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# EVALUATION OF THE ENFORCEMENT OF FOUR MAINE ENVIRONMENTAL STATUTES

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# EVALUATION OF THE ENFORCEMENT OF FOUR MAINE ENVIRONMENTAL STATUTES

prepared for:

Maine Department of Environmental Protection

August, 1981

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## EXECUTIVE SUMMARY

### 1.0 Introduction

The purpose of this project was to evaluate the enforcement of four Maine environmental statutes in terms of their effectiveness in protecting Maine's coastal resources. These laws are the Site Location of Development Law, the Alteration of Coastal Wetlands Law, the Mandatory Shoreland Zoning Act, and the Solid Waste Management Act.

Four basic questions answered in the course of this study were:

1. Do local and state administrative systems review all coastal development activities which are regulated by these laws?

2. When construction permits are approved, denied or granted with conditions, are the state and local enforcement mechanisms effective in ensuring compliance with those decisions?

3. In cases where enforcement does not ensure compliance, are significant environmental impacts likely to result?

4. What measures would be most effective in improving the present enforcement situation and ensuring compliance with these four environmental laws?

A brief legislative history and description of the fundamental points of the four laws under

reviewed is provided. These descriptions are intended to give the reader a flavor of what the laws entail in order to better understand subsequent discussion in this report.

To enhance communication between the consultants and the state agencies responsible for administering the four environmental laws, and to provide a mechanism for continuous review and evaluation during the course of this study, a Project Steering Committee was established. This Committee was composed of representatives of the Maine State Planning Office, the Land Bureau of the Department of Environmental Protection, the Department of Marine Resources, and the Maine Municipal Association.

## 2.0 Compliance with the Laws

One of the primary objectives of this study was to determine the extent of compliance with the four laws under review which regulate human activity along the coast of Maine. No such analysis has been made since the laws became effective.

This portion of the study attempts to answer a number of questions in relation to the laws:

- Are necessary state and local permits and approvals being obtained for activities regulated by these laws?

- Are conditions applied to permits and approvals being met?

- If the law is not being complied with, why is this the case?

- Is there any regional variation in degree of compliance?

- Do apparent violations of the laws result in significant impacts on the coastal environment?

In an attempt to limit the geographic scope of the project to a manageable size while retaining a comprehensive coastal perspective, a case study approach was adopted. Six municipalities were selected for intensive investigation. Results from detailed case studies combined with more general research conducted on a regional and coast-wide basis serve as the basis for the findings presented later in this report.

The first task of the study was the selection of case study communities. The objective was to choose communities which reflect a reasonably representative sample of the coastal area. The municipalities of Wells, Brunswick, Camden, Winterport, Deer Isle, and Pembroke were selected for detailed study.

The investigation of compliance with the four laws in the six case study communities focused on two major areas: 1. compliance by obtaining the appropriate permits and approvals; and 2. compliance by satisfying the terms and conditions of permits and approved plans.

One phase of the study required a methodology to answer the following question in each case study community: Have activities which are regulated under the laws occurred in the absence of an approved permit application and plan? The answer to this question involved a two step process: first, an identification of all activities for which approval had been obtained; and, second, review of municipal records and on-site investigation to reveal additional regulated activities for which permits had not been obtained.

The determination of compliance with terms and conditions of approvals and permits, including the construction of a project according to approved plans, was

approached from two perspectives: to what extent do the responsible enforcement agents conduct inspections to ensure such compliance; and to what extent does such compliance actually occur?

The evaluation of the performance of enforcement agents was based on a review of municipal and DEP files and discussions with the enforcement personnel. The extent to which compliance with conditions of approval actually occurs was arrived at through the review of project files, discussions with enforcement agents, and field investigations.

The results of the case study investigations are presented in detail on a community basis. The format of these descriptions starts with a brief discussion of the physical and cultural character of the community. In each case, an effort was made to highlight factors which might influence the pattern, rate, or type of development within that community.

The body of each case study describes the history of permit application review and compliance inspections pertaining to the Site Location of Development, Alteration of Coastal Wetlands, Shoreland Zoning, and Solid Waste Disposal Laws in each respective community. This history is summarized in two tables for each community.

Finally, each case study includes observations and conclusions by the consulants for each respective community. These remarks are based upon our experience with that particular community as well as more general coastal-wide information obtained from discussions with state and local enforcement personnel.

## 2.5 Compliance Investigation Findings

The following findings are based on the results of the six community case studies and extensive discussions with people from across Maine's coastal area. The case studies provided a quantitative examination of the compliance situation within a small but diverse sample of coastal communities. The results of the interviewing were more qualitative in nature and played an important role in the formulation of findings.

1. Between 10% and 20% of the development activity within Maine's coastal zone has occurred without obtaining the necessary state and local approvals under the Site Location, Coastal Wetlands, and Shoreland Zoning Laws.

2. Non-compliance with the laws is the result of both ignorance and attitude.

3. The degree of compliance with the laws has been improving over the past few years.

4. Local officials and individuals are not familiar with the specific requirements of the laws.

5. Non-compliance with terms and conditions of approval has occurred at a rate greater than 30%.

6. No ~~systematic~~ inspection of approved projects for compliance with conditions of approvals has been conducted.

7. The results of investigation into the environmental consequences of non-compliance are inconclusive.

8. It is difficult to draw definite conclusions concerning the regional variation of instances of non-compliance.

9. Compliance with the Solid Waste Management Act has improved significantly over the past few years, but there is still room for major improvement.

## 3.0 Effectiveness of Administrative Systems

The second major task of this study involved the evaluation of the administrative systems which are responsible for enforcing the four laws. The basic questions to be addressed include:

- Why have problems in relation to compliance with the four laws occurred?

- Did most problems with the administration of the Site Location, Coastal Wetlands, and Solid Waste Management Laws occur before the DEP's review and enforcement staffs were expanded in 1979?

- How effective are the current administrative systems?

A brief description of the administrative structure responsible for enforcing the four laws is given for the Division of Review and Planning and the Division of Enforcement of DEP's Bureau of Land

Quality Control, the Natural Resources Section of the Attorney General's Office, the Coastal Warden Service of the Department of Marine Resources, and the Maine State Planning Office.

The following findings concerning the administrative structure are based primarily on two sources of information. An extensive series of interviews was conducted with people involved with all aspects of the administration of the laws, including personnel of the DEP, State Planning Office, Attorney General's Office, Department of Marine Resources, municipal officers, and private individuals who have familiarity with the administration of these laws. Material relevant to these questions was also reviewed. This included annual enforcement reports and DEP and State Planning Office files.

Findings of the Administrative Systems Investigations:

1. The Land Bureau of the DEP has never had the resources necessary to effectively meet its enforcement responsibilities.

2. Public cooperation has been a significant element in enforcement efforts to date.

3. The Enforcement Division and the Attorney General's Office do prioritize their responsibilities in an effort to manage their time efficiently.

4. In the absence of an understanding of the enforcement staffing situation, some members of the general public have become disillusioned with the DEP.

5. The level of staffing of Assistant Attorneys General is not sufficient to satisfy the demand for legal action by the DEP.

6. DEP enforcement personnel are reluctant to refer cases to the Assistant Attorneys General.

7. The expansion of the Enforcement Division's staff in 1979 is just beginning to have an effect on the effectiveness of enforcement.

8. Existing staffing levels have limited the degree of cooperation possible between the Division of Review and Planning and the Division of Enforcement in regards to enforcement.

9. The documentation of violations is a difficult and time consuming process.

10. DEP enforcement of the Solid Waste Management Act emphasizes the desirability of volunteer compliance.

11. The performance of Coastal Wardens is quite variable in their enforcement of the Coastal Wetlands Law.

12. Local administration and enforcement of Shoreland Zoning is extremely variable.

13. Administration of Shoreland Zoning on the state level has been only minimally supported.

## 4.0 Recommendations

The following recommendations are made for improving the enforcement of the four environmental laws under review:

1. Increase the level of staffing of the Division of Enforcement, the Division of Review & Planning, and the Attorney General's Office.

2. Include standard conditions of approval in Board Orders which ensure that applicants and contractors read and understand the orders.

3. Transfer project files to regional enforcement staff in a timely fashion.

4. More guidance provided to the Division of Enforcement by the Division of Review and Planning.

5. Develop a mechanism for handling minor violations.

6. Shorten the negotiation time for consent agreements.

7. Develop better coordination between local code enforcement officers and the Enforcement Division personnel.

8. Encourage more assistance from Coastal Wardens in enforcing the Coastal Wetlands Law.

9. Develop a public education program on the four environmental laws.

10. Develop baseline data on activities subject to regulation under the four environmental laws.

11. Transfer some of the State's Shoreland Zoning responsibilities from the State Planning Office to the Department of Environmental Protection.

12. Increase the State commitment to the administration of Shoreland Zoning.

# 1.0 Introduction

## 1.1 General Background

Beginning in the late 1960's and extending through the 70's, the Maine Legislature adopted a number of laws designed to protect the State's natural environment. These laws reflected strong state and national sentiment that the protection of our natural resources is necessary to ensure long-term social, environmental and economic well-being.

The thrust of the enacted laws was to regulate development activities such that the integrity of the natural environment would be maintained. The implementation of the legislation involved the development of a structure to administer the established system of permit procedures and regulations.

In the early 1970's, Maine began to focus particular attention on its coastal areas by beginning the development of a coastal program. This program, supported by federal funding, recognized the coast as an important section of the State in terms of its spectacular beauty, abundance of natural resources, and economic importance to Maine as a whole.

In 1978, Maine expanded its participation in the federal Coastal Zone Management Program by obtaining federal approval of the State's Coastal Program. The program, developed by the State Planning Office, was designed "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." Approval of the program made Maine eligible for additional levels of funding for coastal program activities.

The regulatory core of the coastal program is composed of eleven state environmental and resource protection laws intended to accomplish a large part of the stated program goal. The laws include: Protection and Improvement of Waters; Alteration of Coastal Wetlands; Mandatory Zoning and Subdivision Control; Land Use Regulation; Site Location of Development; Protection and Improvement of Air; Solid Waste Management; Alteration of Rivers, Streams and Brooks; Oil Discharge Prevention and Pollution Control; and, Marine Resources Management.

Since 1978, more than a million dollars each year has been provided to Maine through the federal Office of Coastal Zone Mangement to support and develop the state's coastal program. Much of this money has been distributed to coastal municipalities throuh a local grants program. In 1979, part of the funding was provided to the Department of Environmental Protection to hire additional staff for the administration and enforcement of some of the State's environmental laws.

The 1970's was a period of creating through law the measures deemed necessary to adequately protect our natural environment. The challenge of the 1980's is to evaluate what has been accomplished and refine the system which has been established.

In the past ten years, the entire field of environmental protection has matured considerably. Research and monitoring has added to our knowledge and understanding of the relationship between human activity and environmental quality. Changes in population growth, migration patterns, public preferences, the

national and state economies, and industrial technology have altered the direction, type, and intensity of development pressure on our natural resources and land base.

Priorities concerning environmental protection have also changed. Air pollutants associated with acid rain and groundwater contamination from illegal dumping of toxic wastes, now very much in the public eye, received little attention ten years ago. The present political climate is sensitive to the cost and restrictiveness of governmental regulation. And, all levels of government are in the process of scrutinizing the effectiveness and utility of their programs.

## 1.2 Project Purpose

The purpose of this project is to evaluate the enforcement of four Maine environmental statutes in terms of their effectiveness in protecting Maine's coastal resources. These laws are the Site Location of Development Law, the Alteration of Coastal Wetlands Law, the Mandatory Shoreland Zoning Act, and the Solid Waste Management Act.

The study focusses particular attention on: the Department of Environmental Protection's Land Bureau, which has the responsibility of administering and enforcing the Site Location, Coastal Wetlands, and Solid Waste Management Laws; the State Planning Office, which administers Shoreland Zoning on a statewide level; and, municipal planning boards, which administer and enforce shoreland zoning on the local level.

Four basic questions were addressed in the course of this study:

1. Do local and state administrative systems review all coastal development activities which are regulated by these laws?

2. When construction permits are approved, denied, or granted with conditions, are the state and local enforcement mechanisms effective in ensuring compliance with those decisions?

3. In cases where enforcement does not ensure compliance, are significant environmental impacts likely to result?

4. What measures would be most effective in improving the present enforcement situation and ensuring compliance with these four environmental laws?

To enhance communication between the consultants and the state agencies responsible for administering the four environmental laws, and to provide a mechanism for continuous review and evaluation during the course of this study, a Project Steering Committee was established. This Committee met periodically with the consultants during the course of the study and provided guidance in fulfilling project objectives. The Committee also reviewed and discussed the findings and recommendations presented in this report. These findings and recommendations, however, represent the opinions of the consultants. The Committee was not intended to do anything more than provide guidance in undertaking the study.

Members of the Project Steering Committee included: John Bastey, Maine Department of Environmental Protection; Hollis McGlauflin, Maine Department of Environmental Protection; Walter Foster, Maine Department of Marine Resources; Gary Higginbottom, Maine State Planning Office; Rich Rothe, Maine State Plann-

ing Office; and, Rebecca Warren, Maine Municipal Association.

## 1.3 Legislative History

A brief legislative history and description of the fundamental points of the four laws being reviewed is provided below. These descriptions are intended to give the reader a flavor of what the laws entail in order to better understand subsequent discussion in this report.

### 1.31 Site Location of Development Law

The Site Location of Development Law (Title 38 M.R.S.A., Sections 481-489), became effective on January 1, 1970. The law requires approval from the Board of Environmental Protection prior to the construction or operation of developments including: subdivisions in excess of 20 acres; gravel or borrow pits over 5 acres in size; parking lots, roads or paved areas which causes a total project to exceed a ground area of 3 acres; buildings with a ground area in excess of 60,000 square feet; and, drilling or excavating natural resources where the area affected is in excess of 60,000 square feet.

In 1979, the Site Location Law was amended to include mining activity involving the extraction or removal of more than 1,000 cubic yards of product or overburden within twelve successive calendar months. During the same legislative session, roads became exempt from review under this law as long as the roads are built according to state standards.

The Act establishes general criteria to be used by the Board of Environmental Protection (BEP) in deciding whether or not to approve a proposed development:

"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 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."

The BEP has the statutory authority to place terms and conditions upon the granting of approval.

The statute contains a provision which allows the BEP to grant municipalities the authority to review subdivisions of certain sizes through municipal planning board review rather than requiring review under the Site Location Law.

1.32 Alteration of Coastal Wetlands Law

The Alteration of Coastal Wetlands law (Title 38 M.R.S.A., Sections 471-478) prohibits the dredging, draining, filling, displacement, and the construction of permanent structures in, on or over any coastal wetland and coastal dune without first obtaining a permit for such activity from the Board of Environmental Protection (BEP).

The Law was adopted in 1975 and only regulated activities within coastal wetlands. The Act was amended (C. 504, Section 1) in 1979 with the addition of the coastal dune provisions which prohibits the bulldozing, removal, addition or displacement of sand or the building of permanent structures in, on or over any coastal sand dune without first obtaining a permit.

The Law provides for the issuance of wetlands permits, provided the applicant demonstrates to the satisfaction of the BEP 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.

.. dunes permit will be issued provided the proposed activity will not unreasonably interfere with existing recreational or wildlife uses; unreasonably interfere with the natural supply or movement of sand within or to the sand dune system; unreasonably increase the erosion hazard to the sand dune system; or cause an unreasonable flood hazard to structures built in, on or over any coastal sand dune or neighboring property.

Similar to the Site Location Law, the BEP can grant municipalities the authority to issue Coastal Wetlands permits and the BEP or a municipality, can issue permits subject to terms and conditions.

1.33 Mandatory Shoreland Zoning Act

The Mandatory Shoreland Zoning and Subdivision Control Act (Title 12 M.R.S.A., Sections 4811-4814) became effective in September of 1971.

The Act mandated that all cities and towns adopt and administer zoning for all land areas within 250 feet, horizontal distance, of the normal high water mark of any pond, river or salt water body or have the State impose a zoning ordinance for the 250 foot area. Even when a shoreland zoning ordinance is state imposed, the administrative responsibility rests with the municipality.

The Act originally established a July 1, 1973 deadline for local compliance. This date was subsequently changed by the Legislature to July 1, 1974.

The Board of Environmental Protection and the Land Use Regulation Commission are responsible for adopting state-imposed ordinances for municipalities which have not adopted or have repealed shoreland zoning. A state-imposed ordinance may also be put into effect if an ordinance adopted by a municipality is determined to be too lax or permissive.

The State Planning Office is responsible for co-ordinating the efforts and responsibilities of the BEP and LURC under this statute. The State Planning Office also provides support to the Shoreland Zoning Task Force which is made up of members of the BEP and LURC and which makes recommendations to the BEP and LURC concerning general policy and specific actions directed toward particular municipalities.

1.34 Solid Waste Management Act

The Solid Waste Management Act (Title 38 M.R.S.A., Sections 1301-1311) was adopted in 1973. This law authorized the Board of Environmental Protection to adopt, amend, and enforce such rules and regulations as deemed necessary to govern solid waste management, including the location, establishment, construction and alteration of solid waste facilities.

The BEP adopted solid waste regulations which became effective on February 1, 1976 and addressed the disposal of solid waste, septic tank sludge and municipal treatment plant sludge on land.

In 1979, the Septage and Hazardous Waste Law was merged into the Solid Waste Management Act and An Act to Establish a Solid Waste Management Subsidy for Municipalities was adopted.

The "Subsidy Law" made the state a participant with municipalities in paying for the cost of maintaining and operating solid waste disposal facilities. The subsidy was intended in part as an incentive to communities to improve the existing solid waste disposal situation. Only municipalities with facilities in "substantial compliance" with state laws and regulations were eligible for up to a 50% reimbursement for eligible costs under the program based on the amount of money in the subsidy pool. In 1980, $500,000 was available in the subsidy program. In 1981, no money was appropriated by the Legislature for municipal solid waste subsidy.

In 1981, the Maine Legislature authorized the Department of Environmental Protection to provide technical assistance to municipalities regarding solid waste management. The following funds were appropriated for carrying out the purposes of the Act: $125,000 for FY 81-82 and $110,550 for FY 82-83. While the DEP has had the responsibility for providing solid waste disposal technical assistance for a number of years, the passage of this Act marks the first time state funds have been appropriated for this specific purpose.

The Land Bureau of the Department of Environmental Protection (DEP) is presently reevaluating and updating all previous solid waste management regulations.

## 2.0 Compliance with the Laws

### 2.1 Introduction

One of the primary objectives of this study was to determine the extent of compliance with the four laws under review which regulate human activity along the coast of Maine. No such analysis has been made since the laws became effective.

This portion of the study attempts to answer a number of questions in relation to the laws:

- Are necessary state and local permits and approvals being obtained for activities regulated by these laws?

- Are conditions applied to permits and approvals being met?

- If the law is not being complied with, why is this the case?

- Is there any regional variation in degree of compliance?

- Do apparent violations of the laws result in signficant impacts on the coastal environment?

The size of Maine's coastal area is so large that a thorough analysis of all activity within this portion of the state was not possible within the context of this study. Maine's coastal zone encompasses 144 municipalities in nine of the state's sixteen counties. The coastal area is over 3,500 square miles in

size and includes over 4,000 linear miles of shoreline. Literally thousands of approvals and permits have been issued under the four laws.

In an attempt to limit the geographic scope of the project to a manageable size while retaining a comprehensive coastal perspective, a case study approach was adopted. Six municipalities were selected for intensive investigation. Results from detailed case studies combined with more general research conducted on a regional and coast-wide basis serve as the basis for the findings presented later in this report.

## 2.2 Case Study Selection

The first task of the study was the selection of the case study communities. The objective was to choose communities which reflect a reasonably representative sample of the coastal area.

A list was prepared of factors to be considered in making the selection of case study locations. The factors identified included:

geographic distribution: DEP enforcement districts;

distance from a DEP regional office;

location along the coast of Maine

character of community: urban, suburban, rural;

seasonal vs year-round economic base;

year-round vs seasonal population

| | |
|---|---|
| physical characteristics: | length of shoreline; |
| | type of coastline; |
| | extent of wetlands; |
| | riverine vs marine environment |
| development characteristics: | population change (1970-80); |
| | change in number of housing units (1970-80); |
| | number of DEP permits/approvals issued |
| administrative characteristics: | full-time/part-time code enforcement officer; |
| | presence of town manager or town planner; |
| | state imposed vs locally adopted shoreland zoning ordinance; |
| | existence of other land use ordinances |

Initially, the possibility of using a systematic and statistically valid selection process was explored. However, this was abandoned for two reasons. First, in light of the number of selection factors identified, the number of possible combinations of factors far exceeded the number of case study locations which could be feasibly investigated. Secondly, the constraints of the contract did not allow for the systematic characterization of all 144 coastal communities in relation to the factors identified.

The process of selecting case study locations was more informal and less rigorous. Final selections were based on: the consultant's knowledge and understanding of the Maine coast; discussions with knowledgeable individuals; discussions with the Project Steering Committee; and, a sensitivity to the factors which had been identified.

The municipalities of Wells, Brunswick, Camden, Winterport, Deer Isle, and Pembroke were selected for detailed study. While being neither a statistically valid sample of coastal communities nor necessarily truly representative of the Maine coast as a whole, it was felt that these communities satisfy the original objective of selecting locations which reflect a reasonably representative sample of the coastal area.

The characteristics of the six case study locations are summarized in Table 1. The locations of the six communities are noted in Figure 1.

## 2.3 Method of Investigation

The investigation of compliance with the four laws in the six case study communities focused on two major

TABLE I

Case Study Community Characteristics

| | | Wells | Brunswick | Camden | Winterport | Deer Isle | Pembroke |
|---|---|---|---|---|---|---|---|
| Geographic Distribution | County | York | Cumberland | Knox | Waldo | Hancock | Washington |
| | DEP enforcement district | Southern | Southern | Central | Downeast | Downeast | Downeast |
| | Distance from DEP regional office | 30 mi | 25 mi | 30 mi | 18 mi | 45 mi | 120 mi |
| Community Characteristics | Nature of Community | Suburban Seasonal | Urban Year-round | Urban Seasonal | Suburban Year-Round | Rural Seasonal | Rural Year-round |
| | Population (1980) | 8,146 | 17,392 | 4,586 | 2,674 | 1,486 | 922 |
| | # of Seasonal Housing units | 2,094 | 212 | 288 | 17 | 437 | 47 |
| Physical Characteristics | Shoreline length (miles) | 40 | 50 | 17 | 9 | 126 | 47 |
| | Wetlands area (acres) | 1,380 | 574 | 0 | 110 | 0 | 27 |
| | Coastal Character | sand beach | rocky | rocky | tidal river | rocky | rocky |
| Development Characteristics | Population change (1970-1980) | +83% | +7% | +11% | +36% | +23% | +32% |
| | Housing change (1970-1980) | +66% | +22% | +18% | +62% | +21% | +31% |
| | # of Site Location applics. | 21 | 13 | 10 | 3 | 1 | 0 |
| | # of Wetlands applications | 48 | 14 | 11 | 3 | 13 | 2 |
| Administrative Characteristics | Code Enforcement Officer | full-time | full-time | full-time | part-time | part-time | part-time |
| | Town Manager | yes | yes | yes | yes | no | no |
| | Town Planner | no | yes | no | no | no | no |
| | State imposed Shoreland Zoning | yes | no | no | yes | no | yes |
| | Other land use ordinances | Sub. Zon. | Sub. Zon. | Sub. Zon. | - | - | - |

Sub. - Subdivision Regulations
Zon. - Townwide Zoning

FIGURE 1 CASE STUDY COMMUNITIES AND MAINE'S COASTAL ZONE

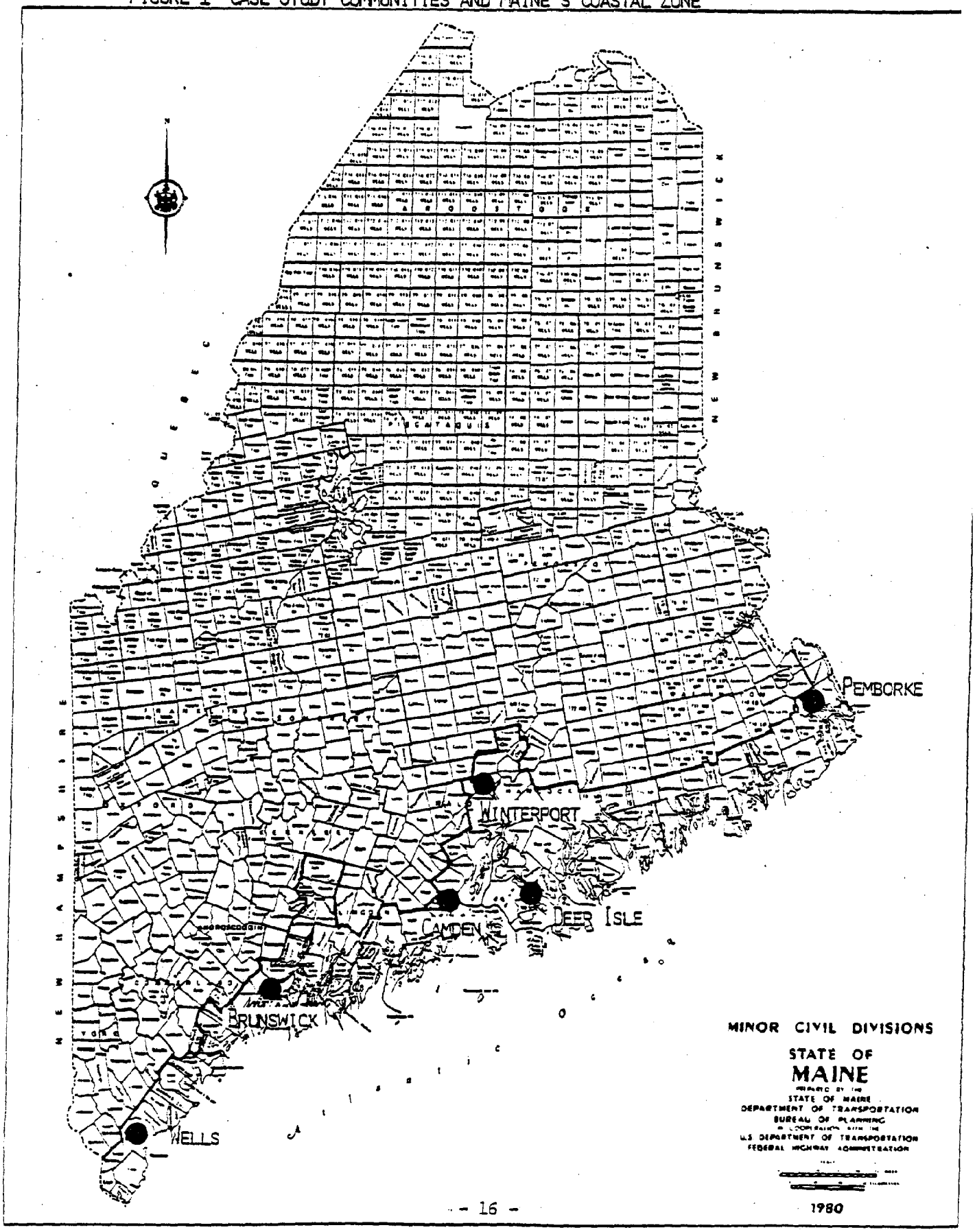
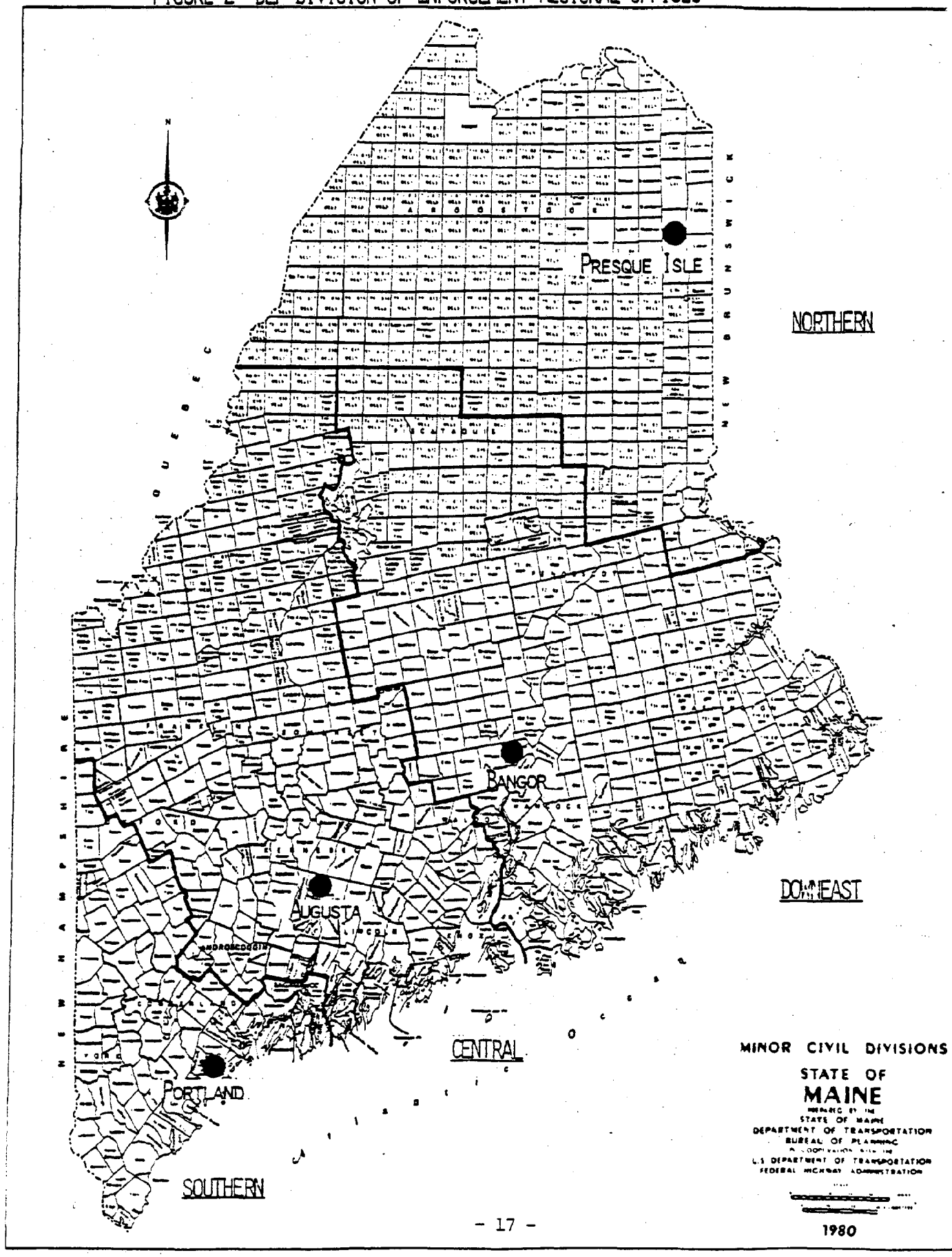


FIGURE 2 DEP DIVISION OF ENFORCEMENT REGIONAL OFFICES



areas: 1. compliance by obtaining the appropriate permits and approvals; and, 2. compliance by satisfying the terms and conditions of permits and approved plans.

## 2.31 Permit Application and Approval

This phase of the study required the development of a methodology to answer the following question in each case study community: Have activities which are regulated under the laws occurred in the absence of an approved permit application and plan? Arriving at an answer to this question involved a two step process: first, the identification of all activities for which approval had been obtained; and, second, the review of municipal records and on-site investigations to reveal activities for which permits had not been obtained.

DEP files in Augusta, the Department's main office, and in regional offices in Portland and Bangor were reviewed for applications made under the Site Location and Coastal Wetlands Laws from each of the case study communities. This review included noting the nature of the proposed activity; the name and address of the applicant; the date of approval or denial of the application; conditions of approval; and, mapping of the geographic location of the activity.

Some difficulties were experienced in reviewing DEP files. In a few instances, files could not be located and it was not apparent whether the files had been placed in archives or were misplaced. Particularly in older files, it was not clear whether certain conditions of approval had been met; and, in some files, the map locating the development was not explicit enough to pinpoint its precise location.

The Shoreland Zoning permits granted by the municipalities were documented through a review of town records. Files of the planning board, board of appeals, and code enforcement officer had to be reviewed since different types of development are reviewed and approved by different bodies under Shoreland Zoning. In many instances, no specific notation was made on municipal records that action taken fell under the shoreland zoning ordinance.

Considerable variability was experienced in reviewing municipal records. In more than half of the six case study communities, there was at least some period of time during which records of municipal approval were simply not available. For the most part this occurred during the first few years of the administration of the ordinance. At the same time, two of the communities had well organized records of approval dating from July 1, 1974 when shoreland zoning became effective. Nearly all of the communities had good records of approvals over the past few years.

In general, municipal shoreland zoning records lacked good descriptions of the nature and the location of approved developments. A site plan was included in only a few instances. The location of a development was usually difficult to determine. A good map or a clear verbal description of the location was more the exception than the rule. In three of the communities, the tax map and lot numbers were used to determine the precise location. In other instances, the only way to locate approved developments was through the assistance of municipal officials.

2.32 Identification and Documentation of Statutory Non-Compliance.

Since each of the laws became effective on different dates, it was necessary to establish a baseline of activities which had occurred prior to these dates and were thus grandfathered. Aerial photography, cultural information on U.S.G.S. topographic maps, and other available land use maps were explored. While these sources of information were helpful in researching specific cases of suspected non-compliance, they were of little use in establishing a town-wide baseline. Municipal records and files were found to be much more valuable.

Subdivision plans approved by the municipal planning boards were reviewed to ensure that all such plans had obtained DEP approval where necessary under the Site Location Law. Additionally, both field and aerial reconnaissance were used to spot potential Site Location violations. Due to the sheer size of developments which are subject to this law, these methods were considered sufficient for identifying instances of non-compliance.

To identify non-compliance with the Coastal Wetlands and Shoreland Zoning laws, both municipal tax records and building permit records were used. First, municipal tax maps and files were used to identify all lots which fell within the shoreland zone. All lots which were partially or entirely within 250 feet of designated water bodies were considered shoreland lots.

For communities which require building permits, the permits were used to document the type and location of development on a shoreland lot. Development within the shoreland zone was cross-checked against planning board records to confirm planning board review and approval of a shoreland zoning permit when such approval was required by the ordinance.

Some communities had no building permit requirement. In these cases, the tax records alone were used to identify potential shoreland development. Tax maps were again used to locate all lots partially or entirely within the shoreland zone. Current and previous owners were then established for each lot, and tax assessor's records were reviewed to determine a sequential picture of property and building valuation over a four to five year period.

Of particular interest were lots which changed from no tax assessment on buildings to some building assessment. Large increases in valuation beyond the usual increase for the town was also noted. These changes in the tax assessment for shoreland lots identified structural development during the particular time interval reviewed. Field investigation was then required to determine whether the lot development had occurred within the shoreland zone.

In addition to the review of municipal records, field and aerial reconnaissance was used to identify potential violations of the Coastal Wetlands Law Shoreland Zoning Ordinances.

In all case study communities, the method of investigation explained above was supplemented through discussion with local and state officials, such as

planning board members, town managers, code enforcement officers, coastal wardens, and DEP personnel, and other knowledgeable individuals. These discussions proved to be more useful in identifying problems with and attitudes concerning the laws and their administration/enforcement than in identifying particular instances of non-compliance. While some of the people interviewed did acknowledge that non-compliance occurs, very few were willing to identify specific violations.

Of all the laws reviewed, violations of the Coastal Wetlands Law were most difficult to identify. Many of the types of activities which fall under this law (such as dredging or filling) are neither subject to scrutiny under other laws nor are they of concern to municipal tax assessors. As the result, few records were located for use as a cross reference against DEP files. Also many of the types of developments which fall under this law, such as fills, are not readily apparent in aerial photographs or subject to notation in most land use mapping, thereby eliminating the opportunity to establish a historical baseline. Field investigations, discussions with individuals, and aerial reconnaissance were used in identifying wetlands violations.

2.33 Compliance with Terms and Conditions

The determination of compliance with terms and conditions of approvals and permits, including the construction of a project according to approved plans, was approached from two perspectives: to what extent do the responsible enforcement agents conduct inspections to ensure such compliance; and to what extent does such compliance actually occur?

The evaluation of the performance of enforcement agents was based on a review of municipal and DEP files and discussions with the enforcement personnel and other knowledgeable individuals. Difficulties arose due to the incomplete or inconsistent reporting of compliance inspections in DEP files. Frequent turnover of municipal code enforcement officers hampered the development of a consistent picture of municipal enforcement since enactment of shoreland zoning.

The extent of compliance with conditions of approval was arrived at through the review of project files, discussions with enforcement agents, and field investigations. Some of the stumbling blocks experienced in these efforts included: the absence of detail in approved plans, particularly in the case of shoreland zoning; the placing of terms and conditions of approval which are unenforceable; difficulty in locating the development site; incomplete inspection reports; gaining access to development sites; and, the inability to conduct an inspection of a project at the point during construction when a particular condition of approval applied.

## 2.34 Solid Waste Management

Of the four laws under scrutiny, the Solid Waste Management Act by design received the least amount of attention. This study was limited to only that portion of the law which deals with municipal solid waste disposal. The solid waste management situation in

Maine has been subject to other studies whereas this is not the case for the other three laws. Also, the constraints of the contract did not provide the opportunity for a more thorough investigation in this area.

The method of investigation into the solid waste situation in the case study communities included a review of DEP files and discussions with municipal and DEP officials and some of the operators of the disposal facilities. The conclusions and recommendations in this area are based on both the results of work undertaken as part of this contract and work performed for the DEP by Arthur Lerman Associates earlier this year.

## 2.4 Case Study Results

### Introduction

As described in the previous section, six case study communities were selected for detailed investigation into the degree of compliance with and the effectiveness of enforcement of the four environmental laws under review in this study. What follows is a description of the results of this investigation for the municipalities of Wells, Brunswick, Camden, Winterport, Deer Isle, and Pembroke.

The format of these descriptions starts with a brief discussion of the physical and cultural character of the community. In each case an effort was made to highlight factors which might influence the pattern, rate, or type of development within that community and factors which might influence the enforcement process.

The body of each case study describes the history of permit application review and compliance inspections pertaining to the Site Location Law, Alteration of Coastal Wetlands Law, and Shoreland Zoning. This history is summarized in two tables for each community.

Since some files could not be located for our review, a distinction is made between the number of DEP applications that were filed under each law and the number that were reviewed by this study. Other statistics of interest, such as number of after-the-fact applications and number of cases discovered to be in non-compliance, are also indicated on these tables. Since 1979 was an important year with respect to levels of staffing for DEP's Enforcement Division, permit approval and compliance inspections are segregated as having occurred either before or after this year.

Finally, each case study includes observations and conclusions by the consultants for each respective community. These remarks are based both upon our experience with that particular community as well as more general coastal-wide information obtained from discussions with state and local enforcement personnel.

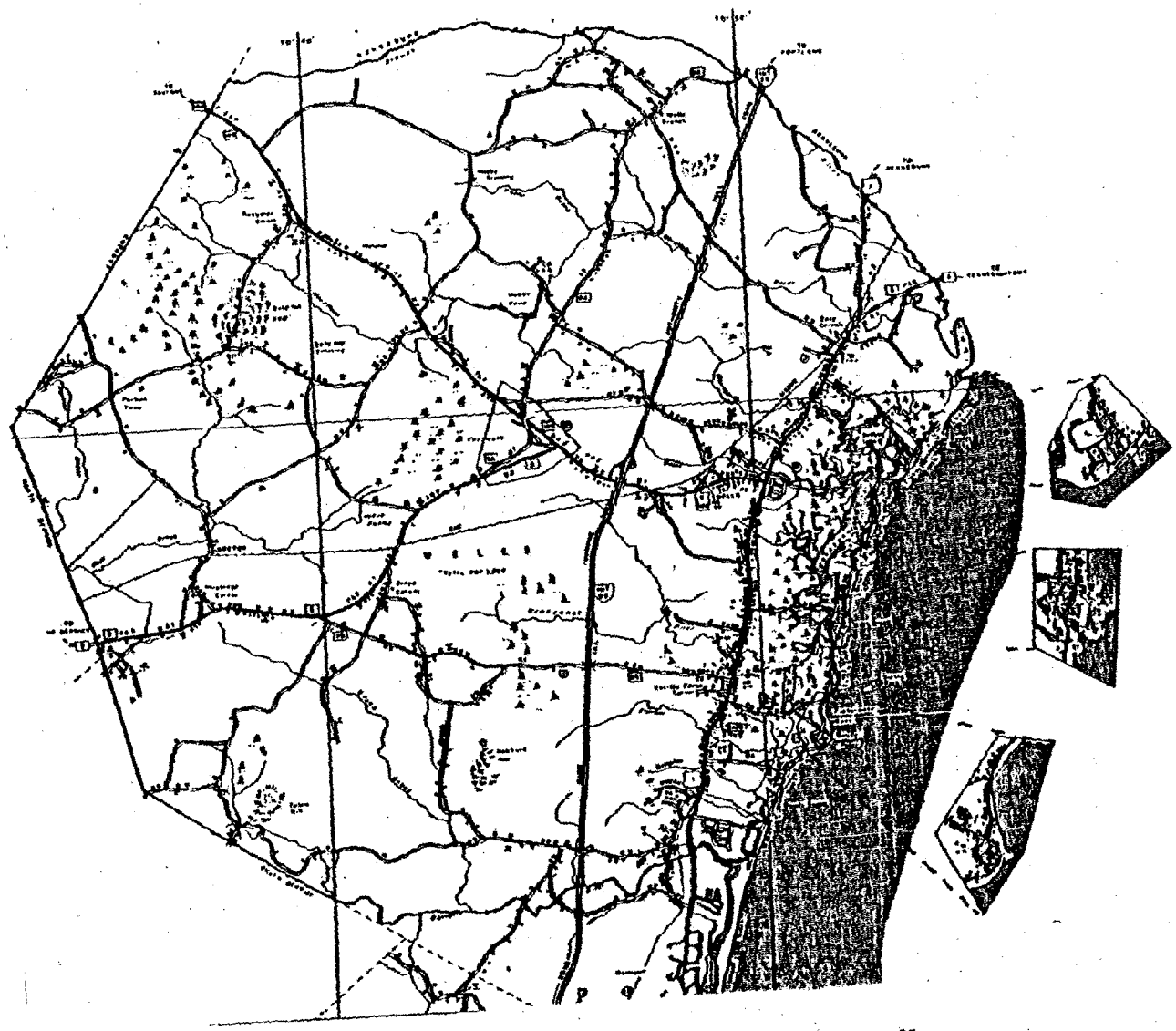
## 2.41 Wells

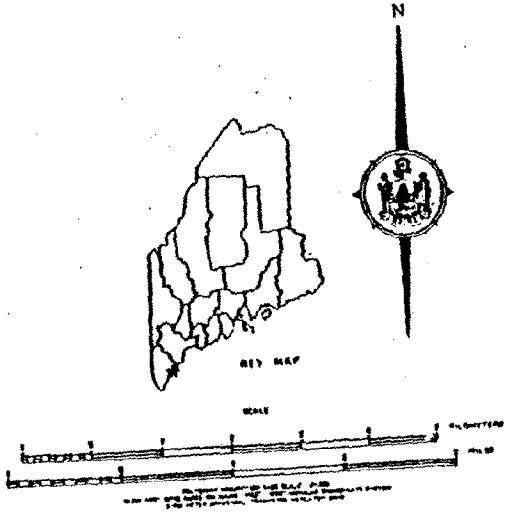
### General Description

Wells is a town located within the beach belt along Maine's southern coast. The Town has historically been oriented toward the summer trade which serves as the economic backbone of the community. Wells Beach and Moody Beach, which are barrier spits, have been almost completely developed for summer recreational use and are covered by high density residential dwellings. There is limited commercial development in the shoreline portion of the Town. Most commercial recreational development occurs along Route 1 which runs parallel to the ocean.

Wells had a 1980 year-round population of 8,146. This represented a 83.1% increase in population since 1970 and makes Wells one of the fastest growing communities in the State. The Town itself has a small industrial base. Much of the new development (a 66% increase in housing units between 1970 and 1980) accommodates people who work in nearby communities. Housing development has been spurred within the past five years by the completion of a municipal sewage treatment system. The system included the extension of sewer lines to numerous parcels which had previously not been buildable lots.

There are roughly 40 miles of shoreline in Wells. Much of this shoreline, particularly on the backside of the barrier spits, is abutted by coastal wetlands. Over 1,000 acres of coastal wetlands have been preserved through inclusion in the Rachel Carson National Wildlife Refuge.






# WELLS

A townwide zoning ordinance and subdivision regulation are in effect in Wells. In November, 1980, the Town Meeting enacted a "Planned Growth Ordinance" in an attempt to control the increase in new residential construction. There is a town planning board and board of appeals. There is also a full-time town manager.

Wells is located in the DEP's southern enforcement district. DEP's regional office in that district is located in Portland which is approximately 30 miles from Wells.

Site Location Law

The DEP has records of 15 approved residential subdivisions in Wells since 1972. Several of them have gone through revisions since their original approval. Two are mobile-home developments. No DEP approved subdivisions are located in the shoreland zoning area of the Town.

No subdivisions were identified that were subject to the Site Location Law and had not obtained DEP approval. This conclusion is based on conversations with municipal and DEP officials, a review of municipal files, and limited field reconnaissance. Forty subdivisions received municipal review and approval from 1974 to 1980.

A review of the individual project files for 13 of the 15 approved subdivisions indicates that no systematic inspection of subdivisions has been conducted by the DEP. Of the 13 approved projects, seven apparently had not been inspected by DEP staff. Of the

six projects inspected by the DEP, five projects were noted as being incomplete, including one in which construction had just started. One of the subdivisions inspected was identified as being in non-compliance with conditions of approval.

Of the 13 DEP approved subdivisions reviewed by this study, 10 had received approval prior to 1979. Seven of these ten had been inspected, five prior to 1979 and two during or after 1979. Of the 3 subdivisions which were approved since 1979, one has been inspected by the DEP enforcement staff.

One industrial project and two institutional projects - a high school and a church-parish facility - have obtained Site Location approval. The industrial development, approved in 1979 and revised in 1980 and 1981, is under construction and is being inspected regularly by enforcement staff. Problems of erosion are being addressed and no environmental damage is anticipated. The institutional projects, one approved in 1976, the other in 1978, are not known to have been inspected.

One gravel pit application was withdrawn and the area of the pit reduced to make it exempt from the law.

The project staff inspected 7 of the 16 developments which have obtained approval under the Site Location Law. Four of the developments had been inspected by the DEP staff, while the DEP files indicated that three had not been inspected. One of the

## DEP Applications - WELLS

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.* |
|---|---|---|---|---|---|---|---|---|
| Site Location | Subdivision | 17 | 15 | 2 | 0 | 0 | 13 | 0 |
| | Public Buildings | 2 | 2 | 0 | 0 | 0 | 2 | 0 |
| | Industrial | 1 | 1 | 0 | 0 | 0 | 1 | 0 |
| | Gravel Pit | 1 | 0 | 0 | 1 | 0 | 0 | 0 |
| | Total | 21 | 18 | 2 | 1 | 0 | 16 | 0 |
| Wetlands | Dwellings | 10 | 10 | 0 | 0 | 0 | 10 | 1 |
| | Walls | 21 | 16 | 2 | 3 | N/A | 14 | 0 |
| | Other | 6 | 5 | 1 | 0 | 0 | 6 | 0 |
| | Fill | 11 | 3 | 8 | 0 | 5 | 10 | 4 |
| | Total | 48 | 34 | 11 | 3 | 5 | 40 | 5 |

* Not having received necessary approval or permit.

## DEP Inspections - WELLS

| Law | Type of Devel. | No. of Projects Reviewed by Study | DEP FILES App'd. Before Jan/79 | DEP FILES Inspected Before Jan/79 | DEP FILES Inspected Since Jan/79 | DEP FILES App'd. Since Jan/79 | DEP FILES Inspected Since Jan/79 | Case Study Field Work Insp. | Case Study Field Work No. of Non-Compli. |
|---|---|---|---|---|---|---|---|---|---|
| Site Location | Subdivision | 13 | 10 | 5 | 2 | 3 | 1 | 5 | 1 |
| | Institutional | 2 | 2 | 0 | 0 | - | - | 2 | 0 |
| | Industrial | 1 | - | - | - | 1 | 1 | - | - |
| | Total | 16 | 12 | 5 | 2 | 4 | 2 | 7 | 1 |
| Wetlands | Dwellings | 10 | 0 | 0 | 0 | 10 | 1 | 10 | 2 |
| | Walls | 14 | 6 | 1 | 0 | 8 | 2 | 6 | 0 |
| | Other | 6 | 5 | 1 | 1 | 1 | N/A | 2 | 0 |
| | Fill | 10 | 0 | 0 | 0 | 3 | 1 | 9 | 6 |
| | Total | 40 | 11 | 2 | 1 | 22 | 4 | 27 | 8 |

developments which had not been inspected by the Department was found to be in non-compliance with the DEP approval.

Coastal Wetlands Law

With the adoption of revisions to the Coastal Wetlands Law in September 1979, new structures on dunes came under DEP Wetlands review. Until then the dunes were not considered wetlands. In all, ten dwellings have been approved in 1980-81, a majority of which are under construction or complete.

All ten dunes projects completed or under construction were field-inspected as part of this study. All but two appear to be in compliance with conditions of approval. Of those two, both appear to have a surplus of fill, raising the ground elevation about six inches to one foot higher than neighboring lots, and one appears to have more natural vegetation removed than necessary.

The Portland DEP staff was familiar with most of the projects, since they had been involved in pre-permit investigations. However, all but one of the project files were in Augusta and no compliance inspections had been conducted.

According to DEP files, seawall construction was approved in sixteen cases and denied in two cases. Of the fourteen approved project files reviewed, only three projects had been the subject of compliance inspection by DEP staff. The consultants field inspected six of the approved seawalls and found no instances of non-compliance with terms and conditions of approval.

In a recent occurrence, a seawall was reconstructed without a permit. But, in after-the-fact consultations with DEP staff, it was determined that no permit was required since there was a finding of no significant difference from the wall it replaced.

Based on information provided by the Army Corps of Engineers, there were two seawalls constructed without authorization under the Wetlands Law. In one of these cases, DEP obtained a consent agreement with monetary penalty. The Corps' information was insufficient to locate the other case.

Other approved wetlands projects were a large sewer-crossing system, a sewer outfall, a sewage treatment plant, an individual sewer crossing, Town ramps and steps, and a waterline-driveway. All but the last were approved. Field observations verified compliance of the Town project and the waterline driveway (denied).

The large sewer crossing project by the Wells Sanitary District created substantial violations as the result of excessive movement of material, grade changes, and removal of natural vegetation. Maine Department of Marine Resources, the Environmental Protection Agency, the Army Corps of Engineers, and the DEP were all involved in enforcement over a period of years. Restoration was undertaken after EPA withheld project construction funds, and the work appears to have been generally effective, although it is too early to evaluate fully.

There are on record 11 Board cases involving wetlands filling; only three fills were approved and one was only a partial approval. Five cases, all denied, were after-the-fact. Of these, four remain in apparent non-compliance, according to field investigations. One of the latter is a relatively old case which was referred to the Attorney General's office but has not been acted upon.

In another fill case, the alleged violator was ordered by the Board to remove the fill but no deadline was given for compliance. A consent agreement was offered by the DEP, and was not returned. The case has been referred to the Attorney General's Office but has not been given priority. Action is still pending.

Two after-the-fact applications were denied by the Board, but field observations reveal that the fill has not been removed and no subsequent DEP action has been taken.

DEP enforcement personnel were familiar with practically all wetlands fill cases, whether approved or denied, but had filed only one compliance inspection report. The Town Code Enforcement Officer, the Corps of Engineers and the DMR regional biologist have been involved in reporting violations, and U.S. Fish and Wildlife personnel have helped police those wetlands which are part of or border on the Rachel Carson Wildlife Refuge.

In field observations, three possibly unauthorized fill areas were identified, none of which were confirmed by DEP, and all of which require further investigation to determine more definite dates, extent of fill, or applicability of the "wetlands" definition.

The most difficult policing problem is evidently the small backyard fills which intrude on the wetlands. An example of these is in the area of the Wells Beach Fire Station. Again, more definite dates, measurements and wetlands determinations would be needed to investigate fully these "wheelbarrow jobs."

The Wells Code Enforcement Officer recently observed a bulldozer on Wells Beach moving accumulated sand away from the beach side of seawalls. The bulldozer work was done without a wetlands permit and was an apparent violation of the law. Twenty-five shorefront lots were involved in the bulldozing activity. Prosecution of the contractor has been initiated. The Coastal Warden from the Department of Marine Resources also reports that those property owners who had previously requested permission to have the work done and had been refused but went ahead with the work anyway, will be prosecuted. This sand-clearing activity has reportedly been a regular occurrence in the past, and the Coastal Warden and the Code Enforcement Officer have been consulting with DEP about ways of addressing this problem in the future.

## Shoreland Zoning

In 1974, a state-imposed Shoreland Zoning Ordinance was put into effect in Wells. This ordinance was considered interim and placed all of the shoreland area in the Resource Protection District. In 1975, the state revised the Ordinance to better reflect the situation in Wells.

In June, 1978, Wells adopted its own Shoreland Zoning Ordinance which is still in effect. As the result of this town action, the state-imposed Ordinance was repealed.

The Town of Wells contains approximately 1,000 lots in the Shoreland Zoning area, according to the Assessors' tax maps. In order to determine the level of enforcement of the Shoreland Zoning Ordinance, a sample of these lots was selected:

| | Total | Sample |
|---|---|---|
| Beachfront | 318 | 106 |
| Back Dunes and Downriver | 500* | 125 |
| Upriver | 187 | 62 |

*approximate, due to boundary revisions of wildlife refuge lands

Within the entire Shoreland Zoning area, every third lot along the beachfront and upriver sections, and every fourth lot in the back dunes were selected for review. Observations were checked against four major elements of the ordinance:

1. permits for new structures (Sec. II.D. and IV.D.)

2. setbacks (Sec. VIII.A.7.)

3. reconstruction, alteration and expansion of existing structures (Sec. VIII.A.9.)

4. filling (Sec. VIII.A.10.)

First, the tax-assessment card of each sample lot was examined and the type of development on the lot (dwelling, additions, porches, garages, etc.) recorded. In addition, structures built since 1975 were noted.

Code Enforcement Officer's files were examined to determine if permits had been obtained for new structures.

Results of this review were only partially satisfactory due to faulty record-keeping prior to 1978. Five structures noted on assessors' records as having been built between 1975 and 1978 had no corresponding permits in the files. After 1978, however, all structures in the sample were accounted for with permits in the files.

Field investigation was conducted within representative sections of the beachfront and back dunes. The observation sample was as follows:

| | Total | Field Sample | Percent |
|---|---|---|---|
| Beachfront | 318 | 77 | 24% |
| Back Dunes and Downriver | 500 | 79 | 16% |
| Total | 818 | 156 | 19% |

Sample lots observed in the field fell into the following general development categories:

| | Beach | Back Dune |
|---|---|---|
| Vacant | 3 | 32 |
| Existing prior to 1975 | 61 | 33 |
| Additions to Exist. Since 1975 | 11 | 5 |
| New structures Since 1975 | 2 | 9 |
| Total | 77 | 79 |

Setbacks were found to be in accordance with the ordinance. A difficulty arises, however, from the wording of the ordinance with respect to the wetlands side of Moody Beach, Wells Beach and Drakes Island: "...no dwelling shall be less than 25 feet from the edge of the wetland." The "edge of the wetland" has been interpreted at the "high water mark," which is defined for coastal waters as "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."

A group of five structures and one foundation in Moody appear to be significantly less than 25 feet from the unvegetated, near-vertical edge of the river embankment. But, local and state officials have placed

the "high water mark" further into the stream bed, making the setbacks adequate. From field observation, that decision would appear open to dispute. One of these houses and the foundation were built since 1978; the others evidently antedate the ordinance.

Reconstruction, alteration and expansion of structures appear to have been conducted, at least since 1978, in accordance with the Ordinance, with permits being obtained in all cases. One exception was noted in connection with one of the Moody Beach structures mentioned above: a deck protruding well beyond the setback limit. In this case, an after-the-fact adjudication by the Board of Selectmen allowed the deck to remain but fined the owner $500.

The ordinance requires a town permit for more than 10 cubic yards of fill. On coastal wetlands, it also mandates prior permits from DEP and the Corps of Engineers and sets up operational criteria for all filling. It was generally not possible to evaluate compliance with the operational criteria, since the apparently unauthorized fills that were observed occurred long before this study. As for the permit process, it appears from several conversations with the Code Enforcement Officer, the DEP and the Corps, that the Town works cooperatively with the other agencies in ensuring that permits are secured, reporting violations, and policing operations. All fills observed in the sample study areas are covered in the Wetlands section of this report on Wells. Generally, it can be said that the major problem is accumulation of small fills, which are difficult to detect and monitor, encroaching on the wetlands.

## Solid Waste Management

Wells has been operating its solid waste disposal facility off Route 9 since 1971. In 1973, the facility was converted from a burning dump to an area system landfill. The area owned by the Town is 125 acres, approximately 15 acres of which are now covered. From 1975 to 1980 approximately 83,000 tons were delivered to the site.

Until 1980, this area was also used to receive septage, which was placed in lagoons developed for that purpose. The original lagoon was being heavily overloaded and was leaking. After action by the state, including a $1,000 fine, the lagoon was closed and a new one built. However, shortly afterward, the municipal sewage treatment plant was opened, and all sewage is now delivered to that plant. Sludge from the plant is disposed of in approved fields in the town and elsewhere.

At the landfill site, there is at present a significant leachate plume emanating from the refuse area. A 1980 DEP study, "Ground Water Impact Assessment at Selected Maine Communities," states that "the strongest contamination (Well No. 3) is in the direction of expected ground water flow toward the Webhannet River. The local contamination of Wells Nos. 2, 6, and 7 suggests that a ground water mound had formed within the refuse, allowing localized flow in all directions from it."

"Refuse disposal directly into ground water," the report continues, "has allowed the generation of large amounts of leachate... The leachate plume has at least crossed onto the adjoining property to the south."

The report recommended further investigation to determine the full extent of contamination.The Town has recently been in contact with DEP seeking further technical advice and assistance. According to enforcement personnel, no action has as yet been taken against the Town because management of the landfill has been sufficient in terms of DEP's operational criteria to place it in a low enforcement priority. The Town Manager reports that the Town has not been under any recent pressure from the state to correct existing conditions.

In consideration of the possibility of having to dispose of some refuse in other towns, the Town recently set up a fund of $10,000 for development of a transfer station, if one is needed.

## Conclusions

### Site Location Law

On the basis of compliance inspections noted in project files, about half, or 56 percent of the projects regulated by this law had been inspected by DEP enforcement staff. The inspection rate prior to 1979 was approximately 42 percent, while the rate after 1979 was approximately 64 percent.

### Coastal Wetlands Law

According to project files, only about 18 percent of all wetlands projects had been inspected by DEP enforcement staff. There appeared to be no appreciable difference in the inspection rate prior to and after 1979. A significant number of after-the-fact denials which remained in non-compliance and unauthorized fills were discovered during the course of field investigations by project staff.

Small fills appear to present a problem for inspection and enforcement. Definite dating and the extent of any previous fill is often difficult to document.

### Shoreland Zoning

Municipal administration of the Wells Shoreland Zoning Ordinance appears to be quite adequate. Reconstruction, alteration and expansion requirements are

being enforced, but the procedure for establishing the high-water mark for setback requirements may result in public perception of inequity and unfairness in the enforcement of this provision.

Solid Waste Management

While significant ground water contamination has been noted in the vicinity of the Wells land fill site, the Town has not been under any recent pressure to correct these conditions. The DEP is, however, providing technical assistance and advice to Wells, and a fund has been established to develop a transfer station to dispose of some refuse in other towns.

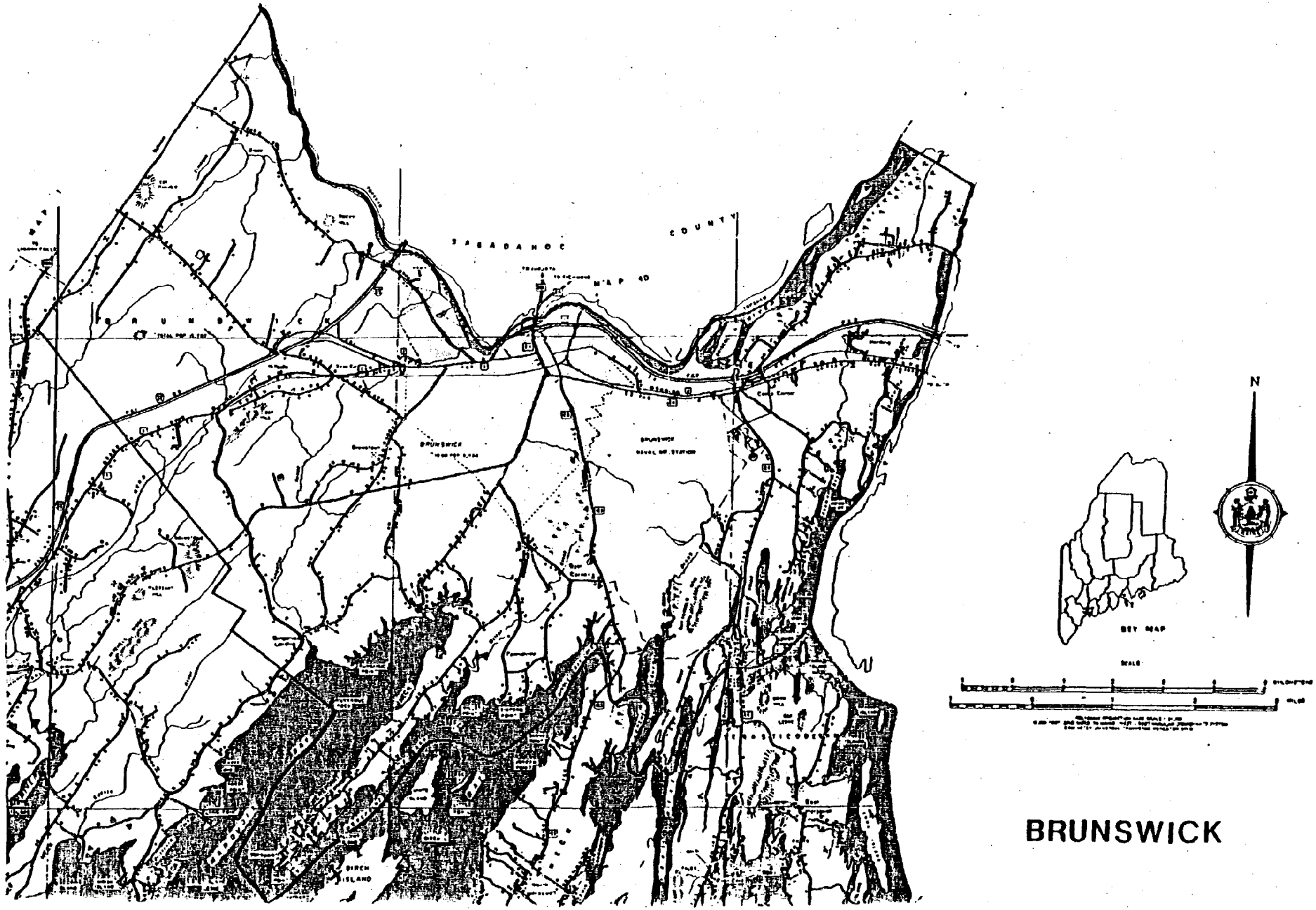
## 2.42 Brunswick

### General Description

Brunswick is a southern mid-coast community located twenty-five miles from the southern regional enforcement office. The Town is bounded on the north by the Androscoggin River, and on the south by the highly embayed coastline of Casco Bay.

This section of the Maine coast is generally a transition zone between large, shallow bays and open sand beaches to the south and west and deeply indented, steep-sided fjord-like rocky coast to the north and east. While much of the southern coastline is very accessible and visible from the mainland, the northern coastline is characterized by long projecting fingers of land that are often cut off from the mainland by narrow guts or channels.

Brunswick is transected by two highly travelled coastal routes: Interstate I-95 and U.S. Route 1. In addition, the Brunswick Naval Air Station is located in the eastern portion of the Town.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BRUNSWICK

## Site Location Law

DEP files show ten residential subdivisions approved since 1972 in Brunswick. One was a large mobile home park expansion. Of the DEP subdivisions, three, including the mobile home park, were in the Town's shoreland area.

The town has approved 28 residential subdivisions since January 1976. In a review of the Town files it was found that the ten projects approved by DEP were the only subdivisions that required DEP approval.

Planned construction by the developer was incomplete in eight of the ten cases and undetermined in two. DEP enforcement personnel had conducted only four inspections. Reinspections had not occurred for many months or years in several cases.

In one case, a recent DEP inspection discovered severe erosion problems and failure to submit plans for a dam, which had been a condition of approval. A visit to another site in connection with this study found a potential ponding problem due to evidently insufficient road drainage; the DEP had apparently not inspected here as yet. Another project which DEP inspected several years ago was experiencing surface water drainage problems. These have apparently not been completely rectified, but in a recent Board approval of another subdivision in the same development, one of the conditions requires an overall drainage plan before conveyance of new lots.

## DEP Applications - BRUNSWICK

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.* |
|---|---|---|---|---|---|---|---|---|
| Site Location | Subdivision | 10 | 10 | 0 | 0 | 0 | 9 | 2 |
| | Indust., Inst. | 3 | 3 | 0 | 0 | 0 | 2 | 0 |
| | Total | 13 | 13 | 0 | 0 | 0 | 11 | 2 |
| Wetlands | Walls | 3 | 3 | 0 | 0 | 0 | 3 | 0 |
| | Docks, etc. | 5 | 5 | 0 | 0 | 1 | 5 | 1 |
| | Beaches | 2 | 2 | 0 | 0 | 0 | 2 | 0 |
| | Other | 4 | 4 | 0 | 0 | 0 | 4 | 0 |
| | Total | 14 | 14 | 0 | 0 | 1 | 14 | 1 |

* Not having received necessary approval or permit.

## DEP Inspections - BRUNSWICK

| | | | DEP FILES | | | | | Case Study Field Work | |
|---|---|---|---|---|---|---|---|---|---|
| Law | Type of Devel. | No. of Projects Reviewed by Study | App'd. Before Jan/79 | Inspected Before Jan/79 | Inspected Since Jan/79 | App'd. Since Jan/79 | Inspected Since Jan/79 | Insp. | No. of Non-Compli. |
| Site Location | Subdivision | 10 | 8 | 2 | 1 | 2 | 1 | 7 | 1 |
| | Ind., Inst. | 2 | 1 | 1 | 0 | 1 | 1 | 1 | 0 |
| | Total | 12 | 9 | 3 | 1 | 3 | 2 | 8 | 1 |
| Wetlands | Walls | 3 | 2 | 1 | 0 | 1 | 1 | 3 | 0 |
| | Docks, etc. | 5 | 3 | 0 | 0 | 2 | 1 | 1 | 0 |
| | Beaches | 2 | 2 | 1 | 0 | 0 | 0 | 0 | - |
| | Other | 4 | 4 | 1 | 0 | 0 | 0 | 2 | 0 |
| | Total | 14 | 11 | 3 | 0 | 3 | 2 | 6 | 0 |

It should be noted that the case files reveal generally that the greatest concerns expressed in public and departmental comments during the permit review process had to do with water quality, septic discharge and traffic.

The other Site Location projects included an elderly-housing development, an automobile showroom/garage and a large industrial park. The first two projects evidently created no enforcement problems. The industrial park, approved in November 1980, is under development; the case file has not yet been referred to the Portland office. There have been no gravel pit applications under the Site Location Law in Brunswick.

## Coastal Wetlands Law

The shoreline of Brunswick facing the ocean bays is generally rocky, rising sharply from the water or tidal zone. Thus shoreland homeowners over the years have sought to improve access and utilization of the shore by means of docks, steps, walls and artificial beaches. With increased pressure for shoreland development, it would seem that more of such projects can be expected.

Since enactment of the Wetlands Law, the DEP had formally processed 14 applications in this category for Brunswick, all since 1975. All were approved, though some with conditions, and some had been revised. Attempts were made in the permit process to minimize damage to wetland vegetation and to require strict controls on the use of construction equipment along the shore.

The three retaining walls approved were all in apparent compliance, and the two larger ones were inspected by DEP. There were five stairway or dock systems, three of which occurred before present staff, and files do not indicate if inspections were made. One other was approved after-the-fact. The owner has been offered a consent agreement with a $25 fine, though it has not yet been returned (due July 10, 1981).

One small sand beach development and a large beach replacement project were approved. The latter occurred several months after the replacement of beach sand had reportedly started, although no administrative action was taken on the earlier fill and it was not reported as an after-the-fact violation.

Four other wetlands approvals were granted in Brunswick. Two were river cable crossings, one aerial and one submarine. There were no DEP inspection records of these. A bridge-replacement approval was given in 1978 and the project is complete; impact to the stream enbankments appears to have been minimal. An approval for a small shoreline dredge operation was denied, but the applicant was permitted to remove a portion of a wall and remove the debris by hand. That project appears to be in compliance.

No wetlands fill applications were processed from Brunswick. In conversations with Town officials, it was reported that there is generally good compliance with filling regulations. For example, the chairman of the Conservation Commission and the Code Enforcement Officer felt that there were very few unauthorized fills, and those were minor. The Town Shellfish Warden

reported that there may be an average of 10 small infractions a year known to him, but in most cases the owners cooperated by stopping their operations. He did express doubts that the filling cases referred by him to the DMR Marine Patrol were acted upon, since these were considered only a small part of his and their duties. He advocated more specialization of enforcement, with DEP inspectors being given greater policing authority and manpower to enforce those laws which are primarily environmental.

Two officials mentioned the possibility of unauthorized filling having occurred at a construction yard on the Androscoggin River. No complaints about it were known to have been made to DEP.

Shoreland Zoning

Brunswick enacted its Shoreland Zoning Ordinance in August 1974. The Town is currently considering addition of a Resource Protection District as part of this ordinance. Brunswick's shoreland fronts several bays and coves in the Casco Bay system and also several miles of the New Meadows and Androscoggin Rivers. According to the town tax maps, there are approximately 600 lots in the shoreland district.

The Assessors files on each lot were found to contain excellent detail. Notes were taken on each lot showing what type of construction was on the lot and the date of any structures since 1975, or whether the lot was vacant.

Structures or other developments in the Shoreland Zoning districts since 1975 were as follows:

| | | | |
|---|---|---|---|
| New Residences | 7 | New or Expanded Commercial or Recreational | 2 |
| Mobile Homes Placed | 3 | Garages, Barns, Sheds, Greenhouses, Shops, Boathouses | 6 |
| Additions | 7 | Major Excavations | 1 |
| Alterations Increasing Rooms or Units | 3 | | |
| Multifamily Complex | 1 | | |

Notations on these were checked against the Town Code Enforcement file to determine the level of enforcement at the permit stage of development.

Finally, field tours were made within 10 of the 26 tax-map sections of the Shoreland District. The effort here was to inspect these sample areas for signs of new construction and to check any such activity against the permit file.

Virtually all shoreland construction since 1975 was covered by a permit. The only discrepancies appeared to be two sheds and a mobile home garage for which permits could not be found; however, the assessors dates for these structures were not certain. As the Brunswick ordinance excludes only "principal structures" 75 feet from the shoreline, these may not constitute violations.

The field survey revealed no apparent unauthorized structures, despite extensive exploration down private driveways and footpaths. It should be pointed out again, however, that many parts of the actual shoreline were inaccessible. Still, from the sample that was observed, it can be inferred that few, if any, violations have occurred.

## Solid Waste Management

The Brunswick solid waste disposal facility on Pleasant Hill Road has been operating at or beyond capacity for several years. It is in violation of the state's "300-foot law," being situated near Bunganuc Brook. With the 15,000 tons of refuse generated annually by the Town, little shifting around to accommodate more solid waste is possible. In addition, the facility receives sewage sludge, though it is not a state-approved site.

An engineering study contracted by the Town with state assistance recommended development of a new site. After DEP rejected one site, the Town decided on another site and acquired the property in 1980. An engineering analysis of this site has been presented to DEP, but approval has not as yet been obtained. DEP has suggested additional test wells to monitor groundwater quality.

The new project if approved will be a secure sanitary landfill with a clay base. It will not accept sewage sludge.

As part of the Town's overall disposal plan, a home-pickup recycling program was initiated in the Spring of 1980. Two packer trucks were purchased, and white glass, cardboard and newspaper are received, with separation conducted by the homeowner. It is believed that about 4 percent of the Town's refuse has been picked up in the first year of the program for recycling.

Brunswick was also one of the Towns to have become part of a waste-burning steam generation project with Pejebscot Paper Co. This proposal was being packaged by the Southern Midcoast Regional Planning Commission at the time that agency closed down. The status of the project is therefore uncertain.

Brunswick's solid waste problems will not end even if the new landfill is approved. The old dump must be treated under an approved closing plan, with careful slope stabilization, covering, seeding, etc. For many years, the Bunganuc shellfish flats have been closed due to coliform contamination believed to be from the dump. Testing has been under way to trace the source within the dump, but as yet no determination has been made.

## Conclusions

### Site Location Law

Post-approval inspections have been made by DEP enforcement staff of a few of the Site Location projects. According to project files, fifty percent of Site Location projects had been inspected, with a marked improvement in the inspection rate since 1979. Where problems have been noted, the staff has attempted to deal on a cooperative basis with the developers. In several cases, there have been no recent inspections or reinspections of projects approved prior to 1979.

### Coastal Wetlands Law

In general, compliance with the Wetlands Law appears to be good in Brunswick. Inspections of approved projects by DEP personnel have been irregular but seem to have been directed at activities requiring movement of large amounts of material. Prior to 1979, the inspection rate was about 33 percent, while the rate of inspection of projects approved since 1979 is twice that. It should be noted that, as in many rural, seacoast, peninsular areas of Maine, the wetlands areas are virtually inaccessible from land except by travelling out long driveways and crossing private properties. Enforcement and inspection is thus a more challenging task.

## Shoreland Zoning

Administrative procedures appear adequate for enforcement of the ordinance. Any violations that may exist appear to be minor in nature and of no environmental impact.

According to members of the Planning Board and the Code Enforcement Officer, a potential problem exists in the interpretation of setback requirements: the Town Appeals Board may be inclined to give favorable consideration to the lateral extension of a "nonconforming" setback. This would appear to some as a violation of the spirit of the ordinance or even the state statute.

## Solid Waste Management

It appears that the Town, DEP and other state agencies have been working cooperatively on Brunswick's solid-waste program. As long as progress has been made, no punitive action has been undertaken by the State.

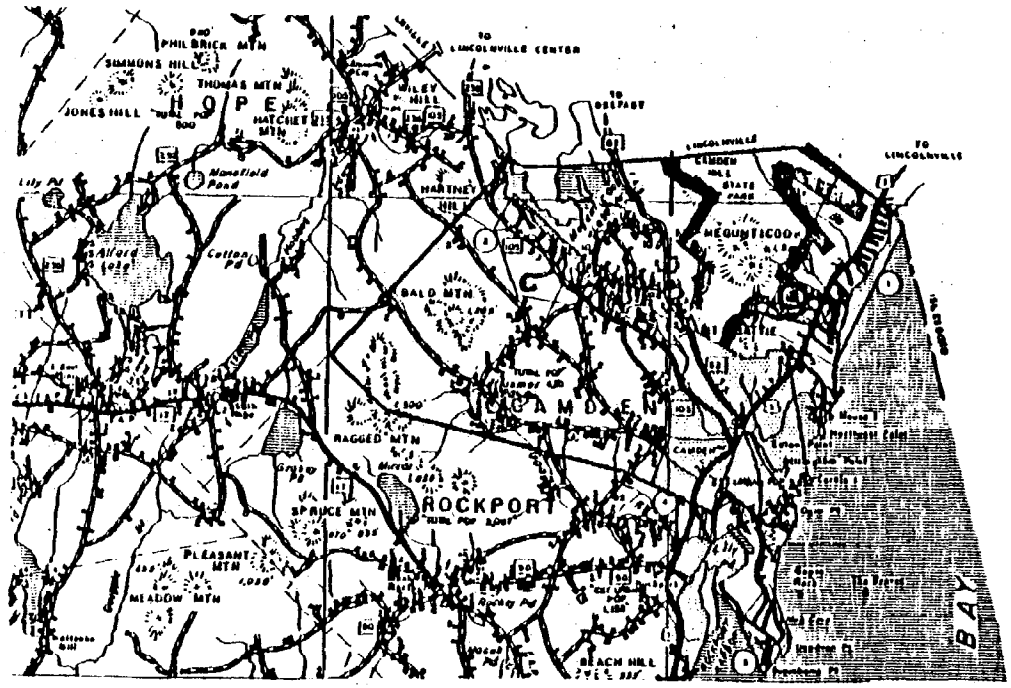
## 2.43 Camden

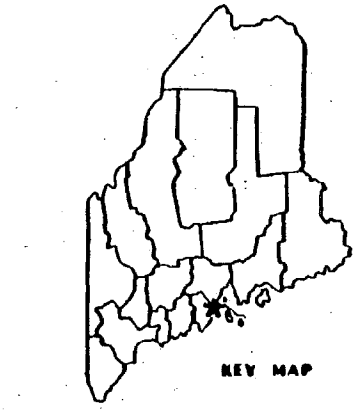
### General Description

Camden is located on West Penobscot Bay about mid-way along the coast of Maine. The Town possesses an extremely scenic and well-sheltered harbor, a beautiful state park and campground, and numerous attractive lakes. These features and its location on U.S. Route 1 make Camden one of the most popular tourist attractions on the coast of Maine.

The economy of the Town is based on the tourist and recreational trade, and the population increases considerably during the summer season. The development and road pattern of Camden is approximately radial with the center being the head of Camden Harbor.

As the previous community, Brunswick, represented a transition point in the physical character of the Maine coast, so Camden represents a change in the cultural character. To the south and west of Camden, Maine's coast is relatively developed, residentially, commercially and industrially. To the north and east, the coast is relatively undeveloped with few urban places and little industrial development. With the exception of Bar Harbor and Acadia National Park, the intense pedestrian and vehicular traffic that characterizes the summer season subsides dramatically east of Camden.



SCALE

KILOMETERS

MILES

POLYCONIC PROJECTION SAME SCALE 1:62 500
10 000 FOOT GRID BASED ON MAINE 1 (EAST) RECTANGULAR COORDINATE SYSTEM
5 000 METER UNIVERSAL TRANSVERSE MERCATOR GRID

# CAMDEN

## Site Location Law

The Town of Camden approved 16 residential subdivisions between 1972 and 1980. Of these, six were approved by the BEP. In addition, three subdivisions were created just under the minimum 20-acre standard for BEP review. One large-lot subdivision also fell outside BEP jurisdiction by consisting of only four lots.

Compliance inspections have been made by the DEP on five of the six sites. Construction was complete on only one of these. Two inspections were made a year ago; inspections before that appear to have been irregular. Where projects had not been started, no inspections were necessary, but several projects had progressed significantly since the last inspections. Based on field observations and a discussion with the Code Enforcement Officer, no violations were found.

A shopping center, a nursing home and a hospital expansion were also approved under the Site Location Law. The shopping center was last inspected a year ago and found to be in compliance, though construction was not complete. The nursing home, approved in 1975, was never built. Records of the hospital expansion in 1975 could not be located at the Augusta DEP office.

## Coastal Wetlands Law

Eleven wetlands applications have been approved in Camden, none after-the-fact. Five of these cases involved dredging in Camden Harbor. One also included the construction of an extensive breakwater. Four

## DEP Applications - CAMDEN

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.*** |
|---|---|---|---|---|---|---|---|---|
| Site Location | Subdivision | 7 | 6 | 0 | 1 | 0 | 5 | 0 |
| | Other | 3 | 3 | 0 | 0 | 0 | 2 | - |
| | Total | 10 | 9 | 0 | 1 | 0 | 7 | 0 |
| Wetlands | Walls | 4 | 4 | 0 | 0 | 0 | 5 | 0 |
| | Dredging* | 5 | 5 | 0 | 0 | 0 | 2** | - |
| | Fill | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Other | 2 | 2 | 0 | 0 | 0 | 2 | 0 |
| | Total | 11 | 11 | 0 | 0 | 0 | 9 | 0 |

*One case includes extensive work on a breakwater.

**Two files unavailable.

***Not having received necessary approval or permit.

## DEP Inspections - CAMDEN

| | | | DEP FILES | | | | | Case Study Field Work | |
|---|---|---|---|---|---|---|---|---|---|
| Law | Type of Devel. | No. of Projects Reviewed by Study | App'd. Before Jan/79 | Inspected Before Jan/79 | Inspected Since Jan/79 | App'd. Since Jan/79 | Inspected Since Jan/79 | Insp. | No. of Non-Compli. |
| Site Location | Subdivision | 5 | 3 | 2 | 1 | 2 | 2 | 3 | 0 |
| | Other | 2 | 1 | 0 | 0 | 1 | 1 | 0 | 0 |
| | Total | 7 | 4 | 2 | 1 | 3 | 3 | 3 | 0 |
| Wetlands | Walls | 5 | 2 | 0 | 0 | 3 | 2 | 3 | 1* |
| | Dredging | 2 | 1 | - | - | 1 | 0 | 0 | - |
| | Fill | 0 | - | - | - | - | - | - | - |
| | Other | 2 | 2 | 0 | 1 | 0 | 0 | 0 | - |
| | Total | 9 | 5 | 0 | 1 | 4 | 2 | 3 | 1 |

*One case of no application/no permit was found. See text.

cases were for seawalls or retaining walls on wetlands; one of these also involved minor dredging.

Two of the above projects are known to have been inspected. Records of four were not at either DEP Headquarters or Regional offices. Of particular interest, however, is the fact that no inspections or supervision were called for in the Board Orders approving dredging, which would appear to be a critical operation.

One DEP inspection made in 1980 discovered a broken sewer pipe in a State Park and a section of the pipe on the beach exposed. This was reported to the Parks and Recreation Bureau and has been rectified.

In the course of this study's field investigations, a newly constructed retaining wall of timber cribbing and rock fill was found in the Camden Harbor area. There had apparently been no DEP application or permit issued. The wall was approximately 150 feet in length and four to six feet high, and may have replaced an earlier structure.

Shoreland Zoning

Approximately five years ago the Town passed a Shoreland Zoning Ordinance which was unacceptable to the State. In subsequent discussions with the State Planning Office, and with a State-imposed zoning ordinance impending, Camden adopted an acceptable shoreland ordinance in December of 1980.

There are some 482 lots in the Shoreland District, along the saltwater shorefront, the Megunticook River and Lake, and Hosmer Pond. Within this area, the Town has granted 67 permits since October, 1974.

In Camden, the tax assessors have done very few field assessments of properties for several years. It was therefore not possible to use tax records as a source of information for new developments on shoreland lots. A sample of one third of the shoreland lots was inspected for this study. The sample area also contained 36 percent of all Shoreland Zoning permits since 1974. The areas chosen for the sample were representative of Camden Harbor, the bay front, the Megunticook River and one of the lakes (Megunticook).

No Shoreland Zoning violations were found during field investigations. An effort was made during these investigations to find new structures and to check them against permits. Those structures with permits were also checked for compliance with the setback restrictions in the ordinance. In most cases it was possible to view any possible construction from the road or from common driveways, although some lots along the river extended too far back from the road to see possible structures near the shore.

Solid Waste Management

Camden had been operating a solid waste disposal facility for many years with the towns of Hope, Lincolnville and Rockport at a quarry site in Rockport near the

Camden town line. Problems of surface water contamination (with runoff into a nearby pond), unrestricted access to mat-covered waters in the pit, and air pollution from the burning of refuse continued for several years. By October 1976, a BEP order had been issued stating that the Attorney General's Office was of the opinion that the 300-foot law was being violated, that a new solid waste disposal facility was required, that a closing plan for the old dump was to be submitted, and that a barrier to the dump quarry was to be constructed. The plans were to be submitted by May 1, 1977 and disposal at the old site was to be stopped by July 1, 1977.

In June, 1977, the towns requested a one-year extension to pursue plans they had been developing. The DEP elected to treat the problem as an enforcement matter with a Consent Agreement. The Agreement of July 13, 1977 specified a series of deadlines for local consideration and approval of a new facility, submission of plans to the Board, start-up of the new facility, and closing of the old dump. The latter two deadlines were May 1 and June 1, 1978, respectively.

These deadlines were not met. The towns had been considering at least five proposals by private contractors for a new disposal system. In early summer 1978, the towns approved a composting system which was to operate in a portion of the quarry site.

A closing plan for the old dump area was submitted on April 6, 1979, with that dump to close by October

1, 1979. This plan included rat extermination, grading, fire extinguishing, cover and seeding, and fencing. However, it was understood that all of the burned material would be deposited in the pit. A question of possible leachate, raised several years earlier, had not been thoroughly investigated, and treatment of it was mentioned in the closing plan as a possible requirement in the future.

Records in the files indicate that DEP staff visited the site several times in 1979-80 and observed deviations from the composting plan, as well as problems with the closing of the old dump. By the latter part of 1980, enforcement action was considered due to the major alterations of the plan and the overdue submissions. Discussions were held with the Attorney General's Office about the possibility of taking legal action against the towns and/or the contractor. It was decided at that time to pursue a negotiating process.

On Dec. 2, 1980, the contractor submitted a request to DEP for modification of the application and Board Order. The applicant also requested removal of a condition prohibiting storage of composted material for more than one year, and removal of another condition requiring prior approval of the constructed facility, replacing it with a condition requiring approval of each stage as it is completed. The contractor and the towns also proposed revisions in the plan and compliance schedule. A public hearing was held on Jan. 30, 1981.

In a Findings of Fact and Order of April 22, 1981 the Board generally accepted the proposals. It added, however, a testing and monitoring plan for the refuse processing, evidently designed to assist in the enforcement phase and in controlling disposal/use of the composting product.

## Conclusions

### Site Location Law

Compliance inspections were made on most projects, with 71% being inspected overall, and 100% since 1979. While most projects were inspected at least once, it was observed that construction on several projects had progressed a significant amount without any re-inspection.

### Coastal Wetlands Law

File records indicated that no compliance inspections had been conducted on projects under this law in Camden before 1979. After that date the inspection rate improved. One case of a wetlands construction for which no application had been submitted was discovered during field investigation for this project.

### Shoreland Zoning

After considerable negotiations between the Town, the State Planning Office, and the Shoreland

Zoning Task Force, over a five year period, Camden finally adopted an acceptable ordinance in 1980. Field observations in the course of this study revealed no apparent violations of the previous state-imposed ordinance, and it appears that shoreland zoning in Camden is being properly administered.

Solid Waste Management

Camden has experienced persistent difficulties in arriving at an acceptable solid waste management program. Failures to meet deadlines and deadline extensions have been numerous.

The development of an operation to compost municipal waste is an innovative attempt at a solution which needs refinement. Further investigation is required to determine the suitability of the final product as a soil conditioner.

It appears that decisions were made early in this case by the DEP to follow a negotiating course throughout, and to hold back from enforcement action. Among the factors favoring this approach were the support of town officials for the new project, the experimental nature of the facility in which modifications can be expected to be necessary in the early stages of operation, and, the apparent lack of serious environmental impact of the operation as yet. The role of enforcement, therefore, has been limited generally to that of inspection and reporting of possible violations, and occasional consultations with the contractor and Towns.

## 2.44 Winterport

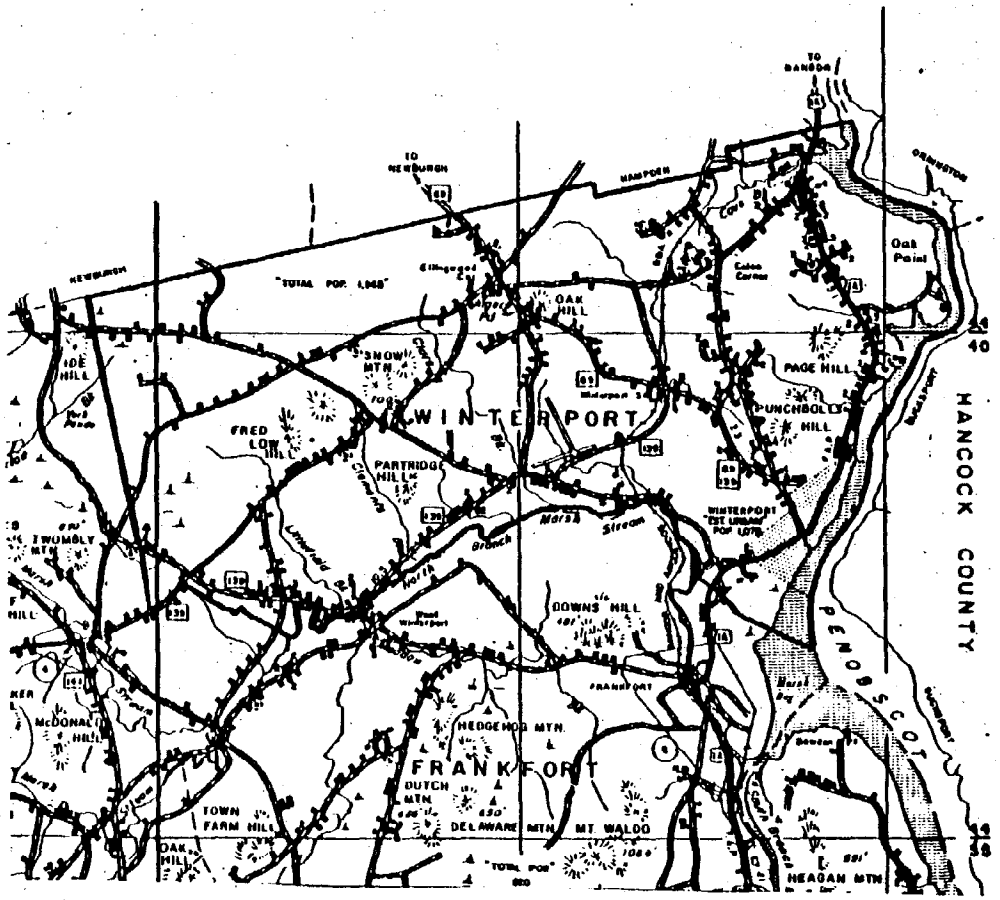
### General Description

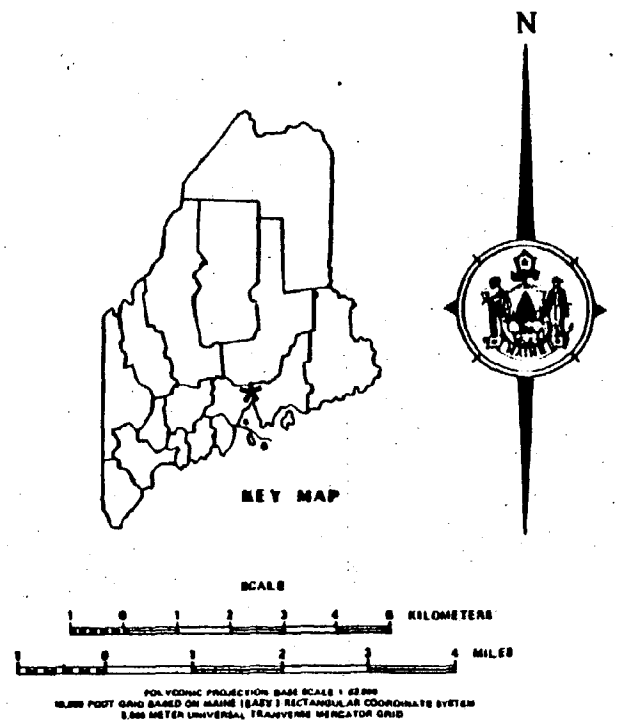
Winterport is a riverfront town located on the Penobscot River at its confluence with Marsh Stream, a major tributary. Water transport and associated support facilities constitute the major industrial activity in the Town. The Winterport Docks serves as an important source of employment when boats are being loaded and unloaded.

Geographically, Winterport is located within the sparsely developed region of Central Maine, along the eastern border of Waldo County. Its rural character, relatively inexpensive land, and virtual lack of local land use controls have made it an attractive bedroom community for the nearby Bangor urban area. Population increased 36% from 1970 to 1980, and the number of units increased by 62% over the same time period.

Most of the concentrated development in Winterport has occurred along its nine miles of shore length, while large lot, scattered development is typical within the inland portions of the Town. Significant but not extensive residential subdivision activity has occurred in Winterport over the past ten years.

Land use control at the local level is limited to that which has been imposed by the state. There is no comprehensive plan, building code, or town-wide zoning. Shoreland zoning was imposed by the state in


WINTERPORT
FRANKFORT
HANCOCK COUNTY
PENOBSCOT
Oak Point
PAGE HILL
PUNCHBOLL HILL
OAK HILL
SNOW MTN
FRED LOW HILL
PARTRIDGE HILL
DOWNS HILL
HEDGEHOG MTN
DUTCH MTN
DELAWARE MTN
MT WALDO
TOWN FARM HILL
McDONALD HILL
TWOMBLY MTN
HEAGAN MTN
Marsh Stream
North Branch
TO NEWBURGH
TO BANGOR
HAMPDEN
NEWBURGH
ORRINGTON
40
38


N
KEY MAP
SCALE
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# WINTERPORT

1975. The general attitude in town about planning is characteristic of most small, rural communities in Maine. There is a strong antagonism to any governmental restriction of the use of private property.

The Town Planning Board and Town Manager are sensitive to this sentiment, acknowledging that it presently precludes initiation, development and adoption of ordinances and regulations at the local level. This attitude may change in the future, however, as increased development alters the rural character of the town.

Site Location Law

Two Site Location applications for residential subdivisions were filed from the Town of Winterport. Both were filed after-the-fact. In one, nine lots had been sold without obtaining approval. The application was initially denied approval then finally approved after the applicant made adequate provision to comply with the conditions of the law. The Department began working on the case in July of 1973. In January of 1974, the matter was referred to the Attorney General, and by August of 1974 the matter was resolved. It appears that in this case the threat of legal action was instrumental in coercing the party in question to properly design the subdivision and comply with the law.

In another subdivision, the development was designed to make adequate provision to comply with the law, but BEP approval was again issued after the

## DEP Applications - WINTERPORT

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.* |
|---|---|---|---|---|---|---|---|---|
| Site Location | Subdivision | 2 | 2 | 0 | 0 | 2 | 2 | 0 |
| | Gravel Pit | 1 | 1 | 0 | 0 | 1 | 1 | 0 |
| | Total | 3 | 3 | 0 | 0 | 3 | 3 | 0 |
| Wetlands | Fill | 2 | 1 | 1 | 0 | 1 | 2 | 0 |
| | Road & Bridge | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| | Sewer Outfall | 1** | - | - | - | 0 | 0 | 0 |
| | Total | 4 | 2 | 1 | 0 | 1 | 2 | 0 |

**Archives.

* Not having received necessary approval or permit.

## DEP Inspections - WINTERPORT

| | | | DEP FILES | | | | | Case Study Field Work | |
|---|---|---|---|---|---|---|---|---|---|
| Law | Type of Devel. | No. of Projects Reviewed by Study | App'd. Before Jan/79 | Inspected Before Jan/79 | Inspected Since Jan/79 | App'd. Since Jan/79 | Inspected Since Jan/79 | Insp. | No. of Non-Compli. |
| Site Location | Subdivision | 2 | 2 | 1 | 1 | 0 | 0 | 1 | 0 |
| | Gravel Pit | 1 | 1 | 1 | 0 | 0 | 0 | 1 | 0 |
| | Total | 3 | 3 | 2 | 1 | 0 | 0 | 2 | 0 |
| Wetlands | Fill | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 |

fact as lots had already been conveyed.

In each subdivision, one compliance inspection was conducted. One inspection was conducted prior to 1979, and one during 1979.

To determine if other developments in Winterport had occurred without BEP approval, Town Planning Board files were reviewed and aerial reconnaissance conducted. Nineteen subdivisions had been submitted to the Planning Board for approval under the Subdivision Law from 1974 to 1980. With the exception of the two subdivisions previously described, none met the criteria for a subdivision as defined by the Site Law. It was apparent, however, that the design of several of the subdivisions was manipulated to fall just below the threshold of requiring a site location application. It appears that developers are quite aware of the requirements of the law as the subdivision designs reflect a desire to avoid the added time and expense of BEP review.

A gravel pit operation was approved in 1976 with conditions. This was an approval after-the-fact in that eight acres had been opened since 1972 without a site location application having been submitted. In eight compliance inspections from 1976 to 1978, numerous failures to comply with the submitted and approved plan were noted. These included improper vegetation and screening, no gate, and excavation as much as ten feet deep as close as six feet to a road. In October of 1978, the Assistant Attorney General informed the owner that a legal action might be initiated to correct continued non-compliance. Based on a review of the files, no further progress has been made.

## Coastal Wetlands Law

Four coastal wetlands applications have been submitted from within the Town of Winterport. One, a road and bridge construction, was submitted after the applicant had already filled in a portion of a wetland with gravel. The applicant was denied approval because the project would destroy productive habitat for water fowl, would adversely affect the value of abutting property, and would constitute a threat to public health, safety, and welfare.

The BEP ordered the applicant to remove the gravel fill to restore the site. The application was denied in August of 1975, and subsequent compliance inspections, three in 1976 and three in 1977, revealed no work done to restore the site. Finally in April of 1978, a compliance inspection found the site to be restored.

The second coastal wetlands application from Winterport was to upgrade a barge and bailey bridge from a temporary to a permanent structure. This was approved without incident.

The third application involved a bridge and road construction project of the Maine Department of Transportation which was approved. And, the fourth was an application for a sewer outfall submitted by the Town of Winterport. This file was in the archives and it was not noted on the file card whether the project was approved or denied.

## Shoreland Zoning

In 1974, a state-imposed Shoreland Zoning Ordinance was put into effect in Winterport. This ordinance was considered interim and placed all of the shoreland area in the Resource Protection District.

In July of 1975, the Board of Environmental Protection and the Land Use Regulation Commission revised mandatory shoreland zoning for the Town of Winterport, effective in August of 1975. All shoreland areas were placed in a Limited Residential-Recreational or Resource Protection District. In November of 1976, the ordinance was amended to change four shoreland lots from Limited Residential to General Development District to permit the operation of two commercial facilities: the Winterport Marina and the Winterport Docks.

The two commercial facilities mentioned above are the only activities which have received shoreland zoning permits from the Town Planning Board. In the opinion of the Town Manager and the Chairman of the Planning Board, the shoreland zone is not condusive to development as it is essentially marsh and tidal flats.

To ascertain whether development may have taken place in the shoreland zone without Planning Board approval, tax assessment records for Winterport were examined. Each lot in the shoreland zone was reviewed from 1975 to 1979 to determine any marked increase in the valuation placed on buildings. Particular attention was paid to lots which indicated a change from no buildings tax to some amount of buildings tax in the four year period, indicating structural development in that interval. Changes in the valuation rate of the town were considered in determining potential building activity.

This analysis revealed, from tax records alone, fifteen lots which contained land within the shoreland zone on which building had taken place. Field investigation was then required to determine where on that lot building had occurred. Aerial reconnaissance along the shoreline of Marsh Stream and the Penobscot River revealed only one potential instance of construction within the shoreland zone. Subsequent field inspection on the ground showed that although a corner of the lot in question was within 250 feet of the shoreline, the structures and attendant construction activity fell outside the shoreland zone.

Solid Waste Management

In its only application under this law, the Town of Winterport requested a variance to dispose of solid waste closer than 300 feet to a tributary of Marsh Stream. Upon review, the BEP found that the solid waste disposal area was in fact within twenty feet of the tributary and was located on a steeply sloping (20-30%) parcel unsuitable for a landfill site. The application was denied and the Town was ordered to submit plans and relocate the solid waste operation to a suitable site. The area in violation has subsequently been landscaped and closed to dumping.

Solid waste disposal now occurs on an adjacent area more than 300 feet from the tributary. Drainage problems have been corrected, monitoring wells installed, and a sampling schedule has been established. Better covering techniques have led to a reduction of rats, gulls, litter and fires. The Town presently plans to close this dump and transport solid waste to a neighboring town.

## Conclusions

The general attitude of the Winterport population has been somewhat antithetical to the notion of planning and regulation. During the years immediately following passage of the Site Location Law and Alteration of Coastal Wetlands Law, regulated activities were consistently initiated in the absence of obtaining necessary approvals. In those instances, the DEP showed considerable persistence in eliciting an application or in requiring rehabilitation of a degraded environment. In recent years, it appears that, at least in the case of residential subdivisions, developers are adjusting their plans to fall short of the threshhold which triggers DEP review.

There has been very little development in the shoreland zone in Winterport since the imposition by the state of a shoreland zoning ordinance. As the more rural, inland portions of the Town become developed, there is the potential for building and other regulated activities along Marsh Stream. With annual inspection for tax assessment purposes, it is not expected that such development will go unnoticed. It is probable, however, that the Planning Board will meet resistance from some residents in obtaining shoreland zoning permit applications.

## 2.45 DEER ISLE

### General Description

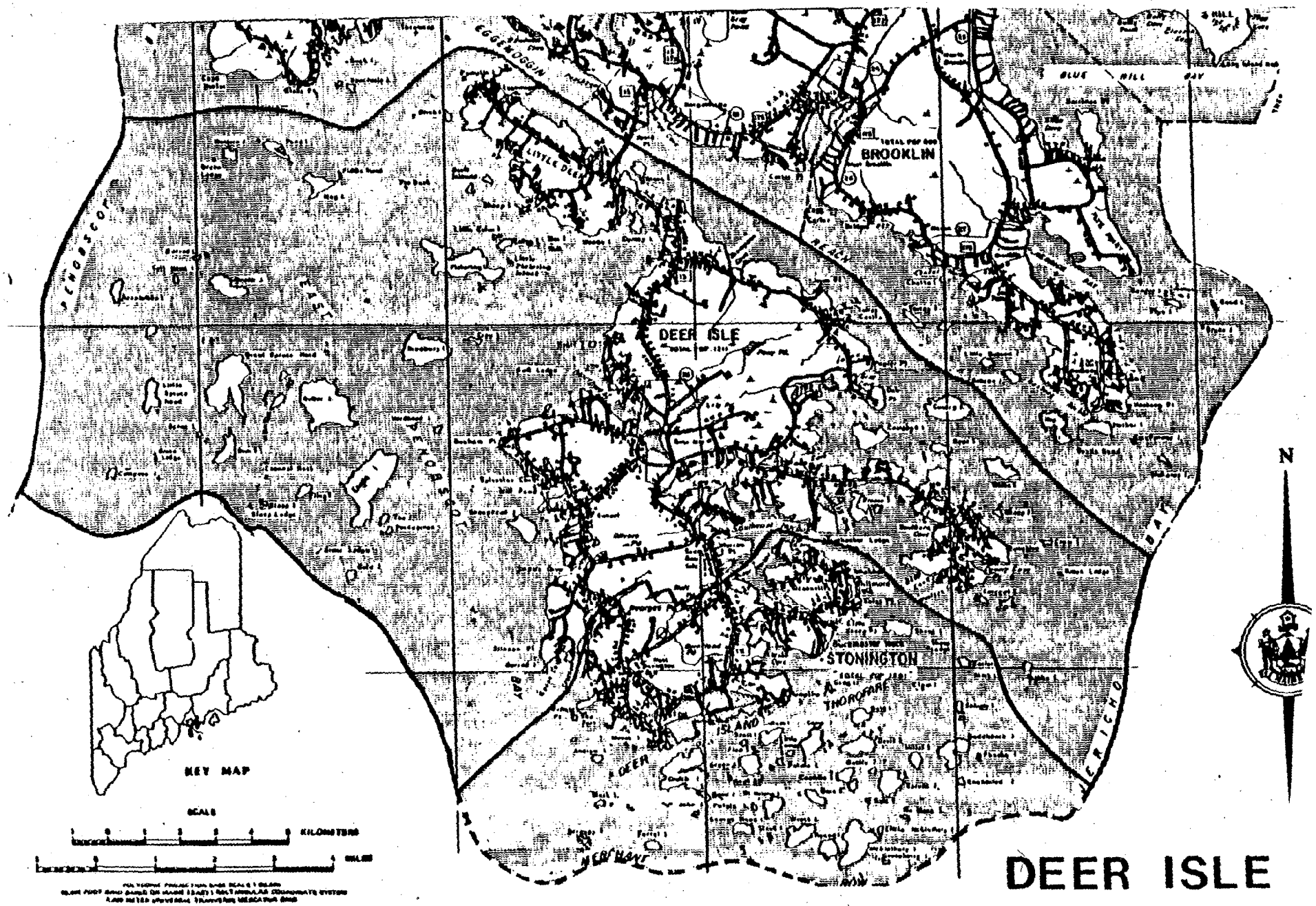
Deer Isle is an island community located in Penobscot Bay. It is a part of the Acadia Archipelago, a chain of several thousand islands scattered about the focal point of Mt. Desert Island and Acadia National Park. With its complex coastline of coves, harbors, points, necks, ledges and islands, Deer Isle has by far the greatest shoreline length of the six case study communities at one hundred twenty-six miles.

The character of Deer Isle is that of a classic downeast fishing community. The development pattern is rural and dispersed. Coastal access is the primary locational determinant and the road pattern reflects this with numerous spurs and dead-ends extending to the complex coastline from major roads running along the interior.

The economic base of the town is largely dependent upon marine resources, with most employed residents involved in the harvesting, processing or sale of finfish or shellfish. Significant seasonal population also has a stimulating effect on the local economy during the summer months.

### Site Location Law

The Deer Isle Planning Board has reviewed 13 subdivision proposals since 1974. Ten of these proposals have been approved and three have been denied.


EGGEMOGGIN
BROOKLIN
BLUE HILL BAY
LITTLE DEER
DEER ISLE
PENOBSCOT
EAST
STONINGTON
THOROFARE
DEER ISLAND
MERCHANT
BAY
JERICHO
N
KEY MAP
SCALE
KILOMETERS
MILES

DEER ISLE

The majority of the approved subdivisions have been small both in acreage and in the number of lots created. Two subdivision proposals were just under the threshhold for review under the Site Location Law, one of which was denied by the Deer Isle Planning Board. None of the subdivisions reviewed by the planning board required Site Location approval.

The construction of athletic fields beside the senior high school is the only development which has been reviewed under the Site Location law in Deer Isle. This project was approved in 1975 with conditions attached. The file does not indicate that the conditions of approval were met, nor does it indicate that a compliance inspection was conducted. An inspection of the site by project staff did not reveal any instances of non-compliance with approved plans.

No developments appear to have been undertaken in Deer Isle in violation of the Site Location Law.

## Coastal Wetlands Law

Thirteen coastal wetlands applications have been reviewed by the DEP. A summary of the types of developments which have been proposed can be found in the accompanying table. Eleven of the projects have been approved and two of the applications were withdrawn. Ten of the thirteen project files were reviewed during this study.

The files indicate that the DEP has conducted very few wetlands compliance inspections in Deer Isle. Only two of the ten projects reviewed (all of which were

## DEP Applications - DEER ISLE

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.* |
|---|---|---|---|---|---|---|---|---|
| Site Location | Institutional | 1 | 1 | 0 | 0 | 0 | 1 | 0 |
| Coastal Wetlands | Crib Pier | 2 | 2 | 0 | 0 | 0 | 1 | 0 |
| | Fill | 2 | 2 | 0 | 0 | 0 | 2 | 1 |
| | Dock & Ramp | 5 | 4 | 0 | 1 | 0 | 3 | 3 |
| | Structures | 1 | 1 | 0 | 0 | 0 | 1 | 0 |
| | Road | 1 | 1 | 0 | 0 | 0 | 1 | 0 |
| | Walls | 2 | 1 | 0 | 1 | 0 | 2 | 2 |
| | Total | 13 | 11 | 0 | 2 | 0 | 10 | 6 |

* Not having received necessary approval or permit.

## DEP Inspections - DEER ISLE

| | | | DEP FILES | | | | | Case Study Field Work | |
|---|---|---|---|---|---|---|---|---|---|
| Law | Type of Devel. | No. of Projects Reviewed by Study | App'd. Before Jan/79 | Inspected Before Jan/79 | Inspected Since Jan/79 | App'd. Since Jan/79 | Inspected Since Jan/79 | Insp. | No. of Non-Compli. |
| Site Location | Institutional | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Coastal Wetlands | Crib Pier | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| | Fill | 2 | 1 | 0 | 0 | 1 | 0 | 1 | 0 |
| | Dock & Ramp | 3 | 3 | 0 | 1 | 0 | 0 | 2 | 1 |
| | Structures | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Road | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| | Walls | 2 | 2 | 0 | 1 | 0 | 0 | 1 | 0 |
| | Total | 10 | 7 | 0 | 2 | 3 | 0 | 5 | 1 |

approved) had been inspected by enforcement personnel. The inspections have occurred since 1979 and were of projects which were approved prior to that date. None of the three projects approved since 1979 have been inspected.

Six violations of the law have been identified. The violations were uncovered through a review of planning board's shoreland zoning files and building permit records, and the use of aerial photography and aerial reconnaissance. The six violations include three docks, two retaining walls, and one fill. Half of the violations were identified on the small islands within the Deer Isle municipality.

Five wetlands projects were field-inspected by project staff. Of the five projects, one was found to be in non-compliance with approved plans. More fill was used in building a ramp than was approved.

Shoreland Zoning

The Town of Deer Isle adopted a Shoreland Zoning Ordinance which became effective on July 1, 1974. In August, 1975, state imposed Resource Protection Districts were established around Georges Pond, Lily Pond, and Torrey Pond. In November of that same year, a letter was sent to the Planning Board identifying areas in the Town which should be zoned Resource Protection.

In April, 1976, Deer Isle amended its ordinance. Within the next four months, both the BEP and LURC

accepted the amendments and repealed the portions of the ordinance which had been state imposed.

The ordinance has subsequently been amended twice, in 1977 and 1981. No indication has been found that the state has reviewed and accepted the more recent amendments.

The Town of Deer Isle has made an effort to inform residents of the requirements of Shoreland Zoning. Information on shoreland zoning has been sent to property owners accompanying tax notices. The Planning Board has generated publicity on the need to comply with the Ordinance.

The Planning Board has spent time reworking certain aspects of the Shoreland Zoning in consultation with the State Planning Office. The Board has tried to develop an Ordinance which is reasonable, consistent, and easily understood. The Chairman of the Board feels that the communication between Deer Isle and the State Planning Office has resulted in some constructive changes in the administration of the Shoreland Zoning program. Most of these changes have related to the wording of the "Minimum Shoreland Zoning Ordinance."

The Planning Board has maintained orderly records of shoreland zoning applications since 1974. A special form was developed specifically for administration of the ordinance. While the form asks for a significant amount of detailed information on the proposed project, the amount of information actually provided was slim. The absence of detailed information made it

impossible for project staff to conduct field inspections to assess compliance with approved plans.

Municipal files indicate that 56 projects have been approved under Shoreland Zoning. The Planning Board has approved 45 projects and the code enforcement officer has approved 11. Only three applications to the Planning Board have been denied. The types of developments which have obtained approval are as follows:

| | Planning Board Approval | CEO Approval |
|---|---|---|
| dwellings | 14 | - |
| storage bldgs./garages | 4 | - |
| commercial bldgs./uses | 4 | - |
| additions | 3 | 8 |
| bunk houses | 3 | - |
| timber harvesting | 3 | - |
| docks | 2 | - |
| seawalls | 2 | - |
| other | 10 | 3 |
| | 45 | 11 |

Seven instances of non-compliance with Shoreland Zoning were discovered. The majority of the cases were found on islands within the Town's boundaries. The violations had not occurred during any particular time period since Shoreland Zoning went into effect. The Chairman of the Planning Board claims that some of the violations occurred on islands which are not actually within the municipality. He reported that repeated efforts to get the State to recognize the "true" boundaries of the Town have been fruitless.

## Solid Waste Management

The Town of Deer Isle has been using the present disposal site for over ten years. The site is adjacent to a marsh area which drains into Torrey Pond in the north-central portion of Deer Isle. The site has been inspected over a half-dozen times by the State since 1967. There are no records of any inspections between 1967 and 1977.

In 1977, the Board of Environmental Protection denied a request from the Town for a variance from the Solid Waste Management Regulations related to daily cover, earthwork and refuse handling equipment (during the winter months), and attendant and lockable access gate. The Board found that the variances, if granted, would not result in an environmentally sound method of solid waste handling.

In 1978, Deer Isle gained approval for a septic tank and cesspool waste disposal site. In 1981, the BEP approved a Solid Waste Operational Manual for the Town.

While the solid waste disposal facility has been in violation of state regulations, the Town has been slowly addressing those aspects of the operation which need improvement. Town officials feel that they have a good relationship with the DEP. They feel that the Department has been "understanding" in dealing with the Town's lack of compliance with some regulations.

The DEP staff, on the other hand, feels that there is a need for improving the situation at the present landfill. There is concern about leachate affecting the water quality of Torrey Pond. At the same time, there are other facilities in the general area which pose more serious problems and are the focus of the DEP's attention. Improving the facility in Deer Isle is simply not a high priority.

## Conclusions

Deer Isle is a community where there is concern about compliance with environmental statutes. This attitude, however, is tempered by what is a locally considered "reasonableness". To the credit of the Town, an effort has been made by municipal officials to inform residents of their responsibilities under both state statues and municipal ordinances, as well as to work out inconsistencies and lack of clarity in Shoreland Zoning with state officials.

While some instances of non-compliance have occurred, this does not reflect a lack of conscientiousness on the part of local officials and citizens. The convoluted nature of the shoreland, the presence of a number of islands within muninicipal boundaries, and the fact that many people make a living from fishing all contribute to the difficulty of strict law enforcement. More than half of the instances of non-compliance idenified occurred on islands which the Chairman of the Planning Board claims are not within the municipal boundary.

DEP enforcement activity in Deer Isle has been minimal. Only two of the twelve projects approved by the state have been subject to compliance inspections. And, since it is not a high priority community, Town contact with DEP enforcement personnel in relation to solid waste management has not been extensive.

## 2.46 Pembroke

### General Description

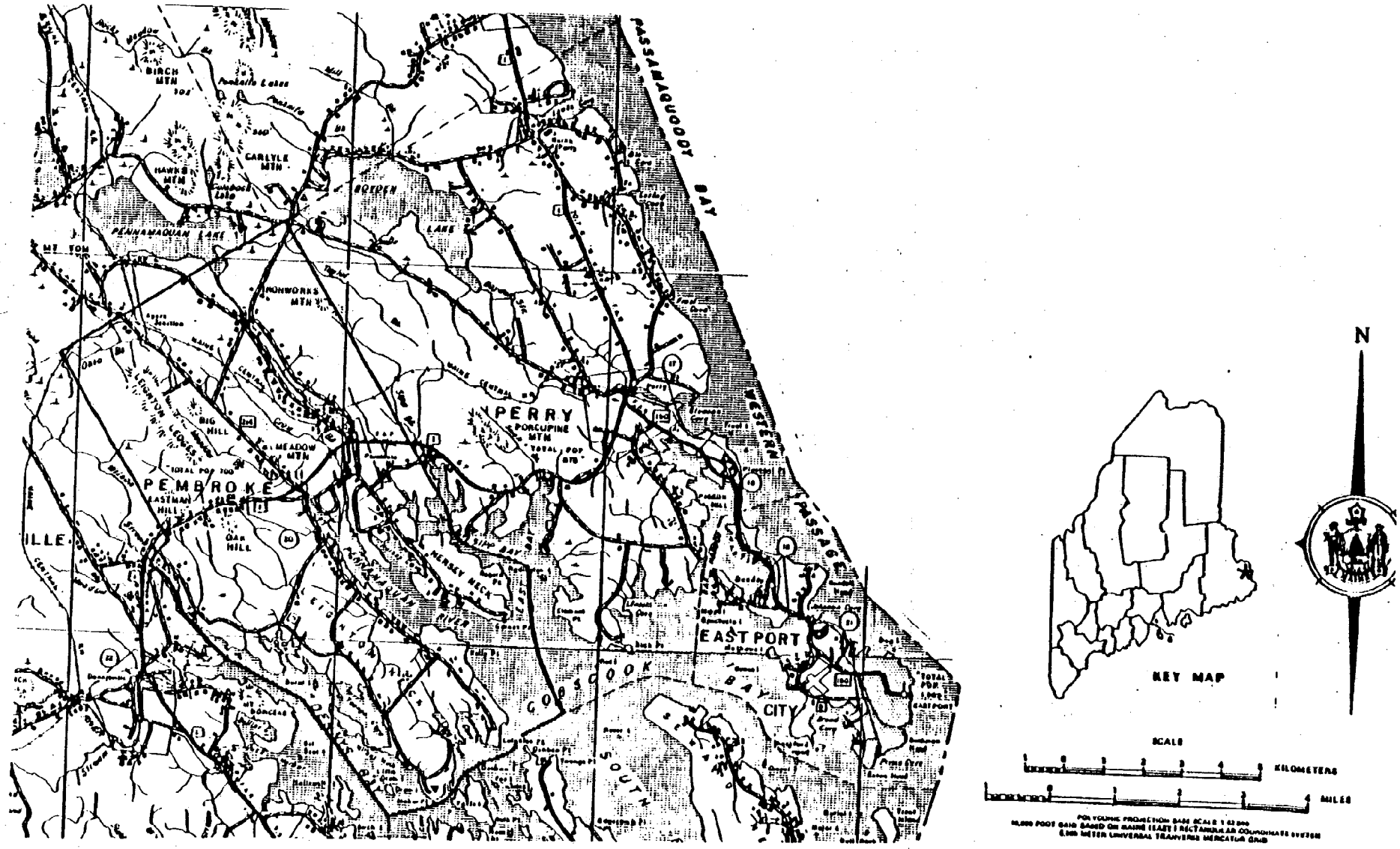
Of the six case study communities investigated in this study, Pembroke is the most remote community located approximately seven miles from the Canadian border in the eastern portion of Washington County. The road distance from the DEP's Bangor regional office is approximately 120 miles, making field visits to this community a full day affair.

The center of the town, the village of Pembroke, is located at the head of tide of the Pennamaquan River, and thus the town includes freshwater riverine shoreline, brackish estuary with extensive mud flats, and saltwater coast fronting on Cobscook Bay.

Pembroke also has by far the smallest population of the six case study towns, with a 1980 population of 922. Population has increased 32% since 1970, and housing has increased 31% in the past ten years. Much of the road network in the town runs roughly parallel to river and ocean shoreline, and an examination of U.S.G.S. topographic quadrangle (photo-revised in 1977) reveals that most of the new development in Pembroke has occurred on these shoreline roads.

### Site Location Law

No site location applications have been filed from Pembroke. Aerial reconnaissance, however, revealed a large building under construction which was surrounded by a significant area which had been stripped of


PASSAMAQUODDY BAY
WESTERN PASSAGE
BIRCH MTN
CARLYLE MTN
HAWKS MTN
BOYDEN LAKE
PENNAMAQUAN LAKE
MT TOM
NONWORKS MTN
PERRY
PORCUPINE MTN
TOTAL POP 878
BIG HILL
MEADOW MTN
PEMBROKE
EASTMAN HILL
OAK HILL
MERSEY NECK
EAST PORT
CITY
COBSCOOK BAY
SOUTH
N
KEY MAP
SCALE
KILOMETERS
MILES

PEMBROKE

vegetation. This activity appears to fall under the jurisdiction of the law.

Two gravel pits were observed along the Pennamaquan River, both large enough to come under the law. Since these were not shown on the 1977 photorevised topographic map, neither of these operations would be grandfathered under the law.

Coastal Wetlands

Two applications under this law were filed from Pembroke. One involved a culvert extension and rip-rap submitted by the Maine Department of Transportation which was approved with a condition. The DEP apparently has not inspected this project for compliance with approved plans. Project staff inspection found the project to be in compliance.

The second application was for construction of a dam and development of a bird sanctuary. This was denied. The files gave no indication that a compliance investigation was conducted in this case.

No instances of non-compliance with the Coastal Wetlands Law were found in Pembroke.

Shoreland Zoning

The Town has no records of the approval of any developments under Shoreland Zoning. To some extent, this reflects the small degree to which development has occurred along the shore since 1974. At the same time, five dwellings were identified by project staff which appear to be within 250 feet of the shore and have been built since 1974.

## DEP Applications - PEMBROKE

| Law | Type of Development | No. of DEP Applic's | Applic's Approved | No. Denied | No. Withdrawn | No. After Fact | No. Reviewed By Study | No. Cases Non-Compli.* |
|---|---|---|---|---|---|---|---|---|
| Site Location | | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Coastal Wetlands | | 2 | 1 | 1 | 0 | 0 | 1 | 0 |

* Not having received necessary approval or permit.

## DEP Inspections - PEMBROKE

| | | | DEP FILES | | | | | Case Study Field Work | |
|---|---|---|---|---|---|---|---|---|---|
| Law | Type of Devel. | No. of Projects Reviewed by Study | App'd. Before Jan/79 | Inspected Before Jan/79 | Inspected Since Jan/79 | App'd. Since Jan/79 | Inspected Since Jan/79 | Insp. | No. of Non-Compli. |
| Site Location | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Coastal Wetlands | | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |

## Solid Waste Management

Inspection of the Town dump in the early 1970's revealed that refuse was being placed within approximately 10 feet of the Pennamaquan River and that there was evidence of resulting surface water pollution at the site. A variance of the 300 foot law was requested by the Town and denied in July of 1974.

In July of 1976, a schedule of compliance with the Solid Waste Management Regulations was ordered for Pembroke. Subsequently, the Town has closed its solid waste facility and now transports its waste to a private site in Edmunds Township.

The Edmunds Township site will be closed in the near future. The site is being used by a number of communities in the area, in addition to Pembroke. DEP enforcement personnel have been working closely and vigorously with local officials from the area in looking for a regional solution to the solid waste disposal problem. Pembroke has not been an active participant in the search for a regional solution.

## Conclusion

Due to its remote geographic location and the small amount of development which has occurred in recent years, enforcement activity has been nearly non-existent in Pembroke. It appears, however, that increased enforcement would be desirable in light of the number of instances of non-compliance uncovered during this study. Pembroke is the only one of the case study communities within which Site Location violations were identified and had a higher than average number of Shoreland Zoning violations.

The attitude of municipal officials is, not surprisingly, lax concerning enforcement of environmental statutes. This reflects the fact that there is so little development and so much undeveloped land coupled with the isolation of the area and modest life style of the residents. The general feeling of officials seems to be: why go looking for trouble.

## 2.5 Findings of Compliance Investigations

The following findings are based on the results of the six community case studies and extensive discussions with people from across Maine's coastal area. The case studies provided a quantitative examination of the compliance situation within a small but diverse sample of coastal communities. The results of the interviewing were more qualitative in nature and played an important role in the formulation of findings. The interview results compensate for difficulties inherent in compliance investigations and provide a context within which to evaluate the representativeness of the case study results to the entire Maine coast.

Interviews were conducted with a significant number and wide variety of people. People interviewed included: DEP personnel, Assistant Attorneys General, state and federal personnel, municipal officials including code enforcement officers, assessors, planning board members, town managers and selectmen, Department of Marine Resources Coastal Wardens and Area Biologists, staff of regional planning commissions, and individuals who have reported instances of non-compliance and who have been involved in coastal development. The experience of these people ranged across the entire coastal area.

1. Between 10% and 20% of the development activity within Maine's coastal zone has occurred without obtaining the necessary state and local approvals under the Site Location, Coastal Wetlands, and Shoreland Zoning Laws.

The results of the case study investigations reveal that 15% of the development which has occurred within the six coastal communities and falls under the jurisdiction of the Site Location or Coastal Wetlands Law has not obtained the required state approval. This figure is based on the identification 17 out of 134 developments subject to the laws which had never received state approval.

In addition, the review of files revealed that 7% of the DEP applications (10 out of 140) from the case study communities had been submitted and reviewed after development activity had already proceeded. Of the 10 after-the-fact applications reviewed, 6 were denied and 4 were approved.

Under Shoreland Zoning, 182 permits were issued by the six communities. Twelve developments were identified by project staff as having occurred without the necessary local review, indicating a non-compliance rate of 7%.

Interviews from throughout Maine's coastal area generally support the results of the case study investigation. There was nearly unanimous acknowledgement that some development does occur in the absence of necessary local and state approval. The perception of the degree of non-compliance ranged considerably. Some people felt that only a few, scattered instances of non-compliance have occurred. Others felt that the laws are generally disregarded. The consultants feel that the true figure lies somewhere between these two extremes.

The consultants are aware of weaknesses in the case study results. It is difficult to identify certain types of non-compliance, such as wetlands fills. Reliance on municipal records, such as building permits and tax records, as a cross-check against DEP and planning board files is not foolproof. And, the nature of the coast in terms of accessibility affected the reliability of field investigations in identifying instances of non-compliance that may not have been revealed through the review of records. On the whole, the consultants feel that the non-compliance results of the case study investigations are low.

Based on the case study results, discussions with people from throughout the coastal area, and a sensitivity to the strengths and weaknesses of the case study investigations, it is estimated that between 10% and 20% of the development within the coastal zone has occurred without the required approvals.

2. <u>Non-compliance with the laws is the result of both ignorance and attitude</u>.

The two primary reasons for non-compliance with legal requirements are ignorance of the law and the attitude of some people that resists governmental control. Some people are simply not aware of their responsibilities under the law. This was found to be the case among both year-round and seasonal residents.

Defiance of the law also occurs. Some people resent needing government approval for development of their land. As the result, development activity is undertaken without consulting with state or local officials, despite the presence of laws.

A third reason for non-compliance is the perception that gaining state or local approval is a long, complicated and expensive process. Some people are simply fearful of the unknown. Others feel that they cannot afford the time and/or money involved in gaining the required approvals.

3. The degree of compliance with the laws has been improving over the past few years.

Since the adoption of the laws, the general public has become increasingly aware of the legal requirements, thereby decreasing the number of instances of non-compliance resulting from ignorance of the law. Individuals planning to undertake regulated activities are more likely now to be aware of and comply with the necessity to submit a permit application. Likewise, adjoining property owners and other citizens are now more likely to recognize and report potential violations.

Enforcement proceedings and public education efforts by the DEP have contributed to greater public awareness of legal responsibilities. However, due to lack of resources, these efforts by the DEP have not been extensive. As the result, as indicated previously, some instances of non-compliance are still attributable to ignorance of the laws.

4. Local officials and individuals are not familiar with the specific requirements of the Laws.

While there is good general awareness that some types of developments must be reviewed by the state and/or a municipality prior to construction, many

people are not familiar with the specifics of the laws. This was particularly apparent in talking with municipal officials about the Site Location and Coastal Wetlands Laws, and with DEP enforcement personnel about the nature of citizen complaints.

This lack of familiarity is attributable to the language of the statutes (perceived as being complicated and vague), the absence of awareness of policies, regulations and interpretations related to the statutes which have developed through the administration of the laws, and the absence of a well developed public education program.

The ramifications of this lack of familiarity are multiple. First, some people undertake development activity without the required approval. Second, people get either no information or misleading information when asking municipal officials about legal responsibilities under state law. And, municipal and state enforcement personnel spend time investigating citizen complaints about activities which are not in fact regulated by state law.

5. <u>Non-compliance with terms and conditions of approval has occurred at a rate greater than 30%.</u>

Based on the results of case study investigations, 10% of the Site Location developments and 24% of the Coastal Wetlands projects inspected by the consultants were found to be in non-compliance with terms and conditions of approval. Project staff inspected about 50% of the sites in the case study communities for which applications had been submitted under both the Site Location and Coastal Wetlands

Laws. Two of the twenty-one Site Location developments and ten of the forty-two Coastal Wetlands projects had not adhered to terms and conditions placed on project approval.

However, these figures on non-compliance are considered by the consultants to be low. Compliance with terms and conditions of approval in many instances could not be assessed due to the nature of the conditions, the timing of the on-site inspections, and difficulty in gaining access to the sites. Conditions of approval often relate to methods and timing of construction activity. Most of the projects could not be evaluated for compliance with these conditions of approval due to the scheduling of on-site inspections in relation to project development. Many of the projects inspected had already been constructed. Also, some conditions relate to the use of specific construction materials, i.e., certain size or type of material in retaining walls or road bases, which can only be verified during construction.

In light of the difficulties experienced in evaluating compliance with conditions of approval, the consultants feel that this form of non-compliance occurs at a considerably higher rate than the case study figures indicate. Based on case study results and experiences, discussions with local and state officials and knowledgeable individuals, and the judgement of the consultants, it is estimated that more than 30% of the projects approved under the Site Location and Coastal Wetlands Laws are not constructed in conformance with approved plans and terms and conditions placed on project approval.

No evaluation of the degree of compliance with Shoreland Zoning approvals was undertaken. The general absence of detailed records on approvals under this law made such an evaluation virtually impossible. The majority of the municipal records reviewed lacked specifics on the location, dimensions, nature of construction materials, and method of construction of approval projects.

A variety of reasons were identified for the occurrence of non-compliance with condition of approval. These reasons include: the absence of enforcement of conditions of approval; financial considerations; the desire to complete construction as quickly as possible; lack of understanding of the importance of certain conditions; and lack of familiarity with conditions of approval on the part of contractors.

6. <u>No systematic inspection of approved projects for compliance with conditions of approvals has been conducted.</u>

Review of DEP files and discussions with DEP personnel revealed that the absence of systematic inspection of approved projects under the Site Location and Coastal Wetlands Laws for compliance with conditions of approval. The reasons for this situation are discussed in more detail in Section 3.5 of this report and are primarily based on the level of staffing of the DEP's Enforcement Division.

The results of the case study investigations revealed that 59% of the approved Site Location projects and 30% of the Coastal Wetlands approvals

had been inspected at least once by the DEP staff. Due to the likelihood that all project inspections were probably not noted in the files, the above percentages are likely to be low.

At the same time, the files and discussions with DEP staff indicated that inspections have not been conducted systematically. In some instances, inspections were made before any development activity had been initiated or after all construction work was completed. There is little evidence that the timing of inspections has been related in any way to the timing of project construction. As explained earlier, such timing is critical in order to determine compliance with many of the conditions commonly placed on approval.

Municipal records concerning Shoreland Zoning approvals provided virtually no information on compliance inspections. This responsibility usually rests with the code enforcement officer. Discussion with code enforcement officers indicated considerable variability in the degree to which inspections are made for compliance with conditions of approval.

7. <u>The results of investigation into the environmental consequences of non-compliance are inconclusive</u>.

An attempt was made to evaluate the consequences on the coastal environment of non-compliance with the laws reviewed and non-compliance with condition of approval. However, based on contract constraints, the results of this analysis must be considered inconclusive.

There are a number of factors which contribute to this finding. The consultants had little opportunity to inspect projects which were actually under construction. It is during this phase that certain types of environmental impacts, such as erosion and sedimentation and disruption of fisheries and wildlife, are likely to occur. This portion of the study was also limited to visual observation which is not sufficient for determining the effects of development on air quality, surface and groundwater quality, etc. Additionally, the study did not afford the opportunity to explore the cumulative effects of incremental development in any of the case study communities.

Based on the study results, one observation can be made. With the exception of illegal filling of wetlands areas, visual inspection of development sites revealed few instances of environmental degradation. The few observed occurrences were discoloration of surface water apparently as the result of leachate from solid waste disposal facilities, and minor cases of erosion and sedimentation.

8. <u>It is difficult to draw definite conclusions concerning the regional variation of instances of non-compliance</u>.

In very general terms, there was a tendency to find more actual and perceived instances of non-compliance in the eastern portions of Maine's coastal area. However, other factors identified during the study related to non-compliance tends to diminish the significance of this observation.

The remoteness, difficulty of access to coastal areas, and the attitude of people in the eastern portion of the coast all contribute to a situation which appears ripe for disregard of environmental statutes. Many of these factors, however, are present in other portions of the coast. And, these factors are not the only elements involved in determining non-compliance trends.

One factor which significantly affects compliance trends is the attitude of municipal officials, contractors and developers, members of the general public, and title attorneys. In the absence of the resources to conduct a vigorous enforcement program (discussed later), the DEP is very dependent upon public cooperation to ensure compliance with the Site Location and Coastal Wetlands Laws. If a municipal official, such as a code enforcement officer or member of the planning board is particularly concerned about compliance with the laws, that person can have a significant effect by informing people of their legal responsibilities. This same role can be filled by an individual or small group of concerned citizens within a community, though their effectiveness may not be as great as someone who has an official position. Also, if contractors, developers, and title attorneys are aware and sensitive to the state laws, compliance with the laws is greatly enhanced.

This same situation comes into play in the adminstration and enforcement of Shoreland Zoning and

Solid Waste Management. The presence of conscientious code enforcement officers or people concerned with the proper location and operation of a municipal solid waste facility can have a great influence on the degree of compliance with those laws.

The presence or absence of "eyes on the street" appears to be random in geographic nature. As a result, very general regional trends related to instances of non-compliance break down when viewed on an individual community basis. In light of the small number of case studies conducted, and based on the experience of the consultants, it is difficult to draw definite conclusions concerning the regional variation of instances of non-compliance.

9. Compliance with the Solid Waste Management Act has improved significantly over the past few years, but there is still room for major improvement.

The results of the case study investigations are indicative of the Solid Waste Management situation across the coastal zone. Municipalities vary widely in their compliance with the law. Some communities have state-approved facilities which are being operated properly. Some have or use state-approved facilities which are having difficulties in complying with the law. Others have or use facilities which have not been approved and which do not pose serious environmental problems. And, still others have facilities which are not approved and do pose serious problems.

While there are a number of communitiess which use facilities which are not in compliance with the law, the situation has improved significantly over the past few years. Based on a report prepared by Arthur Lerman Associates earlier this year, in 1980, 42% of the state's population was being served by facilities which were operating satisfactorily, as compared with only 12% in 1977. This improvement is the result of increased public concern about proper solid waste disposal and more vigorous administration of the state solid waste management program, including enforcement of the law.

Resolving instances of municipal non-compliance takes a significant amount and duration of time. Some of the obstacles to further and more rapid improvement in solid waste management compliance include:

- The attitude of some Maine residents that the disposal of solid waste is not a problem which deserves much attention;

- The perception that suitable disposal sites are impossible to find;

- The improper operation of disposal facilities;

- The hesitancy on the part of some Maine communities to spend the money necessary to rectify undesirable situations;

- The hesitancy on the part of some Maine communities to engage in regional approaches to solid waste management;

- The changing state of solid waste disposal technology;

- State laws and regulations which place more emphasis on the operational aspects of disposal facilities rather than siting criteria; and

- Lack of stability in the in-state laws and regulations related to solid waste management.

## 3.0 Effectiveness of Administrative Systems

### 3.1 Introduction

The second major task of this study involved the evaluation of the administrative systems which are responsible for enforcing the four laws. The basic questions to be addressed include:

- Why have problems in relation to compliance with the four laws occurred?

- Did most problems with the enforcement of the Site Location, Coastal Wetlands, and Solid Waste Management Laws occur before the DEP's review and enforcement staffs were expanded in 1979?

- How effective are the current administrative systems?

The findings presented in the following sections are based primarily on two sources of information. An extensive series of interviews was conducted with people involved with all aspects of the enforcement of the laws, including personnel of the DEP, State Planning Office, Attorney General's Office, Department of Marine Resources, municipal officers, and private individuals who have familiarity with the administration of these laws. Material relevant to these questions was also reviewed. This included annual enforcement reports and DEP and State Planning Office files.

## 3.2 General Background

The administration of the four laws involves a number of state agencies and divisions within agencies. This structure varies from one law to another. Also, the administration of shoreland zoning is markedly different from the other three laws in that major responsibilities rest with municipalities. The following brief description of the administrative structure is intended to provide an overview for the more detailed discussion found in subsequent sections.

The responsibility for the administration of the Site Location, Coastal Wetlands, and Solid Waste Management Laws rests, for all practical purposes, in the hands of state government. There are provisions in both the Site Location and Coastal Wetlands Laws for the delegation of administrative responsiblity to municipal government with state government overview. However, this option has not been pursued by more than a handful of communities under each law and is not considered significant in the overall administration of the laws when reviewed from a coastwide or statewide perspective.

Three state government offices have primary responsibility for the enforcement of the three laws. They are the Division of Review and Planning and the Division of Enforcement, both within the DEP's Bureau of Land Quality Control, and the Natural Resources Section of the Attorney General's Office. Additionally, the Department of Marine Resources provides assistance to the DEP in the enforcement of the Coastal Wetlands Law through the Coastal Warden Service.

The Shoreland Zoning Act is administered through an entirely different scheme. In this case, the primary responsibility for the administration of the law rests with municipal government. State government plays an overseer's role in the process and this function is fulfilled by the State Planning Office.

## 3.3 Bureau of Land Quality Control

The Bureau of Land Quality Control has the responsibility for the administration and enforcement of the Site Location, Coastal Wetlands, and Solid Waste Management Laws within Maine's coastal area. In order to evaluate the effectiveness of the Bureau in meeting this responsibility, it is necessary to understand the context within which the fulfillment of this responsibility occurs.

The Land Bureau is responsible for the administration of a number of state environmental laws including: the Site Location Law, the Coastal Wetlands Law; the Solid Waste Management Act; the Great Ponds Act; the Minimum Lot Size Law; the Small Hydroelectric Facilities Law; and a law governing the disposal of septage. The responsibility extends throughout the entire state, though in unorganized townships there is overlapping jurisdiction with the Land Use Regulation Commission. The Bureau is responsible for coordinating with various federal agencies in the administration of a number of federal programs. The Bureau is also responsible for coordinating its efforts with other state agencies in developing policy and administering other state programs.

The Land Bureau is different from the other Bureaus within the DEP in that most of the laws it administers were adopted at the initiative of the State Legislature, rather than being tied into an existing federal program. As a result, the Land Bureau has received less federal financial support than the other Bureaus. Bureau efforts in administering the Solid Waste Management Act have received modest amounts of financial support from the federal Environmental Protection Agency. And, the federal Office of Coastal Zone Management has provided financial support for administrative purposes, including the hiring of additional Bureau personnel.

Three divisions make up the Land Bureau. Of the three, the Division of Review and Planning and the Division of Enforcement are most important in administering and enforcing DEP's laws.

## 3.4 Division of Review and Planning

The Division of Review and Planning is responsible for reviewing and making recommendations to the Board of Environmental Protection on applications for permits issued under the laws administered by the Bureau. The Review Division also coordinates with other state and federal agencies on policy review and administrative matters.

The Review Division has processed over 5,000 applications from throughout the State since the early 1970's. During the fiscal years 1978-1980, the Division reviewed 2,122 applications. Over this same period, 643 Site Location and 503 Coastal Wetlands applications were processed.

Applications Processed by Review Division

| | *1978 | 1979 | 1980 | Total |
|---|---|---|---|---|
| Total - all laws | 639 | 587 | 896 | 2122 |
| Site Location | 239 | 174 | 230 | 643 |
| Coastal Wetlands | 175 | 150 | 178 | 503 |

*Fiscal Years

In the past three fiscal years, the percentage of applications processed under Site Location and Coastal Wetlands laws has increased from 46% to 64% of the total number reviewed by the Division. All of the wetlands projects are obviously located within the coastal area, while roughly 1/3 of the Site Location projects were located along the coast in FY 1980.

Besides reviewing applications, the Review Division plays other roles related to enforcement of the laws. This Division is most often responsible for answering inquiries on whether a particular project is subject to one of the state laws. The Division recommends to the BEP what terms and conditions should be placed on approvals and is responsible for ensuring that certain terms and conditions are met. It also processes and makes recommendations on after-the-fact applications.

## 3.5 Division of Enforcement

The Division of Enforcement performs investigative and enforcement duties including complaint resolutions, compliance inspections, environmental education, and technical assistance. The Division is also involved in taking enforcement action, including the negotiation of consent agreements.

The state has been divided into four districts for the purposes of enforcement: Southern, Central, Downeast, and Northern. The Division presently has regional offices in Portland, Augusta, and Bangor and hopes to reopen a Presque Isle office in late 1981. (See map on page 17.)

The history of the Enforcement Division is worth reviewing because it is indicative of the general situation which has existed in the Land Bureau since it was established. From 1973 to 1979, the Enforcement Division was essentially comprised of two staff people who had all of the enforcement responsibilities mentioned earlier. During 1974/75, an attempt was made to expand the enforcement staff through use of the CETA program. Bangor and Portland offices were opened in 1974 and closed in 1975 because of a rapid turnover of CETA people and a change in state government administration. The Portland office was reopened a year later and staffed by one of the two permanent staff people who had been working in the Augusta office.

The staffing situation improved in 1979 as the result of two actions. Four people were hired on funding provided by the federal Coastal Zone Management Program. This resulted in the reopening of the Bangor office with two staff people and the bolstering of the ranks in Augusta and Portland to two apiece as well.

Later that same year, the State Legislature authorized three staff positions for the Division, two full-time and two seasonal. The full-time positions replaced two of the CZM positions. One of the seasonal positions has yet to be filled due to a freeze on hiring. The second seasonal position was filled in the Spring of 1980.

In 1979, the Division was also given the responsibility for enforcing the Solid Waste Management Act. Over the past two years, a significant amount of staff time has been devoted to solid waste. As a result, the Division has had little opportunity to "catch up" on those responsibilities which had been unfulfilled for a number of years due to a shortage of staff. For example, based on the FY 1980 Enforcement District reports, compliance inspections during that year were conducted on 6% of the 4019 "currently active projects" under the Division's jurisdiction. Fifteen percent of the Site Location projects in the state as a whole and 16% of these projects located in the coastal area were inspected. Six percent of the coastal wetlands projects were inspected.

Currently, the Enforcement Division consists of four permanent staff positions and two positions funded by the Coastal Zone program. The funding of the later positions appears to be secure until March, 1982. Beyond this date, the situation is not clear. A fifth permanent staff person is expected to be hired by the end of 1981 as the result of the combination of the two seasonal positions authorized by the Legislature in 1979.

Two general observations can be made about the operation of both the Review and Enforcement Divisions. First, neither of the Divisions take a hard and rigid line in fulfilling their responsibilities. While both have established procedures for accomplishing their work, there is a quality of informality that generally exists as long as it is not abused. The Enforcement Division has best reflected this quality in its enforcement of the Solid Waste Management Act

over the past few years. The Division has tried to work cooperatively with communities in resolving problem situations by providing technical assistance and being flexible in adherence to compliance schedules as long as the communities are being conscientious and proceeding in good faith to remedy the situation. The Review Division reflects this quality in working with applicants in trying to resolve potential conflicts or overcome problems in relation to a development proposal as long as the applicant is willing to make necessary changes to bring the project into compliance with review standards.

The second observation relates to the present level of staffing in relation to responsibilities. Both Divisions tend to be reactionary rather than preventive in their approach to fulfilling their responsibilities. The Enforcement Division for years has had little time to do anything other than react to situations as they arise. There has been almost no opportunity to try to prevent occurrences of violations before they happen or, for that matter, to go looking for violations before they are brought to the Division's attention by an outside source. The Review Division reflects this posture in its review of applications in that it doesn't go looking for potential problems but, rather, relies on issues brought to its attention by outside sources, including state reviewing agencies. Also, the development of policy on review issues is usually in reaction to situations rather than thought out ahead of time.

In fairness to the Divisions, in the absence of having the resources to fulfill all their responsibilities, both Review and Enforcement have prioritized their activities to maximize efficiency. The establishment of priorities is based on their assessment of

what can be done to address those situations which pose the greatest threat to the environment.

## 3.6 Attorney General's Office

Another piece in the "enforcement puzzle" is the Assistant Attorneys General. The Natural Resources Section of the Civil Division of the Department of Attorney General is responsible for providing legal assistance to the DEP and other state agencies having principal responsibility for natural resources and environmental protection. The equivalent of three and one-half staff people are assigned to the DEP, as a whole. Each of the Assistant Attorneys General provide assistance to all of the Bureaus within the Department.

The responsibilities of the Assistant Attorneys General in relation to the Department are considerable and include: representing the Department in court; reviewing consent agreements and decrees and Board orders; assisting the staff in interpreting the laws; developing and reviewing regulations; providing formal and informal opinions on law; providing legal assistance to Board members during BEP meetings; attending public hearings and rulemaking hearings; and, drafting and reviewing legislation.

The Assistant Attorneys General also have a responsibility under the Shoreland Zoning Statute. If a municipality fails to administer and enforce shoreland zoning, whether municipally adopted or state imposed, the Attorney General's office has the authority to seek a Superior Court order requiring municipal officials to cease being delinquent.

The Assistant Attorneys General readily admit that they have more work than can be done. This situation is exacerbated by the length of time it takes to prepare for and go to court and the slowness of the court system.

In response to the heavy workload on the Assistant Attorneys General and the ramification of this on resolving enforcement cases, the DEP developed a consent agreement policy. This policy was adopted by the DEP in October, 1978 and began being used in 1979.

The consent agreement policy allows the enforcement staff of the Department to negotiate with an alleged violator to resolve violations of the law without having to go to court. A consent agreement involves the voluntary admission of wrongdoing on the part of the violator and, in addition, includes both monetary penalties and a commitment to take corrective or preventative action.

Despite the success of the consent agreement policy, the workload on the Attorneys General is still significant. Presently, DEP's "lawyers" have forty to fifty cases in court and an equal number of cases pending. This is in addition to the other responsibilities noted earlier.

The status of cases being handled by the Assistant Attorneys General under the laws subject to this study is as follows: five coastal wetlands cases are in referred status and are not high priorities (Recently a wetlands case of importance was given a high priority and processed through the courts "in record

time."); five site location cases are in court with one case pending action by the Attorneys General (Site location cases are usually handled promptly because they tend to be cases considered to be of significance.); and, five solid waste management cases are in court and three are referred (these cases represesnt the limit which has been placed on solid waste cases by the A.G.).

The Shoreland Zoning Task Force has asked the Assistant Attorney's General to prosecute three municipalities for failure to properly administer Shoreland Zoning. The AGs have not taken any action due to their workload and their assessment that "failure to enforce" is difficult to prove in court and the remedy is little more than a "slap on the wrist."

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Priorities are established on the cases which are referred to the Assistant Attorneys General. The Attorneys feel that only cases of major legal or environmental significance are appropriate for handling by their office. As the result, there is no method in place to resolve those cases of non-compliance with the four laws which are not considered important by the AGs and which cannot be handled through the voluntary consent agreement procedure.

For the past year, the Attorneys General have been meeting with DEP enforcement personnel on a quarterly basis to provide information on progress which is being made on cases and to reevaluate priorities.

## 3.7 Department of Marine Resources

The Coastal Wardens within the Department of Marine Resources' Bureau of Marine Patrol provide

enforcement assistance to the DEP in the administration of the Coastal Wetlands Law. This assistance was first formalized in a memorandum of understanding which took effect in August, 1973. The terms of the agreement have been reviewed and revised a few times since then.

Under the original agreement, Coastal Wardens were authorized to issue citations in the event of a violation of the wetlands statute when no permit is held by the violator. DEP personnel retain sole authority to seek enforcement action when a condition of approval has been violated. Wardens were encouraged to assist in the enforcement of compliance with conditions of approval by reporting obvious violations to the DEP.

Cooperation between the Department of Marine Resources and the DEP in enforcing the Coastal Wetlands Law has definite advantages, particularly to the DEP. There are over thirty Coastal Wardens stationed along the coast, and they are usually quite familiar with what is going on in their areas. Wardens can issue a summons in the event of a violation allowing for a quicker resolution of a case through District Court action than through either the consent agreement process or action by the Assistant Attorneys General.

A number of factors influence the effectiveness of Coastal Wardens in providing enforcement assistance to the DEP. The Wardens have a number of responsibilities which they must meet. Enforcement of the Coastal Wetlands Law is sometimes considered a secondary responsibility. Some Wardens are more inclined to do their own work rather than "someone else's". Other Wardens are not familiar with the workings of law.

## 3.8 State Planning Office

The Mandatory Shoreland Zoning Act was passed by the State Legislature in 1971. Originally, municipalities were given two years to prepare and adopt an ordinance which was consistent with the intent of the law. Just prior to the original deadline of July 1, 1973, the State Legislature granted a one year delay in the effective date of the law and ordered that by December, 1973, standards be developed by the State for use by municipalities in adopting their ordinances. This was the result of towns not having taken concerted action to meet the requirements of the law and the State not having provided adequate guidance to the towns.

Just prior to the 1974 deadline, a significant number of ordinances were submitted. Given the absence of staff and the political climate, the decision was made to accept all ordinances submitted, regardless of quality, and make adjustments later. For those communities which had not submitted an Ordinance, the state imposed an Ordinance which zoned all shoreland areas as Resource Protection.

During the next two years, all the ordinances in the state were systematically reviewed for compliance with the minimum standards. Workshops were held with communities which were having particular difficulties. The state-imposed ordinances were amended to better reflect the character of the shoreland area.

Since 1977, work has progressed slowly in getting communities to make adjustments in their ordinances. In 1980, sixty-four towns with deficient ordinances were given six months to make the required amendments. In

1981, approximately fifteen communities do not have approved ordinances and 110 municipalities have state-imposed ordinances.

The State Planning Office presently has the following responsibilities in coordinating the administration of Shoreland Zoning on the state level: prepare state-imposed ordinances for Board of Environmental Protection and Land Use Regulation Commission adoption; prepare the paperwork necessary to repeal state-imposed ordinances; keep files on current ordinances and communications with towns; provide information and assistance to municipal officials in fulfilling their administrative responsibilities; interpret local ordinances; review shoreland zoning proposals; and, follow-up on complaints and investigate potential violations.

During the period between 1973 and 1977, one full-time person provided staff support for the administration of the state's responsibilities under the Law. The staff person worked with the Shoreland Zoning Task Force which was made up of two members of the Board of Environmental Protection and two members of the Land Use Regulation Commission. The amount of staff time has been diminishing since 1977 to the point in 1981 where only 30% of one person's time is being spent on Shoreland Zoning administration.

The amount of State Planning Office staff time devoted to Shoreland Zoning has been limited to the amount of financial assistance provided by the U.S. Department of Housing and Urban Development. HUD has provided financial support since 1974. Current funding ends in July, 1981 and is not expected to be continued.

The degree to which the State Planning Office will continue to provide staff support in administering shoreland zoning is unclear at the present time.

3.9 Findings of Administrative Systems Investigations

1. The Land Bureau of the DEP has never had the resources necessary to effectively meet its enforcement responsibilities.

As discussed earlier, the Land Bureau has never had a sufficient level of staffing to be able to develop a systematic program for meeting its enforcement responsibilities. Enforcement action is best characterized as being in a day-to-day crisis management mode.

The ability of the Bureau to effectively enforce the laws being reviewed by this study within the coastal zone has to include consideration of the Bureau's full responsibilities. It must be realized that the Bureau's responsibilities are statewide in nature, include enforcement of other state statutes, and go beyond simply looking for violations of the laws and conducting compliance inspections.

2. Public cooperation has been a significant element in enforcement efforts to date.

The public has played a significant role in the enforcement of the laws. This has occurred through voluntary compliance with the laws and by citizen identification of potential violations.

While the nature of the laws is such that public surveillance will always be a necessary element of an

enforcement program, its importance in Maine has added significance since the DEP personnel have, as yet, not had the opportunity to do any regular compliance investigations themselves. Up until 1979, due to staffing levels, enforcement action was almost exclusively undertaken in response to citizen complaints.

3. The Enforcement Division and the Attorney General's Office do prioritize their responsibilities in an effort to manage their time efficiently.

In an effort to manage their time efficiently, both the DEP assigned Assistant Attorneys General and enforcement staff prioritize their responsibilities. The principle underlying the establishment of priorities is the identification of situations which pose the greatest potential harm to natural environment. Priorities are re-evaluated periodically.

There are difficulties with this priortization process. As the result of prioritization, some individual cases are not vigorously pursued and some laws do not receive much, if any, enforcement attention.

4. In the absence of an understanding of the enforcement staffing situation, some members of the general public have become disillusioned with the DEP.

The general environmenal consciousness of Maine residents and the increasing awareness of the existence of state environmental statutes has resulted in high expectations of the DEP. At the same time, few individuals are aware of some of the internal difficulties which affect the Department's performance, i.e., the lack of adequate staffing, statutory limitations, etc.

The DEP's inability to satisfy the public's expectations is resulting in disillusionment of the public and threatens the credibility of the Department and the integrity of the laws. This situation is particularly significant due to the important role that the public plays in enforcement activity.

The consultants would like to note a surprising degree of disillusionment which came out through the interviewing process. This attitude was articulated by a wide variety of people, some of whom have been strong supporters of the Department and the passage of environmental safeguards in the past. In all instances, people interviewed were unaware of the staffing situation within the Department. The degree to which this attitude exists among Maine residents cannot be ascertained based on the work done during the project.

5. <u>The level of staffing of Assistant Attorneys General is not sufficient to satisfy the demand for legal action by the DEP.</u>

The Assistant Attorneys General readily admit all cases referred to their office cannot be pursued. Only cases considered to be of major environmental or legal significance are taken on. Some of these cases take considerable periods of time to get through the judicial process. Action on cases is sometimes very slow due to the Assistant Attorneys General's inability to find the time.

6. DEP enforcement personnel are reluctant to refer cases to the Assistant Attorneys General.

The DEP enforcement personnel are well aware of the discretion exercised by the Attorneys General in selecting cases to pursue and the length of time it takes to get cases resolved through the court process. As the result, the enforcement staff is reluctant to refer cases to the Attorney General's office. The staff realizes that in consent agreement negotiations with violators, the possibility of referral to the Attorney General's Office is often a hollow threat.

The consequences of staff reluctance to refer cases are multiple. In some instances, no remedy can be obtained for cases of non-compliance. Also, negotiations for a consent agreement are sometimes protracted due to the inability to refer a case to the Attorneys General and expect any action. Consent agreement negotiations can go on for years and consume an appreciable portion of a staff person's time.

7. The expansion of the Enforcement Division's staff in 1979 is just beginning to have an effect on the effectiveness of enforcement.

In 1979, the Enforcement Division was able to expand its staffing level by four people as the result of a Coastal Zone Management grant and action by the State Legislature. However, the immediate effect of the additional staff on the effectiveness of enforcement was minimal due to an increase in the Division's responsibilties. The Division was assigned the responsibility of enforcing the Solid Waste Management Law, including some administrative functions under that law.

This year, the time which must be devoted to solid waste management has decreased. This affords the Division the opportunity to begin catching up on other responsibilities. Though this will result in an enforcement capability which is considerably greater than existed prior to 1979, the level of staffing is still not sufficient to fulfill effectively all of the Division's responsibilities.

8. Existing staffing levels have limited the degree of cooperation possible between the Division of review and Planning and the Division of Enforcement in regards to enforcement.

The Review and Enforcement Divisions are the administrative and enforcement arms of the Land Bureau. As discussed earlier, the Divisions are essentially partners in the enforcement of state environmental laws. However, since both Divisions are understaffed, the pressure to fulfill the basic responsibilities of each affects their ability and willingness to work cooperatively in developing a well-coordinated enforcement program.

Close cooperation between the two Divisions is desirable for a number of reasons. First, both Divisions need access to project files in order to ensure compliance with conditions of approval. The Review Division is responsible for ensuring compliance with conditions that relate to additional submittals by the applicant, such as a sedimentation and erosion plan. The Enforcement Division is responsible for on-site compliance. At the present time, project files are kept in Augusta for a one-year period following

approval. This makes it difficult for enforcement staff members to conduct compliance inspections, especially during the period when construction of the project is occurring.

Second, it is important that Review staff document all negotiations with a developer so that Enforcement staff know exactly what has been approved. In recent years, the Review staff has been more conscientious about properly documenting files, though time pressures occasionally cause a breakdown in the system.

Third, the Review staff has a good understanding of projects by the time approvals are issued. This understanding includes potential problem areas in development construction and the attitude of the developers in complying with state requirements. This information would be valuable to enforcement staff, particularly since time is not available to inspect all projects. At the present time, such an exchange of information occurs only occasionally and on an informal basis.

9. <u>The documentation of violations is a difficult and time consuming process.</u>

The consultants can attest to the difficulties of documenting instances of non-compliance with the law. One of the basic problems is obtaining documentation that the development was not in existence prior to the effective date of the laws and therefore is not grandfathered. This is usually done through the use of

aerial photographs, building permits, or other sources of reliable land use data. In the absence of a centralized source of such information, the documentation process can be very time consuming.

Certain types of development, such as fills and gravel pits, are extremely difficult to document. Given time pressures on enforcement staff, instances of non-compliance related to these types of developments are not vigorously pursued unless the environmental damage is particularly significant. In the case of gravel pits, the staff considers instances of potential non-compliance unenforceable and the cases are not pursued.

10. DEP enforcement of the Solid Waste Management Act emphasizes the desirability of volunteer compliance.

Enforcement staff attempt to work closely with municipalites in gaining compliance with the Solid Waste Management Act. Staff members provide technical assistance and coordinate efforts to draw communities together to discuss regional solid waste disposal solutions.

Enforcement action is usually taken only when a community is not willing to make an honest effort in making the improvements necessary to ensure compliance with the law.

This enforcement approach is slow in gaining results. In some cases, discussions between enforcement personnel and town officials have been going on for years. Additionally, the present level of staffing limits the number of municipalities that the Department can work with at a particular point in time.

At the same time, given the political and economic considerations involved, this approach has its advantages. As it is, the Department has been accused by some communities of being heavy handed, which is not supportable by a review of the files.

11. The performance of Coastal Wardens is quite variable in their enforcement of the Coastal Wetlands Law.

Discussions with Coastal Wardens indicated that the vigorousness with which they enforce the Coastal Wetlands Law is variable across the coast. Some Wardens are very conscientious and work closely with DEP enforcement staff. Others indicated that enforcement of the Coastal Wetlands Law is not a high priority and that little enforcement action is likely to be taken. Some Wardens were not familiar with some of the specifics of the statute and the regulations and policies used in administering the Law.

12. Local administration and enforcement of Shoreland Zoning is extremely variable.

There is a great deal of variability in the effectiveness of municipal administration of shoreland zoning. The quality of administration ranges from vigorous to virtually non-existent. For the most part, however, the law is working surprisingly well considering the minimal investment made by the State. There is considerable room for the improvement of municipal administration of this law.

13. Administration of Shoreland Zoning on the state level has been only minimally supported.

State government has made virtually no investment in the state administration of Shoreland Zoning. HUD funds have been used exclusively to provide staff support. These funds supported one full-time person for a few years at the beginning of the program. In recent years, the level of support has decreased to the point this year where funding has ceased.

At the same time, the state administration of Shoreland Zoning has been vigorous, though modest in scale, as the result of the conscientious staff person who has been with the program since its inception.

While administration has been good given the level of staffing, there is room for improvement. More active oversight of municipal administration is likely to decrease the wide variability in the quality of local administration. Also, some municipalities would take steps to improve the effectiveness of administration if technical assistance and support were available.

## 4.0 Recommendations

In light of the findings presented in previous sections of this report, the following recommendations are made for improving the enforcement of the four environmental laws under review:

### 1. Increase the levels of staffing of the Division of Enforcement, the Division of Review & Planning, and the Attorney General's Office.

The present levels of staffing of the Division of Enforcement, Division of Review and Planning, and the Attorney General's Office assigned to the DEP are not sufficient to meet present responsibilities. This situation is most serious for the Division of Enforcement, even though its responsibilities under the Solid Waste Management Act have diminished.

The staffing situation poses several serious problems which were identified earlier in this report, including limited ability to identify and remedy in a timely fashion instances of non-compliance with the laws and to systematically ensure compliance with conditions of approval. While it is possible to make structural changes which would increase the efficiency of the present staff, overall these changes would not solve the staffing problem and, in some instances, would simply shift responsibilities from one agency to another.

The Division of Enforcement has the greatest need for more permanent staffing. While the Coastal Zone Management program has been of some assistance in providing staffing support, the uncertainty of

continued funding poses stability and continuity problems. Programs like CZM should be used for supplementary purposes rather than to fill basic staffing needs.

It is recommended that the Division of Enforcement be staffed at the following levels: three people should staff each of the three regional offices in Portland, Augusta and Bangor; two people should staff the Presque Isle office; and, there should continue to be an administrator of the Division located in Augusta. This represents an increase of seven people over the present level of staffing, not including the two positions presently funded by the Coastal Program.

Staffing at this level would allow the development of a long-term program to meet enforcement responsibilities. The Division could move beyond it's present reactive mode of operating. The additional staff should allow the Division to fulfill responsibilities which have not been fully met in the past.

Additional staff would also allow the Division to do more public education, an integral part of enforcement for which the Division has had little time. Through more public education and closer work with municipal officials, the Division's workload could be decreased as the result of more and better informed citizen surveillance, more and better information concerning state laws being available from municipal officials, and more local delegation of administrative and enforcement responsibility under the Site Location and Coastal Wetland Laws.

The level of staffing recommended for the Enforcement Division may not be necessary on a permanent basis. After a few years of operation at the recommended level, the Division should be reviewed to determine if the level of staffing is still necessary.

The additional staffing needs of the Division of Review and Planning appear to be more modest, though more study is necessary to determine the actual extent. The Division meets most of its responsibilities now, though the timing and quality of its work need to be improved. Quality of work means the degree to which applications are scrutinized for compliance with the standards of the law. This Division could also be improved by increasing its ability to obtain expert assistance in reviewing aspects of projects that are beyond the expertise of the existing staff.

The Attorney General's Office staff assigned to the DEP operate for the most part "under the gun." An additional staff member would be desirable. Also, some pressure on the staff could be relieved by developing a mechanism for handling the enforcement of minor violations. This is discussed in more detail later.

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2. <u>Include standard conditions of approval in Board Orders which ensure that applicants and contractors read and understand the Orders</u>.

Several changes in Board Orders could improve enforcement efforts.

First, Board Orders should include, as a standard condition of approval, the provision that the applicant and the contractor, if any, sign and return a

statement that they have read and understand the order and conditions of approval. There is evidence that some applicants read only that portion of the Board Order which indicates approval of their project and, therefore, are not aware of conditions placed on approval. Also, contractors are not necessarily informed by a landowner of terms and conditions of BEP approval.

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A second standard condition of approval should be the requirement that the owner or contractor notify the appropriate enforcement field office just prior to commencing construction and at certain critical check points during the construction of a project. This would allow enforcement personnel to maximize the effectiveness of their inspections thereby avoiding repeated visits to a site where no progress had been made. Enforcement personnel should also have the discretion to call a pre-construction conference. This provision would also ensure that contractors, as well as owners, are well aware of the details of Board Orders.

3. <u>Transfer project files to regional enforcement staff in a timely fashion</u>.

At present, Land Bureau policy is that project files are kept in Augusta for one year after project approval before being transferred to regional offices. Sometimes it is necessary for the Review Division staff to have access to the files in order to ensure compliance with some conditions of approval, such as preparation and submission of an erosion control plan. This delay in forwarding case files to the regional offices means that compliance inspections and enforcement are delayed. The files are sometimes not received by enforcement staff until project construction has been completed.

Project files which need not be kept in Augusta should be promptly forwarded to district offices. For those files that must be retained, copies of appropriate materials, such as maps, plans, and Board Orders, should be forwarded to the regional enforcement offices as soon as possible after BEP action has been taken.

4. <u>More guidance provided to the Division of Enforcement by the Division of Review and Planning</u>.

The Review Division staff could greatly assist in improving the efficiency and effectiveness of enforcement efforts by passing on their familiarity with and understanding of approved projects to enforcement personnel. Observations such as which applicants were cooperative and which were difficult to deal with and suggestions as to what aspects of the project are more likely to cause problems would be useful. The consultants realize that performing such a function will take some time on the part of Review staff. However, the time involved could be minimized by using a standard sheet to be included in each project file and limiting comments to brief, handwritten notes.

5. <u>Develop a mechanism for handling minor violations</u>.

The possibility of developing a mechanism for prosecuting minor violations of the laws in an expeditious fashion should be explored. This would have a number of positive effects. First, expeditious enforcement of known violations would maintain the integrity of the law, an important consideration with regard to public image. Second, such a mechanism would allow the DEP to take affirmative action against violators without going through the consent agreement process, which can be quite time consuming. Finally,

any mechanism to decrease the workload of the Assistant Attorneys General is desirable.

Three possible ways of implementing this recommendation were identified through the course of this study. Time did not allow for an examination of the strengths and weaknesses of each approval. The three possibilities are:

1. Give DEP enforcement personnel constabulatory power to issue summons and represent the State in District Court.
2. Amend the structure of the administrative court process to expand its jurisdiction to cover unlicensed violators. At present the court only has the power to revoke licenses.
3. Give the Board of Environmental Protection the authority to make enforcement judgments and impose fines.

6. <u>Shorten the negotiation time for consent agreements</u>.

The consent agreement process should be revised to create a mechanism for shortening the negotiation time. Presently, consent agreement negotiations can be protracted, taking up large amounts of staff time. This could be accomplished by providing a financial incentive to the violator. If negotiations are completed within a certain period of time (for instance, three months), this will be considered in determining the magnitude of the fine. Larger fines would be levied for protracted negotiations.

7. <u>Develop better coordination between Local Code Enforcement Officers and Enforcement Division personnel</u>.

Enforcement Division staff should develop a better working relationship with municipal code enforcement officers. Municipal CEO's are usually well informed on development activity which is occurring within their communities. Their assistance could be very helpful in identifying instances of non-compliance.

Code enforcement officers would gain a better understanding of state statutes by working more closely with Enforcement Division staff. They could be a good source of information at the local level for people planning development which may require state approval. Increased familiarity with the DEP statutes might enhance the likelihood of municipal delegation of DEP authority.

The consultants realize that, at the present time, there is great variability in the performance of local code enforcement officers. However, the quality of CEOs has been improving and more contact with Enforcement Division personnel could be of benefit to both parties.

In working with Code Enforcement Officers, the DEP must communicate its own enforcement priorities. This will avoid the situation where a CEO looks for certain types of instances of non-compliance only to find that the Department does not consider it an important priority and will not pursue the matter further.

4.9 <u>Encourage more assistance from Coastal Wardens in enforcing the Coastal Wetlands Law</u>.

Coastal Wardens have been very helpful to the DEP in the enforcement of the Coastal Wetlands Law. At the

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same time, the variability of performance of individual Coastal Wardens indicates that there is room for improvement.

More contact should occur between the DEP and the Department of Marine Resources and between the Coastal Wardens and the Augusta office of the Department of Marine Resources reiterating the responsibility of Coastal Wardens in the enforcement of the Coastal Wetlands Law. Also, DEP enforcement personnel and Coastal Wardens should meet periodically to discuss enforcement issues and priorities and to keep abreast of changes in the statute.

9. <u>Develop a public educational program on the four environmental laws</u>

In the course of this study, it became very apparent that the "eyes of the community" are a valuable asset in reporting instances of potential violation of environmental laws. Many instances of non-compliance have been discovered and prosecuted as the result of an observation and complaint made by a member of the public.

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A more concerted educational program about the four environmental laws could help cultivate a better relationship between DEP and the public. The general level of understanding about the purpose and provisions of these laws could be enhanced, for example, by a poster campaign which could display informational material in municipal buildings, schools, post offices, etc. Increased public understanding would result in fewer instances of non-compliance due to

ignorance, a better citizen monitoring network, and a greater public understanding of the responsibilities of the Department.

10. Develop baseline data on activities subject to regulation under the four environmental laws

One overriding problem that was encountered in this project was the lack of land use data which showed the extent and location of regulated activities at certain points in time. This is of critical importance in determining instances of non-compliance with the law. The dating of a gravel pit or a wetland fill is important to be able to determine if that activity has been grandfathered by a particular law.

As resources become available, it would be extremely useful to develop baseline data for the coastal area on all regulated land use activities that have taken place at a given point in time after the effective date of environmental statutes. All future inspections, surveys and inventories could then be compared to that baseline. Aerial photos of the coast, taken in 1978, are available through the Army Corps of Engineers, New England Division, and would be extremely useful in developing such a baseline data inventory.

An inventory of this nature would save enforcement staff considerable time in identifying and documenting instances on non-compliance.

11. Transfer some of the State's Shoreland Zoning responsibilities from the State Planning Office to the Department of Environmental Protection

In order to increase the efficiency of state administration of Shoreland Zoning, it is recommended that certain responsibilities currently handled by the State Planning Office be transferred to the Department of Environmental Protection. The DEP should be given the responsibilities under Shoreland Zoning of investigating citizen complaints, identifying potential violations, and working with municipal officials in the administration and enforcement of Shoreland Zoning Ordinances. The State Planning Office should retain the responsibilities of providing staff support to the Shoreland Zoning Task Force, handling administrative paperwork, and reviewing and re-evaluating both minimum state standards and municipal shoreland zoning ordinances.

The State Planning Office has no enforcement or investigative capabilities and is not easily accessible to the municipalities since it has only one office in Augusta. At the same time, SPO has planning and administrative capabilities which are needed in order to ensure the effective and efficient operation of the law.

The DEP, on the other hand, has investigative and enforcement capabilities and is more easily accessible through its regional offices. Responsibilities under Shoreland Zoning would provide the DEP further opportunity to develop a good working relationship with municipal officials. This would be of considerable assistance in the Department's administration of other state statutes. This is especially the case in instances where a development must be approved on both municipal and state levels.

12. <u>Increase the State commitment to the administration of Shoreland Zoning</u>

agree

The wide variability observed in the local administration of shoreland zoning could be improved through an increased level of state administration. While local administration is surprisingly good in light of the minimum investment in the administration of the law by the state, there is considerable room for improvement.

It is not suggested that the state become heavy handed in fulfilling its responsibilities under the law. Rather, the state should re-evaluate minimum standards and municipal ordinances, have a greater presence in overseeing municipal administration, and be in a better position to provide technical assistance to municipalities.

In light of the termination of federal funding which has supported the modest state administrative effort in the past, the issue of state commitment to the law will have to be addressed. Significant improvement in the effectiveness of administration of the law on both the municipal and state levels could be achieved by shifting state administrative responsibilities, as indicated in the previous recommendation, increasing the level of staffing of DEP's Enforcement Division (Recommendation Number 1), and providing state funds for staff support of the law within the State Planning Office.

One full-time staff person working on shoreland zoning within the State Planning Office is desirable at least for a year or two. This level of staffing would allow for a smooth transition of designated responsibilities to the DEP and an increased vitality in the administration of the law. After this period, it may be acceptable to decrease the State Planning Office staffing under this law to less than a full-time position.

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