation without license prohibited

No person shall operate or cause to be operated an oil terminal facility as defined in this subchapter without a license.

1. Expiration of license. Licenses shall be issued upon application and shall be for a period of not less than 12 months to expire no later than 24 months after the date of issuance. The board may issue a temporary license for a shorter period of time if it finds that the applicant has substantially complied but has failed to comply with one or more provisions of existing regulations. Licenses shall be issued subject to such terms and conditions as the board may determine as necessary to carry out the purposes of this subchapter.

1970, c. 572, § 1; 1972, c. 618; 1977, c. 375, § 6.

2. Renewal of licenses. As a condition precedent to the issuance or renewal of a license the board shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products and their by-products and the abatement thereof when a discharge occurs.

1970, c. 572; 1972, c. 618.

3. Exemptions. The Legislature finds and declares that the likelihood of significant damage to marine, estuarine and terrestrial environment, due to spills of oil, petroleum products and their by-products by the following classes of persons, is remote due to the limited nature of their operations and the small quantities stored, and accordingly exempts the same from the licensing requirements imposed by this section:

A. Marinas. Persons engaged in the business of servicing the fuel requirements of pleasure craft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity and the serviced vessel is 75 feet or less in overall length.

4. Certain vessels included. Licenses issued to any fixed or permanent oil terminal facility shall include vessels under the direction or control of such facility and used to transport oil, between such fixed or permanent facility and vessels within state waters. Any person operating or causing to be operated a vessel used to transport oil between a permanent or fixed oil terminal facility and vessels within state waters, which vessel is not subject to the direction or control of that permanent oil terminal facility, shall obtain a license as required by this section.

1970, c. 572, § 1; 1977, c. 375, § 7.

§ 546. Regulatory powers of board

1. Repealed.

2. Repealed.

3. Repealed.

1970, c. 572, c. 618; 1977, c. 300, §35 & 36

4. Extent of regulatory powers. The board shall have the power to adopt rules and regulations including but not limited to the following matters:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter.

B. Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter.

C. Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter.

D. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants.

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds.

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district.

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities, and refineries and the approach and departure from terminals, facilities, and refineries.

H. Such rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter.

1970, c. 572; 1972, c. 618.

§ 547. Emergency proclamation; Governor's powers

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. A copy of such proclamation shall be filed with the Secretary of State. The Governor shall have general direction and control of the Board of Environmental Protection and shall be responsible for carrying out the purposes of this subchapter.

1970, c. 572; 1972, c. 618.

In performing his duties under this subchapter, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

In performing his duties under this subchapter, the Governor is further authorized and empowered:

1. Orders, rules and regulations. To make, amend and rescind the necessary orders, rules and regulations to carry out this subchapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

2. Delegation of authority. To delegate any authority vested in him under this subchapter, and to provide for the subdelegation of any such authority.

Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

3. Civil defense. The provisions of Title 37-A, chapter 3, as they shall apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation shall apply to disasters or catastrophies proclaimed by the Governor under this subchapter.

1970, c. 572, § 1; 1973, c. 788, § 212.

§ 548. Removal of prohibited discharges

Any person discharging oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove such discharge to the board's satisfaction. Notwithstanding the above requirement the board may undertake the removal of such discharge and may retain agents and contracts for such purposes who shall operate under the direction of the board.

Any unexplained discharge of oil, petroleum products or their by-products within state jurisdiction or discharge of oil, petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the board. Any expenses involved in the removal of discharges, whether by the person causing the same, the person reporting the same or the board by itself or through its agents or contractors shall be paid in the first instance from the Maine Coastal Protection Fund hereinafter provided for and any reimbursements due said fund shall be collected in accordance with the provisions of section 551.

1970, c. 572; 1972, c. 618.

§ 549. Personnel and equipment

The board shall establish and maintain at such ports within the State, and other places as it shall determine, such employees and equipment as in its judgment may be necessary to carry out the provisions of this subchapter. The board, subject to the Personnel Law, may employ such personnel as may be necessary to carry out the purposes of this subchapter, and shall prescribe the duties of such employees.

The salaries of such employees and the cost of such equipment shall be paid from the Maine Coastal Protection Fund established by this subchapter. The board and the Maine Mining Bureau shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the board in their line of duty under this subchapter shall have the powers of a constable.

1970, c. 572, § 1; 1971, c. 544, § 134; 1972, c. 618.

§ 550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 shall not be subject to any fines or civil penalties if such person promptly reports and removes such discharge in accordance with the rules, regulations and orders of the board.

1970, c. 572, § 1; 1977, c. 375, § 9.

§ 551. Maine Coastal Protection Fund

The Maine Coastal Protection Fund is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to $4,000,000 until July 1, 1978. Thereafter the fund shall be limited to $6,000,000 and the Board of Environmental Protection shall collect fees in accordance with subsection 4. To this fund shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the board related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and 3rd party damages covered by this subchapter.

1977, c. 375, § 10.

Moneys in the fund, not needed currently to meet the obligations of the board in the exercise of its responsibilities under this subchapter shall be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Maine Coastal Protection Fund.

1970, c. 572; 1972, c. 618.

1. Research and development. The Legislature may allocate not more than $100,000 per annum of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations shall be made in accordance with the provisions of section 55.

2. Third party damages. Any person, claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the person causing the discharge can agree to the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection Fund.

B. If the claimant, the board and the person causing the discharge cannot agree as to the amount to the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

2-A. Exceptions; 3rd party damage claims. Subsection 2, 3rd party damages, shall not apply to waters of the State classified under sections 368, 369 and 371, except those waters below head of tide until July 1, 1978.

1977, c. 375, § 11.

3. Board of Arbitration. The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the board to have caused the discharge, one to be chosen by the board to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment then the board shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

1970, c. 572; 1972, c. 618.

A. No member of the board shall serve as an arbitrator.

1970, c. 572; 1972, c. 618.

B. A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may be regulation prescribe. In the event that the party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

1977, c. 375, § 12.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The Board of Arbitration shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

E. Determinations made by a majority of the Board of Arbitration shall be final, and such determinations may be subject to review by a justice of the Superior Court but only as to matters relating to abuse of discretion by the board.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

4. Funding.

A. License fees shall be determined on the basis of ½¢ per barrel of oil transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of

records certified to the board, provided that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, the license fee shall be determined on the basis of 1.0¢ per barrel. License fees shall be paid to the board and upon receipt by it credited to the Maine Coastal Protection Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter, license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development, provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the board when the balance in the fund has reached $4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to the private and special laws of 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to the private and special laws of 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

1970, c. 572; 1972, c. 618; 1975, c. 379, § 2; 1977, c. 375, § 13.

5. Disbursements from fund. Moneys in the Maine Coastal Protection Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the board related to the enforcement of this subchapter.

1970, c. 572; 1972, c. 618.

B. All costs involved in the abatement of pollution related to the discharge of oil, petroleum products and their by-products covered by this subchapter.

C. Sums allocated to research and development in accordance with this section.

D. Payment of the third party claims awarded in accordance with this section.

E. Payment of costs of arbitration and arbitrators.

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund.

1970, c. 572.

G. Payments to Treasurer of State pursuant to subsection 4, paragraph B.

1975, c. 379, § 3.

6. Reimbursements to Maine Coastal Protection Fund. The board shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the board finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd party claims in excess of $15,000, except to the extent that the costs are covered by payments received under any federal program;

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The board may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

1977, c. 375, § 14.

7. Waiver of reimbursement. Upon petition of any licensee the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

1977, c. 375, § 15.

A. An act of war.

B. An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

1977, c. 375, § 16.

C. An act of God, which shall mean an unforseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the board immediate credit therefore shall be entered for the party involved. The findings of the board shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred not a right granted.

1970, c. 572, § 1; 1972, c. 618; 1973, c. 625, §§ 278, 279.

§ 552. Liabilities of licensees

1. Licensee shall be liable. A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the person causing the discharge or the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

1970, c. 572, § 1; 1977, c. 375, § 17.

§ 552-A. Detention of vessels

Whenever there is probable cause to believe that a vessel has violated or been the means of a violation of this subchapter or any other law which the Department of Environmental Protection is responsible for administering or any rule, regulation or order of the board or any official of the department made thereunder, the vessel shall be detained in any port of the State until payment of any fine or penalty assessable under the law has been paid or secured to the satisfaction of the Attorney General. Any justice or judge of the Superior Court or the District Court may issue such orders as are necessary to carry out the purposes of this section.

1977, c. 375, § 18.

§ 553. Interstate Compact, authority

In accordance with subchapter II the Governor of this State is authorized and directed to execute supplementary agreements with any one or more of the states comprising the New England Interstate Water Pollution Control Commission and the United States for the purpose of implementing and carrying out the provisions, limitations, qualifications and intent of this subchapter.

1970, c. 572, § 1.

§ 554. Reports to the Legislature

The board shall include in its recommendations to each Legislature as required by section

361 specific recommendations relating to the operation of this subchapter, specifically including a license fee formula to reflect individual licensee experience, and fee schedule based upon volatility and toxicity of petroleum products and their by-products.

1970, c. 572; 1972, c. 618.

§ 555. Budget approval

The board shall submit to each Legislature its budget recommendations for disbursements from the fund in accordance with the provisions of section 551. Upon approval thereof the State Controller shall authorize expenditures therefrom as approved by the board.

1970, c. 572, § 1; 1972, c. 618.

§ 556. Municipal ordinances; powers limited

Nothing in this subchapter shall be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special act; provided, however, that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety shall be valid unless in direct conflict with the provisions of this subchapter or any rule, regulation or order of the board adopted under authority of this subchapter.

1970, c. 572, § 1; 1972, c. 618.

§ 557. Construction

This subchapter, being necessary for the general welfare, the public health and the public safety of the State and its inhabitants, shall be liberally construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the board shall be stayed pending appeal under the provisions of this subchapter.

1970, c. 572, § 1; 1972, c. 618.

§ 560. Vessels at anchorage

1. Purpose. The Legislature intends by the enactment of this section to exercise the police power of the State through the Board of Environmental Protection by conferring upon said board the exclusive power to deal with the hazards and threats of danger and damage posed by the anchorage of oil carrying vessels in the waters of the State. The purpose of regulations adopted by the board shall be to protect the coastal waters, tidal flats, beaches and lands adjoining the waters of the State from damage by the intentional or accidental discharge of oil, other pollutants as defined in section 361-A or air contaminants as defined in section 582 or explosion from the accumulation of gases aboard such vessels and to prohibit interference with the harvesting of marine resources, aesthetic and recreational uses of such waters.

1977, c. 78, § 203.

2. Definitions.

A. Anchorage. As used in this section, the word "anchorage" means the mooring for a period of definite or indefinite duration of a vessel designed or used to carry oil, which is not waiting for a scheduled loading or unloading of cargo in Maine waters, but shall not include the mooring of a vessel for bunkering, maintenance, repair or overhaul, or in connection with or as a part of sea trials.

3. Board to adopt regulations. The Board of Environmental Protection shall, within 90 days after October 1, 1975, adopt regulations limiting or, to the extent the board determines necessary, prohibiting the anchorage in Maine coastal waters, estuaries or rivers under the jurisdiction of the State of Maine vessels designed or used to carry oil as cargo. All regulations adopted by the Board of Environmental Protection under this section shall not apply to vessels at anchorage prior to July 1, 1975.

1977, c. 78, § 204.

4. Scope of regulations. In adopting these regulations, in addition to other provisions of this subchapter, the board's consideration shall include, but not be limited to:

A. The location, duration and type of anchorage;

B. The type and capacity of vessels permitted anchorage;

C. The systems and precautions necessary for safety on each vessel;

D. The training, number and availability of crew members aboard each vessel;

E. A requirement for contingency plans in the event of accident, fire, storm or other unforseen acts;

F. The protection of the natural environment, aesthetic and recreational uses of State waters; and

G. The protection of the fisheries or fishing industry of the State.

5. Exemption. The board may by regulation exempt certain activities not inconsistent with the purposes of this section.

1977, c. 78, § 205.

6. Prohibition. No person shall have a vessel at anchorage in Maine waters for more than 7 days without a current license from the board.

7. Licenses and fees. The board shall require a license for anchorage of a vessel in Maine waters and charge a fee of ½¢ per deadweight ton for each 30 days of anchorage or part thereof. The board may license properly treated effluents and emissions regulated by this section consistent with the other environmental laws of the State of Maine.

8. Application for a license. Any person desiring to have a vessel at anchorage in Maine waters shall apply in writing to the board and, shall cause public notice of the application and a brief summary to be published in a paper of general circulation in the vicinity of the proposed activity and provide such information as the board may require by regulation. The board shall, within 30 days of receipt of such application, issue a license or deny a license giving the reasons therefor or order a hearing thereon. Any person denied a license without a hearing may request, in writing, within 30 days after notice of denial, a hearing before the board. Such request shall set forth in detail the findings to which he objects the basis of such objection and the nature of the relief requested.

1977, c. 300, § 37.

9. Repealed.

1977, c. 300, § 38.

10. Board shall solicit advice. The Board of Environmental Protection shall solicit the advice of the Commissioner of Marine Resources and the Commander of the United States Coast Guard prior to adopting any regulations under this section.

1975, c. 578.

§ 344. Processing of applications

1. Time limit processing application. Whenever the Board of Environmental Protection receives a properly completed application for any license, permit, approval or certificate under any of the statutes which it administers, it shall make a final decision as expeditiously as possible, but in no case shall such final decision be later than 180 days after acceptance of the application.

2. Exceptions. The Board of Environmental Protection may waive the 180-day requirement of subsection 1:

A. At the request of the applicant; or

B. After consultation with the applicant, if 2/3 of the members of the board eligible to vote do so vote.

3. Notification to applicant. The Commissioner of Environmental Protection shall, within 10 working days of receipt of an application, notify applicants of the official date on which the application was accepted or return the application to the applicant specifying in writing the reasons for returning the application.

The commissioner shall give reasonable notice to the applicant of the date the board will act on the application and that a draft order relating to the application is available in the Augusta office of the department. Draft orders shall be available to any persons at the Augusta office of the department prior to the date the board acts on the application.

All correspondence notifying the applicant of Board of Environmental Protection decisions shall be by registered mail, return receipt requested.

4. Delegation. The Board of Environmental Protection is authorized to delegate to the Commissioner of Environmental Protection and the department staff, authority to approve, approve with conditions or disapprove applications for approvals by the board made pursuant to any of the laws which the board is required to administer. Delegation of authority under sections 413, 414, 414-A, 484 and 590 shall be limited to the applications meeting the following criteria:

A. Applications for development of a subdivision of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;

B. Applications for a maximum daily discharge of less than 50,000 gallons per day; and

C. Applications for incinerators in Classes I through IV or for a boiler at a facility with a total boiler capacity of less than 100,000,000 B.T.U.'s.

Such delegation shall be in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interested person aggrieved by a decision of the commissioner or the department staff made pursuant to this section shall have a right to appeal such decision to the board.

5. Reconsideration. Within 30 days of the applicant's receipt of a board decision, any person aggrieved by the decision may petition the Board of Environmental Protection, in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the board, or for an opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The board shall, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing or dismiss the petition. Any public hearing held under this section shall be held within 45 days of the board's decision to hold such hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the board on any application shall be computed from the date of receipt by petitioner of the board's decision pursuant to this subsection.

The running of the time for appeal, as provided in section 346, is terminated by a timely petition for reconsideration filed pursuant to this subsection, and the full time for appeal, as provided in section 346, commences to run and is to be computed from the date upon which notice is received of any administrative action denying the petition or any order or decision of the board as a result of the petition; provided that the filing of a petition for reconsideration shall not be deemed an administrative or judicial prerequisite for the filing of appeal pursuant to section 346.

6. Fees. The board may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to the department. All such fees may be retained by the department to reimburse expenses incurred in reproducing such materials.

1977, c. 300, § 9.

§ 345. Hearings.

1. Hearings. Except as provided in section 347, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board.

2. Notification. Prior to any hearing conducted by the board or department, the department shall:

A. Publish notice of the hearing twice in a newspaper of general circulation in the area affected. The date of the first publication shall be no more than 21 days nor less than 14 days prior to the date of the hearing and the 2nd publication shall be at least 7, but no more than 10 days, prior to the date of the hearing. In addition, the notice may be published in any other trade, industry, professional or interest group publication which the board deems necessary to reach persons affected;

B. Provide notice of the hearing to any applicant by registered mail at least 10 days before the date of the hearing; and

C. Provide notice of the hearing at least 10 days before the date of the hearing by regular mail to persons who have filed with the commissioner within the calendar year a written request to receive notification of hearings.

3. Contents of notice. The public notice and notice of hearing to applicant and others shall contain:

A. A reference to the statutory authority for conduct of the hearing;

B. A statement of the purpose of the hearing, including, for hearings involving the adoption, repeal or modification of a regulation, a concise description of the regulation proposed;

C. A statement of the time, date and place of the hearing and the manner in which views may be submitted for consideration by the board; and

D. A statement of the place and time where relevant material may be examined, and the name, address and telephone number of the person from whom further information may be obtained.

4. Fees. The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

5. Record. A full and complete record shall be kept of all hearings.

6. Written decisions. Every decision of the board, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law. A copy of the decision shall be delivered personally or by registered mail, return receipt requested, to each party of record to the hearing as recognized by department hearing regulations. Written notice of the party's rights to review or appeal of the decision, within the agency or by the courts, as the case may be, and of the action required and the time within which the action must be taken in order to exercise the right of review or appeal, shall be given to each such party with the decision.

1977, c. 300, § 9.

§ 346. Judicial appeals

1. Except as provided in section 347, subsection 2, any person aggrieved by any order or decision of the board resulting from a hearing before the board of which a transcript is available may appeal therefrom to the Superior Court by filing a notice of appeal with the court stating the points of appeal within 30 days after receipt of such order or decision by the person or other legal entity to whom it is directed. The appellant shall send a copy of the notice of appeal to the applicant or licensee. The appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the board. The court's review shall be limited to questions of law and to whether the board acted regularly and within the scope of its authority and the board's decision shall be final so long as supported by substantial evidence. The court may affirm or reverse the board's decision or remand the matter to the board for further proceedings.

2. Appeals from all other orders or decisions of the board, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

3. Limitation. No riparian or littoral owner on any body or water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an

aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

1977, c. 300, § 9.

§ 347. Violations

1. General procedures. Whenever it appears to the Board of Environmental Protection, after investigation, that there is a violation of any provision of the laws or regulations which it administers, or of the terms or conditions of any of its orders, which does not create a substantial or immediate danger to public health or safety, the board may notify the Attorney General or schedule a hearing thereon. If a hearing is scheduled, the commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of such hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law.

At such hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the board shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

2. Emergency procedures. Whenever it appears to the board, after investigation, that there is a violation of any provision of the laws or regulations which it administers or of the terms or conditions of any of its orders, which is creating or is likely to create a substantial and immediate danger to public health and safety, it may order the person or persons causing or contributing to such a hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the board's findings and order issued under this emergency procedure shall be made by the sheriff or a deputy sheriff within the county where the person, to whom the order is directed, operates or resides. In the event such persons are so numerous that the specified method of service is a practical impossibility or the board is unable to identify the person or persons causing or contributing to such a hazard, the board shall make its order known through prominent publication in news media serving the affected area.

The person to whom such order is directed shall comply therewith immediately. Such order may not be appealed to the Superior Court in the manner provided in section 346, but such person may apply to the board for a hearing on such order, which hearing shall be held by the board within 48 hours after receipt of application therefor. Within 7 days after such hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

3. Revocation, modification or suspension of licenses. After written notice to the licensee of at least 14 days and opportunity for hearing, the board may revoke, suspend or modify, in whole or in part, any license or issue an order prescribing necessary corrective action, whenever the board finds:

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;

C. There has been a change in any condition or circumstances that requies revocation, suspension or a temporary or permanent modification of the terms of the license; or

D. The licensee has violated any provision of the laws administered by the board.

For the purpose of this subsection, the term "license" and "licensee" shall include respectively any license, permit, approval or certification issued by the board and the holder thereof.

4. Oaths. Any member, authorized employee or representative of the board presiding at any hearing under this section may administer oaths and affirmations to any witness appearing at such hearing.

5. Subpoenas. The board may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any such hearing. If any person served with a subpoena demonstrates to the satisfaction of the board that the production of such information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, such information shall be disclosed only at a nonpublic portion of such hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the subpoena. The Superior Court may issue such an order and may punish failure to obey the same as civil contempt.

6. Enforcement orders. All orders of the board shall be enforced by the Attorney General. If any order of the board is not complied with within the time period specified, the board shall immediately notify the Attorney General of this fact.

1977, c. 300, § 9.

§ 348. Judicial enforcement

1. General. In the event of a violation of any provision of the laws administered by the Department of Environmental Protection or of any order, regulation license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, the Attorney General may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the Department of Environmental Protection.

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the Department of Environmental Protection or of any order, rule, regulation, license, permit, approval or decision of the Board of Environmental Protection or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible.

3. Injunction proceedings. If the board finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger ot the health, safety or general welfare of any person, persons or property they shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347.

1977, c. 300, § 9.

§ 349. Penalties

1. Criminal penalties. Notwithstanding Title 17-A, section 4-A and except as provided in subsection 4, any person who violates any provision of the laws administered by the Department of Environmental Protection, or the terms or conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a fine, payable to the State, of not more than $25,000 for each day of such violation.

1977, c. 300, § 9 and c. 510, § 89.

2. Civil penalties. Any person who violates any provision of the laws administered by the Department of Environmental Protection, or any order, regulation, license, permit, approval or decision of the Board of Environmental Protection shall be subject to a civil penalty, payable to the State, of not more than $10,000 for each day of such violation.

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board shall, upon conviction, be subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

1977, c. 300, § 9 and c. 510, § 90.

4. Violations. Any person who violates any of the following provisions shall be guilty of a Class E crime for each day of such violation:

A. Section 419; (high phosphorus detergent);

B. Section 422; (Great Ponds);

C. Section 423; (Discharge from watercraft);

D. Section 471; (Alteration of wetalnds);

E. Section 1306; (Solid waste);

OIL SPILL

NOTIFICATION PROCEDURE

All oil spills shall immediately be reported to the DEPARTMENT OF ENVIRONMENTAL PROTECTION at 1-800-482-0777, a 24-hour emergency telephone. Standby personnel are available through this emergency number.

Other numbers that should be called:

Maine Department of Marine Resources	289-2291
Maine Inland Fish & Wildlife	289-3371
Coast Guard, South Portland	799-5531
Coast Guard, Southwest Harbor	244-5517
Coast Guard, Bucksport	469-7911
Environmental Protection Agency Needham Heights, Mass.	617-223-7265
Department of Environmental Protection Augusta Office	289-2591
Department of Environmental Protection Field Office, Bangor	917-6746
Department of Environmental Protection Field Office, Portland	773-6491/2
Federal Oil Spill Reporting Number	1-800-424-8802

TITLE 12
CHAPTER 405
REGULATIONS FOR THE CONSERVATION OF MARINE RESOURCES LAW

§ 3504.[1] **Conservation of certain marine species; regulations**

The commissioner may make regulations to assure the conservation of renewable marine resources in any of the coastal waters or flats of the State.

1. Limitations for regulations. A regulation may only limit the taking of marine species by one or more of the following methods:

A. The time taken;

B. The method by which taken;

C. The number taken;

D. The weight taken;

E. The length;

F. The location.

2. Section grants no authority over salmon. This section grants no authority to adopt regulations for the conservation of Atlantic salmon.

3. Procedure of section 3505 to be followed. The commissioner shall follow the procedure of section 3505 in adopting a regulation authorized by this section.

4. Commissioner may declare emergency. The commissioner may declare an emergency if it appears to him that immediate action is necessary to remedy the danger.

A. An unusually large concentration of fishermen or diggers in any of the coastal waters or flats in the State which might deplete the supply of any marine species covered by this section is deemed an existing condition endangering the conservation of the particular marine species for the purposes of this subsection.

[1] Section 3504 will be changed to Section 3501 in the 108th 2nd session of the Maine State Legislature.

§ 3505. —procedure for adoption of regulations

The procedure for the adoption of the regulations authorized in section 3504 is as follows:

1. Commencement of proceedings, declaration of emergency, petition. The proceedings must commence by one of the following methods:

A. If the commissioner declares that an emergency exists, he shall prepare a written declaration of emergency containing the following information:

(1) A statement that an emergency exists;

(2) The particular marine species affected;

(3) The existing condition which endangers conservation, and its general location.

B. A majority of the municipal officers of a municipality where an existing condition endangers the conservation of marine life, or 25 citizens of that municipality, or a majority of the county commissioners of a county where such a condition exists may petition the commissioner subject to the following provisions:

(1) They shall address the petition to the commissioner.

(2) They shall include in the petition the following information:

(a) The particular marine species affected;

(b) The existing condition which endangers conservation and its general location.

C. The Commissioner of Marine Resources may investigate or cause to be investigated conditions affecting marine resources in any coastal waters or flats of the State, and may on his own initiative, with the advice and consent of the advisory council, make or amend such regulations as he deems necessary to promote the conservation of marine species or to promote their propagation to the extent provided in section 3504 and in accordance with the procedure provided in this section. To adopt or amend a regulation under this paragraph, the commissioner shall prepare a written declaration containing the following information:

(1) The regulation or the amendment which he proposes to adopt;

(2) The general location or locations to be governed by the regulation or the amendment.

2. Notice of hearing, contents, publication. The commissioner shall give notice of the hearing as provided in this subsection.

A. He shall cause the notice to contain the time and place of hearing.

(1) If the hearing is under a petition, the time of hearing must be in compliance with subsection 3, paragraph B.

B. The commissioner shall cause the notice to contain all the information required to be in the declaration of emergency, the declaration of his own initiative, or the petition, whichever is applicable.

C. The commissioner shall cause the notice to be published in a newspaper published in the county where the petition or declaration of emergency or the declaration of his own initiative alleges the condition exists, or

(1) If no newspaper is published there or if the area where the condition is alleged to exist is in more than one county, then notice may be published in a newspaper or combination of newspapers having general circulation in each county where the condition is alleged to exist.

D. If a hearing is to be held under a petition, the commissioner shall cause the notice to be published once a week for 2 successive weeks prior to the hearing.

E. If a hearing is to be held under a declaration of emergency, the commissioner shall cause the notice to be published once at least 5 days before the hearing.

3. Hearing; time of; who may conduct; who may be heard; record of; place. The commissioner shall cause a public hearing to be held at the time and place designated in the notice.

A. The commissioner may appoint some member of the department or the advisory council to conduct the hearing.

B. The hearing shall be held within 30 days of receipt by the commissioner of a petition provided in subsection 1, paragraph B.

(1) If the petition is not received by September 1st, it is not in order for hearing until the year next following.

C. Any interested person may give relevant evidence at the hearing.

D. The commissioner shall cause a record to be kept of all evidence given at the hearing.

E. The commissioner shall cause the hearing to be held within a radius of 25 miles of where the alleged condition exists, unless the proceeding is under a declaration of emergency in which case it may be held in the State Capitol.

4. **Commissioner to adopt regulation after hearing; consent of advisory council.** After the hearing the commissioner shall adopt a regulation to remedy the danger declared under subsection 1, paragraph A proven at the hearing to exist.

A. The commissioner may adopt any regulation proposed under subsection 1, paragraph B provided that the proposed regulation is first submitted to the advisory council for its advice and consent.

B. The commissioner may adopt a regulation proposed under subsection 1, paragraph C provided that the commissioner is still satisfied that the marine species will be conserved or their propagation promoted and that the regulation is in the best interest of the State.

5. **Publication of regulation before it becomes effective.** A regulation must be published in accordance with this subsection before it may become effective.

A. The commissioner shall cause a copy of the regulation, certified by him, to be filed in all the following places:

(1) With the Secretary of State;

(2) With the clerk of Superior Court of each county where the regulation is to be in force.

B. After the commissioner has complied with paragraph A, he shall publish the regulation once in some newspaper published in the county where the regulation is to be in force, or

(1) If no newspaper is published there, or if the regulation is to be in force in more than one county, he may publish the regulation once in a newspaper or combination of newspapers having general circulation in each county where it is to be in force.

6. **When regulations become effective.** The following regulations become effective and have the force of law at the times indicated.

A. A regulation adopted under a petition proceeding under this section becomes effective on the first day of January following newspaper publication.

B. The commissioner may provide a specific time after newspaper publication when a regulation adopted under a declaration of emergency, or a declaration of his own initiative, becomes effective.

(1) If no time is provided in the regulation, it becomes effective the day following publication.

§ 3506. Publication of biennial pamphlet of laws

As soon as possible after adjournment of each Legislature, the commissioner shall publish in pamphlet form all the laws of chapters 401 to 417 as amended.

1. **May include related laws.** The commissioner may include in the pamphlet regulations adopted pursuant to the Revised Statutes of 1954, chapter 38,[1] regulations adopted pursuant to chapters 401 to 417, regulations adopted pursuant to legislative directive, private and special laws concerning sea and shore fisheries and any other related laws, regulations or ordinances which the commissioner feels necessary or helpful to inform the public.

2. **Size, printing and distribution of pamphlet.** The commissioner shall determine the size of the pamphlet, the manner of printing it and the distribution of it, as he feels necessary or helpful to carry out the intent of this section.

MAINE'S HOME RULE AND COMPREHENSIVE PLAN AND ZONING LAWS

The enactment of the Home Rule and Planning and Zoning laws conferred upon municipalities comprehensive planning and zoning responsibilities at the local level. (See Sections 4.3 and 9.4) This delegation of authority establishes one procedure by which land and water resources in the coastal area can be conserved.

The following list of citations emphasizes those key portions of the Home Rule and Planning and Zoning laws as they currently exist:

§ 1917. Ordinance, power limited

Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law or charter. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

1970, c. 563.

§ 4961. Comprehensive plan

1. **Definition.** "Comprehensive Plan" shall mean a compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the municipality with respect to its population, housing, economics, social patterns, land use, and water resources and their use, transportation facilities and public facilities prepared by the municipal planning board, agency or office. The comprehensive plan, being as much a process as a document capable of distribution, may at successive stages, consist of data collected, preliminary plans, alternative action proposals, and finally as a comprehensive plan to be adopted. In its final stages, it may consist of a series of subsidiary but interrelated plans such as, but not limited to, a water and sewerage system plan, a land use plan, a community facilities plan, a transportation plan, an urban renewal or rehabilitation plan, an air or water pollution control plan, and a park and open space plan. The comprehensive plan shall include recommendations for plan execution and implementation such as, but not limited to, a capital improvements program, renewal and rehabilitation programs, land use control ordinances, and building, safety and housing codes. The comprehensive plan shall include mechanisms which will ensure continual data collection, re-evaluation in light of new alternatives, and revision. The comprehensive plan may include planning techniques such as, but not limited to, planned unit development, site plan approval, open space zoning and clustered development.

2. **Public participation.** In the preparation of a comprehensive plan, the public shall be given an adequate opportunity to be heard.

1971, c. 455, § 2; 1973, c. 536, §§ 16, 17.

§ 4962. Zoning ordinances

1. **Terms.** Any zoning ordinance, or provision thereof, adopted pursuant to the home rule power granted to all municipalities under the Constitution, Article VIII-A and chapter 201-A, specifically section 1917 shall be subject to the following: In the preparation of a zoning ordinance the public shall be given an adequate opportunity to be heard.

A. Such ordinance or provision shall be pursuant to and consistent with a comprehensive plan adopted by its legislative body.

B. A zoning map describing each zone established or modified shall be adopted as part of the zoning ordinance or incorporated therein. Any conflict between said zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

C. Real estate used or to be used by a public service corporation shall be wholly or partially exempted from an ordinance only where on petition, notice and public hearing the Public Utilities Commission has determined that such exemption is reasonably necessary for public welfare and convenience.

D. County and municipal governments, and districts shall be governed by the provisions of any zoning ordinance.

E. Any zoning ordinance shall be advisory with respect to the State.

F. Any property or use existing in violation of any zoning ordinance, is a nuisance.

G. When a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. Said bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

H. For the purposes of this subchapter, "zoning" is defined as the division of a municipality into districts and the prescription and reasonable application of different regulations in each district.

1971, c. 455, § 2; 1973, c. 536, §§ 18 to 20.

§ 4963. Zoning adjustment

1. **Establishment.** A board of appeals is established in any municipality which adopts a zoning ordinance for the purpose of hearing appeals from actions or failure to act of the office charged with the enforcement of the zoning ordinance. Such board of appeals shall be governed by section 2411, except that subsection 2 of section 2411 shall not apply to boards existing on September 23, 1972.

1972, c. 622, § 112, eff. March 15, 1972.

2. **Powers.** In deciding any appeal:

A. The board may interpret the provisions of the ordinance which are called into question.

B. The board may approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance; and provided the municipality has not authorized the planning board, agency or office to issue said permits.

C. The board may grant a variance in strict compliance with subsection 3.

3. **Variance.** A variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship or would not be in the best interest of the community.

4. **Parties.** The board shall reasonably notify of any hearing, the petitioner, the planning board, agency or office and the municipal officers and such persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

1971, c. 455, § 2.

§ 4964. Savings provisions

Any planning board or district established and any ordinance, comprehensive plan or map adopted under a prior, inconsistent and repealed statute shall remain in effect until abolished, amended or repealed. Planning boards established pursuant to provisions of repealed section 4952, subsection 1 shall continue to be governed by those provisions until they are superseded by municipal ordinance.

1971, c. 455, § 2; 1973, c. 536, § 21.

OTHER STATE LAWS THAT ARE RELEVANT TO MAINE'S COASTAL PROGRAM

The following is a listing and short description of thirty-seven other laws that apply in the coastal area and have particular significance there. The list is not all inclusive, it simply shows that the core laws do not stand alone (except for "consistency" purposes when Federal activities are concerned.)

For the purposes of reference the laws are grouped under the name of the State agency responsible for their administration.

F14a	Department of Environmental Protection	425
F14b	State Planning Office	430
F14c	Department of Marine Resources	431
F14d	Department of Inland Fisheries and Wildlife	432
F14e	Department of Conservation	435
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

CONSERVATION AND REHABILITATION OF MINING LAND, 10 M.R.S.A. 2201-2216 as enacted by P.L. 1969, c. 472 and amended by 1971, c.544, c.618; 1973, c.537, c.625, c.712.

Purpose:
To encourage prudent development of mineral resources and reclamation of affected lands for productive use.

Areas and Uses Affected:
Mining operations on all public or private lands. Excluded are excavation or grading preliminary to a construction project or sand, gravel, or borrow operations.

Environmental and Economic Considerations:
Environmental considerations shall include:

(a) Rehabilitation of forests grasses, and cropland.
(b) Enhancement of wildlife and aquatic resources.
(c) Conservation development management and appropriate use of all natural resources of such areas compatible with multiple purposes.
(d) Health, safety, and welfare.
(e) Natural beauty and environmental values.

Economic consideration is the encouragement of productive use of previously mined areas.

Administrative Agency:
Department of Environmental Protection

Regulatory Power:
To adopt rules and regulations to carry out purpose of law, conduct research relating to reclamation, and to acquire in the name of the State, land by gift or purchase, to carry out reclamation work.

Appeal Procedure:
Appeal to Superior Court. Appeal will not act as stay of Commission's action. Appeal is on record and other evidence the Court deems necessary. Order of Board may be affirmed, nullified, or remanded.

GREAT PONDS ALTERATION STATUTE, 38 M.R.S.A. 386-397 as enacted by P.L. 1977 c.123.

Purpose:
Protection and reclamation of water quality of great ponds.

Areas and Uses Affected:
Any inland body of water of 10 acres or more, and any artificial body of water with surface area in excess of 30 acres, if shore is in diverse ownership.

Environmental and Economic Considerations:
Environmental considerations include protection of scenic beauty and unique characteristics of great ponds as well as the protection of their recreational, cultural, historical, and environmental value. Economic considerations are found in exemptions and reduced procedural requirements for activities having no significant impact upon the great pond.

Administrative Agency:
Department of Environmental Protection

Regulatory Powers:
Board has responsibility to establish classification system for great ponds and then classify such ponds. In establishing classification system, Board is to consider:

(a) Size, depth and volume of ponds;
(b) number, size and flow of inlets and outlets;
(c) size of drainage areas;
(d) stratification, geology;
(e) aquatic plant and animal life;
(f) other appropriate physical chemical and biological characteristics;
(g) other statutory water quality classifications of ponds.

Department of Environmental Protection may establish guidelines for sewerage disposal and collection system, and other waste control systems to control, abate, and prevent environmental damage. Department of Environmental Protection may maintain data bank, conduct research to determine how water quality may be restored and enhanced.

MINIMUM LOT SIZE AND MINIMUM FRONTAGE, 12 M.R.S.A. 4807, as enacted by P.L. 1973, c.411 and amended by 1973, c.651, c.712.

Purpose:
Protection of water quality.

Areas and Uses Affected:
Single or multi-family residential units and commercial or industrial land uses which dispose of waste by subsurface waste disposal methods.

Environmental Considerations:
Approval of subsurface waste disposal may be granted by Board for a lot less than required size if water quality is not threatened by:

(a) Soil types.
(b) Slopes.
(c) Percolation rates.
(d) Depth to bedrock and ground water.

Administrative Agency:
Department of Environmental Protection.

Regulatory Powers:
Board may waive 20,000 square feet lot size and frontage requirements.

Appeal Procedure:
To Administrative Hearing Commissioner who after a hearing may sustain, reverse, or modify Board's decision.

SANITARY DISTRICT ENABLING ACT, 38 M.R.S.A. 1061-1209 as enacted by P.L. 1965, c.310 and amended by 1967, c.524; 1971, c. 400; 1973, c. 537; 1975, c. 461.

Purpose:
To authorize one or more municipalities or a sufficient number of persons residing in unorganized territories to jointly construct and operate sewerage systems.

Area Covered:
Any combination of municipalities or municipalities and unorganized territories approved by Department of Environmental Protection.

Environmental and Economic Considerations:
Environmental criteria are abatement of pollution of public streams, lakes, and inland and ocean waters, and the public health, safety and welfare. The economic consideration is the financial saving to be anticipated by joint effort.

Administrative Agency:
Department of Environmental Protection.

Regulatory Powers:
Review and approve application for sanitary district submitted by municipalities or others.

Appeal Procedure:
Appeal direct to Superior Court in Kennebec County on ruling on application to form district. 5 M.R.S.A. 301-307 do not apply. Court may affirm, modify or set aside the order or remand for further proceedings before the Department of Environmental Protection.

CONSERVATION REHABILITATION OF LAND, 10 M.R.S.A. 2201-2213 as enacted by P.L. 1969, c. 472 and amended by 1971, c. 544; 1972, c. 618; 1973, c. 537, 625, 712; 1977, c. 300.

Purpose:
To provide for the reclamation of lands affected by mining .

Areas Affected:
All lands cleared of vegetation or excavated during operation, and all land upon which overburden is to be deposited, either actively or by natural forces.

Environmental and Economic Considerations:
Encourage prudent development of mineral resources while providing for the reclamation of affected lands and their productive use, including: forests, pasture, crops, wildlife and aquatic resource enhancement, and protection of the health, safety and general welfare of the people, as well as the natural beauty and environmental values.

Administrative Agency:
Bureau of Land Quality Control, Department of Environmental Protection.

Regulatory Powers:
Prior to mining operations, the Board of Environmental Protection must approve a "mining plan," which includes water control measures and restriction measures, as well as a reclamation plan.

STATE REGISTER OF CRITICAL AREAS, 5 M.R.S.A. 3310-3314 as enacted by P.L. 1974, c. 312 additional.

Purpose:
Sites or areas of unusual natural, scenic, scientific, or historical significance are areas of such overriding state interest that it shall be the policy of the state to encourage the preservation and utilization of these areas through land use planning regulation and protection acquisition or management as appropriate, commensurate with controlled economic growth and development.

Areas and Uses Affected:
Areas of unusual natural, scenic, scientific, or historical interest, inventory to be conducted and which shall include areas containing, or potentially containing, plant and animal life or geological features worthy of preservation in their natural conditions, or other natural features of significant scenic, scientific or historical value.

Environmental and Economic Considerations:
In determining the classification of an area or site as a critical area, the State Planning Office shall consider:

(a) The unique or exemplary natural qualities of the area or site.
(b) The intrinsic fragility of the area or site to alteration or destruction.
(c) The present or future threat of alteration or destruction.
(d) The economic implications of inclusion of a critical area in the register.

Administrative Agency:
State Planning Office

Regulatory Powers:
The Critical Areas Advisory Board shall be advised by the present or prospective owner of any proposed alteration or change in the use or character of any area listed in the Register of Critical Areas. No alteration shall take place for sixty days subsequent to such notification unless a release is issued by the Critical Areas Advisory Board.

DEPARTMENT OF MARINE RESOURCES

CULTIVATION OF CLAMS AND MUSSELS, 12 M.R.S.A. 4304-4305. See Municipal.

MUNICIPAL SHELLFISH ORDINANCES, 12 M.R.S.A. 4251-4253. See Municipal.

RESPONSIBILITY FOR MAINTAINING RECORDS FOR ALL LEASES, GRANTS, PERMITS FOR ACTIVITY IN MAINE'S COASTAL WATERS, 12 M.R.S.A. 3502-A (8) as enacted by P. L. 1973, c. 513.

Purpose:
Establish central point of reference for activity in Maine's coastal waters.

Areas and Uses Affected:
All records of activities authorized by leases, grants, licenses and permits of, or with respect to, areas of Maine's coastal waters in which the tide ebbs and flows.

Administrative Agency:
Department of Marine Resources
Requirement placed on every state department, agency or official, municipality or political subdivision to file copies of such documents with Commissioner of the Department of Marine Resources.

FISHWAYS AND DAMS, 12 M.R.S.A. 2201-2204 as enacted by P.L. 1954, c. 37.

The Commissioner of the Department of Inland Fisheries and Wildlife may require a fishway to be provided, erected, maintained, repaired or altered by the owners or occupants of any dam or other artificial obstruction above tidewater in any inland waters frequented by migratory fish. Notice to the Commissioner is required before erection of a dam, and penalties are imposed for tampering with a fishway or department dam without authority.

WATERCRAFT REGISTRATION AND SAFETY, 12 M.R.S.A. 2061-2084 as enacted by P.L. 1973, c. 734.

Purpose:
To regulate watercraft, promote safety for persons and property in connection with use or operation of watercraft.

Areas and Uses Affected:
Every undocumented motorboat, with limited exceptions, used on the waters of the State as the state of principal use.

Environmental and Economic Considerations:
Prevent molesting of wildlife and promote safety of property.

Administrative Agency:
Bureua of Watercraft Registration and Safety, Department of Inland Fisheries and Wildlife.

Regulatory Powers:
Power to license boats, designate areas in which they may operate including certain distance from swimming areas, etc.

WILDLIFE MANAGEMENT AREAS, 12 M.R.S.A. 2151, 2155 as enacted by P.L. 1954, c.37 and amended by 1975, c. 431, 516.

Purpose:
To establish and operate wildlife management areas, fish hatcheries, or feeding stations.

Areas and Uses Affected:
Once established, the wildlife management area may be closed to motorcycles, field bikes, all-terrain vehicles and snowmobiles as well as hunting, fishing, trapping, boating, camping and other public use. Commissioner's authority to regulate uses extends to all areas of the wildlife management area.

Environmental and Economic Considerations:
Regulations shall insure desirable effect on wildlife populations. Economic considerations include the Commissioner's authority to harvest and sell natural products of the wildlife management area. Also the owners of real and personal property taken for the wildlife management area are entitled to damages equal to reasonable value thereof. (Title 23, c. 3)

Administrative Agency:
Department of Inland Fisheries and Wildlife.

Regulatory Powers:
Commissioner may acquire in the name of the State real and personal property by gift, bequest, purchase, lease, or take and hold, for the public use of a wildlife management area. Commissioner's authority includes authorization of all public access to and on such areas.

Appeal Procedure:
Disagreement over reasonable value of property taken by Commissioner for wildlife management area shall be resolved by the county commissioners. Party aggrieved by county decision may appeal to Superior Court.

WILDLIFE SANCTUARIES, 12 M.R.S.A. 2105 as enacted by P.L. 1954, c. 34 and amended by 1975, c. 213, c. 516

Department of Inland Fisheries and Wildlife may have authority to acquire wildlife preserves, game sanctuaries and feeding stations by purchase, gift or eminent domain. No hunting, trapping, harassment or killing of animals allowed within sanctuary, except as authorized by Commissioner for conservation reasons.

DEPARTMENT OF CONSERVATION

BUREAU OF FORESTRY

PROHIBITED WOODS HARVESTING PRACTICES, 12 M.R.S.A. 519 as enacted by P.L. 1971, c. 97 and amended by 1973, c. 759.

Purpose:
Regulation of roadside clear cutting practices in order to promote maximum safety of users of public road, to protect public investment in such roads, to preserve and enhance the natural scenic beauty and aesthetic features of public roads.

Areas and Uses Affected:
No person may cut down trees (on land) within 100 feet from right-of-way limits of any numbered highway generally used by public, except on land used for agricultural, residential, non-woodland commercial, industrial, recreational or access to abutting land purposes or in connection with public improvement or unless using the selective cutting method.

Environmental and Economic Considerations:
Preservation of natural scenic beauty, the prevention of erosion of public roadside land, and accumulation of slash which contributes to danger of forest fires. Economic considerations are recognized in exemptions of certain productive land uses and selective cutting from the general prohibition.

Administrative Agency:
Bureau of Forestry.

Regulatory Powers:
Enforcement of provisions.

BUREAU OF PUBLIC LANDS

COASTAL ISLAND REGISTRY, 33 M.R.S.A. 1201-1217 as enacted by P.L. 1973, c. 616 and amended by 1973, c. 788; 1975, c. 509.

Purpose:
To ascertain ownership of islands in Maine's coastal waters.

Areas and Uses Affected:
All islands in tidal waters, excluding islands that have four or more residential structures, providing such property is on tax rolls of state or municipality, and federally-owned islands.

Environmental and Economic Considerations:
Protection of state-owned islands and state's interest in valuable real estate.

Administrative Agency:
Coastal Island Registry maintained by Bureau of Public Lands. State Planning Office has responsibilities in determining county lines. Municipalities shall cooperate in determining land ownership, tax status of island property.

Regulatory Powers:
Power to set up mechanics of Registry.

Appeal Procedure:
Person whose claim is initially determined to be not valid by Director of Bureau of Public Lands shall have 30 days to present evidence to substantiate his claim. Director shall then make a final determination which may be appealed in accordance with Rule 80-B of Maine Rules of Civil Procedure.

BUREAU OF PUBLIC LANDS ESTABLISHED, 12 M.R.S.A. 551 as enacted by P.L. 1975, c. 339.

Bureau of Public Lands shall carry out responsibilities of State Government relating to public lands planning and management. Such planning and management shall proceed in a manner consistent with principles of multiple land use and shall produce a sustained yield of products and services in accordance with both prudent and fair business practices and the principles of sound planning.

PUBLIC RESERVED LOTS, 30 M.R.S.A. 4151 as enacted by P.L. 1954, c. 36 and amended by 1973, c. 788.

Purpose:
To vest in the State title, possession, and management responsibility for public reserved lands contained within the unincorporated areas of the State. Such lands to be managed under principles of multiple use and to produce a sustained yield of products and services.

Areas and Uses Affected:
In every township and plantation, 1,000 acres average in quality, situation and value as to timber and minerals with other lands therein.

Environmental and Economic Considerations:
(a) Public recreation needs.
(b) Scenic quality.
(c) Value as to minerals and timber.
(d) Preservation of significant natural, recreational, and historic resources, including wildlife habitat and other areas critical to the ecology of the State.
(e) Provision of any applicable comprehensive or long-range management plan for use of public lands.

Administrative Agency:
Bureau of Public Lands.

Regulatory Powers:
Director of the Bureau of Public Lands may select and locate public reserved lot in township or tracts sold and not incorporated, with the agreement of proprietors. When Director and proprietors cannot agree on location, the Superior Court may appoint Committee to locate the public lot. Once established, the Director shall have the care, custody, control, and responsibility for management of the public reserved lands. Director shall maintain adequate inventory of public reserved lands, including the multiple land use values. Director may grant licenses for timber, wild food crops, sell sand and gravel, construct recreational facilities, and, subject to Governor's approval, grant mining, mill and other industrial use rights.

Appeal Procedure:
For unincorporated tracts, if Director and proprietors cannot agree on location, Director may petition Superior Court to appoint three disinterested persons to

locate the public reserved lots. Appeal may also be taken to law court, as in other actions. Town assessors may petition Superior Court to appoint such committee which shall locate public reserved lots according to terms of the township grant.

MAINE GEOLOGICAL SURVEY

MINING ON STATE-OWNED LAND 10 M.R.S.A. 2101-2111 as enacted by P.L. 1955, c. 409 and amended by 1975, c. 373.

Purpose:
To administer, regulate, and control mineral extraction from state-owned lands, and natural resource conservation as it relates to mineral and oil and gas development.

Areas and Uses Affected:
Lands owned or held in trust by State which includes all onshore and offshore substrata. Excluded are responsibility for prospecting or mining for water, sand, and gravel. Does not include land under Great Ponds.

Environmental and Economic Considerations:
Leases or licenses must be carried on consistent with "any prior or proposed use by the State or any agency or instrumentality thereof." The economic consideration is the development of the potential of Maine's mineral resources.

Administrative Agency:
Maine Geological Survey within the Department of Conservation

Regulatory Power:
Establish conditions under which lease may be granted and mining operations may be carried out. Broad discretion in deciding where leases and licenses should be granted.

Appeal Procedure:
Forfeiture of lease is appealable to Superior Court. Violations of law or Bureau regulations that may lead to forfeiture are heard before Administrative Hearing Officer.

BUREAU OF PARKS AND RECREATION

KEEP MAINE SCENIC, 12 M.R.S.A. 631-633 as enacted by P. L. 1965, c. 312 and amended by 1973, c. 460.

This legislation is concerned with maintaining the general appearance of Maine, fostering cleanliness, and protecting scenic beauty. The Committee is charged with advising and promulgating regulations preventing offensive litter or unsightly conditions along roads, parks, waterways, and beaches.

PUBLIC FACILITIES FOR BOATS, 38 M.R.S.A. 321-327 as enacted by P.L. 1967, c. 103 and amended by 1975, c. 771.

Purpose:
Place aids to navigation and regulatory marks in waters of the State where hazards to navigation exist. Remove minor hazards. Acquire, construct, maintain public facilities for boats - including launching ramps, parking sites, access roads.

Area Affected:
Waters of the State.

Administrative Agency:
Bureau of Parks and Recreation.

Regulatory Power:
Establish uniform rules for marking of State water areas. Advise Department of Transportation where facilities shall be located and which facilities shall be constructed.

Appeal Procedure:
District Court and Superior Court have concurrent jurisdiction.

MAINE TRANSPORTATION ACT, 23 M.R.S.A. 4202-4206 as enacted by P.L. 1972, c. 593 and amended by 1973, c. 788; 1975, c. 580, c. 771.

Purpose:
The Maine Transportation Act created the Department of Transportation, consolidated several state agencies under its aegis and delegated certain responsibilities formerly entrusted to these agencies to the Commissioner of Transportation. The most relevant of these duties are establishing a system of scenic highways, and to acquire, construct, operate and maintain harbor facilities necessary to implement the planned development of coastal resources, ports and harbors.

Areas and Uses Affected:
Planning development and coordination of transportation facilities.

Environmental and Economic Considerations:
Environmental -
(a) Preserve scenic values along system of highways.
(b) Compatibility with national, regional, and local conservation plans.
Economic -
(a) Consideration of economic implications of scenic highways.
(b) Planned development of coastal resources, ports and harbors.

Administrative Agency:
Department of Transportation.
Act absorbed ferry responsibilities of Maine Port Authority, Advisory Committee of Ferry Service, and Scenic Highway Board into the Department of Transportation.

Regulatory Power:
Authorized to prescribe and promulgate all necessary rules and regulations to carry out purposes of Act.

OUTDOOR ADVERTISING LAW, 32 M.R.S.A. 2711-2723 as enacted by P.L. 1969, c. 257 and amended by 1973, c. 190.

Law contains extensive restrictions on types, size, and location of signs, advertising, structures that may be placed along public ways.

DEPARTMENT OF HEALTH AND WELFARE

STATE PLUMBING CODE, 32 M.R.S.A. 3351-3353 as enacted by P.L. 1954, c.25.

The Department of Health and Welfare has the responsibility to establish a State Plumbing Code which shall constitute minimum standards for municipal plumbing codes.

BOARD OF PESTICIDES CONTROL, 22 M.R.S.A. 1471-A - 1471-M as enacted by P.L. 1975, c. 397 and amended by 1975, c. 644.

Purpose:
Regulate sale and application of chemical pesticides.

Areas and Uses Affected:
Use of chemical pesticides in Maine or in Maine waters subject to certain exceptions.

Environmental Considerations:
Soils, waters, forests, wildlife, agriculture, and other natural resources.

Administrative Agency:
Board of Pesticides Control, Department of Agriculture.

Regulatory Powers:
Establish categories and standards for pesticide use and designate critical areas where pesticide use would jeopardize the environment.

Appeal Procedure:
Appeal to Superior Court which can affirm, set aside, or modify action of the Board. Finding of facts by Control Board conclusive if supported by substantial evidence.

SOIL AND WATER CONSERVATION, 12 M.R.S.A. 1-201 as enacted by P.L. 1954, c. 34 and amended by 1975, c. 172, c. 770.

The Soil and Water Conservation Commission, which is now under the Maine Department of Agriculture, is responsible for classifying soils within the State according to suitability for different types of activity. This is part of its duty to provide for soil and water conservation, prevention of soil erosion, flood control, prevention of impairment of dams and reservoirs, assistance in maintaining navigability of harbors and rivers, preserving wildlife, protect the tax base, and protect public lands. All Commission recommendations are advisory.

MUNICIPAL POWERS

COASTAL ISLAND REGISTRY, see Department of Conservation

COASTAL ISLAND TRUSTS, 12 M.R.S.A. 641-646 as enacted by P.L. 1971, c. 442 and amended by 1975, c. 771.

Purpose:
Control and guide development of Maine's coastal islands.

Area Affected:
Islands or groups of islands which the Legislature designates for inclusion in coastal island trusts.

Environmental and Economic Considerations:
Environmental -

(a) Uniqueness of Maine's coastal islands, maintenance of coastal island environment.
(b) Sanctuaries for recreation, self-renewal.
(c) Prevent environmental degradation.

The economic consideration is the balancing of short term economic gain through rapid development against long range value of islands for recreational, limited development purposes.

Administrative Agency:
Coastal Island Commissions, to administer Coastal Island trusts designated by Legislature. Governor with consent of Council appoints one member to each coastal island commission. Representation on Coastal Island Commissions in accordance with area and population of islands under municipality's jurisdiction that are included in designated trusts. Municipalities appoint own representatives.

Regulatory Power:
To develop and maintain a comprehensive plan to preserve, restore, utilize and develop the commercial, natural, scenic, historical, and recreational value of coastal islands of each coastal trust established. To formulate uniform policies, to encourage state, county, and local governments to adopt and enforce adequate master plans and zoning ordinances. Purchase, lease, accept and otherwise acquire property. Issue and enforce such rules and regulations as it deems necessary to regulate use of any property under its jurisdiction.

FARM AND OPEN SPACE LAW, See State Tax Assessor.

LICENSING OF WEIRS AND WHARVES, 38 M.R.S.A. 1021-1026 as enacted by P.L. 1954, c. 98 and amended by 1975, c. 287.

Legislature has delegated authority to municipalities to license weirs and wharves in tidal waters.

MUNICIPAL AUTHORITY TO GRANT AQUACULTURE LEASES, 12 M.R.S.A. 4304-4305 as enacted by P.L. 1954, c. 38 and amended by 1975, c. 743.

Municipal officers of any municipality, and the Commissioner in case of a deorganized municipality are authorized to grant licenses for purpose of planting and cultivating clams, quahogs, or mussels within their respective jurisdictions.

MUNICIPAL ROLE IN INITIAL APPROVAL FOR ALTERATION OF WETLANDS, 38 M.R.S.A. 471-478 as enacted by P.L. 1975, c. 595.

Municipality may apply to the Board of Environmental Protection for authority to issue permits for alteration of coastal wetlands if the municipality has a Planning Board and an adopted zoning ordinance.

MUNICIPAL SHELLFISH CONSERVATION COMMISSIONS AND MUNICIPAL SHELLFISH ORDINANCES, 12 M.R.S.A. 4251-4253 as enacted by P.L. 1963, c. 277 and amended by 1975, c. 60.

Municipality may establish a shellfish conservation program which has been approved by Commissioner of the Department of Marine Resources.

PARK AND CONSERVATION COMMISSIONS, 30 M.R.S.A. 3851-3854 as enacted by P.L. 1965, c. 203 and amended by 1971, c. 299.

A municipality may establish Conservation Commissions to inventory, plan for, obtain conservation easements, and when necessary, acquire open areas with the approval of

local legislative body.
"Open areas" under this statute, means any area the preservation of the use of which would:

(a) Maintain or enhance conservation of scenic or natural resources.
(b) Protect natural streams or water supplies.
(c) Promote conservation of swamps, wetlands, beaches, or tidal marshes.
(d) Act as buffer for parks, forests, or wildlife preserves, natural reservations or sanctuaries.
(e) Enhance public recreational opportunities.
(f) Preserve historic sites.

TREE GROWTH TAX LAW, see State Tax Assessor.

STATE TAX ASSESSOR

FARM AND OPEN SPACE LAND LAW, 36 M.R.S.A. 585-593 as enacted by P.L. 1971, c. 548 and amended 1975, c.326. Repealed effective December 31, 1977.

Change in assessment tax practices to enable preservation of farm land of at least 10 contiguous acres which has produced from farming activity at least $1,000 in 3 of last 5 calendar years and open spaces that have been designated as such on a comprehensive plan of municipality or by the Land Use Regulation Commission in unorganized territories. This statute is replaced as of December 31, 1977 by:

FARM PRODUCTIVITY AND OPEN SPACE LAND LAW, 36 M.R.S.A. 1101-1118 as enacted by P.L. 1975, c. 726.

Purpose:
Preservation of farm land and open space land.

Areas and Uses Affected:
Farmland of at least 10 continguous acres on which agricultural activities have produced a yearly gross income of $1,000 for 10 acres and $100/acre for each acre over 10, with total income required not to exceed $2,000, in 2 or 3 of last 5 calendar years; open spaces that have been designated as such on a comprehensive plan of a municipality or would qualify according to environmental considerations (below).

Environmental and Economic Considerations:
Environmental -
(a) Conserve scenic resources.
(b) Enhance public recreation opportunities.
(c) Promote game management.
(d) Preserve wildlife.

Economic consideration is to enable a change in assessment tax practices to make it economically feasible to retain land in undeveloped state.

Administrative Agency:
State Tax Assessor.
Department of Agriculture shall determine an acreage 100% productivity value for agricultural land in each county.

Regulatory Powers:
State Tax Assessor shall establish recommended current use value by county for classification

of open space land. Municipal assessors are not required to use values recommended, but must be prepared in any appeal to explain their current use value figures. State Tax Assessor may conduct investigations of farmland and open space.

Appeal Procedure:
Person aggrieved by order of State Tax Assessor or Commissioner of Agriculture may within 30 days petition for reconsideration, or appeal to the Farm and Open Space Appeal Board. Either party may appeal from the decision of the Farm and Open Space Board to the Superior Court. Or, aggrieved person may appeal directly to Superior Court for review limited to questions of law. State Tax Assessor's decision shall be final so long as supported by substantial evidence.

TREE GROWTH TAX LAW, 36 M.R.S.A. 577-594 as enacted by P.L. 1971, c. 616 and amended by 1975, c.765.

Purpose:
Promote better forest management by appropriate tax measures.

Areas and Uses Affected:
Land held primarily for growth of trees and forest products but excludes ledge, marsh, open swamp, bog, water and similar areas which are unsuitable for growing a forest type even though such areas may exist within forest lands.

Environmental and Economic Considerations:
Environmental -
(a) Sustained yield basis for forest lands.
(b) Better management of forest lands.
(c) Protect recreational resources.

Economic considerations are prevention of inadequate taxation, excessive taxation, and forfeiture of some forest lands.

Administrative Agency:
State Tax Assessor.
Forest Land Valuation Advisory Council established by Act to advise State Tax Assessor. Municipality assesses forest land within its jurisdiction. Recommendations of State Tax Assessor not mandatory.

Regulatory Power:
State Tax Assessor to determine annual net wood production, average stump values, and to establish evaluation accordingly in conformance with purposes of the Tree Growth Tax Law.

Appeal Procedure:
Various avenues of administrative and judicial review available depending on where land is and who is seeking relief. See statute for each situation.

F15 AUTHORITIES FOR PROPERTY ACQUISITION

Property acquisition is not necessary to implement this program, therefore no authorities are cited.

Appendix G

PUBLIC PARTICIPATION

A Summary of Agencies, Committees, Questionnaire Results, and Public Hearings Held in Conjunction with the Public's Participation in Maine's Coastal Program 453

PUBLIC PARTICIPATION IN DEVELOPING MAINE'S COASTAL PROGRAM

INTRODUCTION

Extensive effort has been made to inform and involve the public in the development of Maine's Coastal Program. A variety of methods was utilized in order to reach the large number of public and private agencies and individuals who might be interested in or affected by the program.

This section will summarize the citizen participation program since October 1, 1976, approximately the date when work began to prepare a new proposal designed to meet with the approval of the citizens of Maine. Included will be:

- lists of organizations and categories of individuals contacted
- committees formed
- summaries of public meetings held
- letters received
- questionnaires, surveys, used to solicit input and response.

In the interest of brevity, copies of questionnaires, tabulation of results, and other details were omitted. Additional information will be supplied on request.

INTERESTED AGENCIES AND INDIVIDUALS

The list of interested agencies, groups, and individuals has grown as the program has developed. These are currently about 1800 entries on the mailing list. This list is broken down into the following categories: (Where appropriate, an approximate number is given.)

LOCAL GOVERNMENT (COASTAL):
City/Town Managers (57)
First Selectmen or Chairmen of Town Councils (134)
Planning Boards (129)
Conservation Commissions (79)
Recreation Directors (22)
City Planning Offices (8)
City Development Offices (1)

Maine Municipal Association

COUNTY GOVERNMENT (COASTAL):
County Commissioners (30)

REGIONAL AGENCIES (COASTAL):
Regional Planning Commissioners (8)
Executive Directors (8)
Representatives of Member Towns (116)
Representative of RPC's as a group (1)
Resource Conserv. & Developmt Districts(3)
Soil & Water Conservation Districts (8)
Watershed Groups (8)
Economic Development Districts (1)

INTERSTATE:
New England River Basins Commission
New England Regional Commission

STATE GOVERNMENT

State Legislature:
- Coastal Legislators (93)
- Marine Resources Committee Chairman (1)

Maine's Congressional Delegation (4)
Department of Conservation
State Development Office
Department of Environmental Protection
Department of Transportation
Office of Energy Resources
State Planning Office
Department of Marine Resources
Department of Inland Fisheries and Wildlife
Department of Agriculture
Attorney General's Office
Bureau of Indian Affairs
Bureau of Taxation
Maine Housing Authority
Maine Port Authority
Maine Real Estate Commission
Maine Historic Preservation Commission
Soil and Water Conservation Commission

FEDERAL GOVERNMENT:
(Agencies listed and participation discussed in Appendix H.)

EDUCATIONAL INSTITUTIONS:
Maine Colleges (8)
University of Maine

MARINE RESEARCH GROUPS (2)

COOPERATIVE EXTENSION SERVICE OFFICES (9)

COASTAL NEWSPAPERS (27)

BUSINESS INTERESTS:
Chambers of Commerce (25)
Fishermen's Cooperatives (17)
Other Fishermen's Organizations (6)
Aquaculture (8)
Port Development Groups (3)
Boat Building and Marine Trade Associations (2)
Farming Organizations (3)
Tourists Industry Organizations (2)
Housing/Construction Industry Associations (4)
Real Estate Dealers' Associations (1)
Bankers' Associations (3)
Paper and Other Forest Product Industry Associations ( )
Petroleum Dealers' Associations (1)
Truckers' Organizations (1)
Commercial/Industrial Organizations (5)
Other Economic Development Organizations (10)
Major Businesses and Industries (46)

CONSERVATION ORGANIZATIONS:
Statewide Conservation Organizations, such as:
- Maine Audubon Society
- Natural Resources Council
- Coastal Resource Action Committee
- Maine Coast Heritage Trust
- Maine Association of Conservation Commission
- Garden Club Federation
- Congress of Lake Associations

Local Conservation Organizations (8)

OTHER LOCAL ORGANIZATIONS:
Service Organizations (73)
Sportsmen's Associations (57)
Recreation Commissions (10)
Historical Societies (59)

INDIVIDUAL COASTAL RESIDENTS WHO EXPRESSED INTEREST:
(131 on mailing list)

COMMITTEES FORMED

A policy and technical advisory group has been formed specifically for the development and implementation of Maine's Coastal Program.

The Governor's Advisory Committee on Coastal Development and Conservation was formed by Executive Order of the Governor (See Executive Order, Appendix F1). This Committee, intended to represent the broad range of coastal interests, includes the Commissioners (or Cabinet level officials) of the following departments: State Development Office, Department of Conservation, Attorney General, Office of Energy Resources, Department of Marine Resources, Department of Transportation, Department of Environmental Protection, and the State Planning Office.

Additionally, there are two State legislators on the Committee, a representative of the regional planning commissions, the Greater Portland Area Building Fund, University of Maine, and four "citizens at large", one of whom is the chairperson.

This Committee may, from time to time, be expanded by the Governor to include more representation. The Governor may also use this Committee to advise him on matters related to the coast. The Committee meets approximately monthly, or as the need arises. It will serve to advise on funding distribution, especially in cases where decisions have to be made either because of questions regarding eligibility or in selection when grants are awarded on a competitive basis. The Committee has and will continue to play a strong role in advising the Governor on policy refinements on issues affecting the coast.

The Technical Advisory Committee was formed to advise the staff and the Committee on Coastal Development and Conservation (CCDC) on "technical" aspects such as methodology, data, and procedures used in study reports, and local and special projects. This Committee, appointed by the chairperson of the CCDC, consists of professionals in the related state agencies, directors of regional planning commissions; as well as conservation, business, or general organizations; and professional planners of coastal towns (now numbering six). This Committee meets about once in three months, but individual members are often called upon for assistance on an ad hoc basis.

MEETINGS TO SOLICIT PUBLIC OPINION

Since the rejection of the last coastal application, the State Planning Office has made an unprecedented effort to involve the public in guiding the new application and offering them opportunity to comment on it.

There have been 43 public meetings called for the purpose (speaking engagements not included), numerous press releases, and 3 questionnaires to solicit written sentiment. Coastal local and regional officials know the application, feel they have had a say in it, and support it wholeheartedly.

The following summarizes the meetings held for the purpose of answering, "What do people of the Maine coast think of the application?"

Stage	Dates	No. of Meetings	Target	Attendance
Guidance	Oct '76-Feb '77	18 local	Local officials	293
	(Cherryfield-Biddeford)	3 areawide	Local officials	30
	Nov '76-Jan '77	2	Environmentalists	6
	January '77	3	Business-Industry	12
Preview	March '77 (Machias-Kennebunk)	10	Local mailing list invitees	89
Oct. Draft	Nov - Dec '77	6	Local & regional mailing list	227
	December '77	1	Environmentalists RPC Directors	15
	Total	43		592*

* Some of these may be the same people, of course.

Opinions expressed at the meetings are summarized below:

October '76 - February '77 Series

Public

- Control should reside at local level
- Warned of becoming obligated to federal government
- Concern about how money would be distributed

Conservation Groups

- Would like to see coastal policy issues identifying significant areas explored.
- Support funds to localities for projects with eligibility criteria and to the State for policy development.

Business Leaders

- Concern about dictatorial power, prefer advisory role only;
- Concern about adverse impact of environmental laws on economic development activities;
- Decisions should be made at local level
- Role of state and regional agencies should be to offer technical assistance, to enhance local management capabilities.

March '77 - Preview Series

Verbal response at meetings and written response via mailed-in card were encouraged. A list of 50 concerns range from policy to administrative details. On the whole, statements were positive, supportive of allocating large percentage of funds to local level. A sample of comments follows:

"requiring matching funds may be deterrent"

"regional projects should be encouraged, but how?"

"the highest priority for the first year should be to assure that each coastal town has a good comprehensive plan"

"If the amount awarded to Maine is less than expected, will the percentages of the pie remain the same?"

"I would strongly approve additional laws, regulations, or plans being required or resulting from this program unless adopted by individual towns affected"

November-December '77: Public Meetings on October Draft of Proposal

Formal Statements

- 37 local officials - favoring local control, no more new laws, and praising citizen involvement in process
- 5 still negative of program, and dislike or distrust of state and federal funds/meddling
- 3 (LWV, NRDC, & law school professor) critical of shortcomings and lack state control over state problems.

Concerns Raised in Question Period

- regulations will get tighter - suspicion policy work will lead to more regulations;
- anxious for beach erosion projects;
- would like to see acquisition funds for implementing "planning".

SURVEYS AND QUESTIONNAIRES

A survey was mailed to all coastal towns in August 1976 to see how many towns would be interested in conducting local coastal management projects. One hundred out of one hundred forty-three towns responded. Coastal municipalities expressed a strong need for funding for local projects in resource planning and management. The program is being developed to satisfy the need.

Besides indicating project choices, respondents were asked to prioritize their choices. Frequency on table below indicates how many times item was mentioned, (people were asked to identify their top 5 priorities). First and second choice shows priority.

	Frequency in top 5	1st or 2nd Choice
Economic Development	96	54
Preparation of Town Ordinances	82	35
Collection and Refinement of Information	48	20
Conservation	46	20
Resource Management	41	10
Preparation of Comprehensive Plans	37	18
Town Ordinance Enforcement	19	8
Legal Assistance	17	5
Purchase of Equipment	11	3

Since it is Maine's contention that the projects conducted by local municipalities will best meet the objectives of the Coastal Program, it is important to specify as much as possible the nature of these projects. The following list of examples illustrates what was meant by each category of projects. The numbers next to each item again indicate the frequency of times mentioned.

Economic Development	
Wise use of natural resources	37
Guiding commercial development to suitable location	21
Guiding housing development to suitable location	17
Guiding industrial parks to suitable location	13
Other	8

Preparation of Town Ordinances	
Zoning ordinances	17
Growth management ordinances	17
Building codes	17
Subdivision ordinances	12
Sign and billboard ordinances	6
Streamlined procedures for issuing permits	6
Shellfish ordinances	3
Other	4

Collection and Refinement of Information	
Preparation of tax maps	17
Soils information	9
Recreation resource information	7
Shellfish information	7
Socioeconomic information	5
Geologic information	2

Conservation	
Water supply protection	14
Conservation of open space	13
Conservation of wildlife habitat	2
Other	7

Resource Management	
Access to Coast	14
Town shellfish resources	9
Town watersheds	6
Town open space and parks	6
Town historic areas	2
Town forest	1

Comprehensive Plan	
Preparation of Town plans	18
Comprehensive capital improvement	13
Other	6

Town Ordinance Enforcement	
Hiring person to administer ordinances	17
Other	2

Legal Assistance	
Hiring a lawyer	17

Equipment	
Equipment for data refining	5
Other	6

Questionnaires Administered at Meetings

Brief questionnaires were provided to supplement all public meetings. The responses are summarized below:

Allocation of Funds

Regarding the proposed distribution of available funds, the response to questionnaires administered in the October 1976-1977 series was as follows:

- 77% felt the available money should be mostly used by towns and regional agencies
- 48% said funds should be given exclusively to towns, and
- 37% said funds should be given "mostly" to state agencies.

The same question was asked in a somewhat different format in the November '77 public meeting series: The response was quite specific in favor of local assistance and wary of state functions:

- 88% are either satisfied with proposed allocation of funds to local level or thought it not enough;
- 59% thought it just right; 29% not enough.
- 66% thought special project grants to state and regional agencies were just right, but
- 20% thought funds to state and regional were too much.
- The wariness about state policy formulation showed up when only 52% thought funds to state agencies for policy refinements were just right but 35% thought funds for policy refinement to state agencies were too much.

Existing or New Laws

In the October '76-'77 Series, most thought existing state and local "land use control programs" were sufficient in the short term and many thought that in the longer term (several years) a combination of new and old land use control programs was needed. 4% support new land use control programs.

The question was asked a little differently in the November '77 series: 66% thought the "six core laws" adequate, 15% answered no, 13% weren't sure.

Both responses indicate that people would not support new coastal management legislation. Note that the question did not use the word "enforcement". It is unlikely that the word would bring out more support.

Comments

In the '76 questionnaire respondents were asked to list issues they felt the Coastal Program should address. Answers ranged from pollution abatement to public education on planning. Not one mentioned improved enforcement. Two individual suggestions came close on either side of the issue: "Comprehensive coastal zoning administered by the State" and "Reduction of state and regional interference in local planning."

In the October '77 questionnaire 41 comments were supportive, 10 cautiously optimistic, and 3 unfavorable.

Letters Received

In addition to questionnaires, there were 17 letters received by either the Governor, Planning Director, or planning staff; 14 of these letters were supportive; 3 were critical, raising legal points. These latter comments were considered in the same way as federal agency responses and were considered in the revisions to the October Draft.

Appendix H

FEDERAL PARTICIPATION

1 Federal Agency Involvement 192

FEDERAL AGENCY INVOLVEMENT

Opportunity for federal agency participation in Maine's Coastal Program has been, and will continue to be, available through combined federal meetings, correspondence, and one-on-one discussion with those federal agencies with particular concerns. Informal contacts and conversations have also helped assure participation as have contacts made in the early 1970s by the New England River Basins Commission (NERBC) in drafting two reports on federal activities and interests in Maine's coastal area.[1]

Participation has centered on four meetings held under the auspices of the NERBC and correspondence. The first of these meetings was held November 20, 1974, to review the format and content of the State's 306 application for the Mid-Coast region of Maine. At a second, March 1975, meeting that application was reviewed preparatory to its submission to the Office of Coastal Zone Management, however. shortly thereafter the application was withdrawn because of lack of support and a decision was made to revise the scope and administrative strategy of the program - the basic legal/management cornerstones were retained. Thus, the third and fourth meetings (held on August 10, 1976 and April 6, 1977,) focused on an explanation of the revised direction of Maine's program and a description of how funds may be allocated if the program is funded.

The responsibility for arranging these meetings has been shared by the State Planning Office and the NERBC's Coastal Zone Liaison staff person. The names of those invited to attend the meetings were drawn from the Federal Agency contact list compiled by the NERBC.

Twenty representatives of various Federal agencies attended the August 10, 1976 meeting in Boston to discuss the progress of the Maine Program. Attendees reviewed the status of the Maine coastal planning program, discussed the current direction of the Maine program as shown in the management subcommittee's report to the full Committee on Coastal Development and Conservation mailed to the agencies earlier. They also heard a report on key elements of the recently signed Coastal Zone Management Act Amendments and draft regulations for Section 307 (which deals with federal participation in and review of a state's coastal zone program and federal consistency with an approved state coastal zone program).

Designated coastal zone contacts in federal agencies were encouraged to comment on the report of the Management Subcommittee and on the current direction of the state program; to identify federally-owned lands in the Maine coastal area; and to identify and describe federal projects and programs that operate in or affect the Maine coastal area.

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[1] January 1971, "Federal Activities in the Maine Coastal Zone" and January 1971, "Regional and National Demands on the Maine Coastal Zone; N.E.R.B.C."

Twenty-one representatives of various concerned Federal agencies attended the April 6, 1977, meeting in Boston. A preview of the Maine Coastal Program and how the program will accommodate activities of national or regional interest were the key subjects. The Maine Coastal Program staff reported on progress of the program, and described the six state laws which were originally designated to serve as the key authorities for management. Federal agency representatives were particularly interested in how the program would (1) ensure that uses of regional benefit are not arbitrarily excluded; (2) accommodate activities in the national interest; and (3) provide state-level overview of the many program elements. Federal agencies were requested to describe how their own programs and projects relate to the core laws, and to provide a statement of their views of the national interest in the Maine coastal area.

Tables summarizing concerns expressed by federal agencies during the development of Maine's Coastal Program appeared in appendix 42 of the DEIS. In addition the federal agencies have commented on the Draft Environmental Impact Statement on Maine's Coastal Program. In response to these comments a number of changes were made in the program. A detailed summary of federal agency comments on the DEIS and Office of Coastal Zone Management's responses appears in Part IX of this document. The full text of these comments is available as a separate volume.

Appendix I

COORDINATION

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COORDINATION BETWEEN AND WITHIN STATE AGENCIES REGARDING THE ISSUANCE OF LICENSES AND PERMITS RELATED TO THE 11 LAWS

Coordination between the State Planning Office and the two state agencies responsible for the 11 various laws that are the core of Maine's Coastal Program is assured through the Memoranda of Agreement contained in this Appendix. These memos establish cooperative procedures and spell out understandings between the Department of Environmental Protection and the Land Use Regulation Commission and the State Planning Office. They also clarify the State Planning Office's administrative duties in implementing the Program and explain state agency Federal Consistency responsibilities.

Coordination between the Department of Environmental Protection and the Land Use Regulation Commission regarding the review of applications for all environmental permits (including the 11 laws adopted by Maine's Program) and other state agencies is assured by legislation approved by the 108th (1977) Legislature. (See footnote below for the Department of Environmental Protection's provisions as found in 38 M.R.S.A. § 341 and Appendix F5a for Land Use Regulation Commission's provisions in 12 M.R.S.A. § 685-B.) Generally these two sections of the law establish a "one-stop" permit procedure which requires that either the Department of Environmental Protection or the Land Use Regulation Commission (depending on the location of the project) take the lead in establishing "coordination and assistance procedures," on behalf of the applicant, for all state "environmental permits" (in the case of Department of Environmental Protection) and all state "land use permits" (in the case of the Land Use Regulation Commission).

Coordination within the Department of Environmental Protection itself with regard to projects that require more than one permit is achieved at the Bureau level by: requiring an applicant to submit all the required applications before any one permit application is reviewed (see Departmental Regulations 1.4 "Application Requirements,"); or by making approval of one permit conditional on receipt of all applicable permits; or by having the applicant apply for the other permits while the first is being processed.

Coordination with regard to the Shoreland Zoning Law is achieved through the Shoreland Zoning Task Force. Members of both the Board of Environmental Protection and the Land Use Regulation Commission sit on the Task Force and the State Planning Office provides the staff to overview and administer the Act at the State level. Permits are issued at the local, municipal level. (See Appendix F4b for details.)

Sec. 4. 38 MRSA § 341, as last repealed and replaced by PL 1975, c. 771, § 418, is amended by adding at the end the following new paragraph:

The Department of Environmental Protection shall establish coordination and assistance procedures for all environmental permits issued by agencies of the State for activities within the organized municipalities. Such procedures shall, to the extent practicable, ensure: The availability to the public of necessary information concerning such environmental permits; the provision of assistance to applicants in obtaining such permits from all such agencies; the coordination of application procedures, time schedules, application forms and similar requirements so as to reduce delay and duplication of effort by the applicant and the issuing agencies. Such permit issuing agencies shall cooperate with the Department of Environmental Protection in the development and effectuation of such coordination and assistance procedures.

Approved May 25, 1977.

CONSULTATION AND COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION

This section will show how the activities of the Department of Transportation are coordinated with Maine's Coastal Program.

It will describe:

- how activities come under the jurisdiction of some of the core laws in the Coastal Program;
- the social, economic, and environmental review process Department of Transportation uses for making siting decisions;
- the relationship between the State Planning Office and the Department of Transportation;
- the procedure in case there is a conflict between the Department of Transportation and the Coastal Program.

JURISDICTION OF THE CORE LAWS

The Department of Transportation submits all of its highway projects for review to the Department of Environmental Protection. Project proposals are sent to the Land Bureau and Water Bureau for review and comment. Projects are then reviewed under the appropriate core law.

Coastal Wetlands Act

Any road building activity clearly comes under the Coastal Wetlands Act:

> "no individual person, firm, corporation, municipality, state agency ... shall fill ... or erect ... a causeway, bridge ... or other permanent structure, in or over any coastal wetland... in any swamp, marsh, bog, beach, flat, or other contiguous lowland which is subject to tidal action"

Pursuant to § 474, the Department of Transportation must demonstrate that the highway

> "will not unreasonably interfere with existing recreational or navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural fow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries, ..."

Protection and Improvement of Air Law

The air law requires a demonstration that a highway project of four or more lanes will not violate the State of Maine ambient air quality standards.

> "The person or agency proposing to construct a highway resulting in four or more lanes shall submit to the Department of Environmental Protection an air quality impact analysis. This analysis shall be conducted in accordance with such mathematic modeling techniques as are mutually acceptable to the Department, Environmental Protection Agency, and the Federal Highway Administration."

The exemptions eliminate activities which don't affect air quality:

> "The foregoing shall not apply, however, to highway projects that will have no significant affect on air quality such as lights, signs, landscaping, and resurfacing."

The Department of Transportation also submits projects to the Department of Inland Fisheries and Wildlife for review when the Stream Alteration Act applies.

Stream Alteration Act

Similar to the Wetlands Act, the Stream Alteration Act requires a permit for any filling or erection of structures, building of causeways, bridges, etc. The permits are issued by the Department of Inland Fisheries and Wildlife. State agencies are not exempt from the requirement.

The Act does exempt any:

> "river, stream, or brook crossings in connection with public works projects which shall alter not more than a total of 300 feet in any mile of shore which shall .... Alteration to both shores of the river, stream, or beach shall be combined in arriving at a total shore footage."

The Department of Transportation also submits projects to the Land Use Regulation Commission when the Land Use Regulation Commission law applies.

The Land Use Regulation Commission

The Land Use Regulation Commission requires permits for all significant road projects in its jurisdiction, which covers 5% of the coastal area. The permit process and standards are described in Section 7.53. Generally the standards and conditions of the permit are designed to protect and enhance environmentally sensitive areas or values.

Review by the Departments of Environmental Protection, Inland Fisheries and Wildlife, and the Land Use Regulation Commission under these core laws assures that the Coastal Program has control over any highway project which may have a significant affect on the coastal area.

Site Location Law

The Site Location Law does not apply to highways. However, any highway projects funded with federal aid must be consistent with the Maine Coastal Program as provided in the federal consistency provision of Section 307 of the Coastal Zone Management Act.

In addition, the State Planning Office will review all major transportation projects as defined below and notify the Department of Transportation if they are consistent with the Coastal Program. In cases where federal consistency does not apply, the procedures for resolution of the interagency conflict is described below.

DEPARTMENT OF TRANSPORTATION'S ACTION PLAN FOR REVIEW OF ALL HIGHWAY PROJECTS

The Department of Transportation has compiled an "Action Plan" for the review of all its highway projects. The process used for all projects satisfies the social, economic, and environmental review requirements when federal funds are used for highway construction.

The degree of review and public involvement varies with the extent of environmental impact. The Department of Transportation has classified its projects to three levels, Level 1 - minimal; Level 2 - moderate; and Level 3 - major environmental impact. For all three levels appropriate local, state, and federal officials are informed of engineering studies and alternatives. Public meetings are held. For Level 2 and Level 3 formal public hearings are mandatory. Where comments received at public hearing reveal issues or alternatives not previously considered, they must be considered by the Department of Transportation. Level 3 review must include an Environmental Impact Statement and process.

MEMORANDA OF AGREEMENT WITH STATE PLANNING OFFICE AND CORE LAW AGENCIES

In conjunction with the above Action Plan, the Department of Transportation has memoranda of agreement with core law agencies as well as the State Planning Office, stating that the agencies will be provided an opportunity to review all proposed planning studies and engineering plans. The Department of Transportation will provide the agencies with its Biennial Highway Construction Program. The agencies will in turn advise the department of any interest they have in the plans or alert them to any adverse environmental impacts. Such agreements have been signed by the Departments of Environmental Protection, Inland Fisheries and Wildlife, Marine Resources, and the Land Use Regulation Commission, all state core law agencies.

There is also a memorandum of agreement (attached) between the State Planning Office and the Department of Transportation under which the State Planning Office reviews state funded Department of Transportation projects involving more than $200,000, to assess that all projects affecting the coastal area are consistent with Maine's Coastal Program.

Under the agreement the Department of Transportation must discuss any concerns raised by the State Planning Office regarding the impact of the projects on Maine's Coastal Program. The review has been incorporated into the State Planning Office's A-95 review process.

The State Planning Office has reviewed the 1978/79 Highway and Bridge Improvement Program.

The following projects are the only exclusively state aid highway projects in the coastal area:

Project #103 in Arrowsic on Route 127, 1.5 miles, estimated cost $50,000. "Funds are provided to improve the structural conditions of roadway at selected locations, drainage and shoulder improvements."

Project #149 - Cumberland/Yarmouth, on Route 88, 3.45 miles, estimated cost $100,000, "Resurfacing, beginning at the Falmouth town line and extending northeasterly."

Project #150 - Harpswell, 1.51 miles on unnumbered road, "Funds are provided for the continuation of improvements to the easterly approach to the Ewing Narrows Bridge." $40,000.

The State Planning Office has reviewed these projects, and expects no significant impact on the coastal area and finds that they are consistent with the Coastal Program. Any additional major highway proposals will be reviewed by the State Planning Office for consistency with the program through the procedures described in this section.

PROCEDURE FOR RESOLUTION OF CONFLICT

In the cases of major transportation projects not subject to federal consistency proposed for the coastal area where the State Planning Office's final position is that a project is inconsistent with the Coastal Program and the State Department of Transportation believes the project is essential for transportation purposes, the Governor shall resolve whether or not the project will proceed.

For the purposes of the memorandum of agreement, a "major transportation project" shall be defined as a project which involves construction on roads in new locations or increases the number of travel lanes but specifically excludes projects to improve traffic operations at intersections.

MEMORANDA OF AGREEMENT BETWEEN CERTAIN STATE AGENCIES AND THE STATE PLANNING OFFICE

The following pages contain copies of Memoranda of Agreement between the State Planning Office and the following state agencies:

a. Department of Transportation

b. State Development Office

c. Land Use Regulation Commission

d. Department of Environmental Protection

MEMORANDUM OF UNDERSTANDING

WHEREAS the Department of Transportation is developing procedures to provide coordinatic in the planning and development of transportation facilities with the State Planning Office, and

WHEREAS it is desirable to coordinate with the State Planning Office in order to assure early identification of potential impacts relative to areas of mutual interest, and

WHEREAS it is necessary to develop procedures which will fulfill the Maine State Plannir Act of 1968, and title IV of the Federal Intergovernmental Cooperation Act of 1968,

NOW, THEREFORE, the Department of Transportation and the State Planning Office mutually agree to enter into the following Memorandum of Understanding in order to achieve the above goals:

I. Planning Functions

Annual Work Program

1. The Department of Transportation, through its Bureau of Transportation Planr and Services, will submit to the State Planning Office the draft Annual Higl way Planning and Research Program prepared each year by the Department of Transportation. The program will define the Bureau of Transportation Planni and Services' objectives for the forthcoming fiscal year. This submission s be regarded as the beginning of the A-95 project review and evaluation proce

2. The State Planning Office shall have thirty (30) days in which to indicate whether comments may be forthcoming. The State Planning Office is encourage to comment on the studies proposed within their jurisdictional area regardir the need for the establishment of study committees for a specific proposal.

3. Should the State Planning Office indicate to the Department of Transportatic that it may wish to comment, the Bureau of Transportation Planning and Services will arrange for a discussion to resolve any questions or points of interest.

4. The State Planning Office shall have 30 days following receipt of the final program to submit formal comments to the Department of Transportation.

5. The Bureau of Transportation Planning and Services will consider the comment received from the State Planning Office pertaining to the Annual Highway Planning Program. The results of the review along with A-95 State Planning Office communications and appropriate Department of Transportation comments will then be submitted to the Federal Highway Administration.

Urban or Corridor Planning Studies

1. The Bureau of Transportation Planning and Services will inform the State Planning Office of proposed urban or corridor planning studies, including the Department's plans to establish a study committee.

2. Within fourteen (14) days, the State Planning Office will advise the Bureau c Transportation Planning and Services that they are interested in serving on

proposed study committees or, not interested in serving on the proposed study committees or, if study committees are not proposed, shall indicate if they are interested in being periodically informed on the progress of the study. They shall also indicate the phases in planning development in which they would prefer contact.

Biennial Highway Construction Program

1. The Bureau of Transportation Planning and Services will provide the State Planning Office with a copy of the Department of Transportation's Biennial Highway Construction Program.

2. The State Planning Office will review the Biennial Highway Construction Program and advise the Bureau of Transportation Planning and Services within thirty (30) days of those projects in which they may have a potential interest.

3. The Bureau of Transportation Planning and Services will consider the comments received from the State Planning Office pertaining to the Biennial Highway Construction Program.

Project Development

1. The Bureau of Transportation Planning and Services will provide all liaison functions between the State Planning Office and the Department of Transportation. The Department will provide the State Planning Office with a notice of the beginning of preliminary engineering studies including a map of the study area for all Federal-Aid projects, and State funded projects which exceed $200,000.00 in total cost, and State projects involving more than one municipality. The notice of the beginning of preliminary engineering studies on Federal-Aid projects will indicate the level of action defined in the Action Plan proposed for utilization in the development of the project.

2. The State Planning Office, upon receipt of the notice of preliminary engineering studies shall have thirty (30) days in which to conduct an initial review of the proposed project and to indicate if comments may be forthcoming. If the State Planning Office does not respond within a thirty (30) day period after receipt of the notification, it shall be assumed that no comments shall be forthcoming. However, the State Planning Office is encouraged to comment on the project's proposed level of action.

3. Should the State Planning Office indicate to the Department of Transportation that it may wish to comment, the Bureau of Transportation Planning and Services will arrange for a discussion to resolve any questions or points of interest.

4. Procedures to Resolve Questions and Points of Interest --

   (a) The State Planning Office will indicate to the Department of Transportation their potential interest or concern, including suggested points in project development where informal meetings should be held to discuss the project.

   (b) The Department of Transportation will notify the State Planning Office when these specific points in project development identified as per item (4a) above have been reached. An informal meeting will be held at the request of either party for each of the defined points of interest.

(c) During the development of the project should the Department of Trans portation determine that a change in level of action would be approp the State Planning Office will be notified of this decision and prov an opportunity to comment on this change.

(d) The Department of Transportation, upon completion of preliminary des plans on projects where interest still exists, will contact the Stat Planning Office to determine if personal contact is desirable at thi time and to determine future contact points during project developme:

5. The State Planning Office will be notified if an Environmental Impact Sta is required and, if so, an indication of the nature and extent of the env: mental impact anticipated.

6. The State Planning Office will be advised of all informal public meetings public hearings in order that they may be represented where there is a sp interest.

7. The State Planning Office, upon receipt of the notice for an opportunity : public hearing or formal public hearing shall have thirty (30) days in wh: to conduct a re-review of the proposed project and to indicate if additio comments may be forthcoming. This phase will be considered the beginning final phase in the A-95 process. If the State Planning Office does not r within a thirty (30) day period after receipt of this notification, it sh assumed that no comments shall be forthcoming.

8. Should the State Planning Office indicate to the Department of Transporta that additional comments may be forthcoming, the Bureau of Transportation Planning and Services will arrange for a discussion to resolve these ques of points of interest.

9. The Department of Transportation will advise the State Planning Office of location and design approval by the Commissioner of Transportation.

10. The State Planning Office shall have thirty (30) days following receipt o: notice of location and design approval by the Commissioner of Transportat: submit formal comments to the Department of Transportation.

11. These comments and the results of the review for a Federal-Aid project wi: transmitted to the Federal Highway Administration prior to contract adver

III. This Memorandum of Understanding will be subject to review annually or at request of either party.

This Memorandum of Understanding becomes effective after signature and after the Governo approval of the Action Plan.

Witness.

Witness.

David H. Stevens, Commissio
Department of Transportatio

Philip M. Savage, Director
State Planning Office

Date Oct. 15, 1

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JAMES B. LONGLEY
GOVERNOR

March 22, 1978

Robert Knecht, Assistant Administrator
Office of Coastal Zone Management
Department of Commerce
Page Building No. 1
3300 Whitehaven Street
Washington, D. C. 20235

Dear Bob:

The purpose of this letter is to assure you that I recognize the Office of the Governor may be called upon to make the final decision regarding major highway projects in the coastal area in light of the goal and policies of Maine's Coastal Program.

To quote from Section II of the appendix to Maine's Program Proposal,

> "In the cases of all major transportation projects proposed for the coastal area (as defined in Maine's Coastal Program) where the State Planning Office's final position is that a project is inconsistent with the standards of the core laws of the Coastal Program and the Department of Transportation believes the project is essential for transportation purposes, the Governor's Office shall resolve whether or not the project will proceed."

Very truly yours,

Jim

James B. Longley
Governor

JBL;jpm
cc: Jean Childs, Chairperson
Comm. on Coastal Development & Conservation
Roger Mallar, Transportation Commissioner
Allen G. Pease, Director, State Planning Office

MEMORANDUM OF AGREEMENT

Under the Terms of this Agreement between the:

State Development Office, an agency within the Maine Executive Department, hereafter referred to as the "S.D.O.," and the

Maine State Planning Office, a staff agency within the same Executive Department, hereafter referred to as the "S.P.O."

> it is hereby recognized that to help achieve the balance between conservation and development interests that is necessary to fulfill the basic goal of Maine's Coastal Program, it is in the best interests of the people of Maine for the S.D.O. and the S.P.O. to cooperate and coordinate those activities that further that goal. Towards this end, (and in furtherance of 5 M.R.S.A. § 7002.2D), the

- S.D.O. agrees to continue to utilize, from the S.P.O., economic analyses and data on the coast and its economy, with a view to making this available to interested parties.

- S.P.O. agrees to provide the following information and services to the S.D.O. and persons or corporations residing, or planning business ventures in Maine's coastal area:

  - copies of relevant Maine Coastal Inventory resource maps,
  - land capability maps,
  - copies of S.P.O. planning, or economic reports that have relevance to development proposals;
  - advice on favorable locations or sites for specific types of commercial, or industrial enterprises;
  - information from the MIDAS computer inventory; and

- S.D.O. agrees to refer persons contemplating economic development activities in the coastal area to the S.P.O. for the above advice. Such referrals, however, shall be made only with the concurrence of the client.

Signed at Augusta, Maine, this 4/13/78

STATE DEVELOPMENT OFFICE

Hadley P. Atlass

Hadley Atlass, Director

STATE PLANNING OFFICE

Allen G. Pease

Allen G. Pease, Director

MEMORANDUM OF AGREEMENT

Under the Terms of this Agreement between the:

Land Use Regulation Commission, a bureau of the State of Maine, Department of Conservation, hereafter referred to as "LURC", and the

Maine State Planning Office, a staff agency within the Executive Department, hereafter referred to as the "S.P.O.",

> it is hereby recognized that in order to make those existing laws, rules, and regulations that apply to the coastal area of Maine work more effectively, and in order to strengthen the roles that both agencies play in helping achieve a balance between conservation and development, it is in the best interests of the people of Maine for the LURC and S.P.O. to work together in the following ways:

- The LURC agrees to submit to the S.P.O. (Resource Planning Division) for review and comment all those plans, reports, research documents and applications that, in its judgment, are significant to the management of activities in the coastal area. Such materials shall include, but will not necessarily be limited to: Revisions to LURC's Comprehensive Plan, Land Use Districts and Standards, Official Land Use Guidance Maps, and applications for a permit that, by their characteristics would qualify for review under the terms of the Site Location Act. LURC further agrees to thoughtfully consider the comments, advice and information provided by the S.P.O. in this connection.

- The S.P.O. agrees to provide the following information and services to the LURC and persons or corporations residing or planning business ventures in those parts of the coastal area in LURC's jurisdiction:

  - Copies of all Maine Coastal Inventory resources maps that apply to the Commission's jurisdiction
  - Land capability maps
  - Advice on favorable locations or sites for specific types of commercial or industrial enterprises
  - Information from the MIDAS computer inventory, and

- LURC agrees to utilize this mapping and inventory information as a guide in reviewing applications and in determining land use districts.

- Furthermore both parties to this memorandum agree that, whereas the S.P.O. has administrative responsibility for processing "consistency" findings submitted by federal agencies or persons requiring federal permits or licenses in the coastal area, as specified in the Appendix to Maine's Coastal Program and entitled "Federal Consistency Requirements," the LURC shall have primary responsibility for evaluating such proposals, submitted to it by the S.P.O., and for reporting its findings to the S.P.O.

- In addition, LURC agrees to consider all applications for siting facilities in its jurisdiction that may be in the national interest. Furthermore, the agency recognizes that there are facilities and resources that are in the national interest and is in agreement with the statements relating thereto in the Appendix (E1) of Maine's Coastal Program.

- Finally by this Agreement both parties reaffirm their commitment to continuing to carry out their respective roles under the provisions of the Mandatory Shoreland Zoning Act.

Signed at Augusta, Maine, this 31st day of March, 1978.

LAND USE REGULATION COMMISSION

Kenneth G. Stratton

Director: Kenneth Stratton

STATE PLANNING OFFICE

Allen G. Pease

Director: Allen G. Pease

MEMORANDUM OF AGREEMENT

Under the Terms of this Agreement between the:

Department of Environmental Protection, hereafter referred to as the "D.E.P.," and the

Maine State Planning Office, a staff agency within the Executive Department, hereafter referred to as the "S.P.O."

> it is hereby recognized that in order to make those existing laws, rules, and regulations that apply to the coastal area of Maine work more effectively, and in order to strengthen the roles that both agencies play in helping achieve a balance between conservation and development, it is in the best interests of the people of Maine for the DEP and SPO to work together in the following ways:

- The DEP hereby agrees to submit to the SPO (Resource Planning Division) for their review, information, and comment, all regulations and applications for Site Location of Development permits that, in the opinion of the DEP, are of significance in the coastal area. The DEP further agrees to take the SPO comments into careful consideration when evaluating any such proposal.

- By this agreement the SPO agrees to provide the following information and services to the DEP and persons or corporations residing, or planning business ventures in Maine's coastal area:

  - copies of relevant Maine Coastal Inventory resource maps,
  - land capability maps,
  - copies of SPO planning, or economic reports that have relevance to development proposals;
  - advice on favorable locations or sites for specific types of residential, commercial, or industrial enterprises; and
  - information from the MIDAS computer inventory.

The above information will be used by the DEP as a guide for assisting in reviewing permit applications in the coastal area.

Further, the SPO will continue to make persons considering development in the coastal area aware of, and familiar with, those laws administered by the DEP that most directly affect them.

- Furthermore both parties to this memorandum agree that, whereas the SPO has administrative responsibility for processing "consistency" findings submitted by federal agencies or persons requiring federal permits or licenses in the coastal area as specified in the Appendix to Maine's Coastal Program and entitled "Federal Consistency Requirements," the DEP shall have primary responsibility for evaluating such

proposals submitted to it by the SPO, and for reporting its findings to the SPO.

- In addition, the DEP agrees to consider all applications for siting facilities in its jurisdiction that may be in the national interest. Furthermore, the agency recognizes that there are facilities and resources that are in the national interest and is in agreement with the statements relating thereto in the Appendix (E1) of Maine's Coastal Program.

- Finally by this agreement both parties reaffirm their commitment to carry out their respective roles under the provisions of the Mandatory Shoreland Zoning Act.

Signed at Augusta, Maine on the 3rd day of April, 1978.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Henry E. Warren, Commissioner

STATE PLANNING OFFICE

Allen G. Pease, Director

CONSULTATION AND COORDINATION WITH OTHER PLANNING

This section of the Appendix describes the procedure undertaken by the State Planning Office to meet the requirement of Section 306(c)(2) of the Coastal Zone Management Act of 1972 as amended, "Consultation and coordination with other planning."

Using Section 305 financial support, the State Planning Office contracted with each areawide planning agency (in Maine termed Regional or County Planning Commissions, "RPCs") to contact each local government with zoning or other land-use regulatory authority in their planning region and the designated Coastal Area. Staff from each RPC contacted each local government in order to review plans and related ordinances in effect on January 1, 1977. The review of plans was conducted to make a general survey of the extent of land use planning and control exercised at the local level throughout the Coastal Area, and in particular to identify conflicts with the Section 306 Coastal Program being proposed by the State of Maine. This list was updated by State Planning Office staff in July 1978.

The results of the survey are presented in the following set of tables. The extent of various land use control ordinances in effect in the Coastal Area is displayed for each local government within each planning region.

The survey shows that no conflicts between Maine's proposed Coastal Program and plans in existence in coastal towns were identified by the Regional Planning Commissions.

Continuing consultation with the towns concerning the status of plans will occur through the Regional Planning Commissions, who will be funded with 306 monies.

REGIONAL PLANNING COMMISSION

SOUTHERN MAINE

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Arundel	●	●	●	●				●		●			●	
Biddeford	●	●	●	●		●	●	●	●	●	●			
Eliot	●	●	●	●		●	●	●	●	●				
Kennebunk	●	●	●	●		●	●	●	●	●				
Kennebunkport	●	●	●	●		●	●	●	●	●				
Kittery	●	●	●	●		●	●	●	●	●			●	
Old Orchard	●	●	●	●		●		●	●	●	●		●	
Saco	●	●	●	●		●		●	●	●	●		●	
South Berwick	●	●	●	●				●					●	
Wells	●	●	●	●		●		●					●	
York	●	●	●	●		●	●	●	●	●				

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

CUMBERLAND/ GREATER PORTLAND COUNCIL OF GOVERNMENTS

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Cape Elizabeth	●	●	●	●	●	●	●	●	●	●	●	●		
Cumberland	●	●	●	●	●	●	●	●	●	●				
Falmouth	●	●	●	●	●	●	●	●	●	●				
Freeport	●	●	●	●	●	●	●	●	●	●	●			
Portland	●	●		●	●	●	●	●		●	●	●		
Scarborough	●	●	●	●	●	●	●	●	●	●				
South Portland	●	●	●	●		●	●	●	●	●	●			
Yarmouth	●	●	●	●		●	●	●	●	●				●

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

SOUTHERN KENNEBEC VALLEY

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Augusta		●	●	●			●	●	●	●	●	●		
Chelsea	●	●		●				●	●				●	
Farmingdale	●	●		●			●	●	●					
Gardiner		●	●	●		●	●	●	●	●	●			
Hallowell	●	●	●	●		●	●	●	●		●			
Pittston	●	●	●	●			●	●		●				●
Randolph	●	●		●			●	●	●					
Richmond		●	●	●		●	●	●	●	●				

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

SOUTHERN MID-COAST

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Alna	●	●	●	●			●	●	●	●				
Arrowsic	●	●		●	●	●	●	●	●		●			
Bath	●	●		●	●	●	●	●	●	●	●			
Boothbay		●	●	●			●	●		●				
Boothbay Harbor		●	●	●	●	●	●	●		●				
Bowdoinham	●	●	●	●	●	●	●	●	●	●				
Bremen		●	●	●			●	●						
Bristol		●		●			●	●						
Brunswick		●	●	●	●	●	●	●	●	●	●			
Damariscotta	●	●	●	●			●	●						
Dresden	●	●	●	●			●	●	●	●	●			
Edgecomb		●	●	●			●		●	●				
Georgetown	●	●	●	●			●		●					
Harpswell	●	●	●	●			●	●						
Monhegan +														
Newcastle		●	●	●	●	●			●	●			●	●
Nobleboro	●	●	●	●			●	●						
Perkins TWP +														
Phippsburg	●	●	●	●			●	●	●	●				
South Bristol	●	●		●			●	●						

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

SOUTHERN MID-COAST (continued)

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Southport	●	●	●	●	●	●	●			●				
Topsham	●	●	●	●	●	●	●	●	●	●				
Waldoboro	●	●	●	●			●	●						
West Bath	●	●	●	●	●	●	●		●	●				
Westport	●	●	●	●			●	●	●					
Wiscasset	●	●		●		●		●	●	●			●	
Woolwich	●	●	●	●	●	●	●							

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

EASTERN MIDCOAST

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Belfast	●	●		●	●	●		●	●	●			●	
Camden	●	●	●	●	●	●	●	●		●				
Cushing	●	●	●				●	●	●					
Friendship	●	●	●		●	●	●	●						
Islesboro		●	●		●	●	●	●		●		●		
Lincolnville		●	●	●			●	●		●				
Matinicus +														
North Haven	●	●		●	●	●	●							
Northport	●			●			●	●		●		●		
Owls Head	●	●	●	●	●	●	●	●			●			
Rockland	●	●		●	●	●	●	●	●	●	●			
Rockport	●	●	●	●	●	●	●	●	●	●				
South Thomaston	●	●	●	●			●							●
St. George	●	●	●				●	●	●					
Thomaston	●	●		●	●	●	●	●	●	●				●
Vinalhaven	●	●	●	●	●		●		●					
Warren	●	●	●				●	●	●		●			

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION	Planning Organization			Town Enacted Ordinances									State Requirements	
PENOBSCOT VALLEY	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Bangor	●	●		●		●	●	●	●	●	●			
Brewer	●	●	●	●		●	●	●	●	●	●			
Frankfort	●	●					●							●
Hampden	●	●	●	●		●	●	●	●	●		●		
Orrington	●	●	●	●		●	●	●	●					
Prospect	●	●		●				●					●	
Searsport	●	●	●	●			●	●						
Stockton Springs	●	●	●	●		●	●							●
Winterport	●	●		●									●	●

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

PLANNING COMMISSION

HANCOCK COUNTY

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Bar Harbor	●	●	●	●		●	●	●		●				
Blue Hill	●	●		●			●							●
Brooklin	●	●		●			●							●
Brooksville	●	●		●			●							●
Bucksport	●	●	●	●			●	●						●
Castine	●	●	●	●		●	●	●						
Cranberry Isles	●	●		●			●	●						
Deer Isle	●	●	●	●			●							●
Ellsworth	●	●		●		●	●	●	●	●		●		
Franklin	●	●		●			●							
Gouldsboro	●	●	●	●			●	●						
Hancock	●	●	●	●		●	●	●	●					
Isle au Haut	●	●		●		●	●							
Lamoine	●	●		●			●	●	●	●				
Long Island Plt. +														
Mount Desert	●	●	●	●		●	●	●	●	●		●		
Orland	●	●	●				●	●	●					
Penobscot	●	●		●		●	●	●						
Sedgewick	●	●		●			●			●				
Sorrento			●				●		●					●

Legend: + Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

PLANNING COMMISSION	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Southwest Harbor	●	●	●	●			●	●						
Stonington	●	●	●	●			●	●						
Sullivan	●	●	●	●			●	●	●	●				
Surry	●	●	●	●			●			●				
Swans Island	●	●	●				●	●						
Tremont	●	●		●			●			●				
Trenton	●	●	●	●		●	●	●	●	●				
T7 SD +														
T8 SD +														
T9 SD +														
T10 SD +														
Verona	●	●	●	●	●	●	●		●					●
Winter Harbor	●	●	●	●		●	●	●	●	●				

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION

WASHINGTON COUNTY

	Planning Organization			Town Enacted Ordinances									State Requirements	
	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Addison	●	●					●							●
Beals	●	●					●							●
Calais	●	●		●	●	●	●	●		●				
Centerville		●											●	●
Cherryfield	●	●	●				●					●		
Columbia	●	●					●							
Columbia Falls		●					●							●
Cutler		●		●	●	●	●	●				●		
Dennysville	●	●		●	●	●	●	●				●		
East Machias		●											●	●
Eastport	●	●		●	●	●	●	●	●	●				●
Edmunds +														
Harrington	●	●	●		●	●	●							●
Jonesboro	●	●					●	●	●					
Jonesport		●	●	●			●					●		●
Lubec	●	●		●			●					●		●
Machias	●	●	●	●				●	●			●	●	●
Machiasport	●	●					●							●
Marion +														
Marshfield	●	●					●	●	●	●				

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

REGIONAL PLANNING COMMISSION	Planning Organization			Town Enacted Ordinances									State Requirements	
WASHINGTON COUNTY	Regional Planning Commission Member	Planning Board	Conservation Commission	Comprehensive Plan	Partial Zoning Ordinance	Townwide Zoning Ordinance	Shoreland Zoning Ordinance	Subdivision Ordinance	Mobile Home Ordinance	Building Code	Housing Code	Flood-prone Area Ordinance	Shoreland Zoning	Subdivision Regulations
Milbridge	●	●	●	●			●							●
Perry	●	●					●					●		●
Pembroke	●		●										●	●
Robbinston		●					●	●				●		
Roque Bluffs	●	●			●	●	●					●		●
Steuben	●	●			●	●	●	●						●
Trescott +														
Whiting	●	●					●					●		●
Whitneyville	●	●											●	●

Legend:
+ Land Use Regulation Commission (LURC) jurisdiction
o In effect January, 1978, or later
* Potential conflict with proposed 306 Program

Source: State Planning Office files and correspondence with Regional Planning Commissions and towns.

Plans, Other than Local Plans, in Effect on January 1, 1978:

Section 925.42 of the Coastal Zone Management "Notice of Final Rulemaking" requires an identification of plans in effect, a listing of contacts made with those responsible for the plans, documentation of possible conflicts between those plans and Maine's Coastal Program, and a description of how continuing coordination will be accomplished. Appendix H3a answers these requirements with regard to local plans.

The Technical Advisory Committee (TAC) (see G) provides the basic vehicle for coordination between the State Planning Office and other entities undertaking or carrying out plans. Representatives of most state agencies involved in planning that may affect the coast sit on this 44 member committee as do the directors of all the coastal Regional Planning Commissions. The TAC will continue to assist the Committee on Coastal Development and Conservation on an ongoing basis, in monitoring the development and implementation of the Coastal Program. Thus continuing opportunity is afforded the TAC (and the entities they represent) to voice objections to any possible conflicts.

Those persons responsible for coordinating the State's 208 (water quality), and State Comprehensive Outdoor Recreation Plans sit on the TAC. No objections or conflicts between the Coastal Program and these or other plans under the authority of the agencies represented on the TAC have been identified at meetings or elsewhere.

The Land Use Regulation Commission has notified the State Planning Office that there is no conflict between its Comprehensive Plan and the Coastal Program. (See next page.)

Finally, no conflict with other plans is at all likely since Maine's Coastal Program incorporates existing laws as its foundation. Plans in conflict with existing state laws are not useable or acceptable.

STATE OF MAINE

Inter-Departmental Memorandum Date August 1, 1978

To R. Alec Giffen, Supervisor Dept. Natural Resource Planning Div., SPO

From Kenneth Stratton, Director Dept. L. U. R. C.

Subject Possible Conflicts Between LURC's Comprehensive Plan and Maine's Coastal Program

We have reviewed your Draft Environmental Impact Statement issued in April, 1978, to determine if there are any areas of conflict between it and our Comprehensive Land Use Plan of September 17, 1976.

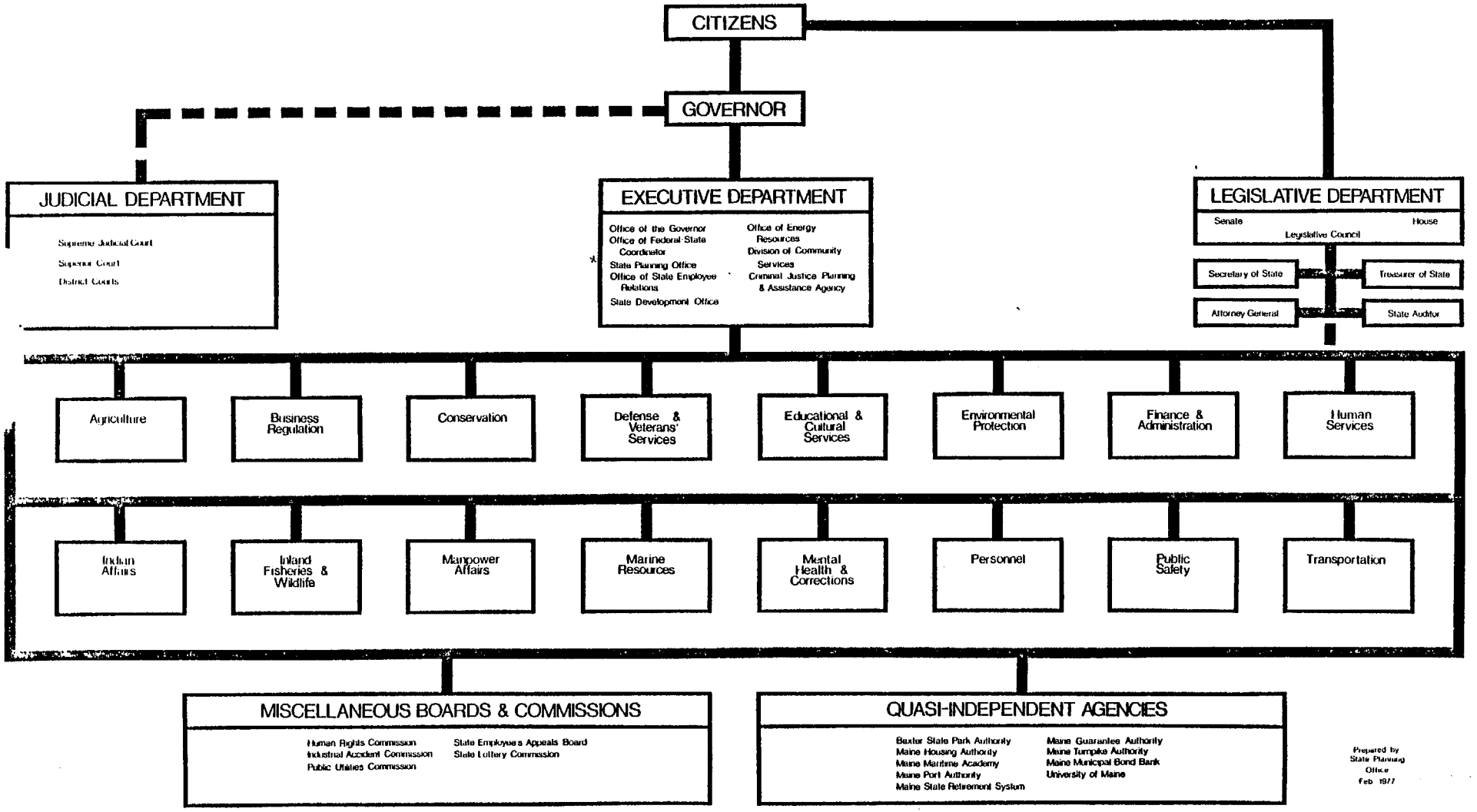
In our opinion the Program fairly describes this agency, its duties, and authorities. By adopting the LURC statute, the Land Use Plan, and the Rules and Regulations promulgated by the Commission for those parts of our jurisdiction in the coastal area, the Coastal Program document helps reinforce our planning effort. We see no conflicts between the two documents referred to above.

ks:j

STATE OF MAINE
ORGANIZATION CHART OF STATE GOVERNMENT

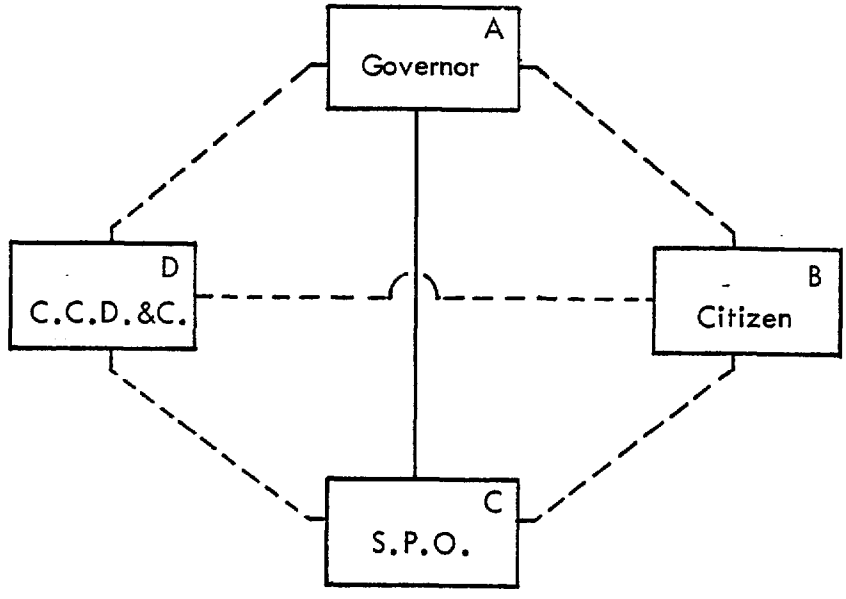
Based on Elective or Appointive Line of Authority

Major State Agencies



* See Diagram I for a description of the relationship of the Governor's Advisory Committee on Coastal Development and Conservation to the Chief Executive, the State Planning Office, and the citizenry.

I. Diagrammatic Representation of the Relationship of the Committee on Coastal Development and Conservation to the State Plannine Office, the State Executive Department Agency Responsible for Developing and Administering Maine's Coastal Program.



A. For a description of the Governor's Executive Order creating the C.C.D.&C. refer to Appendix F.

B. For a summary of the role of citizen participation in shaping Maine's Coastal Planning Program see Appendix F5.

C. For a description of State Planning Office functions refer to Section 9.3.

D. For an explanation of C.C.D.&C. functions see Section 9.2.

STATE OF MAINE

Inter-Departmental Memorandum

Date May 5, 1978

To Alec Giffen Dept. State Planning Office

From Earle G. Shettleworth, Jr., State Historic Preservation Officer Dept. Historic Preservation Commission

Subject Maine's Proposal for 306 Program Approval

In response to your recent request, I have reviewed Maine's Proposal for 306 Program Approval. This proposal satisfactorily addresses the area of Historic Preservation, and encourages the continued close co-operation between the Maine Historic Preservation Commission and the State Planning Office's Critical Areas and Coastal Zone Management Programs.

Therefore, this proposal will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

If you have any questions concerning this matter, please do not hesitate to contact me.

Appendix J

MISCELLANEOUS

1 State Compliance with Federal Air and Water Pollution Control Requirements 501

2 Maine's Coastal Program and the 1976 Coastal Zone Management Act Amendments 502

STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: STATE HOUSE, AUGUSTA 04333

WILLIAM R. ADAMS, JR.
COMMISSIONER
289-2811

ADMINISTRATIVE SERVICES:
289-2691

BUREAUS:

AIR QUALITY CONTROL
289-2437

LAND QUALITY CONTROL
289-2111

WATER QUALITY CONTROL
289-2591

LABORATORY SERVICES
289-3866

OIL POLLUTION CONTROL
289-3527

REGIONAL OFFICES:

31 CENTRAL STREET
BANGOR 04401
947-6746

415 CONGRESS STREET
PORTLAND 04101
775-6587

634 MAIN STREET
PRESQUE ISLE 04769
764-3737

OIL POLLUTION CONTROL
40 COMMERCIAL STREET
PORTLAND
773-6491

OIL SPILL REPORTS ONLY
(TOLL FREE) 1-800-482-0777

CITIZENS' ENVIRONMENTAL
ASSISTANCE SERVICE
289-2691
(TOLL FREE) 1-800-452-1942

March 13, 1978

TO: Allen Pease, Director, State Planning Office

FROM: Henry E. Warren, Commissioner, Environmental Protection

SUBJECT: Applicability of Air and Water Pollution Control Requirements to Maine's Coastal Program

It is our understanding that to meet the requirements of the Coastal Zone Management Act, the State must include in its application for 306 funding a statement that the Coastal Program incorporates air and water pollution control requirements as adopted pursuant to the Federal Clean Air and Water Pollution Control Acts.

This memorandum is intended to fulfill that requirement.

First, the Department of Environmental Protection is the State agency responsible for implementation of the above mentioned federal laws. This is achieved through 38 M.R.S.A. §§ 460-463, as amended (Air Emission License); 38 M.R.S.A. §§ 581-605, as amended, (Protection and Improvment of Air); and through 38 M.R.S.A. §§ 361-A -372 and §§ 411-451-A (Protection and Improvement of Water). These existing Maine laws meet or exceed the federal requirements of the Clean Air and Water Pollution Control Acts.

Second, we have reviewed Maine's draft Coastal Program application and note that the Protection and Improvement of Water and Air laws are incorporated as a major element of that program. Further, the program incorporates, as major elements, the Land Use Regulation Commission Law, the Subdivision Law, and the Site Location Law; all of these three laws specifically require that State air and water pollution control standards be met. No other part of the application conflicts with the State's air and water pollution laws, which, we note, are summarized in the Appendix to the application.

Third, we have reviewed the draft application in light of our ongoing Section 208 responsibilities and find no conflict between the two programs.

The Department has reviewed and expects that the Governor will certify the Areawide Water Quality Management Plans for the Southern Maine, Greater Portland, and Southern Kennebec Valley coastal regions. These plans were prepared pursuant to Section 208 of Public Law 92:500 and the Department considers them to be the water quality management requirements of Maine's Coastal Zone Management program for the affected areas in conformance with Section 307(f) of the Coastal Zone Management Act of 1972. By incorporating these plans by reference, we believe that Section 306 funding may then be utilized to implement appropriate water quality management recommendations.

Finally, we note that Maine's Coastal Program incorporates policies, in Section 6.7, that indicate that Maine's air and water pollution laws are basic to the overall program.

I trust that the above statements will serve to satisty the 306 Coastal Zone Management Act requirements.

MAINE'S COASTAL PROGRAM AND THE 1976 COASTAL ZONE MANAGEMENT ACT AMENDMENTS

The original 1972 Coastal Zone Management Act was amended in 1976 (P.L. 94-370) to add new provisions to strengthen the program. Three of the amendments require that state programs include a planning process by September 30, 1979, for:

- providing public access to, or protection of, beaches or other valuable public coastal areas,
- assessing the effects of shoreline erosion and identifying ways to control it,
- identifying energy facilities likely to be located in or significantly affect the coastal zone - and anticipating and managing the impacts from these facilities.

Maine has chosen not to include a planning program for these areas of concern as part of this 306 submission to the Office of Coastal Zone Management. However, a full planning process for each will be established within the required time-frame, and a start has already been made utilizing 305 funds.

- Providing for Public Access
  Maine's current 305 program (July 1977-June 1978) funds two projects relating to access. The first will review opportunities for public access to the coast and the second will make recommendations on State acquisition for parks, rights-of-way, and other areas.

- Assessing Shoreline Erosion
  Maine's current 305 program funds two projects relating to erosion. The first involves a study and analysis of beaches; the second will collect information on the physical characteristics of seven estuaries in southern Maine.

- Identifying Energy Facilities
  Maine's current 305 program funds one project relating to energy and the coast; that study will prepare recommendations on siting heavy industry, particularly oil refineries and electrical generating facilities. The study is being undertaken by the Department of Conservation with the Office of Energy Resources.

LIST OF TECHNICAL ASSISTANCE MATERIALS

As part of its coastal zone management efforts, Maine has amassed a very substantial amount of technical information and data. Listed below are selected projects which have either been conducted by the State CZM office or funded by CZM 305 monies. Some of the technical work resulted in publications for the general public, while other products have supported specific efforts of local, regional, state and Federal agencies to manage coastal resources.

a) Conservation Priorities Plan for the Coast of Maine
Provides statistical measures and location of key natural areas; makes policy recommendations on the protection of islands and estuaries.

b) Penobscot Bay Resource Plan
Provides systematic treatment for dealing with the varied problems of coastal protection and development; presents a process through which natural resource and socioeconomic analysis can be integrated with a land use planning and management program.

c) Guidelines for Municipal Shoreland Zoning Ordinances
Establishes guidelines and minimum standards to assist Maine communities in preparing and adopting ordinances to comply with the Shoreland Zoning and Subdivision Control Act (see B-1 Core Laws).

d) Standard Classification System for Land Cover in Maine
Sets forth a standard code for data collection to be used by government agencies concerned with the vegetative cover over land surfaces; information gathered by satellite imagery and aerial photography.

e) Aquaculture Suitability Study
Provides information concerning the location of sites suitable for aquaculture.

f) Quantitative Classification of Maine Lakes
Provides interim guidelines for the management lake shorelands, some of which are situated within Maine's coastal zone. Describes which lakes are most vulnerable to pollution.

g) Socioeconomic Data Collection/Coastal Statistics
Creation of nine files of coastal socioeconomic data and a report containing statistical information to provide technical assistance to citizens, towns and industries.

h) Comprehensive Mapping
An extensive coastal mapping effort resulted in a series of maps related to the following:

Surficial geology	Groundwater conditions
Soils	Recreational facilities
Vegetation/ground cover	Large scale development sites
Farmlands	Coastal trails
Forest lands	Historic sites
Shoreland slopes	Scenic viewpoints
Shoreline erosion	Archaeological sites
Public access areas	Marine geology
Wildlife habitats	Living marine resources
Water supplies	Coastal islands
Watersheds	
Wetlands	

j) Comprehensive Planning Guide for Local Planning Boards
Regional Planning Commission guide for towns; provides technical assistance for developing comprehensive plans and for undertaking review of subdivision proposals.

k) Natural Resources Inventory Courses
Coastal residents and officials were provided with courses on the preparation of natural resource inventory maps for coastal towns.

l) Fish and Wildlife Resource Analysis
Provided information on inland fisheries and wildlife for portions of the coastal area.

m) The Climate of the Maine Coast
Provided an assessment of coastal climatic information.

n) Maine's Coast: Special Consideration for the Municipal Planning Process
Planning guide for coastal residents to assist them in managing coastal resources at the town level.

o) Maine Directory of Natural Resource Organizations
This report lists the organizations within Maine dealing with natural resources.

p) Coastal Park Acquisition
Study identifying coastal areas appropriate for use as parklands.

g) Critical Areas Evaluation
Evaluation and registration of critical natural areas, which encompass unusual natural, scenic, scientific or historically significant areas along the coast.

r) A Procedural Guide for Subdivision Review/Greater Portland Development Program
Technical assistance provided by eight regional planning commissions to towns; provided guidance regarding comprehensive planning and subdivision review.

s) Maine Coastal Inventory Handbooks
Provides assistance for the use of natural resource inventory maps by all coastal towns.

t) Beach Area and Beach Erosion Study
Sea Grant/CZM effort to identify critical beach areas in Maine. Provides technical information to develop policy decisions concerning beach preservation.

u) Maine and the Search for OCS Oil and Gas/Service Bases for Offshore Oil
Assessment of possible offshore oil and gas resources, description of required onshore facilities in the event of a discovery, and discussion of impacts on local economies, fisheries and on the environment assuming OCS development takes place. Reports provided to all coastal towns and regional planning commissions.

PART II - PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

Since the draft environmental impact statement (DEIS) was issued, the Office of Coastal Zone Management has received more specific information on projects to be funded if the Maine Coastal Program is approved. Accordingly, portions of this environmental impact statement have been substantially changed to include a cross-section of the selected project plans and activities and their immediate and long-term environmental impacts. The impact description is organized around the four recipients of project funds:

1) Town projects; 2) special projects - state agencies; 3) special projects - private/public organizations; and 4) regional planning commissions. All projects are consistent with the Program policies (Section 6) and the eligibility criteria for the respective project type (Section 8 of Part I.). No construction activities will be undertaken as part of the first year of program implementation. A description of the Maine environment affected by the Program is contained in Section 5, Part I.

A. IMPACT FROM TOWN PROJECTS

The immediate impact of program approval will be the funding of coastal communities to improve their natural resource planning and management capabilities. Communities are also encouraged to cooperate with one another on projects of mutual concern in a comprehensive approach to resource management.

- Though the federal government cannot commit itself either to a future funding level or a formula, approximately 66% of the first year program implementation funding will be awarded to 125 coastal communities which have chosen to actively participate in the Coastal Program. Sixty-five of these towns have also applied for Supplemental grants which are available for multi-town projects.

All the town projects have been grouped into the seven eligible funding categories listed in Section 8.311.

1. Planning of economic development
2. Resource management and conservation
3. Town ordinance preparation
4. Data collection and refinement
5. Preparation of town plans
6. Town ordinance administration
7. Public awareness, involvement, and education

The benefits and costs associated with projects proposed within each of these categories are discussed below.

1. Planning of Economic Development

While most of the projects, such as municipal pier studies, harbor improvements waterfront landscape plans will have considerable economic benefits, there are only three projects which are directly economic planning. Many of the proposed planning projects are aimed at attracting suitable development and increasing the productivity of Maine's coastal resources. Maine's program seeks to encourage those activities which have a minimum adverse environmental impact and which maintain or improve social and economic conditions. Expanding employment opportunities to Maine citizens is an important aspect of the Coastal Program.

Economic stability and expansion of traditional coastal industries such as fishing, clamming, and recreation is encouraged through port and harbor planning, and improved controls over non-point-source- water pollution which still endangers fisheries areas. Three types of projects selected in this category are port or harbor planning; industrial, and commercial waterfront rehabilitation projects and planning for enhanced resource utilization, i.e. aquaculture.

a) Planning for port or harbor restoration or construction.

In those communities choosing harbor planning projects this could constitute the first and often the most important element of the planning process, the making of a commitment to capital improvement. This infrastructure planning will often lay the basis for the future economic viability of a community.

Public access both for commercial fishermen and recreation is becoming increasingly scarce on the Maine coast as non-waterdependent uses such as housing and resort developments vie for prime waterfront lands. In order to insure continued access and waterfront facilities, several communities (Belfast, Phippsburg, Machiasport, Stonington, Tremont, Kennebunkport, Waldoboro, North Haven, and Portland) propose to undertake preliminary or feasibility engineering studies for piers and landings. In addition to a pier inspection program, Portland would like to prepare a dredging assistance plan and locate a site for a public landing. Falmouth intends to undertake preliminary site planning for public access to the Presumpscot River at an existing parcel of town-owned land with a canoe ramp facility.

The immediate or direct results of port or harbor planning would be a specific site development plan or a study considering alternative port or harbor construction/restoration projects and their impact on the coastal environment. Harbor planning does not necessarily lead to construction. Based on the conclusion of such a report, the town may decide what facilities, regulations and implementation activities are desirable. Should such a study lead to actual construction activities, the secondary and possible long-term effects of the development could be considerable, but would be more suitably described after a more specific

project proposal is available.

b) Rehabilitation of industry and commercial waterfronts.

Economic development planning efforts can also be useful in mitigating adverse effects by directing growth to the least sensitive areas appropriately regulated for various commercial, residential and industrial uses. In order to encourage well-planned development, the Maine Coastal Program makes appropriate planning tools available, such as extensive technical assistance, resource maps, and planning handbooks on land use considerations, and guidance for administration of the municipally-oriented core laws.

Ten communities (Cape Elizabeth, Cumberland, Falmouth, Freeport, Old Orchard Beach, Portland, Saco, Scarborough, South Portland, and Yarmouth) are coordinating their efforts in a project to prepare an industrial park data book describing the characteristics of available industrial lands that are environmentally suitable, make the best use of the Greater Portland area's potentials, and meet economic development goals. The book will be made available to municipal and development organization officials. The project will also include identifying, in priority order, economic development projects in the region.

Successful completion and implementation of economic development projects will encourage suitable employment opportunities in environmentally compatible industrial areas. Should development locate in the identified areas, the tax base for the area may be increased. Zoning patterns established by the municipalities have already determined areas for such industrial location, and thus, to some extent, growth in these areas is anticipated.

c) Natural resource development or enhancement.

Boothbay Harbor is proposing a research market study to improve the sales of seafood products from that region to areas within the State of Maine. The project will be of state as well as regional benefit in that more effective and efficient means of seafood marketing will be explored. The objective of the study is to increase the local market for the various species of fin and shellfish harvested in the North Atlantic, thus implementing the policy of the Coastal Program to encourage native industry.

Shellfish are an extremely important economic, as well as an important renewable resource on the Maine coast. They provide significant opportunities for employment and recreation. A number of towns have expressed a desire to undertake clam management plans, and hire clam wardens to enforce town ordinances. The long-term benefits of these activities include the preservation of important habitat, increasing shellfish crops, making better use of the shellfish which are harvested, increasing the basis for more stable employment in one of Maine's traditional industries.

Several communities intend to use coastal funds to establish or to continue clam management programs which involve assessments of stock, predation and over-utilization problems and strategies, regulation programs, and reseeding efforts. Gouldsboro, Brunswick, and Harrington would like to start cultivation programs so as to assure a continued supply of shellfish. The towns of Jonesport, Addison, Milbridge, and Harpswell will do in-depth resource analyses of clam flats, and develop regulations concerning the management of shellfish. Harpswell, Brunswick, and West Bath plan to coordinate their activities in a cooperative project. The town of Steuben will hire a full time shellfish warden and Eastport area towns have proposed an aquaculture program to assess growth and productivity of ten species to determine the most productive method of cultivation.

A possible adverse impact may be created as a result of action by one municipality to close a flat for conservation purposes, causing fishermen to use neighboring clam flats and possibly straining the resources in those areas. Furthermore, if a town decides to set a priority on improving the shellfish economy, then it should recognize that it will have to discourage industry or other land use activities which may conflict with it. For example, clam beds are very sensitive to pollution; the town will have to either be prepared to pay for expensive waste treatment plants or strongly discourage the polluting activity.

2. Resource Management and Conservation Activities

Projects cover a variety of activities including open space/recreation planning; preservation or restoration of critical natural areas; watershed/water supply protection and management; and historic preservation.

a) Open space/recreation planning.

Four communities (South Portland, South Bristol, Hancock, and Whitneyville) are interested in developing open space and/or recreation plans. These towns will evaluate existing publicly owned land for recreation and conservation uses, and depending upon the needs identified by townspeople will recommend additional areas for acquisition and public use. South Portland intends to plan a bike pathway system as part of its effort to establish an open space system. Some towns may also undertake site plans for specific areas identified in the early phases of these projects; several intend to stress public access to water resources.

Many towns have existing sites which they would like to evaluate for recreation, town park, education, conservation, and management purposes. Boothbay wants to conserve a marsh area as an open space with a portion of the 20 acre parcel to be used for more active types of recreation. The sites owned by Kennebunk, Chelsea, Bowdoinham, and Kittery are all located on waterfronts and planning may include boating access, picnicking and similar activities. Kittery's project will evaluate conflicting proposed uses on its Piscataqua River parcel, recommending whether it is better suited to a recreational or commercial use. And Woolwich wants to prepare an environmental, safety, and enforcement management plan for an area that serves recreation and commercial fishing purposes. All of the above

projects will provide valuable leisure opportunities, thus enhancing the aesthetic and recreational character of Maine's coast, particularly for local residents who are apt to be discouraged from utilizing the more populated tourist attracting state and national parks. Matinicus will use its grant to clear title and to do site planning for a beach recreation area as well as preliminary engineering for a town pier.

b) Preservation and restoration or critical areas.

The Oyster River Bog is a 6,000 acre wetland owned by 62 landowners and located in the towns of Rockland, Rockport, Thomaston, and Warren. The Bog has been identified for eventual inclusion on Maine's Register of Critical Areas and the Oyster River Bog Association has been active in raising public consciousness concerning the values of the Bog. The Association will coordinate this project to survey the property lines of landowners so that it can work with these individuals in conserving the Bog. The eventual goal of the Association is to acquire the Bog for management purposes.

Taunton Bay supports an active shellfish industry. Concern for the Bay's resources has been growing as townspeople have observed red tide pollution, erosion and siltation and the growing threat of cultural pollution from an expanding summer resort colony. Coastal funds will be used to study the importance of the Bay to the economic, social, and environmental welfare of Franklin and to determine the management needs of the Bay's resources.

Implementing plans for managing open space and wildlife habitat will have long-term community benefits by providing public recreation areas and open space. Managing wildlife habitat to protect the feeding, breeding and cover of birds, terrestrial species and aquatic species can improve the productivity of the natural environment and sustain the increased yields over the long term. Adverse impacts may include that some landowners may have limitations placed on their property, particularly if it includes productive wetlands or habitats of threatened or endangered species. In addition, some communities may forgo the increased tax base by limiting development of land. These costs are frequently offset by increased land values in property adjacent to designated open space areas and by increased economic activity from tourists attracted by the availability of well-managed natural areas.

Three beach erosion projects are proposed for funding. Falmouth and Trenton will inventory coastal erosion problem areas and formulate recommendations for their stabilization. Saco and Old Orchard Beach will focus on the Saco Bay vicinity. These projects will be coordinated with ongoing beach erosion studies initiated by the State Planning Office. The secondary impacts from these projects depend upon the recommendations actually implemented in later years. The short-term economic costs could be significant in those areas with inappropriately located development. However, the long-term economic costs from the unwise use or development of erosion-prone or environmentally sensitive areas would be greater.

c) Watershed and water supply management.

Maine's poor soil conditions and strict environmental regulations make it difficult to find suitable locations for sanitary landfills, which in the guise of "dumps" have been the traditional method of solid waste disposal in the state. Several towns and groups of towns will be using coastal funds to explore alternatives to landfill operations or to evaluate sites for landfills. Friendship, Cushing, South Thomaston, Rockland, Damariscotta, and Georgetown plan to jointly investigate alternative sites to their present disposal locations. Boothbay, Boothbay Harbor, and Southport want to identify a disposal site for septic sludge. Bath and Arrowsic will be jointly evaluating sites and the possibility of recycling. The Mount Desert League of Towns experiencing growth problems from intense tourist activity in Acadia National Park will develop solid waste management alternatives as a follow-up to their 305 solid waste inventory activities. These efforts to properly develop and locate solid waste facilities will protect water supplies from polluted runoff and contamination from poorly located and inadequate dump sites.

Machias and Randolph are both interested in projects to improve water quality. Machias is proposing engineering studies for the most critical portion of the sewer system in order to alleviate the existing pollution of the Machias Bay. The town of Randolph plans to contract for preliminary engineering studies of a surface storm drain system which drains directly into the Kennebec River.

Three communities are proposing water supply related projects. Ellsworth will study the economic, social, and environmental aspects of the Card Brook watershed area and will develop a basic management plan to alleviate the adverse effects of development. Verona plans to map aquifers and their recharge areas. Kennebunk will investigate the location, potential yield and need for protection of its sand and gravel aquifers. All of the above studies will be coordinated with the Maine Geological Survey and the U. S. Geological Survey.

Maintaining an adequate supply of high quality drinking water is the primary long-term benefit of watershed management. Projecting future demands for water can lead to timely protection of new water sources within the watershed. Identifying sources of pollution can lead to eliminating existing sources and directing future unsuitable development away from water supply sources. The long-term and short-term costs of watershed/water supply management are the same: to protect the community's water supply, some areas will have limitations placed on their use, reducing their development potential. Zoning ordinances allowing clustered development with buffer zones near water supplies and providing adequate wastewater treatment can offset the adverse effects of watershed management on property owners.

d) Historic preservation.

The benefits of historic preservation have been well documented by the economic success of historic districts such as Lowell, Massachusetts, and Newport, Rhode Island. In addition to economic benefits, communities can help maintain a sense of continuity and identity by preserving the architectural heritage of a town.

The town of Hallowell, listed on the National Register of Historic Places, has already begun its efforts to restore the historic character of the town waterfront area along the Kennebec River. Funding from the Department of Commerce's Economic Development Administration has provided the town with the capital investment necessary to begin Hallowell's comprehensive restoration efforts. Preliminary design specifications for the installation of brick sidewalks and an energy-efficient lighting system which will enhance the Hallowell Historic District are activities proposed under the Coastal Program.

The town of Searsport, which has an historically important village area would like to develop plans and guidelines for preserving and enhancing the village, which is bisected by Route 1. The plan would revitalize the waterfront area by reversing the deteriorating process of economic decline and strip development, while maintaining and enhancing the traditional heritage of the area.

Historic preservation carries with it an expensive initial capital investment. Individual property owners and developers initially may incur higher costs for preservation of architectural integrity. Also, the community may have to offer reduced taxes and other short-term incentives to encourage investment of private funds in preservation. Some financial assistance for these efforts is provided through the Council for Historic Preservation.

3. Town Ordinance Preparation

The types of activities in this category include developing and implementing subdivision, zoning, sign control, and municipal inland wetlands ordinances. In most cases existing ordinances will be updated and revised to better address the resource management needs of the town. Ordinances which direct growth to the areas within a community most suitable for that growth are the most effective ways to mitigate the adverse socio-economic and environmental impact of projects designed to enhance economic growth.

Brewer's existing zoning ordinance does not realistically reflect existing uses. This situation has resulted in excessive requests for variances from Town Boards. There is a critical need to reexamine what the city is trying to accomplish through its zoning ordinance. The study will include maps, an inventory, a statistical summary, an analysis of the situation and trends, and recommendations for zoning text and boundary amendments, including recommendations for dealing with extensive non-conforming uses in the city, primarily in the older areas along the Penobscot River.

Alna, Rockport, and Steuben intend to obtain legal and planning assistance in reviewing existing ordinances so as to identify where revisions are needed to meet changing resource and development pressures. Steuben also plans to utilize such assistance in reviewing development proposals. The overall benefit of ordinances would be to inform property owners and developers of acceptable uses for various zones in the community so that projects could be planned for acceptable areas in an orderly way.

In addition to ordinance revisions, Bowdoinham will undertake a project to develop an inland wetlands ordinance which could serve as a model ordinance for other municipal as well as state government action. Currently there is no overall state law or policy regarding the protection of inland wetlands. The town will inventory and prepare an ordinance to regulate non-tidal wetlands. In addition, the study will benefit the town in its efforts to maintain water quality, protect coastal wetlands, minimize erosion and flood damage, conserve wildlife and visual resources, and to enhance educational opportunities for improved resource management.

4. Data Collection and Refinement

The types of projects in this category include preparing/updating tax and shoreline zoning maps; collecting, analyzing and distributing socio-economic data; and collecting additional data on soils, geology, hydrology, air quality, land use and other natural resources.

Natural resource and land use inventories are a basic planning tool that will allow all 25 communities to consider environmental and cultural resources in both their day to day and long range planning processes. In many instances, these inventories will be a preliminary step forward land use plans or the refinement of shoreland zoning and other ordinances. They will be of use to municipal staffs, town boards as well as developers, special interest groups, and other citizens. Depending upon the specific needs of each community, a series of reproducible overlay maps, and, in many cases, an accompanying report will be prepared.

In the town of Steuben the Planning Board and the Code Enforcement Officer will identify areas where development pressures are likely to be greatest. These areas will then be examined more closely by a soil scientist so that detailed soil surveys will be on file for use by town officials in evaluating development proposals.

Many rural communities have not yet developed land ownership maps which are an essential basic planning tool for planning boards, utilities districts, assessors, developers, conservation groups, and others. Communities benefit from these maps through better defined zoning districts, the location of environmentally sensitive areas, more accurate taxation procedures, the utilization of composite ownership maps with land use and resource inventory overlays, etc. Towns will use coastal funds to contract for aerial coverage, surveying, and map preparation. In most cases, only partial mapping of a town will be undertaken as funds are limited. Areas mapped this year will be high priority districts such as along shorelands or in villages; rural areas will be completed if funds are available in subsequent years.

Collecting and refining data in the detail needed for use at the local level, then distributing the results will help local decision-makers evaluate the various factors and possible effects of issuing permits or permitting zoning variances. Citizens will have a better understanding of how various decisions can create cumulative effects within the community, both positive and adverse; therefore, their role in local decision-making could be enhanced.

Long-term costs to the community would result from a decision to continue data collection, refinement and updating at local expense after the grant funds are exhausted. This cost could be offset by the benefit to the community of providing the service.

5. Preparation of Town Plans

The types of activities in this category include preparing comprehensive town plans; or planning for historic or urban waterfront redevelopment.

Coastal communities, particularly in Waldo and Hancock counties, have experienced considerable growth and land use change during recent years. In addition to stressing natural and cultural resources, growth pressures are aggrevating economic conditions as the coastal influx of people is occurring where the percapita income is lowest in the state.

The major benefit of comprehensive planning efforts for local residents is that it allows growth to occur in an orderly way. School districts, hospital zones, fire and police protection districts can be planned for and appropriate public monies can be budgeted to cover costs associated with growth without duplicating services to accommodate haphazard development. With comprehensive plans, property owners and developers can anticipate the rate at which growth will reach certain areas and can plan their investment of funds for private capital improvements accordingly. Environmental benefits include planning to protect sensitive or unique ecosystems within open space areas by directing growth pressures away from these areas. In addition, comprehensive plans allow communities to jointly plan for the wise use of environmental resources common to several communities without duplicating investment of public funds.

Several towns have selected this as an activity to be performed with their first year of funding under an approved Maine Coastal Program. In most cases, the potential funding levels available to individual towns as well as the one-year time frame will not allow communities to prepare entire comprehensive plans. For these reasons, several towns intend to utilize coastal funds for such preliminary activities as data collection, map preparation, public opinion surveys and reports evaluating current conditions. These projects are considered the building blocks for effective coastal resource management.

Although for many towns comprehensive plans currently exist, these are either out of date or were not locally derived and supported. In updating comprehensive plans, the Coastal Program is encouraging towns to obtain significant local input into the process.

6. Town Ordinance Administration

This category provides for employing administrative personnel such as a lawyer, building inspector, or shellfish warden and to hire temporary help to complete planning and

research efforts initiated by a community. A code inspector would monitor development to assure compliance with existing laws; a shellfish warden would ensure protection of a community's shellfish beds from overharvesting or pollution.

Effective code enforcement in Maine is hindered by the fee structure system, lack of full time technically trained personnel and frequent lack of support from government officials. Although most towns have designated plumbing inspectors on call and are required by the Shoreland Zoning Law to have code enforcement officers, few have evolved comprehensive enforcement programs. Coastal funds will aid several towns in improving their capabilities and will allow them to set up more effective record keeping systems through the hiring of salaried (mostly part-time) individuals.

Scarborough will expand its project, funded under Sec. 305 coastal grant to collect information concerning septic system failure, inspect all systems, and to implement a new sewage disposal ordinance. Three other towns plan to hire an individual to enforce local codes, to maintain records, and act as advisor to their Planning Boards.

The benefits of increasing a community's personnel would, of course, to some extent depend on the qualifications of persons hired. The costs would be in maintaining the employee on the community payroll if the grant funds were exhausted. Hiring only temporary help eliminates the long-term costs but may not provide the level of expertise needed to accomplish the community's goal.

7. Public Awareness, Involvement and Education

Activities in this category include providing courses in resource management for local decision-makers and code inspectors; establishing a planning and natural resource information service; and providing public presentations to heighten citizens' awareness of coastal issues.

The State Planning Office is presently working with other state and regional agencies to provide local decision makers, code-inspectors and the Maine public at large with the necessary information to promote better understanding of coastal problems. These efforts would be expanded under an approved Maine Coastal Program, promoting more interaction between the levels of government to jointly address important resource management problems.

One of the major roadblocks to the more effective enforcement of existing regulations is the lack of public awareness of what local ordinances exist and how these ordinances relate to one another. To overcome this problem, Topsham and Arrowsic intend to consolidate already existing ordinances into booklets that can be printed and distributed to townspeople and made available to developers and others at the town office.

The benefits of these activities would be to make local citizens more aware of the role they can play in maintaining the quality of life in their communities and resolving any conflicts among alternative uses of coastal resources. The costs of maintaining this service would have to be borne by the state or local communities when grant funds are exhausted.

B. IMPACTS FROM SPECIAL PROJECTS

Maine's program proposes to use 17% of the funds allocated to it for special projects and development of recommendations for refinements in state policy. State, county, and nonprofit organizations will be eligible for these funds. The State Planning Office will use an additional 10% of the funds for coordinative responsibilities under the Coastal Program. These tasks include administering all grant programs, conducting the federal consistency review procedure and staffing to the Governor's Advisory Committee which provides advice on the program and continued policy refinement.

For clarity this category has been sub-divided into Special Projects - State Agencies (including only those activities to be funded and contracted to the State agencies) and "Special Projects - Other Organizations" (including only those activities to be funded and contracted to non-state government organizations).

Special projects are subject to eligibility requirements similar to those for the town grants. An applicant must show that the project meets all of the criteria explained in Sec. 8.411 of Part I of this document. The short-and long-term impacts of undertaking projects meeting the above criteria would be generally positive. However, the specific impacts will depend largely on the projects selected. A discussion of the proposed projects and their impacts follows:

1. Special Projects - State Agencies

Since funding will be available to assist the operations of State agencies administering land and water regulatory laws, it will be helpful to look at the current status of these core laws and determine the potential impact of approval on these efforts.

Four State agencies have singular or joint responsibility for nine of the State-administered core laws. Present implementation of these laws has significantly decreased serious water pollution, erosion, and air quality problems throughout the coastal area. However, inadequate staffing, lack of funding and inadequate enforcement of these laws have hampered the full achievement of the benefits to be derived from their more effective implementation.

Approximately 150 wetlands permits and 150-200 site location permits are processed annually at the State level, with about 95% of these being approved annually over the last few years. Limited staff has been available for reviewing, field work, permitting and monitoring of these two laws in the entire coastal area.

Funding of the State agencies has been insufficient to meet the administrative, enforcement and technical assistance needs called for in the Acts and by the increasing needs of local governments. In some cases funding has been inconsistent and other sources of financial assistance or reappropriations have filled in the gaps. Often the initial operating

budgets of the agencies have been exhausted in processing large-scale project applications, such as the Pittston oil refinery.

The enforcement of the water discharge laws has been limited to enforcing municipal and industrial discharge violations. Manpower has been lacking to identify the numerous private and boat overboard discharges occurring in the many miles of convoluted ocean shorelands of the coast. The elimination of these discharges would improve the quality of ocean waters and valuable coastal marshlands and clam flats.

Due to the lack of staff, violations of permit conditions and other environmental quality standards may go undetected and as a result remain uncorrected. In the 10 million acres of the Land Use Regulation Commission jurisdiction, which includes 500,000 acres in the coastal area, there are only four enforcement officers. Some of these people are part-time, and staffing levels and qualifications vary. Thus, enforcement is sporadic and inconsistent. In many instances, the State agencies are dependent on interested individuals to bring violations to their attention. Public cooperation has made a significant difference in finding discharge violations; however, more personnel for the State agencies are needed for adequate enforcement of violations of the laws.

The Department of Environmental Protection will be provided two additional staff persons to administer the DEP core laws in the coastal area, to assist communities with enforcement, facilitate local/state communication on environmental matters, and assist developers in meeting the application requirements under applicable laws.

The State of Maine recognizes the need to assure that the core laws which make up the Coastal Program are fully implemented. In this regard the State will continue to aggressively pursue the work it has already undertaken to define what is needed to fulfill this responsibility in the case of the Site Location Law; and is committed to implementing measures that will guarantee excellence in the administration and enforcement of this law. These measures will involve either hiring expert consultants to supplement existing capabilities, reassigning personnel within state government, hiring several additional permanent staff, hiring additional seasonal staff, or other equally effective measures as yet undefined. The specific actions to be undertaken will be determined by the work currently in progress and will be implemented within the current calendar year. To support this effort, OCZM has committed approximately $100,000 in supplemental funds if they are needed to augment existing or supplemental state funds used to resolve this problem.

Increased staffing to DEP should lead to better administration and implementation of the core laws, for which it has legal authority, resulting in more efficient permitting, and better monitoring and enforcement of violations. In addition, the Department will undertake clarification of statutory language in the Site Location, Shoreland Zoning and the Coastal Wetlands Acts. This will result in promulgation of regulations for more effective and efficient administration of the laws. Proposed regulations will be reviewed by public hearings and by the Board of Environmental Protection before final approval. Regulations developed for the core laws will be incorporated into an approved Maine Coastal Program as an amendment, giving interested parties an opportunity to comment.

The Bureau of Public Lands (Department of Conservation) will implement a management plan for coastal state-owned islands. A management plan has been produced using Sec. 305 coastal funds. The plan recommends specific measures to achieve management objectives-transfer of title, easements, and management agreements among others. This project would: 1) initiate agreements with appropriate agencies, towns or nonprofit organizations, and 2) provide feedback for changes in plan implementation. The probable impact of the implementation of the islands management plan is to preserve and protect state-owned islands according to the intent of the Coastal Islands Registry Act, a copy of which appears in Appendix F of Part I of this document. Funding has been requested by the Bureau of Parks and Recreation (DOC) to develop a handbook on coastal access for towns. The handbook will explain the full issue and legal implications of direct and lateral access including: 1) how a town should survey available access point, 2) the town's opportunities for use of access points, and 3) responsibilities and legal requirements associated with maintenance of access. The handbook would supply local government with important information to be considered in making planning, zoning, and permitting decisions. The data report would be based on existing authorities currently available to municipalities under Shoreland Zoning and other laws.

Two projects are proposed by the Department of Transportation. The first is to develop a study which identifies specific port development projects which present the most important investment needs to improve fisheries port facilities in York and Cumberland Counties. A regional advisory group will assist the Maine Department of Transportation (working with advice from the Department of Maine Resources) in preliminary identification of potential investment areas, in light of state-level investment priorities. A general market and construction feasibility analysis will be undertaken to produce a final investment plan.

The Department of Transportation's other proposed project builds upon previous work which determined that container port development appears feasible for the Maine coast. Additional work is necessary, however, in order to substantiate a decision regarding the commitment of a substantial public investment in port construction.

Recommendations posed as a result of these reports would need further gubernational and legislative action prior to implementation.

An important part of the first year's state activities will center on solving two distinct problems: (1) how to prevent coastal oil spills, and (2) how to assess the likely effects of petroleum hydrocarbons on marine resources. The study will specifically identify present problems associated with oil terminals, develop improved preventive and containment measures for oil spills, and establish a data bank for the assessment of the possible effects of future accidents. Data produced should lead to recommendations for making petroleum-related industries more environmentally compatible with marine resource protection needs.

Funds will also be available to continue the Critical Areas Program and the Coastal Islands Registry. The Critical Areas Program (described in Appendix D-2 of Part 1) will continue to identify, document and encourage the conservation of areas which may contain rare or exceptional plant and animal habitat, areas of geological or historical interest and outstanding scenic areas. Examples of areas already identified are colonial bird nesting sites, naturally occurring rhododendron stands, significant fossil deposits and scenic gorges and

waterfalls. The Coastal Islands Registry Program ascertains ownership of Maine's coastal islands. The Bureau of Public Lands has responsibility for implementing desirable management programs, including determining public rights to selected islands as well as preventing environmental degradation.

Another project to be funded is a management plan for nearshore finfish species which should have an impact of averting fish stock depletion and developing maximum sustainable yield estimates for nearshore species, i.e., cod, haddock, polluck, silver hake, cusk, yellowtail and winter flounders, and scallops. Impacts of such a project could result in short-term limits on catches, and the long-term benefit of sustained productivity. In addition, a tagging-recapture program for groundfish will be initiated to refine distribution and abundance estimates in the nearshore area.

2. Special Projects - Other Organizations

To augment State agency efforts in overcoming the problem of fragmented enforcement of the core laws, a manual will be developed to promote better understanding and administration of these laws at the local level. The manual will describe effective procedures for towns to follow in enforcing the laws through the courts, the Attorney General's Office, or state agencies. A Maine Municipal Association lawyer will be working with several coastal communities providing enforcement assistance. Approval of the Maine Coastal Program and the performance of this task will neither establish nor expand municipal or state government authorities. However, increased understanding and assistance should enable municipal governments to fully exercise the authorities already mandated by existing Maine legislation. This should lead to better compliance with the core laws and alleviation of resource-deteriorating pressures.

Lincoln County will be developing a county-wide recycling system and providing technical assistance to county towns in choosing a method for disposal of non-recyclable wastes. Solid waste recycling has been organized and initiated in the county and the primary emphasis in this project will be to work with citizens to maintain a high level of participation. This recycling effort could be a model solution for Maine's coastal solid waste disposal problem.

In an effort to provide for the continued involvement of Maine citizens in the implementation of the Coastal Program, a public survey shall be conducted to identify resource problems and suggest solutions. The survey shall also address the issue of trade-offs between competing uses of coastal resources.

C. IMPACTS OF REGIONAL COMMISSION PROJECTS

About 7% of the 306 funds will go to regional commissions which provide planning and technical assistance to member communities. Approximately 90% of the coastal communities belong to regional planning commissions. Member communities depend on these commissions for technical support, information, and guidance in planning and management activities.

Under the Coastal Program the Regional Planning Commission function is to make technical assistance available to small towns which cannot afford full-time professionals and to coordinate projects of more than local concern. The Regional Planning Commissions also serve as a mechanism to support efforts to improve administration of the core laws by providing resource information and explanation of the laws.

The impacts of the technical assistance to small towns will be the same as those described above for local projects and will not be further discussed here. The projects that will coordinate activities of several towns will have similar impacts. One example of the impacts can be seen from a project undertaken during the current fiscal year by five communities in the Bar Harbor area. Although this particular project was done through the Mt. Desert Island League of Towns, it is the type of activity a Regional Planning Commission could undertake under this program.

The towns, all rural in nature, enjoy a high tourist influx from Acadia National Park with recreation and nonrecreation business population totalling approximately 2,800,000 in 1976. The towns, abandoning open air burning disposal to comply with EPA Air Quality standards, have turned to landfill as the answer to their solid waste management problem. That requires a permanent commitment of land resources with accompanying problems in accommodating such a large volume of solid waste. The towns are seeking a possible solution in resource recovery of solid waste. The project will consist of a program of data gathering and focused public awareness on solid waste management alternatives. The reuse of previously wasted resources, i.e., metals, aluminum, etc., would extend limited supplies of natural and physical resources and the reduced space requirement would free some of the land for other uses.

The project will benefit the entire Mt. Desert Island community. Project products will be knowledge on the composition of the waste stream, a model for the first-hand collection and analysis of solid waste data for the five island towns that will be applicable to other areas, and will help to resolve conflicts between resource uses on Mt. Desert Island.

D. SUMMARY OF IMPACTS

The long-term and short-term impacts of Federal approval of the Maine Coastal Program will generally be positive. Improved coastal resource management and regulation will result through better technical assistance, government coordination, public awareness and a comprehensive data base on which to make improved management decisions at both the State and local levels. While there may be some unavoidable adverse effects from economic development activity which result from these planning efforts, these impacts should be reduced by implementation of the coastal goals and policies in resource utilization and decision-making. These decisions would reduce the probability of irretrievable coastal resource loss and enhance the impetus to preserve, protect, restore and develop the Maine coast.

Positive fiscal impacts will result from Federal funding being transferred to implement the Maine Coastal Program at the State and local levels. For the State agencies

this will mean the continuation of coastal programs partially funded under program development such as the Coastal Island Registry and the Critical Areas Program. Funding would also provide the opportunity for these agencies to expand their services in implementing the Coastal Program.

These same opportunities are also available on a wider scale at the municipal level, where a larger amount of funding will be invested in projects which are consistent with the laws and will further the goals and policies of the Maine Coastal Program. Program approval would for the first time make funding available to Maine's coastal towns to enhance fulfillment of their mandated responsibilities to develop and administer shoreland zoning and subdivision ordinances.

With the Assistance Administrator's approval of the Maine Coastal Program, Federal activities will be required to be consistent to the maximum extent practicable. The Federal consistency requirements of Section 307(c) and (d) of the Coastal Zone Management Act of 1972 place new legal requirements on the Federal agencies to comply with an approved coastal program. The long-term effects of program approval and Federal consistency will be positive to the extent that Federal and State actions will be consistent with State laws and policies in minimizing potential adverse impacts on the Maine coast.

PART III: ALTERNATIVES TO THE PROPOSED ACTION

This part describes the four most likely reasons the Assistant Administrator might deny or delay program approval. The proposed action is federal approval of the Maine Coastal Program. The essential alternative to be considered by the Assistant Administrator is whether or not to approve the Program as revised.

If the Assistant Administrator determines that the Program cannot be approved, it may be funded under Section 305(d) of the Coastal Zone Management Act, which provides preliminary approval but allows additional planning to correct identified deficiences. Several DEIS commentators suggested this action. However, after reviewing the revisions to the Program, the Assistant Administrator has determined that there are no identifiable deficiencies, therefore preliminary approval is not an available option.

In deciding whether to approve the program, the Assistant Administrator must determine whether the program meets all requirements of the Coastal Zone Management Act for approval. This determination ultimately requires that discretion be used in interpreting the intent of Congress as expressed in the Act. This environmental impact statement and public comments are intended to assist the Assistant Administrator in determining the adequacy of the proposed program.

In the process of developing the Maine program, several potential deficiencies were identified which the Assistant Administrator has preliminarily determined have been corrected. In order to elicit public comment and assure the Assistant Administrator's preliminary assessment is correct, this section identifies areas that appeared most likely to be deficient during program development.

The consequences or impacts of delaying or denying program approval are generally the same regardless of the reason for denial or delay and are as follows:

Loss of Federal Funds to Administer the Program

After approval, Maine would receive over one million dollars per year to administer the program. Loss of federal funds would lessen Maine's activities promoting balanced use and conservation of coastal resources. Another consequence would be the lack of funds for positive resource management special projects that will serve as incentive for resource protection. The proposed increased technical information and assistance to all levels of government would be reduced. In short, all of the activities described in Part I, Chapter 8, would be delayed or precluded.

Loss of Consistency of Federal Actions with Maine's Program and Policies.

The activities explained in Appendix E of Part I, which would be subject to a review for consistency with the approved Maine Coastal Program would not be subject to the state laws and policies if the Assistant Administrator denied 306 approval. The potential for more state and federal coordination of activities would be lessened.

Loss of Adequate Consideration of the National Interest in the Siting of Facilities Which are Other than Local in Nature.

The core laws currently address the balanced national interest considerations encouraged by Section 306(c)(8) of the federal Coastal Zone Management Act. The process for continued considerations of those concerns is strengthened by program approval. By delaying or denying program approval, the state would be under no obligation to continue to give adequate consideration to coastal resources and facilities that are of national interest except as provided for in existing laws. This may result in loss of public benefit that the use of such resources or facilities may provide.

1) The Associate Administrator could delay or deny approval if the state is not adequately organized to implement the Program at the time of 306 approval.

The Office of Coastal Zone Management has made an initial determination that the state organization will be adequate to carry out the management program and meet the objectives of the Coastal Zone Management Act. The State Planning Office will act as the agency responsible for the coordination of agency activities pursuant to the Maine Coastal Program.

Nine of the core laws which are a part of Maine's Coastal Program are administered primarily at the state level, but are outside the State Planning Office. The two remaining laws - Shoreland Zoning and Land Subdivision Act, are municipally permitted, administered and enforced with minimal state supervision. The case could be argued that the Memoranda of Agreement between the State Planning Office and the state agencies are inadequate for the assurance of the effective implementation of the Coastal Program. However, the strength of the Maine Coastal Program lies in that the core laws contain the legally enforceable coastal policies which form the basis for the program. The duties and responsibilities of the regulatory agencies are specified in these Acts and are thus, consistent with the Coastal Program of which they are a part. This means that the MOAs are not necessary for carrying out the policies of the program, but only describe interagency procedures.

In the case of highway projects, the policies are only partially mandated by law. Because highway construction is exempted from the permit requirements of the Site Law, it may be argued that the control over land use activity in the coastal zone is not comprehensive. However, it should be pointed out that highway construction does require a wetlands permit, the Department of Transportation is required to follow a fairly rigorous public hearing process to assess environmental impact, and in conjunction with the Action Plan, the Department of Transportation has memoranda of agreement with all core-law agencies, and the State Planning Office, which require the agencies to alert the Department of Transportation to any adverse environmental impacts. (Further described in Appendix 1.)

In the cases of all major transportation projects for the coastal area where the State Planning Office's final position is that a project is inconsistent with the standards of the core laws and the Maine Department of Transportation believes the project is essential for transportation purposes, the Governor's Office shall resolve whether or not the project will proceed. (See Appendix 1.)

With regards to state-local coordination, it should be noted that there have been specific state criteria prepared by the state for implementing the Shoreland Zoning Act and that local zoning ordinances must be in conformance or exceed this guidance. There is adequate state overview of the Subdivision Act as described in Section 4 of the Act.

2) The Assistant Administrator could delay or deny approval if the program does not provide adequate specificity and predictability for decision makers who must take action pursuant to or consistent with the management program.

The Assistant Administrator has made the preliminary decision that the 11 core laws and any subsequent state guidance or regulations on which the program rests provide sufficient specificity. However, the issue has been raised that more detailed standards and procedures, as might be provided through regulations, would offer more predictability. The advantages of specific guidelines are numerous. Persons proposing development can predict the likelihood of receiving the necessary permits and design their projects accordingly. There is more guidance to the persons processing the permits, with less subjectivity afforded. The state has more specific criteria to monitor and evaluate implementation on some of the laws. Currently, there is such state-prepared guidance (in addition to that contained in the law) for the Shoreland Zoning Act, Oil Discharge Prevention Act, and LURC. In the case of the two laws on Protection and Improvement of Water and Air, the water classifications and air performance standards are sufficiently specific. There are administrative or procedural guidelines in place for the Solid Waste Management Law. In the case of the Wetlands and Site Location laws specificity is provided by regulations promulgated by DEP; the regulations, requirements, and guidelines of other agencies used by the DEP in determining if a proposal meets the criteria of these acts. (See Sections 7.3, 7.7; Appendix F)

While there is agreement that the state could provide more guidance for some of the core laws, particularly the Site Location and Wetlands Laws, the Assistant Administrator has made a preliminary decision that the specificity in the laws and existing guidelines are adequate for approval. Further work in providing specificity is an eligible expenditure of 306 funds.

3) The Associate Administrator could delay or deny approval if the national interest in the siting of facilities in the coastal zone were not adequately considered.

The Coastal Zone Management Act states that prior to granting approval of a management program the Secretary shall find "the management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities...) necessary to meet requirements which are other than local in nature."

The siting of large facilities would be subject to all provisions of the Site Location Act. The law specifies permit requirements for the siting of all large development in excess of 60,000 sq. ft. or 20 acres. No special provisions for any particular type of development are made in the Act, and thus those facilities in the national interest would require the same application procedures as all others. The case could be argued that the provisions of the Coastal Zone Management Act require a special treatment of these facilities to assure they are adequately considered. An example would be creating a

special state permitting council on energy facilities. The Assistant Administrator has made a preliminary determination that the Congressional intent has been met by assuring there is a process for continued consideration of these facilities. This process in Maine is adequately provided in existing state laws as described in Appendix E.

The State of Maine will be formulating a planning process for the siting of energy facilities pursuant to Section 305(b)(8) of the Coastal Zone Management Act to be submitted during the first year of program approval as an amendment to the program.

4) The Assistant Administrator could deny or delay approval if the Program does not meet the specific requirements of the Coastal Zone Management Act.

Section 306(c) of the Coastal Zone Management Act requires the Assistant Administrator to find that a State coastal program meets all of the requirements of the Coastal Zone Management Act prior to approving the Program.

This alternative encompasses all of the possible reasons for not approving the Program as submitted in addition to those already discussed in Alternatives 1 - 3. For example, someone might feel that the boundary does not extend far enough inland to protect the interests of the Act.

The Office of Coastal Zone Management has made an initial determination that the Program does meet the minimum requirements. However, the Office will review specific comments on the consistency of the Maine Coastal Program with the requirements outlines in the Federal Act and with the specific standards for Section 306 approval provided in 40 CFR 923.

PART IV: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

The probable effects of Maine's Coastal Program approval will, on the whole, be environmentally beneficial. However, there may be a number of adverse impacts to both the natural and socio-economic environments which cannot be avoided.

Numerous unavoidable adverse impacts will continue to be associated with the siting of major facilities for purposes of defense, transportation, energy requirements and others in which both the State and Federal governments have interest. The Program makes provisions for consideration of the siting of facilities which are in the national interest; however, it is important to note that, under the core laws, the Coastal Zone Management Program, and related Federal Acts (e.g., National Environmental Protection Act), each such project will be evaluated as to the impacts on the natural coastal environment.

PART V: RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

While the Maine Coastal Program already restricts some local, short-term uses of the environment through existing laws, it will also provide long-term assurance that the natural resources and benefits provided by the Maine coast will be available for future use and enjoyment, by more effectively administering existing resource protection laws.

Some examples should serve to illustrate how short-term adverse impacts may lead to significant long-term benefits.

- By restricting development from occurring in wetlands, the Coastal Program is enhancing the fisheries and wildlife resources of the coast, as well as preventing damage from floods.

- By encouraging local clam ordinances through funding and technical assistance, the Coastal Program may in the short-run close a clam flat, but in the long-run guarantee a sustained economic gain to the community.

- By requiring pollution control mechanisms, be it structured or nonstructured, the Department of Environmental Protection may be asking for certain financial or political short-term sacrifices but obtaining the long-term benefits to both the recreation and fishing interests of the state and the nation accruing from cleaner waters and opened shellfish areas.

Maine's Coastal Program is realistic and therefore recognizes that sacrifices in the short-term will have to be made. Some energy facilities and other developments are dependent on, or because of, site requirements, must locate in the coastal area. The program allows for the location of such developments in the national interest, provided the environmental safeguards in the Coastal Program are followed to the maximum extent practicable.

The goal of Maine's Coastal Program is the balanced management of coastal resources, recognizing the delicately balanced ecosystem, and yet allowing for growth to continue while protecting the key resources.

It provides for a framework which can protect regional, State, and national interest by assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the public, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources.

Without the enhanced implementation of rationally based land and water use management programs, some intense short-term uses and gains, might be realized in the coastal area. However, such uses would most likely result in long-term loss of

resources because of degradation of the environment. Without proper management, the traditional conflicts between shoreline resources uses--residential, commercial, industrial, recreational, and wildlife--could be expected to occur.

Approval of the Maine Coastal Program will result in minimization of the social costs which inevitably accompany environmentally destructive development, the mitigation of which requires public investment. At the same time, the Program aims to stimulate those activities which provide employment and are the most beneficial for the coastal area by minimizing the adverse environmental impacts of development.

PART VI: IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

The approval of the Maine Coastal Program will not in itself lead to the loss of resources that a site specific project would.

PART VII: CONSULTATION AND COORDINATION

Extensive consultation, coordination, and input has been received in developing the Maine Coastal Program. Because the Program was developed with the natural and human environment in mind, many alternatives have been considered.

The Office of Coastal Zone Management requires that a State conduct an environmental impact assessment on their coastal management program prior to any approval of the Program. This assessment was used in developing the Final Environmental Impact Statement. Additional input has been received from various Federal agencies throughout the duration of a State's Program development period, on such things as the impact of the Program on the Federal agency program, as well as an analysis of the Program.

Coordination with all local, state, Federal, public, and private interests remains a key component of the Maine Program. The Program will provide technical assistance to coastal communities as to how local plans may be made consistent with the Coastal Program, assist the private sector through the publication of handbooks and other means of communication on meeting coastal policy requirements, and continue coordination with Federal agencies to resolve potential conflicts during implementation.

PART VIII. LIST OF FEDERAL, STATE, AND LOCAL AGENCIES AND OTHER PARTIES FROM WHICH COMMENTS WILL BE REQUESTED ON THE DEIS

Federal Agency Distribution

Advisory Council on Historic Preservation
Department of Defense
- Department of the Navy
- U. S. Army Corps of Engineers
- U. S. Air Force

Department of Agriculture
Department of Commerce
Department of Energy
Department of Health, Education and Welfare
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Economic Development Administration
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
National Oceanic and Atmospheric Administration
U. S. Coast Guard

National Interest Group Distribution

AFL-CIO
American Association of Port Authorities
American Fisheries Society
American Forest Institute
American Gas Association
American Industrial Development Council
American Institute of Architects
American Institute of Planners
American Littoral Society
American Petroleum Institute
American Society of Planning Officials
American Waterways Operators
AMOCO
Ashland Oil, Inc.
Association of Oil Pipe Lines
Atlantic States Marine Fisheries Commission
Center for Law and Social Policy
Center for Natural Areas
Chamber of Commerce of the United States
Chevron, USA, Inc.
Cities Service Company
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies
The Cousteau Society
Edison Electric Institute
El Paso Natural Gas Company
Environmental Defense Fund, Inc.
Environmental Law Institute
Environmental Policy Center
EXXON Company, U.S.A.
Friends of the Earth
Getty Oil Company
Gulf Energy and Minerals, U.S.
Gulf Oil Company
Gulf Oil Corporation
Gulf Refining Company
Independent Petroleum Assoc. of America
Institute for the Human Environment
Institute for Marine Studies
Izaak Walton League
League of Women Voters Education Fund
Marathon Oil Company
Massachusetts Petroleum Council
Mobil Exploration & Producing, Inc.
Mobil Oil Corporation
Murphy Oil Company
National Assoc. of Electric Companies
National Assoc. of Engine & Boat Manufacturers
National Assoc. of Home Builders
National Assoc. of Realtors
National Assoc. of Regional Councils
National Assoc. of State Boating Law Admin.

National Interest Group Distribution (cont'd.)

National Audubon Society
National Boating Federation
Nat'l. Coalition for Marine Conservation
Nat'l. Conference of State Legislatures
Nat'l. Environmental Development Assoc.
Nat'l. Federation of Fishermen
Nat'l. Fisheries Institute
Nat'l. Forest Products Association
Nat'l. Ocean Industries Association
Nat'l. Parks & Conservation Association
Nat'l. Petroleum Council
Nat'l. Recreation & Park Association
Nat'l. Shrimp Congress
Nat'l. Wildlife Federation
Nat'l. Waterways Conference
Natural Resources Defense Council
The Nature Conservancy
Nautilus Press
New England River Basins Commission
North Atlantic Ports Association
Shell Oil Company
Shellfish Institute of North America
Sierra Club
Skelly Oil Company
Soil Conservation Society of America
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of California
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
Water Pollution Control Federation
Western Oil and Gas Association
Wildlife Management Institute

CONGRESSIONAL DELEGATION

Senator William Hathaway
Senator Edmund Muskie
Representative William Cohen
Representative David Emery

GOVERNOR'S ADVISORY COMMITTEE ON COASTAL DEVELOPMENT & CONSERVATION

STATE AGENCIES

Department of Environmental Protection
Department of Marine Resources
State Development Office
Office of Energy Resources
Department of Conservation
Department of Inland Fisheries & Wildlife
Department of Transportation
Department of Agriculture
Maine Housing Authority
Public Utilities Commission
Maine Historic Preservation Commission
Department of Human Services
Attorney General's Office
Maine Port Authority
Soil and Water Conservation Commission
Department of Finance and Administration
Department of Business Regulation
Land Use Regulation Commission
Maine Real Estate Commission

REGIONAL PLANNING COMMISSIONS

Eastern Mid-Coast RPC
Hancock County Planning Commission
Southern Kennebec Valley RPC
Southern Mid-Coast RPC
Eastern Maine Development District
Greater Portland Council of Governments
Penobscot Valley RPC
Southern Maine RPC
Washington County RPC

BUSINESS AND CONSERVATION INTERESTS

Maine Petroleum Association
Maine Coast Heritage Trust
Center for Natural Areas
League of Women Voters
Maine Lobsterman's Assoc.
Southern Maine Lobsterman's Assoc.
Associated General Contractors of Maine, Inc.
Paper Industry Information Office
Home Builders Association of Maine
Industrial Development Council of Maine
Central Maine Power Company
Downeast R. C. & D.
Threshold to Maine R.C. & D.
Sea Grant Program
Ira C. Darling Center
New England River Basins Commission
Maine Forest Products Council
The Nature Conservancy
New England Coastal Oceanographic Group
Coastal Resources Center
TRIGOM
Maine Marine Trade Association
Associated Fisheries of Maine
Maine State Chamber of Commerce
Economic Resources Council of Maine
Maine Association of Realtors
State of Maine Publicity Bureau
Area Development Council of Portland
Associated Industries of Maine
Maine Municipal Association
Time & Tide R.C. & D.
Maine Audubon Society
Natural Resources Council
Maine Association of Conservation Commissions
Atlantic Sea Run Salmon Commission
Sportsmen's Alliance of Maine

COASTAL LIBRARIES

William Fogg Library, Eliot
Ogunquit Memorial Library
York Public Library
Bowdoinham School & Public Library
Community Library, Cape Porpoise
B H Bartol Library, Freeport
Louis T Graves Memorial Library, Kennebunkpt
Orrs Island Library
Scarborough Public Library
Merrill Memorial Library, Yarmouth
Falmouth Memorial Library
Thomas Memorial Library, Cape Elizabeth
Gardiner Public Library
Isaac Umberhine Library, Richmond
Brewer Public Library
Witherle Memorial Library, Castine
Patten Free Library, Bath
Skidompha Library, Damariscotta
Richards Library, Georgetown
Newagen Memorial Library
Bristol Area Library, Pemaquid
Barter's Island Community Library, Trevett
Wiscasset Public Library
Mayhew Library Association, Addison
Bass Harbor Memorial Library
Friend Memorial Public Library, Brooklin
Chase Emerson Memorial Library, Deer Isle
Peavey Memorial Library, Eastport
Community Library, Hancock
Revere Memorial Library, Isle au Haut
Lubec Memorial Library
Northeast Harbor Library
Sedgwick Library
Southwest Harbor Public Library
Stonington Public Library
Camden Public Library
Monhegan Library
Owls Head Village Library
M E Jackson Memorial Library, Tenants Hbr
Carnegie Public Library, Vinalhaven
Belfast Free Library
Winter Harbor Public Library
Rice Public Library, Kittery
South Berwick Public Library
McArthur Public Library, Biddeford
Curtis Memorial Library, Brunswick
Chebeague Island Library
Kennebunk Free Library
Edith Belle Libby Memorial Library, Old Orchard Beach
Dyer Library, Saco
Topsham Public Library
Portland Public Library
South Portland Public Library
Lithgow Public Library, Augusta
Hubbard Free Library, Hallowell
Bangor Public Library
Buck Memorial Library, Bucksport
Hampden Regional Library
Boothbay Harbor Memorial Library
Friendship Public Library
Bremen Library Association, Medomak
Damariscotta Mills Library, Newcastle
Albert F Totman Library, Phippsburg
Waldoboro Public Library
Ellsworth City Library
Jessup Memorial Library, Bar Harbor
Blue Hill Public Library
Calais Free Library
Sturdivant Public Library, East Machias
Frenchman's Bay Library, East Sullivan
Gallison Memorial Library, Harrington
Peabody Memorial Library, Jonesport
Porter Memorial Library, Machias
Prospect Harbor Public Library
Sorrento Free Library
Henry D Moore Library, Steuben
Rockland Public Library
Alice L Pendleton Library, Islesboro
North Haven Public Library
Rockport Public Library
Thomaston Public Library
Warren Free Public Library
Carver Memorial Library, Searsport

PART IX: COMMENTS FROM DEIS REVIEWERS

Summaries of all comments received on the draft environmental impact statement have been made and responded to in this section. A separate document of the complete text of the comments appears as a separate document.

Comment	Response by the Federal Office of Coastal Zone Management (OCZM)
I. U.S. Environmental Protection Agency	
1. We support approval of the application for a management grant under Section 306 and vigorous implementation of the Program. The DEIS adequately addresses the policies, implementation tools and their impact on the environment. The DEIS has qualified for the highest rating by which EPA evaluates an EIS.	No response necessary.
2. Because the Program relies on pulling together the administration of existing laws toward CZM objectives, future development of the policies of the Program should address the issue of the cumulative impact of development on the coast an issue not addressed specifically in any of the laws nor in the overall Program.	The State is doing a policy study on the issue of cumulative impacts even though it is not required. Should the policy study result in recommended changes to the Program, they will be incorporated through the amendment process, which will involve full participation by citizens and federal agencies.
3. The Program adequately presents the authorities under which air and water standards will be met (Section 307(f)). However, the Program would be strengthened if, as one of the next steps, the conflict resolution roles of the Committee on Coastal Development and Conservation, SPO and the Department of Environmental Protection were spelled out more specifically and criteria defined for balancing environmental concerns against economic growth policies - to assure air and water quality standards are not comprised.	The standards and criteria in the Federal Air and Water laws do not allow for balancing economic considerations against environment safeguards. The roles of the three agencies have been further specified in Section 9. The Committee on Coastal Development and Conservation will attempt to provide for a balance in the program by awarding funds for projects which enhance coastal resources within the regulatory framework.
4. The following additional Uses of Regional Benefit should be listed on pg. 254: "8. wastewater treatment facilities. 9. regional waste management facilities (covering both solid waste and toxic/hazardous materials)."	The State does not consider such facilities to be Uses of Regional Benefit. Although Maine agrees that these are important uses they see no advantage to listing them as URB's. These facilities are strongly encouraged by existing Maine law. Maine's Coastal Program offers assistance in implementing the provisions of these laws by financial assistance under the proposed 306 grants.
II. Penobscot Valley Regional Planning Commission	
1. Penobscot Valley RegionalPlanning Commission supports the State of Maine 306 Coastal Zone Management grant application.	No response necessary.
2. This program has had more real public input than probably ninety percent of the grant applications received by the federal government.	No response necessary
III. U.S. Federal Energy Regulatory Commission	
1. We have serious reservations concerning the Maine Coastal Program. The "Site Location Development Act" provides absolutely no concrete basis for the evaluation of projects. Without this specific criteria, State decisionmakers will be forced to judge each project individually, which will decrease the predictability of Federal consistency decisions. This variability is unacceptable and must be corrected before the program can be considered for Section 306 approval.	The combination of administrative procedures, precedence, and standards used by the Department of Environmental Protection strongly supports our contention that sufficient predictability exists in the present administration of the laws to provide applicants with a clear understanding of how proposals are evaluated. A more detailed description of procedures and standards used to make findings under the criteria are included in the revised document 7.3 and 717 and Appendix F. The Office of Coastal Zone Management has found these revisions satisfy the predictability requirements in 923.3 of the program approval regulations.

Common Abbreviations:
* OCZM - Federal Office of Coastal Zone Management
* MCP - Maine Coastal Program
* CZMA - Coastal Zone Management Act as amended
* SPO - State Planning Office
* 15 CFR 923 refers to the regulation which implement the CZMA
* 306 - Section of the CZMA which applies to program implementation
* DEP - Department of Environmental Protection

2. State policy on industrial and energy facility siting is apparently still being developed. Maine has elected to not include a state policy on heavy industrial siting with this program. Since the State's siting policy is not sufficiently developed in this very important area, it is impossible to determine whether the State has given adequate consideration to the national interest in facility siting.

The current policy on industrial and energy facility siting is specified in the Site Location Act and is adequate to meet the requirements of the Coastal Zone Management Act. The State's policy refinement studies are an attempt to review existing policy in view of changing needs. However, the program currently under consideration for 306 approval will be reviewed and evaluated using the existing state policy. Any changes would need to be amended into the program and follow the procedures established for review by federal agencies and the public under Subpart I of the program approval regulations.

3. The process for the consideration of the national interest within the Maine Coastal Program also needs to be more fully described. The Maine Coastal Program does not include an integrated program involving the planning and siting of energy facilities and the consideration of national interest other than the requirements of the existing Maine laws.

Please refer to revisions of national interest section on process also further specificity added to the Site Location and Coastal Wetlands Laws in Section and in Appendix F

4. The State should consider the planning and forecasting activities of the Northeast Power Coordinating Council in preparing recommendations on siting electrical generating facilities.

The State will consider this in preparing the more detailed energy facility siting element to the program. This element will be amended into the program after October 1, 1978 with full opportunity for public and federal agency participation.

5. Although the State admits that the Maine coast was being considered as an alternative site for a liquid natural gas terminal, it has excluded these terminals from its list of Uses of Regional Benefit. This seems to be an indication of inadequate consideration of the national interest in energy facility siting in the Maine Coastal Program.

The commentator has confused the regional benefit requirements of the Coastal Zone Management Act (Section 306(e)(2)) with the National Interest clauses. Liquified natural gas terminals are defined as facilities in which there may be a national interest, see Appendix E.

6. The requirement that an applicant for a federal license or permit receive all applicable Maine core law permits before the issuance of state concurrence is unacceptable. By the State's own admission, the receipt of only one core law permit may take more than six months (pg. 248). Since these permits are applied for at various stages in project development, an applicant would be forced to wait until state processing is completed before applying for a federal license or permit. We recommend that the State designate a single core law permit as an equivalent for each listed federal license or permit.

An applicant could apply for the federal license or permit simultaneously with local and state permits and thus enable much of the evaluation to occur at the same time. The federal permit could not be granted prior to the determination of consistency or presumed state concurrence after 6 months. If any single core permit was to be selected, it would be the Site Location Law which contains in its text the requirement that all state permits be granted prior to receiving that permit.

7. On pg. 252 the information identified under the Department of Energy needs to be corrected. FERC is an independent regulatory commission; it does not speak for DOE, nor does DOE speak for FERC. The State of Maine and applicants for licenses and permits will have to deal with FERC. Therefore, the following should be included:
   - Federal Energy Regulatory Commission
   - Licenses required for non-Federal hydroelectric projects and associated transmission lines under Section 4(e) of the Federal Power Act (16 USC 797(e)).
   - Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both

These corrections have been made.

(III.7 cont.)
interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act (15 USC 717f(c)).
-The permission and approval required for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 USC 717f(b)).

8. The statement on pg. 252 concerning A-95 process should be clarified. The A-95 process applies to the State's monitoring effort on unlisted Federal license and permit activities in accordance with 15 CFR 930.54.

Please see revised section on Federal Consistency for this clarification.

9. The State should comply with the requirements of 15 CFR 923.52(c)(2)(i) in its initial program submission, in order to aid federal agencies in their review of the Maine Coastal Program.

Pp.246-248 cite a specific example of how an energy facility would be cited in the Maine Coastal Program. The State will satisfy the requirements of subsection 305(b)(8) by October 1, 1978 as allowed under 15 CFR 923.52(c)(2)(i). Also see Section 7.7 on the siting of energy facilities under the Site Location Act.

IV. Office of the Assistant Secretary of Defense

1. We have reviewed the Maine Coastal Program and DEIS and concur in its approval subject to incorporation of minor changes or additions.

No response necessary.

2. Pg. 249, Section 1, paragraph 2, after the wording "will be submitted in the State Planning Office as the designated coastal agency," we recommend adding "through the A-95 clearinghouse review process." It has been the position of the Dept. of Defense to utilize the A-95 process for consistency notification.

A-95 does not cover all activities listed in the program. In the instances that the A-95 process is used, it can serve as notification of to the State Planning Office. This is clarified in the Federal Consistency portion of the document.

3. Pg. 211, additional military property listings are given.

The change has been made.

V. Natural Resources Council of Maine

1. We support the plan because implementation of the coastal program will result in a net environmental gain for the State.

No response necessary.

2. The Committee on Coastal Development and Conservation and the State Planning Office have succeeded in formulating a coastal plan which is a great improvement over the State's first efforts in this area.

No response necessary.

3. As the Maine Coastal Plan stands, the Natural Resources Council of Maine has no doubt that it will have a positive affect in Maine and serve to further the goals of the Coastal Zone Management Act.

No response necessary.

4. Regulations under the four laws needing them should be adopted during the first year of 306 funding.

The State is committed to developing regulations for promulgation for the Site Location and Coastal Wetlands Law.

VI. Natural Resources Council of Maine - Staff Members

1. We endorse the plan.

No response necessary.

2. We believe that with only relatively modest changes in the plan and a commitment from

Sections 7.3 and 7.7 have been revised to give a better explanation of the evaluation of the permit

the State to develop regulations under the core laws within the first year of 306 funding, the program will provide comprehensive coastal management and be less vulnerable to legal attack.

applications under the Site Location and Coastal Wetlands Acts. In addition, the State has made a commitment to developing regulations for promulgation pursuant to those Acts during the first year of 306 funding.

3. We are concerned about the weakness of the legal relationship between the core laws and the program. Our concern is underscored by the disposition of Maine's court toward a narrow interpretation of the State's environmental laws. We believe that greater emphasis on the CZMA provisions relating to permissible uses, designation of areas of particular concern and guidelines on priorities or use may be an effective way to ensure a substantive coastal program.

The core laws and the agency responsibilities defined in those laws serve as the legal foundation of the Maine Coastal Program and its policies. As such it meets the enforceability and other requirements of the Coastal Zone Management Act. Regulations to be developed for promulgation during the first year of 306 approval will further clarify the language of the law and further assure effective implementation of the Maine Coastal Program. However, the comprehensiveness of the goals, policies, organizational structure, and the laws themselves ensure that the program is substantive.

4. The State takes the position that the Coastal Zone Management Act requirements relating to permissible uses are satisfied by the core laws. Our analysis indicates that the State's assertions in this respect are highly optimistic.

The standards and criteria of the core laws define permissible uses in a manner suitable to meet federal requirements 923.12 under the Coastal Zone Management Act.

5. With the exceptions of Shoreland Zoning and Land Use Regulation Commission Law, neither the core laws nor the accompanying regulatory permit procedures reflect the following
   a. Compatibility of a particular use with an adjacent use or resource - the incompatibility of a proposed activity with existing adjacent uses or resources is not sufficient grounds under the core laws to prohibit it.
   b. An evaluation of alternative locations - including inland areas.
   c. Coastal dependencies of various uses (the extent to which a use actually requires proximity to coastal waters).

Compatibility with existing uses is considered under several of the core laws, particularly the Site Location Act and the Coastal Wetlands and Shoreline Zoning Acts. See criterion 3 under the Site Law and Section 7.7.

An evaluation of alternative locations for development is not required under the Coastal Zone Management Act; however, the applicant maybe encouraged to seek the State Planning Office or the DEP for assistance in locating appropriate sites.

Coastal dependency, though encouraged under the Coastal Zone Management Act is not a requirement.

6. Coastal Zone Management Act regulations require criteria upon which management decisions are made must be articulated precisely. We submit a clear understanding does not exist and four of the core laws fall short of achieving the degree of clarity and detail contemplated in both the regulations and the Act itself.

Please see the revised Section 7.3 and 7.7 and additions to Appendix F for further clarity. The state is committed to developing regulations for promulgation during the first year of program implementation.

7. a. Wetland Law - there are simply no guidelines of any sort to inform a coastal resident of what the Wetlands Law specifically requires.

Sections 7.3 and 7.7 have been revised to give a better explanation of the evaluation of the permit applications under the Coastal Wetlands Act. In addition, the State has made a commitment to promulgating regulations pursuant to the Act during the first 306 approval.

   b. Subdivision Law - while Maine's Subdivision Law contains general guidelines, the State has not issued any model regulations to assist municipalities.

The general guidelines contained in the law are sufficient to meet the requirements of the Coastal Zone Management Act. The State has provided guidance though not in the formal regulations.

(VI.7 cont.)

c. Site Location of Development Law - the Law's critical terms such as "harmoniously" and "adversely affect" have never been defined by regulation. As a consequence that entire subsection of the statute has never been implemented.

The State has been implementing the Act including this subsection and has reviewed over 1200 applications based on it. Sections 7.3 and 7.7 has been revised to give a better explanation of the evaluation of the permit applications in light of these decisions. In addition, the State has made a commitment to developing regulations for promulgation pursuant to those Acts during the first 306 approval.

d. Alteration of Rivers, Streams and Brooks - the policies, standards, objectives, and criteria of the Program must be set forth clearly and explicitly so that coastal residents will be able to understand the program and identify who is affected by it and in what way.

The guidelines contained in the law are sufficient to meet the requirements of the Coastal Zone Management Act.

8. The areas of particular concern designated by the State fall within the limits of the jurisdiction of the Shoreland Zoning Law. It would seem that Areas of Particular Concern are being chosen according to whether there are available existing State laws which will satisfy the Coastal Zone Management Act's requirements instead of whether they are truly in need of particular or special management.

The legislature of the State of Maine has declared 250 ft. area as a critical resource in need of protection. As in other instances, the Maine Legislature in passing the Shoreland Zoning Act was responding to the same pressures as was Congress in passing the Coastal Zone Management Act. This meets the requirements of 305(b)5.

9. The State's designation fails to reflect consideration of those eight areas in the Coastal Zone Management regulations 923.20 (d)(1). The State's plan fails to explain why, if those eight examples of areas do exist outside the proposed Area of Particular Concern in Maine, they do not need special management. Virtually all of those eight kinds of areas can in fact be found outside of the State's proposed Area of Particular Concern and almost all of them are left vulnerable.

The Coastal Zone Management regulations do not require the program to contain the evaluation conducted by the State even though all eight items were considered. Nor do the regulations require all these areas be included only that they be considered. Maine carefully considered all eight items.

VII. City of Bangor - Engineering Department

1. The Office of Engineering wishes to express support for the Section 306 Application for Coastal Zone Management funds which was submitted to your office by the State Planning Office.

No response necessary.

VIII. City of Brewer, Maine

1. We believe that the 306 application submitted to the Office of Coastal Zone Management by the State Planning Office to be reasonable for our State and support its approval.

No response necessary.

IX. U.S. Dept. of Housing and Urban Development

1. We recommend approval contingent upon adequate response to our concerns.

No response necessary.

2. We are concerned about the proposed use of the Section 306 funding with respect to program implementation on a formula basis to undertake any of numerous possible activities. There apparently has been no

It is a policy with the Maine Coastal Program to allow local governments to choose priority concerns within a scope defined by the goals and policies of the Maine Coastal Program. The State has set the eligibility criteria (See Section 8) to guide local officials in choosing coastal management projects for their communities.

(IX.2 cont.)

priority established among the activities, and therefore no assurance that a locality would undertake an activity which addresses a priority concern for the coastal area or could be relied on to carry out the most pressing needs of coastal policy implementation.

3. The Program's major deficiency is the lack of state involvement at the local level. The lack of state responsibility neutralizes the state's administrative role in carrying out the objectives of the Maine Coastal Program at the local level and subjects the localities to private developmental pressures that could seriously impinge on the existing environment of the coastal zone.

Nine out of the 11 core laws are administered by the State. Shoreland Zoning is locally administered but under state guidelines. The Subdivision Law is locally administered with the state responsibility described in the Attorney General's opinion in the Appendix. Thus for the two locally administered laws, there is state involvement. Furthermore, major private developments are subject to the Site Location Law.

4. The Maine Coastal Program does not contain a land-use element identifying existing and proposed uses within the coastal zone. Not all coastal communities have developed a comprehensive plan which would have this element and a zoning ordinance for the shoreland area. Many of these communities do not have building and housing codes to designate minimum requirements for safe and habitable structures.

A State-level land use master plan is not required While many communities have some of the land use planning elements, it is the purpose of the local formula grants to complete, update, and improve land use planning.

5. The State of Maine should be informed that any such approval of the Maine Coastal Program by the Secretary of Commerce should not be construed as meeting the land use element requirement of the 701 Comprehensive Planning Assistance Program (24 CFR 400.72). HUD determination and approval of the land use element shall be in accordance with the procedures established in 24 CFR 600.73.

The approval of any coastal program is based on the requirements under the Coastal Zone Management Act regulations promulgated thereto. This approval should not be construed as approval of the land use element of the 701 Comprehensive Planning Assistance Program. Maine's HUD land use element was approved on June 15, 1978.

6. The DEIS needs to be revised to adequately address the Maine Coastal Program's impact upon land-use, state regulations, local ordinances, pollution, erosion, shoreline development, natural resources and implementation of the program by local government bodies.

The impact description has been rewritten.

7. The Plan neither acknowledges the efforts of the Flood Insurance Administration nor integrates its communities' ongoing actions in response to them into its discussion of the State's goals and existing mechanisms to achieve them.

The efforts of the FIA are addressed in policies 44 and 45. Funding to communities would need to be consistent with these policies under the eligibility criteria (Section 8). Flooding and erosion will be addressed in greater detail in the Planning Element Section 307(b)(7) of the Coastal Zone Management Act to be submitted by October 1, 1978 and ammended into the Program.

8. While the efforts of Maine communities under the National Flood Insurance Program comprise a significant step in addressing the issue of coastal hazards, they cannot, alone, adequately minimize such hazards. Therefore, the adequacy of the State's efforts under the Shoreland Zoning Act is very important. However, this act uses a delineation of the flood plain based on that area of land "within 250' of the normal high water mark."

The 250 feet has been a state minimum. The State has encouraged towns to use FI maps or other information for determining the zone up to the actual 100 year flood plain.

X. Southern Mid Coast Regional Planning Commission

1. We strongly recommend approval of Maine's Coastal Program in its existing, revised form.	No response necessary.

XI. U.S. Department of Transportation

1. The Program is extensive and displays the concerns and recommendations necessary to improve coastal resources for the benefit of the state as well as the nation.	No comment necessary.
2. The FEIS should discuss actions for protecting the coastal environment from the spillage of hazardous materials, such as petroleum products. Frequently, problems arise because those who are assigned clean-up duties are not aware of the characteristics of the materials. This situation can best be corrected by a good education program in the safe handling of hazardous materials.	Under the Coastal Conveyance of Oil Act, Maine has made statutory provisions for safeguarding its coast from oil spills. It also establishes a fund and responsibilities for cleanup. A copy of the full text of the law appears in Appendix F.
3. Consideration should be given in the compatible location of recreation, housing and industry to minimize a noise impact or provide abatement where mitigation is necessary.	This factor is considered under criteria 3 of the Site Law "fit harmoniously into the environment" as well as under provisions of the Shoreland Zoning Subdivision and Alteration of Coastal Wetlands Act.
4. The Oil Discharge Prevention and Control Statute, 38 MRSA subpart IIA, is very broad in scope and has the potential to generate regulations which would contradict existing federal regulations. This is particularly true in its provisions for the regulation of anchorages.	This Act acknowledges the State's police power to establish reasonable and non-discriminatory environmental protection measures which the U.S. 46th Supreme Court has recently approved in Ray v. Arco 4203 DOT's concern with potentially contradictory regulations should be satisfied by the actual regulation adopted by the Board which establishes that federal regulations govern when a state-federal conflict exists.
5. On pg. 3, Section 1.4 "All Federal activities affecting the coast would have to be conducted in a manner consistent with Maine's Coastal Program..." should be changed to reflect the terminology used in reference (a) Section 930.32 (a).	The correction has been made.
6. Section 2.9, pg. 21 "Federal consistency" could cause some confusion to the reader in its present form. Using the terminology in Section 930.33 (a) of reference (a) would clarify this issue.	The correction has been made.
7. Page 23, last paragraph, item 3 states "All Federal activities affecting the coast would have to be conducted in a manner consistent with Maine's Coastal Program." Section 930.32(a) of reference (a) reflects the proper terminology.	The correction has been made.
8. Item 27 on pg. 76 sets out, as one of the Program's policy objectives, the State's intention to "assure the safe conveyance and transfer of oil on waters of the state, and land adjoining, extending 12 miles seaward from the coast." A state claim to regulate movement and transfers of oil may to some degree conflict with, and be preempted by, federal regulations imposed under the Tank Vessel Act 46 U.S.C. 391a, and 334 of the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. 1321.	Please refer to response XI,4.

9. Incorrect statements regarding the determination of consistency of federal activities appears on pg. 195, item #2; pg. 197, item #10; pg. 198, item #6; pg. 199, item #3; and pg. 200, item #4. As stated in 930.34(a), the federal agencies shall make this consistency determination.	The corrections have been made.
10. The property listing on pg. 209 of U.S. Coast Guard activities in Maine appears to be inconclusive.	The Federal Lands Listing includes only land of 10 acres or more.
11. With regards to the National Interest beginning on pg. 235 - the Coast Guard would also be included under the Energy Facilities Section (Deepwater Ports) as well as Section E, "Living Marine Resources" (Marine Environment and Protection Functions). These would be in addition to those functions listed in 14 U.S.C. 2.	These changes have been incorporated.
12. The State's claim of jurisdiction to regulate anchorages (S 560, pg. 336) could conceivably conflict with Federal Regulations imposed under 33 U.S.C. 471 et seq., or with our authority to require certain vessel movements, etc., in the interest of safety or to protect the Marine Environment under Title I of the Ports and Waterways Safety Act of 1972. 33 U.S.C. 1221 et seq.	See response XI,4.
13. The terminology in S 560.4.C on pg. 335 appears to be an attempt by the State to regulate construction design, equipment and/or safety standards of vessels; however, this is preempted by Title II of the Ports and Waterways Safety Act (46 U.S.C. 391a).	See response XI.4.
14. Section 560.4.D on pg. 335 in all probability contemplates action beyond the scope of authority of the individual state. Except for the regulating of the Pilots on vessels engaged in foreign trade where the individual states have authority under U.S. Statutes, (46 U.S.C. 211), the U.S. Coast Guard is responsible for the administration of Federal Laws and regulations addressing safe manning, training and inspection requirements aboard all U.S. commercial vessels. The authority provided in U.S. Statutes is not shared with the states nor is there any provision in federal statutes for joint jurisdiction in this area.	See response XI,4.

XII. Department of Interior

1. We believe that the proposed Maine Coastal Program has several excellent features that will be of considerable benefit to the State in stimulating economic development and in protecting valuable coastal resources.	No response necessary.
2. The management strategy proposed by Maine, which does not involve the use of a Governor's executive order or interagency agreements to assure State agencies will administer their programs consistent with State coastal policies, is not a clearly articulated management option under	The specific responsibilities of state agencies are spelled out in the core laws. Therefore, an Executive Order of the Governor would only reiterate those responsibilities specified in the legislation and are neither necessary nor required under federal regulations. This is an unusual circumstance because most states do not have enough laws in place when

(XII.2 cont.)

section 923.42 of the interim-final regulations. While the Department recognizes that it is possible for a State coastal management program to be based on existing, enforceable and comprehensive coastal policies without the use of an executive order, approval of State programs using this management technique may set an unwise policy precedent. We recommend that the specific reasons why this program is acceptable without the use of an executive order or interagency agreements be explained in the final Maine Coastal Program.

they develop their program to sufficiently manage activities directly or significantly affecting the coastal waters. Coastal Zone Management regulation 923.42(a)(3) specifically allows for such factors to be taken into account in determining program approval. See response to comment XXV,2.

3. We expect that Maine will revise the proposed Maine Coastal Program to include additional specific information related to the administration of the Site Location and Wetlands Acts. This revision will aid in the determination of whether or not proposed Federal activities are consistent with Maine's Program.

See additional information in Sections 7.3 and 7.7 and in Appendix F.

4. The promulgation of the State regulations would increase predictability for permit applicants and decision makers, enhance the State's ability to make uniform Federal consistency determinations and allow the State to more adequately consider the National Interest in facilities and resources.

The State has some regulations in place, has a procedure for adopting them as needed, and will in the first program year develop regulations for promulgation on Coastal Wetlands and the Site Location Law.

5. The roles and responsibilities of the State Planning Office and of the Committee on Coastal Development and Conservation as they pertain to resolving conflicts between existing or future coastal policies should be more clearly explained in the final program.

The role of the Committee on Coastal Development and Conservation and SPO in policy refinement has been further described in Section 8.2. The Committee will be identifying possible conflicts and recommending resolutions to the Governor and Legislature. These would have to be amendments to the program.

6. While we believe that the designation of all areas within 250 feet of normal high water of any great pond, river or saltwater body as geographic areas of particular concern is commendable, the Shoreland Zoning Law excludes from its purview ponds of less than 10 acres and streams with drainage areas of less than 25 square miles. Environmentally sensitive areas such as wetlands, floodplains and steep slopes which extend further than 250 ft. from the normal high water line are also excluded from GAPC designation. The final program should describe how such environmentally sensitive areas will be designated and managed where they are not subject to the Shoreland Zoning Act.

Although the respondent is accurate in describing the Shoreland Zoning Law, Maine does provide for protection of inland-sensitive areas by the Subdivision Law and Site Law which apply statewide. The Great Ponds Alteration Statute is not a core law but in effect, protects wetlands associated with great ponds. One of the most important measures protecting inland wetlands are the State Plumbing Code which prevents building on soil associated with bogs and wetlands.

7. The Maine Coastal Program does not specifically provide for the inclusion of listed critical plant or animal habitat as Geographic Areas of Particular Concern or as areas for preservation or restoration. Since Maine has entered into a cooperative agreement with the Department's Fish and Wildlife Service to protect and conserve endangered and threatened species, the document should explain how endangered species habitat will be provided Geographic Areas of Particular Concern management protection.

The Coastal Zone Management Act regulations do not require endangered species habitats to be Geographic Areas of Particular Concern. Nevertheless Maine does provide considerable habitat protection in the Shoreland Zoning Law, Coastal Wetlands, and subdivision law. Further through its Department of Inland Fish and Wildlife and the Critical Areas Program, the State is actively working to identify important habitats and protect them.

8. The final program should also explain the interrelationship of the "Critical Areas Program" with Geographic Areas of Particular Concern and Areas of Preservation and Restoration. If these "Critical Area" designations are not enforceable, they are of limited usefulness to the Maine Coastal Program.

Though Maine's Critical Areas Program supports the process for the designation of areas of particular concern, it is not a regulatory program and the affected property owners' participation is voluntary. Therefore, though it is a law which supports the Coastal Program it is not used in satisfying any of the requirements for Geographic Areas of Particular Concern (Regulation 923.20) or Areas of Preservatin or Restoration (Regulation 923.24.

9. Forestry activities such as road construction and timber harvesting may adversely affect coastal resources if they are conducted without adequate safeguards. Protection similar to the standards and permit controls imposed by the Shoreland Zoning Act should be provided to unorganized coastal areas under the jurisdiction of the Land Use Regulatory Commission, by eliminating the forestry exemption for management districts.

Forestry activities are covered in Land Use Regulation Commission's 250 ft. Shoreland Protection District, which is similar to the Shoreland Zoning Act.

10. The inland coastal boundaries which coincide with township boundaries may exclude certain water resource areas such as aquifers and groundwater recharge areas which may require additional management protection. We suggest that the State periodically consider the need to adjust management boundaries based upon further technical information related to water resources and associated impacts.

This option was examined and dismissed because it would include 3/4 of the State, put unequal emphasis on different areas and lead to overlapping administrative jurisdictions. The State will periodically consider the need to adjust management boundaries.

11. An additional item for review criteria under the Subdivision Law on pg. 128 would be to examine water table depths.

This criteria is considered under the Subdivision Law more specifically through criteria "F" "will provide for adequate sewage waste disposal" which in turn requires a site investigation to determine the depth of the water depth.

12. We note that on pg. 143 under the Solid Waste Management Act, refuse must be placed at least five feet above ground water, but no reference is made to post-construction monitoring. We believe that close monitoring for this and other similar acts is vital to the effectiveness of the State's proposed coastal program.

Monitoring activities for compliance with the Solid Waste Management Act is done by DEP and code enforcement officers. Though personnel has been limited for these activities, the coastal program should enable local government and DEP to hire additional persons to administer these laws.

13. The section on Probable Impacts of the Proposed Action on the Environment (part II, pp. 419-431) is brief and concentrates almost exclusively on positive impacts. The final program should contain some substantive evaluation of the negative impacts.

Thank you for your comments. The Section has been revised. Please refer to Part II, Section A-C.

14. Page 11. To have a balanced program in resource use, the second paragraph should be altered to read "...supplemented by resource enhancing projects which increase productivity and encourage the native coastal economy, such as deep sea and shell fishing, forestry, mineral recovery, recreation, and shipping."

Maine's Coastal Program recognizes the importance of mineral recovery and of protecting them from conflicting uses. However, it is not in the same category that the context of this paragraph requires.

15. While pg. 44 mentions that "An inventory of coastal resources was completed," the inventory status chart on pg. 212 does not include mineral resources. The Bureau of Mines State Liaison Officer provided Maine with mineral information and maps. The final document should reflect how this information was used in the inventories.

This information was incorporated into newer land use inventory maps which are currently ready for printing. Surface mining is also included in the land cover map.

16. Pg. 49, sixth paragraph. In a May 16, 1977 letter to the State Planning Office, the Bureau of Mines listed 60 current mining producers in the coastal zone producing sand and gravel, peat clay, expanded perlite, waterstruck brick, and tungsten. These items should be listed.	Omission corrected.
17. Page 53. This list should be expanded to include counties as well as communities included in the coastal zone. The map on pg. 54 does not clearly display this information.	The change has been made.
18. Page 226. Lowest priority uses are equated with prohibited uses. This is inaccurate; prohibited uses have no priority.	This point has been clarified in the document. The priority of uses in the Areas of Particular Concern are determined in the designation of the district. By designating a district "General Development," it is intended to give commercial uses highest priority.
19. In the October 1977 draft appendix, Maine's program listed mineral resources as an item of national interest; the present program has omitted minerals. We believe that many of Maine's coastal minerals could serve more than local needs and, therefore, should be reconsidered for inclusion in this list.	The Maine Program will evaluate its determination on the basis of any specific new information that can be provided. Such a reconsideration would be handled with full opportunity for public and federal agency comment.
20. In the October 1977 draft, Maine listed large mineral extraction projects in its Uses of Regional Benefit. These projects have been omitted from this list and should be reconsidered for inclusion.	The CZM regulations do not require these to be listed as Uses of Regional Benefit.
21. The Bureau of Land Management has jurisdiction over the 6,798 acres of non-surface Federal mineral ownership in Maine. As we stated in a previous submission to the State, these mineral rights occur in Cumberland, Knox, and Waldo Counties. It may be appropriate that the Maine Coastal Management Program recognize these Federal interests.	The State's information indicates only 19 acres of Federal mineral rights in the coastal area in Waldo County. The ommission has been corrected in the document.
XIII. Coastal Resource Center, Inc. Ronald E. Beard, Executive Director 1. I support Maine's Coastal Program at this state of review of the environmental impact of the proposal.	No response necessary.
XIV. U.S. Army Corps of Engineers 1. Generally, we find that the program provides a reasonable balance between economic development and conservation of Maine's coastal resources. Before we can consider this program for approval, the following comments should be adequately addressed.	No response necessary.
2. The MCP is structured solely on eleven existing State laws, some of which must be implemented by municipalities. We point out that only activities falling within the purview of the eleven state laws will form a basis for consistency determinations. We emphasize that all consistency determinations will be made through the designated State agency, on the basis of State law, only.	You have correctly interpreted the Program. The State Planning Office is the designated agency for the filing of Federal Consistency determinations and findings of determinations. The CZMA regulations allow local levels of government to participate in the consistency review as long as the one state agency has the responsibility for consistency decisions. Only the eleven core laws will apply to such decisions.

3. On pp. 6 and 62, the Program refers to the Governor's Executive Order that established the Committee on Coastal Development and Conservation. However, the Executive Order cited (No. 10, FY 75/76) is not the one provided on pg. 258.	Thank you for your comment. Your correction has been made.
4. Clarification of Maine's coastal area is needed. It is noted on pg. 112 that three plantations under the jurisdiction of the L.U.R.C. are located in the coastal area. These plantations should be incorporated in the boundary definition along with towns and townships. Further, the established inland boundary line should refer to townships and plantations, as appropriate, not just towns.	Thank you for your comment. The boundary definitions have been revised to include townships and, where appropriate, plantations.
5. On pg. 76, policy #27 states that a goal of Maine's Coastal Program is the "safe conveyance and transfer of oil on waters of the State, and lands adjoining, extending 12 miles seaward from the coast." The term "territorial sea" is a legal term of art designating that band of oceans extending three miles (three marine leagues in the Gulf of Mexico) from the shore. Accordingly, "12 miles" should be amended to read "3 miles."	This policy has been reworded to reflect the substance of this comment.
6. The discussion of consistency seems to confuse activities inside and outside the coastal zone with listed and unlisted permit activities.	Clarification of the section has been made.
7. On pg. 252, the document states that "Federal agencies should notify the State Planning Office of these activities through the A-95 process..." According to S.930.54, the State should monitor unlisted activities, and A-95 is one mechanism for doing so. However, this section should be clarified consistent with S.930.54, if the intention is to implement that section.	Clarification of this point has been made.
8. On pg. 252, the document implies that Federal agencies will be responsible for notifying the State of potential consistency reviews for licenses and permits. The applicant, not the Federal agency, will provide certifications to the State.	Clarification of this section has been made.
9. We strongly recommend that this entire section be rewritten in order to clearly respond to the consistency regulations.	See revisions to the Federal Consistency section of Appendix E.
10. Under State Agency Disagreement, pg. 251, it implies that up to 60 days may be allowed to determine if a Federal agency has submitted sufficient information for a consistency evaluation. Although it is recognized that requests for additional information may be required in some instances, this need should be determined and sought early in the review process. This is further applicable to state and local government entities competing for limited available Federal assistance grants, where timing of grant applications is essential.	The state intends to follow your recommendation but has allowed for the maximum time in the regulations in case of unforeseen circumstances.

11. The national interest portion of the program document should be expanded consistent with Policy 6.42 (pg. 67) to "Encourage Port and Fishing Development." In addition the national interest discussion should also include beach erosion control, hurricane protection and maintenance dredging.

The State has the option to select those facilities which may be in the national interest so long as they have followed the CZMA and regulations. Additional facilities beyond those identified are not required.

12. On pg. 251, the three sentences concerning Corps permits should be revised as follows:
    a. Under Section 404, change "in navigable waters" to "waters of the U.S. and their adjacent wetlands."
    b. Under Section 10, change "for obstruction or alteration in" to "structures or work in or affecting..."
    c. Under Section 103, expand the sentence to read: "...permit for transportation of dredged material for the purpose of dumping in ocean waters."

The three corrections have been made.

13. There is no discussion of Federal permit or licensing requirements in the main body of the document. We recommend that a brief discussion be included in Section 7, to indicate the role played by Federal regulatory programs. In addition, a reference to the more extensive discussion in Appendix E should be added.

A description of Federal permits is not required and would unduly lengthen the document. Section 7 discusses the core laws of the MCP with which Federal agencies must be consistent. The procedures are described in Appendix E. A reference to Appendix E has been added to Section 7.

14. In view of the limited discussion in Appendix E concerning activities or permits, we encourage State distribution (at least to all applicants for State permits) of a handbook or pamphlet that would describe the specific activities that require Federal permits and the specific Federal regional agency having jurisdiction. This handout could be a State-handbook or a pamphlet prepared by the Federal agency having specific jurisdiction in the proposed activity.

Appendix E has been revised to further clarify the consistency process. Additional assistance is available to an applicant for a state permit upon request to the State Planning Office. A handbook on state permit licensing requirements is a good suggestion and will be attempted if funds allow during the first year of implementation.

15. The discussions on pp. 183-185 and pg. 418 (Appendix J) concerning policy issues and erosion studies do not address future management policy concerning existing structures now subject to severe coastal erosion or coastal flooding. We recommend that future consideration be given this matter so that such areas may be managed or acquired under qualifying conditions (as established by future legislation or administrative procedures) as natural protection areas.

The SPO is currently examining possible changes in managing current coastal land use practices subject to severe erosion. The State is not required to complete the erosion planning element until October 1, 1978.

16. It is believed that the term "refinements" used on pp. 66 and 185 is more akin to an "amendment or modification" as defined in Section 923.81 of the Coastal Zone Management Program Approval Regulations. The use of the term "refinement" should be reconsidered.

The policy studies currently underway which may change state policy would be incorporated into an approved Maine Coastal Program through an amendment process as specified in the regulations. The word reginement has been deleted from the CZMA Regulations.

17. Policy number 44, pg. 78 is read to mean all flood plains as described. This in essence would involve lands along the entire Maine coastline except where bluffs are encountered. The compatibility of this policy with policy number 9, pg. 72, is questioned. Clarification is needed.

Policy #44 states that flood plains as defined are Resource Protection Districts and therefore no structures are permitted. Policy #9 states that commercial or industrial development is restricted to General Development Districts. The suitable soils requirement would discourage such development from a flood plain.

18. The federal agency responses to the October 1977 Draft do not reflect the oral comment regarding the distribution of maps to key federal agencies so that federal planners and permit reviewers could be aware of unique preservation areas, as inventories by the State Planning Office Critical Areas Program.	The responses given are based on written comments received from federal agencies. The document has been revised to show availability of maps.
19. Six additional federal installations should be included in the Federal Lands listing on pp. 208-211.	Your additions have been incorporated into the official list of the State. Only areas over 10 acres are described in this document.

XV. State of Maine Department of Conservation

1. We are in agreement with the findings of the report.	No response necessary.
2. On pg. 428, reference is made to four enforcement officers for the 500,000 acres in the Land Use Regulation Commission's jurisdiction in the coastal area: the implication in the document is that they are only responsible for the coastal area...those four people have another 10 million acres to be responsible for outside of the coastal area.	This correction has been made.

XVI. U.S. National Oceanic and Atmospheric Admin.
(National Marine Fisheries Service)

1. While we do not object to 306 program approval, we strongly recommend that measures be taken to resolve concerns involving the management and protection of living marine resources and their habitats in subsequent program steps.	See responses to specific questions below.
2. We note an improvement in the MCP over the document issued in January 1978.	No response necessary.
3. The MCP does not appear to establish any new performance standards for protection of natural resources within the state's coastal zone.	The MCP uses the existing standards in its laws to protect natural resources. These laws afford adequate management to meet the requirements of the Coastal Zone Management Act. A more detailed description of the standards used by the State has been added to Section 7 in Appendix F.
4. The jurisdictional boundary limitations of several of the core laws results in incomplete protection of the coastal zone. The Program has designated only those areas of the coastal zone within 250 feet of the high water line to be within the jurisdiction of the Shoreland Zoning Act. Such limited jurisdiction fails to include all environmentally sensitive areas which could have a direct and significant impact on the coastal zone.	In addition to the Shoreland Zoning Act, sensitive areas are protected through each of the other core laws especially the Coastal Wetlands Law and the Stream Alteration Law. The coverage of all eleven core laws provides the adequate protection required by the Coastal Zone Management Act.
5. The document does not identify one responsible authority or agency to administer and enforce the MCP's goals, objectives, and policies. There is no state agency or office designated to ensure that the provisions of the MCP are adhered to by all state agencies.	The State Planning Office, in the Governor's office has been designated as the lead coastal agency to coordinate all state and local activities in the program, Federal regulations do not require that this lead agency be a regulatory agency. The State Planning Office will monitor all state and local activities for consistency with the goals and policies of the Maine Coastal Program. Ultimate responsibility for the implementation of the program rests with the governor and thus the State Planning Office's position seems appropriate and is clearly allowed by CZM regulation 923. See response XII,2.
6. On pg. 390, it states the Maine Dept. of Transportation is exempt from all but four of the core laws. The document should give the reasons for this exemption, state the possible environmental consequences of exemption, and present a procedure for resolution of conflicts.	The statement on pg. 390 has been misinterpreted by the commentator. The only exemption to the Dept. of Transportation for these activities is granted under the Site Location Act. This exemption has been addressed in Appendix I.
7. The document appears to be aimed at local planning, rather than at comprehensive coastal planning. The majority of the program funds will be spread evenly over the coastal zone rather than being directed toward critical problem areas on a priority basis.	After a thorough evaluation of the needs of the coastal zone, the State determined that the highest priority for improving coastal zone management would be improvement of the local government efforts especially as they relate to the eleven core laws. The State has established eligibility criteria for these projects as described in Section 8. The State found that local governments are more familiar with specific needs within these broad guidelines.
8. On pg. 244, it is stated that, "In certain cases, where a proposed facility is too small to be subject to the Site Location Act and is located inland of 250 ft. from the high water line, there is no state or national interest in resource protection." This statement should be changed to reflect the fact that projects beyond the 250-ft. zone have the potential to affect resources within the coastal zone.	This statement has been deleted.
9. Pages 427 and 428 point out that state agencies having authority to implement the eleven core laws are not sufficiently funded. The FEIS should express how program approval will improve the present conditions of understaffing when the bulk of funds will be spent on local procedures and administration.	The State is committed to implementing measures that will enhance the administration and enforcement of core laws. These measures will involve either hiring expert consultants to supplement existing capabilities, reassigning existing personnel, hiring additional staff, hiring seasonal staff, or other equally effective measures. The specific actions to be undertaken will be determined by the work currently in progress and will be implemented within the current calendar year. To support this effort, OCZM has committed approximately $100,000 in supplemental funds to augment existing or supplemental state funds.

XVII. City of South Portland, Maine

1. The Planning Department of the City of South Portland supports Maine's Coastal Program, and specifically its application for funding under Section 306 of the CZMA, as a program which will enhance both the natural and human environments of the Maine coast.	No response necessary.
2. The strategy incorporated into Maine's Coastal Program is exactly parallel to the state's regulatory approach of the past decade. It calls for the setting of overall policy at the state level, with implementation responsibilities delegated among the state, regional, and local levels in accordance with the scale of planning projects to be undertaken and with the best chance of implementation.	No response necessary.

XVIII. Maine Petroleum Association, A Division of the American Petroleum Institution

1. The MCP falls short of the requirements for approval.	See specific responses below.
2. The DEIS does not satisfy the requirements of the National Environmental Policy Act. Approval of these documents in their present form should be withheld pending legislative action to amend this program.	The EPA is charged with the responsibility for rating the adequacy of environmental impact statements. The DEIS was given a Lack of Objection/Adequate rating signifying the adequacy of the EIS and that the alternatives were adequately discussed.
3. While Maine is not presently a key energy-producing state, it has the potential to accommodate future national energy needs through the location of onshore support facilities for Outer Continental Shelf (OCS) oil and gas development in the Atlantic Ocean, expansion of its deepwater ports and construction of additional energy-related facilities in the national interest.	In a meeting with state officials held April 11, 1978, officials of Maine Petroleum Association and American Petroleum Institute indicated that to their knowledge there were no existing plans for new oil related energy facilities anywhere on the coast of Maine.
4. We firmly believe that the MCP must specifically set out clearly defined approval criteria related to facility siting and land use planning.	We agree with the comment. Sections 7.3 and 7.7 have been revised to give a better explanation of the evaluation of the permit applications under the Site Location and Coastal Wetlands Acts. In addition, although not required by the CZMA, the State has made a commitment to developing regulations for promulgation pursuant to those Acts during the first year of 306 approval. More specific planning for energy facility siting is allowed by the CZMA to be processed as an amendment after October 1, 1978.
5. While local input is critical to the success of coastal management program we recognize the paramount importance of regional and national issues, such as energy facility siting. We believe that such issues should be resolved at the state level, rather than the local level.	The Site Location Law and Public Utilities Commission provide for State review of all significant energy facilities. Those energy facilities identified as being Uses of Regional Benefit (See Appendix E) are resolved at the State level, those that are not so identified are subject to local regulations as allowed in 15 CFR 923.13 and 42. A further discussion of this distrinction is contained in the preamble to the Interim-Final Regulations, Federal Register, March 1, 1978 and in 15 CFR 923.13d.
6. Governor James B. Longley's executive approval is an insufficient showing that the management program represents the official policy and objectives of the State of Maine. The "networking" arrangement, created solely by executive fiat, is legally insufficient and unenforceable.	The specific responsibilities of state agencies are spelled out in the core laws which institute an expression of State policy. The Governor's letter attests to the fact that the State has the authorities necessary to implement the Program as required in Section 306(c).
7. In response to Section 305(b) (3) of the CZMA, Maine's DEIS (p. 219) deems the area of particular concern "all land areas within 250 feet of the normal high water of any great pond, river, or salt water body." It is doubtful that this is sufficient for two reasons (1) the designation is extremely general and is not an "inventory" of particular areas; and, (2) there is no articulation of policies for the management of these areas, this being left up to the Shoreland Zoning Law and Land Use Regulation Commission.	Under the Federal regulations, the designation of Areas of Particular Concern can be a generic designation. Enforceable policies for the management of designated areas are clearly stated in Section 6 of the document and in the Shoreland Zoning Act and the Land Use Regulation Commission Act. To repeat the policies rather than reference them would add unnecessary length to the document. Nevertheless, the State encourages OCS energy facilities in the national interest as seen in the Governor's letter, Appendix E.

8. While the DEIS addresses the CZMA requirements that comflicts amont competing uses be managed pp. 243-44, the approach lacks direction and suggests, without much more, that "(ag) grieved parties can ensure that these standards are not arbitrarily applied by court tests if necessary."	The process for resolving conflicts is established in Maine law. The Site Location, Wetlands and Subdivision laws all have procedures for resolving conflicts among competing uses. The availability of judicial review is well established in Maine law.
9. The national policy of the CZMA requires that the coastal program of each state provide for adequate consideration of the national interest including a planning process for energy facilities. We believe that the coastal states, operating in conjunction with these federal guidelines, an contribute significantly to the overall effectiveness of the management process.	The MCP provides for adequate consideration of facilities which may be in the national interest through the provisions of the Site Location Law. See revised Appendix E.
10. The plan does not adequately provide for the planning and development of energy-related facilities in the coastal zone.	Section 306(c)(8) calls for "adequate consideration" which is not synonomous with assuring that provision be made to assure the siting of energy facilities in which there is a national interest. Legislative history of the CZMA 1976 amendments indicates Congress did not wish to accelerate the location of energy facilities in the coastal zone.
11. The Maine DEIS, while it purports to following the Council on Environmental Quality (CEQ) guidelines of weighing the merits and demerits of its plan, as well as allocating proportionately its Section 306 funds, is more or less a "selling" document (pp.419-31). Maine's analysis of potential negative environmental impact is cursory.	Please refer to response XVIII,2.
12. The Maine proposal does not introduce any new legislation but simply "networks" eleven existing statutes together dealing with environmental quality, land use, zoning and subdivision. The application of these laws is often unclear.	The CZMA does not require new State legislation if adequate laws are in place at the time of approved 15 CFR 923.42(d). Maine has qualified under this requirement. The new description of the Coastal Wetlands and Site Location Laws contained in Section 7 provides further clarity.
13. The State of Maine could simplify the coastal management process by granting one central state agency, or cabinet-level or multi-agency review commission, the authority to resolve conflicts to coordinate and expedite program implementation by other agencies.	The State Planning Office will have the responsibilities of coordinating the Program. Further concentration of authorities is not required.
14. The plan needs to clearly define the jurisdiction and functions of the State Planning Office and any supporting governmental units involved in the coastal management process.	See the revisions to Section 8.2.
15. It would be desirable to modify the composition of the Committee on Coastal Development and Conservation so that it represented interests now excluded under the current proposal. We recommend that the Committee include the following professions: general business, energy industry, marine transportation industry, environmental groups, recreational groups, and aqua-culture and fisheries.	Some representation from these groups exists now. The suggestion is a good one and SPO will pursue it during the next year.

16. The Committee on Coastal Development and Conservation could be reorganized to perform the role of the central agency. Legislative action would be necessary in order to vest this Committee with the necessary authority to establish legally enforceable state policies and bind other state, local and regional entities to comply with those policies.

The CCDC is an advisory committee with responsibilities and authority as defined in the Executive Order contained in Appendix F1 of the program. It is correct that legislative action could be necessary. The State has not chosen to manage the program in this manner.

17. The proposal recognizes that many issues in land use planning might be of such importance to warrant the pre-emption of local jurisdiction by state authorities. However, the proposal does not draw the line where local jurisdiction ends in such instances. Since the program imposes no limits on powers or local authorities to regulate land and water uses in the coastal zone, uses of regional benefit-including necessary energy facilities-are subject to being precluded by local restrictions.

The facilities which do preempt local government are specifically described in Appendix E. Some energy facilities are included under this definition, others are not. Such a distinction between energy facilities is recognized by 15 CFR 923.15.

18. The coastal management process could be a two-tiered process with local authorities having primary jurisdiction in local planning, permitting and conflict resolution. The second tier could be a central agency-with statutory responsibilities to hear appeals, formulate coastal management policy coordinate planning of the coast and prepare development standards.

Although this would be approvable, the process selected by the state is also approvable.

19. Another option could involve a "performance standard" approach encouraging multiple uses in coastal areas if such uses can be resonably and safely supported by the zone area of interst and if the multiple uses have a beneficial or tolerable effect on the environment.

Prior to developing the Program, the State considered this alternative. Although this would be approvable, the process selected by the state is also approvable.

20. The major deficiency of the Maine proposal involves the issue of the national interest in energy facility siting and planning. Section 6.2 on pages 63-64 of the Proposal raises a number of serious questions concerning the resolution of coastal issues of broad concern.

The section in reference is about the refinement to existing policies. The State currently has adequate policies regarding the siting of energy facilities. The national interest portion of the Appendix E describes how these issues are resolved.

21. Nowhere in the State's draft is the 305(b)(8) and 306(c)(8) planning process for engery facilities identified. It does not exist in any of the eleven core laws nor is it alluded to as a special objective of the program. We strongly recommend that the state review this plan and adopt specific criteria for the approval of energy facilities which are in the ational interest.

The CZM regulations allow for the 305(b)(8) planning element to be submitted as an amendment to the program up to October 1, 1978. The State has chosen to do so. The State has provided for adequate consideration of the planning for and siting of energy facilities as is identified in the National Interest Appendix; based on using the Site Location Law.

22. The National Interest section fails to address how local governments will be reuired to have an obligation to adequately consider the national interest.

For those facilities described as uses of regional benefit there are provisions for assuring local decisions do not unreasonably restrict or exclude such facilities. Other facilities which may be in the national interest are given full consideration in the process of obtaining a permit under the Site Location Act.

23. The Maine Program does nothing more than rely upon existing state laws which were not created to fulfill, nor are they responsive to, the current CZM requirements.

The OCZM regulations specifically do not require new laws if existing laws are adequate. See 15 CFR 923.42(d)(3).

XIX. Verona Land Use Committee

1. The Verona Land Use Committee, consisting of the Planning Board and Conservation Commission, urges the Office of Coastal Zone Management to continue to fund locally administered projects such as yours. In our experience, it is a rare example of a few federal dollars going a long way.

No response necessary

2. The process of drawing up the plan has had some significant secondary effects which may eventually prove to have a greater impact on the management of coastal resources than the plan itself.

No response necessary

XX. United States Department of Agriculture

1. We will support Maine's coastal program through our services at both State and local levels.

No response necessary

2. Several problematical situations appear to fall outside the range of the eleven existing laws which form the core of Maine's coastal program. Examples of these situations are:
   a. Land subdivided into two parcels, rather than three or more.
   b. Housing built on land with severe limitations, for on-site waste disposal, that is not otherwise served by sewerage facilities.
   c. Housing built on marine-clay soils that may suffer structural damage.

The CZMA does not require that all subdividions of land be subject to the coastal program, but that uses of statewide importance be managed. The state has determined that land subdivided into two parcels would not fall into this definition which is consistent with the CZMA. Although not one of the core laws, the Maine State Plumbing Code, recently updated, regulates all subsurface disposal or all individual dwellings. The standards in the code also prohibits or make it extremely difficult to build on marginal/poor soil.

3. We suggest the stated permissible uses of coastal program funds be expanded to include soil mapping, other natural resource mapping, and base map preparation.

Soil mapping is an eligible expense since it meets the eligibility requirements listed in Section 8.311.

4. Included among the policies related to agriculture is this statement: "Carry out preventative and control measures and works of improvement for the control and prevention of soil erosion and sedimentation." (See page 70.) This goal is also applicable to nonagricultural land development. Therefore, it is recommended that this statement be included under 6.5, Outdoor Recreation, and 6.7, Natural Resources Management policies.

This policy applies to any area within the scope of the Soil and Water Conservation Commission Law.

5. Several substantive matters described in the Appendices appropriately belong in the program document itself.

The Program Description and the Appendix are of equal importance to the Maine Coastal Program The reader should refer to both portions to gain a full understanding of the program. Maine has chosen to arrange its document and the Federal EIS in this order so it will be more understandable to citizens of the state while still providing necessary information to all reviewers.

6. This statement appears on page 244: "In certain cases, where a proposed facility is too small to be subject to the Site Location Act and is to be located inland of 250 feet from the high water line, there is no State nor national interest in resource protection." The effect of this statement is to define national interest by the Site Location Act. We suggest that this statement be revised to read: "In certain cases,

The facilities identified to be of the National interest were selected based on the sources described in Appendix E. Nevertheless, this statement has been deleted from the FEIS. The final suggestion was not incorporated because of the need to provide certainty as to which resources and facilities may be in the national interest.

where a proposed facility is too small to be subject to the Site Location Act and is to be located inland of 250 feet from high water line, a determination will be made as to the State or national interest in the facility."

7. The list of agencies on page 238 should include the Soil Conservation Service (USDA), and the Forest Service (USDA), both of which have programs related to development of recreation opportunities.

The list has been revised to make these inclusions.

8. The list of guides for determining national interest in living marine resources should include the Soil Conservation Service (USDA), and the Science and Education Administration-Extension, (USDA), both of which are concerned with inland fish farming.

Since this section pertains more to coastal and marine resources the inland fish farming activities did not seem appropriate.

9. Review of Maine's coastal program is hampered by the absence of maps showing coastal area resources: neither is referenced made to where interested readers may see them. Charts on appendix pages B-4 and B-5 indicate that all listed inventories and maps are respectively complete and currently available. Is this correct.

Maps are currently available in the State Planning Office in Augusta or offices of the eight Regional Planning Commissions in coastal areas. The charts are correct as shown. Reference is provided in revised document.

10. There may be a national interest in Maine's agricultural lands. Maine is the primary U. S. producer of commercially harvested lowbursh blueberries. Most of the berries are produced in coastal towns. As such, this should be given full consideration in Maine coastal planning. The blueberry production area should appear on the maps.

Even though Maine is primary producer of lowbush blueberry and is important to the economy of Washington County, it does not have the national significance that fisheries have. Maine would be willing to discuss this with the agency after program approval.

11. The paragraph on page 49 on Maine's coastal forests should be expanded to describe the role that Maine's coastal forests play in providing much of the aesthetic and recreation attraction of the coast. These forests also provide watershed stability for the streams that flow to the coastal areas.

Good suggestion. Revised document reflects Maine agreement with this statement.

12. The Federal consistency section should be rewritten to clearly indicate that Federal assistance to individuals is excluded under the consistency clause.

"Federal assistance" is defined in 930.91 and doesn't include licenses or permits. In addition, it is defined as assistance to an "applicant agency" which would appear to exclude assistance to individuals.

13. On pages 14 and 15 the Department of Environmental Protection, Board of the Department of Environmental Protection, and the Bureau of Environmental Protection are mentioned. If these three agencies with similar names do in fact exist, it is important to know the roles and responsibilities of each.

The revised document clarifies this confusion. The decision making body of the Department of Environmental Protection is the Board of Environmental Protection. The word "Bureau: was an error- it has been corrected to read "Board".

14. Change the entry on page 210 to: Name of property: Winterport Land Utilization Project. Contact: Forest Supervisor, White Mt. National Forest, P. O. Box 628, Laconia, N. H. 03246, Phone: 603-524-6450.

The change has been made. See page 210.

XXI. U.S. Nuclear Regulatory Commission

1. NOAA/OCZM will need to assure itself that leadership exists for strong coordination of their many acts. We are skeptical.

The responsibilities of individual state agencies are specified in each of the core laws. In that these laws are incorporated directly into the coastal program, state activities will be consistent with the coastal management program. The SPO as an executive office of the governor has been charged with prime responsibility for the coastal program in Maine and has entered into memoranda of agreement with core state agencies. See Appendix I and revised Section 9 for further clarification.

2. On pg. 63, the statement is made that it is policy...to develop recommendations for more refined policies...It is difficult to judge a program with this kind of policy statement.

Clarification added, see revised pg. 63. These refinements to policy are part of an ongoing management effort and exceed the detail required by the CZMA regulations.

3. On pg. 254, the use of KV units to indicate generating capacity seems unusual. It should probably be stated in terms of thousands of kilowatts or megawatts.

Terminology reflects the law.

4. Maine's energy planning portion of its coastal zone management plan is not yet complete and will presumably be provided via an amendment to the plan. The NRC would welcome the opportunity to comment on an early draft of this amendment.

Maine is not attempting to satisfy the requirements of Section 305(b)(8) in this document. The energy facility siting element will be submitted prior to October 1, 1978. All federal agencies and interested parties will have an opportunity to comment.

5. On pg. 237, we are uncertain about the import of the quoted language from Maine's Energy Plan regarding the disposal of nuclear water. It is suggested that, before approving Maine's Coastal Zone Plan containing this policy, the OCZM carefully consider the question of whether it is consistent with the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974.

This policy is consistent with the President's National Energy Plan, pg. 72 and requires only that these questions be resolved according to Federal law including the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974

XXII. Town of Scarborough, Maine

Charles J. Andreson, Town Planner/Engineer

1. I am writing in support of the Maine Coastal Program proposed by the Maine SPO.

No response necessary.

2. Scarborough has seen the "208" recommendations as being totally compatable with CZM funds to implement some of the recommendations. This is a valuable aspect of the program, which I hope will not be overlooked.

No response necessary.

XXIII. Maine Assoc. of Conservation Commissions

1. The Maine Association of Conservation Commissions wishes to go on record in support of Maine's 306 Program Application prepared by the Committee on Coastal Development and Conservation.

No response necessary.

XXIV. Natural Resources Defense Council

1. We compliment Maine for the good ideas in the Maine Coastal Program and for the many improvements as the program has developed. The Maine Program as proposed, however, is unacceptable at this time because of the failure to meet a number of significant requirements of the Coastal Zone Management Act and because of a consequent failure to assure effecive coastal resource protection. Fortunately, these problems are easily cured without new legislation.

No response necessary; specific points discussed in detail below.

2. One of the most disturbing facts about the Maine Coastal Program is that it will effect no substantive changes in existing state and local protection programs. Yet the Coastal Zone Management Act specifically found that present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate (Section 302(g)). In the face of this Congressional finding, the Maine program proposes to rely on existing institutions to implement existing State programs pursuant to policies which are neither new nor ambitious.

Congress found that, nationwide, or on the average, states' land use guidance systems were inadequate in 1972 to protect coastal resources. Maine was one of the first states which responded to the same pressures that brought forth the Coastal Zone Management Act and passed legislation to control critical land uses. Coastal Zone Management Act regulations allow the use of existing legislation to implement a program when it addresses the findings and policies of the act. There is no requirement that policies be new, only that they be comprehensive and enforceable.

3. The Site Location of Development Law, -the Coastal Wetlands Law. the Stream Alteration Law, and the Subdivision Law must be interpreted to place emphasis on environmental protection. There must be administrative regulations under these statutes to make the vague policies in those statutes enforceable in a meaningful way.

The emphasis in the laws is on environmental protection. The procedures used to assure the intent of the law, as well as the precedents, regulations, and standards used to define the criteria in the laws are further described in Sections 7.3 and 7.7. and Appendix F. Regulations for the first two laws will be developed for promulgation in the first year after 306 approval.

4. The Site Location and Coastal Wetlands Regulations must contain a component of energy facility regulation, reaching electric power plants, oil tank farms, oil refineries and gas plants. There is no method for requiring them to locate outside the coastal zone.

Any energy development is now subject to the Wetlands Law if it occurs within a wetland and the Site Location Law of these energy facilities would be larger than 20 acres. These facilities will be required to locate outside the Coastal one if the various criteria of these Acts cannot be satisfied at coastal sites. If such criteria can be satisfied, the state sees no need to preclude them.

5. The legal authorityof Maine to lease State tidal and ocean waters must be added to the program as a formal component. Also, the Bureal of Public Lands must tie leasing to public interest and environmental considerations.

The laws that are in the program as core laws are sufficient in scope and enforceability to meet the requirement of the Coastal Zone Management Act. Between the Coastal Wetlands Act and the Protection of Waters Act, the state can ensure more comprehensive protection than is possibel under the submerged lands act.

6. An Executive Order of the Governor must be adopted to establish some CZM coordinative network, with review power and the power to take action to cure problems. A new agency is not necessary but some new legal relationship must "tie" these individual authorities into a comprehensive framework which addresses individual responsibility of each agency.

The specific responsibilities of state agencies are spelled out in the core laws. Therefore, an Executive Order of the Governor would only reiterate those legally enforceable responsibilities. The State Planning Office within the Governor's Office has the legal authority to monitor and coordinate program implementation in accordance with NOAA regulation 923.46 under an Executive Order issued by Governor Curtis creating the Coastal Program.

7. The Department of Environmental Protection must receive additional funding. The "pass-through" of 66 percent of the federal grant may be admirable but the of Environmental Protection is the prime agency for the statutes being networked and it goes begging under the proposed CZMP, making the policies relied upon effectively unenforceable.

Please refer to response XVI 9.

8. The policital catch phrase of "balancing" is inappropropriate and should not be given the dignity of a program policy. The CZMA does not envision "balancing" in the sense of economic and ecological tradeoffs but rather economic development which must recognize and reflect environmental protection.

The commentator appears to be misinterpreting Maine's use of the term "balancing" and how it will affect the operation of Maine's Coastal Program. The 11 laws which make up the core of Maine's Coastal Program act to assure that the quality of Maine's coastal environment is protected exactly as the commentator is suggesting should be done in the latter part of his/her comment. The fact that the goal of Maine's overall Coastal Program is to "achieve a balance between conservation and economic development in the coastal area.", does not affect the legal tests which applicants must meet to receive approval under the applicable core laws. Nor is the goal an enforceable requirement used to satisfy NOAA regulations 923.3.

9. The policy studies now being conducted on recreation, tourism, port development, heavy industry, fisheries and cumulative impacts should be completed before program approval.

These constitute a part of the ongoing process of coastal management. Their completion is not required for 306 program approval as there are adequate enforceable policies in place. Please refer to response IV.2 beginning with the second sentence.

10. The program should be amended to provide that the Coastal Islands Act will be added to the program for federal consistency purposes for any island electing in the future to create such an island trust.

Since there are no trusts now, if one becomes a reality, the Act could be incorporated by amendment. Incorporation of the Act is not necessary for program approval.

11. Missing are enforceable controls on transportation. State highways and the state aid highways are exempt from the Site Location of Development Laws (DEIS, pg. 132) and subject only to the vague controls of the Coastal Wetlands Act (DEIS, pg. 433). Thus, there is no control over the location of such highways in the coastal zone, only over the means of installation.

The commentator is correct that state aid highways are exempt from the Site Location of Development Law. In the case of major transportation projects (defined in Appendix I) for the coastal area where the SPO's position is that a project is inconsistent with the core law standards and the Maine DOT believes the project is essential, the Governor's Office shall resolve whether or not the project will proceed. This decision will be made by the Governor consistent with Maine's Coastal Program (See letter in Appendix I). Also see rewritten Appendix I which describes more specific roads.

12. There is no control over cumulative impacts of piecemeal permit decisions. The policy on this is not yet developed. Each "core" law does not apply throughout the coastal zone. Each agency will administer only those policies found in the statutes it now administers.

The Coastal Zone Management Act requires control over projects having direct and significant impacts. Not every development decision must be subject to the program providing critical resources are protected. Federal requirements mandate the management of coastal resources, not that all the laws apply throughout the coastal area.

13. The Stream Alteration Act (SAA) (DEIS, pg. 330) specifies the standard for approval in Section 2207. The SAA consists of general policies, not even effective performance standards. There are no regulations under the SAA advising how and what conditions to apply.

We feel the standards specified in the Act provide the program with enough specificity to meet the requirements of the CZMA.

14. The Subdivision Law (SL) suffers from vagueness. Although it (DEIS, pg. 303) does set forth guidelines for subdivision approval by local agencies, and the performance standards are more specific than in the other statutes, guidelines of the nature of the Shoreland Zoning Program are necessary to make the SL statutory guidelines meaningful and workable. These and other regulations should be adopted prior to MCP approval.	We feel the standards specified in the Act provide the program with enough specificity to meet the requirements of the CZMA. Various materials have been developed by the state to assist the local governments in administering this law. See bibliography in Appendix for examples.
15. There seems to be a defective definition of direct and significant impacts (DEIS), pg. 225) in that all projects subject to the core laws are regarded as having direct and significant impacts.	The Maine legislature responded to the same concerns as Congress expressed in the CZMA when it adopted the core laws.
16. There is no Inland Wetlands Protection Statute.	While there are no inland Wetlands Statutes, there are state laws which protect that resource. The Shoreland Zoning Law, the Great Ponds Act and the Alteration of Streams Act protect wetlands associated with water bodies. The State Plumbing Code prevents building on any wetlands because it could not meet the soil suitability standards of the code.
17. The Stream Alteration Act does not reach beyond the banks.	The SAA requires permits for activities taking place on the land which may cause dredge or soil to enter the river bed. Major activities are subject to the requirement of the Site Location Act.
18. There is no erosion control or construction site review program.	Erosion control on development sites is a requirement under all the core laws relating to land use. Adequate measures for prevention are one of the criteria for permits under the Shoreland Zoning, Site Law, Subdivision Act and others.
19. There is to be no future designation of Areas for Preservation or Restoration. The State is claiming (DEIS, page 231) that they already have been designated. They are to be the Class Waters, resource protection districts under the Shoreland Zoning Program, and specified protection districts under the Land Use Regulation Commission (LURC).	The process for future designation is now included in Appendix D. The State has gone beyond the CZMA regulations by actually designating some of these areas.
20. The FEIS should analyze alternative forms under which the program could be approved.	The NEPA requires a discussion of alternatives to federal actions. The options for OCZM are to approve or deny approval. The EIS discusses alternative reasons for denial.
21. Procedures must be based upon compatibility of various uses with adjacent uses or resources; evaluation of inland alternatives; and water dependence of various uses.	This comment results from an incorrect reading of CFR 923.12(c), which lists these issues to be considered, but does not require a program to have direct control over them. Table H in Appendix C shows how this requirement, i.e. permissible uses, has been met.

XXV. U.S. Department of Energy

1. We recommend that you deny approval of the Maine Program as submitted for Federal review. We would not object, however, to administrative action granting preliminary approval pursuant to Section 305(d) of the Coastal Zone Management Act.

The Department's specific criticisms are responded to in depth. Various revisions and clarifications have been made to the Program to address many of the concerns raised during the DEIS review. These clarifications strengthen the mechanism for meeting the CZMA and regulations. (The CZMA does not allow the option of 305 or 305(d) funding) for an approvable program which could be strengthened.

2. As a result of the lack of a management network, we find that the Maine Coastal Program does not provide adequate organizational guidance or authorities and procedures for conflict resolution and enforcement of compliance. The Maine Coastal Program makes no provision for the resolution of disagreements among the State agencies.

The State's program does not require an elaborate organizational structure to administer it. Its regulatory policies simply reflect the legal mandates of a series of core laws of the program. Consequently, each agency responsible for implementing one or more of these core laws is authorized and required to carry out the relevant policies established by such law or laws. Where more than one core law applies, e.g. for a large project in a wetland, the requirements of each have to be satisfied so there is no conflict if one agency grants a permit and another denies it. In the one instance where possible agency conflict could develop, that of highway projects, a specific mechanism is provided with the Governor acting as the ultimate authority to resolve the conflict. He has stated a commitment to carrying out the goals and policies of the Maine Coastal Program and to making decisions consistent with the Program in the program submittal letter. The State Planning Office acting as the coordinator of state and local activities for the coastal program and monitoring the efforts of the various agencies. Conflicts among competing uses are resolved through Shoreland Zoning with 250 feet of high tide, by LURC zoning in the unincorporated areas and, in the remainder of the coastal zone through the application of policies of the Program in the permit processes, particularly those of the Site Location Act which requires a determination that the proposed activity will not "adversely affect existing uses," and the Wetlands Act assuring no "unreasonable effect on navigational and recreational uses."

3. The Program does not provide adequate specificity and predictability to the consistency provisions. It is clear that Federal consistency cannot be assessed; rather one must simply submit a proposal to the various regulatory processes of the eleven core laws and then await their individual outcomes.

Sections 7.3 and 7.7 have been revised to provide further guidance in addressing the concerns raised. (The assessment for consistency determinations is made by the State.) Neither the Coastal Zone Management Act nor its regulations require a Federal assessment to be done by one agency only. There must be a single agency to accept and respond to Federal Consistency determination which will be the State Planning Office.

4. The Maine Coastal Program does not adequately provide for protection of energy facilities as Uses of Regional Benefit, CZMA, Section 306(e)(2). Energy facilities providing more than local benefits, especially in view of the special energy supply problems of the New England Region, and falling within the scope fo the 304(5) definition should be treated as Uses of Regional Benefit. The Maine Coastal Program seems to justify its limited scope regarding Uses of Regional Benefit on a policy excluding "industrial facilities which are essentially private investment decisions."

The Coastal Zone Mangement regulations specifically recognize that "facilities which may be in the National Interest need not necessarily be defined as Uses of Regional Benefit" (See Preamble to 15 CFR 923 under National Interest and Sec. 923.13(d)). The requirement to assure that local regulations do not unreasonably restrict or exclude Uses of Regional Benefit is in a separate portion of the CZMA from the National Interest section.

5. Uses of Regional Benefit coincide with the energy projects currently regulated by the Public Utilities Commission, and its associated authorities to exempt certain types

The State is not attempting to meet the requirement for an energy facility planning process of 305(b)(8) with the Program as submitted thus far. The determination of the adequacy of meeting this

(XXV.5 cont.)

of energy facilities from local regulation. The State cannot develop a balanced, comprehensive approach to energy planning, regulation, and facility siting responsive to the CZMA, Sections 305(b)(8) and 306(c)(8), by arbitrarily limiting its scope concerning Uses of Regional Benefit.

requirement will be made after October 1, 1978, as allowed by the Coastal Zone Management Act. Federal agencies will be encouraged to participate in this review at that time.

6. The Maine Coastal Program does not provide adequately for compliance with the CZMA, Section 305(b)(3) requiring inventory and designation of Areas of Particular Concern.

Regulation 923.21 allows a state to designate generic areas of particular concern. The State has designated land within 250 feet of high tide as their Geographic Area of Particular Concern.

XXVI. Eastern Maine Development District

1. The EMDD Board of Directors unanimously endorsed Maine's Coastal Program in the fall of 1977.

No response necessary.

2. EMDD sees the eleven core environemental laws as an appropriate basis for guiding development of coastal areas, while assuring maintenance and enhancement of the long-term productivity of Maine's coastline.

No response necessary.

XXVII. Office of Comprehensive Planning - State of New Hampshire

1. This office has consulted with the Maine State Planning Office on their proposed Coastal Management Program as required in section 923.34 of 15 CFR Part 923.

No response necessary.

2. At the State border, Maine's Coastal Zone boundary is about 4,000 ft. upstream from our proposed primary zone boundary and about 7,000 ft. downstream from our proposed secondary zone boundary. These differences reflect the fact that Maine's Shoreline Zoning Act extends further inland from tidal waters along rivers and streams than our primary zone and that the inland municipal boundaries of South Berwick, Maine, and Rollinsford, New Hampshire, do not coincide at the State border.

No response necessary.