



New Hampshire's Shoreland Protection Act - RSA 483-B
submitted to the legislative Shoreland Protection Study Committee
by the Connecticut River Joint Commissions
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Introduction

Shoreland protection is essential not only to protect the water quality and scenic value of New Hampshire's shores which are so critically important to its \$9.7 billion dollar tourism industry, but also to protect property investments on shorelines vulnerable to erosion. While New Hampshire's Shoreland Protection Act has started the state on a path toward protecting its scenic and ecologically valuable shorelines, the Act in its present form, and NH DES' ability to educate the public about it and enforce it meaningfully, are often ineffective. New Hampshire should take this opportunity to learn from its neighbor, Maine, about how to support local communities in protecting the scenic shorelines that are so important to their tourism economy while protecting private property from erosion at the same time.

The provisions of New Hampshire's Shoreland Protection Act were applied to the Connecticut River through Senate Bill 453 in 2002. In the significant number of Connecticut riverfront towns that do not have zoning, the Shoreland Protection Act is all that may stand between the river and inappropriate land use decisions. Two of the towns along the river do not even have planning boards. While it remains our hope that these and other towns will adopt the stronger setbacks, riparian buffer, and floodplain protection measures recommended in our *Connecticut River Corridor Management Plan*, the statewide provisions are important to engage - and strengthen - for the benefit of the river and its tributaries.

The Connecticut River Joint Commissions have considered the advantages and inadequacies of New Hampshire's shoreland protection law many times over the last 14 years, particularly in the context of developing our *Connecticut River Corridor Management Plan* in conjunction with our five local subcommittees of citizens of riverfront towns.

The importance of shoreland protection takes on new urgency following completion of New Hampshire's *Wildlife Action Plan* in October, 2005. This *Plan*, created by New Hampshire Fish and Game Department with significant partner participation including CRJC, finds that Floodplain Forests in general, and Connecticut River Mainstem Watersheds in particular, are among the types of habitat that are of special interest and concern. The *Wildlife Action Plan* identifies human development and transportation infrastructure as the most challenging issues facing Floodplain Forests, and for Connecticut River Mainstem Watersheds, non-point source pollution and agriculture. An effective Shoreland Protection law could substantially address at least three of these four identified prime threats. The *Plan* recommends conservation of shoreland and riparian areas and better interagency cooperation in environmental review.

Shoreland setbacks can be more effective, especially on rivers

The Connecticut River Joint Commissions and the more than 100 local river subcommittee members who created the *Connecticut River Corridor Management Plan* are unanimous in their belief that a 50 foot building setback is entirely inadequate for this large river. Erosion, a natural process that is exacerbated on the Connecticut River for a number of reasons, claims three to five feet of shoreline every year in some places. In the space of one decade, the river may easily threaten a building that was legally built according to the Shoreland Protection Act. For this reason, a number of riverfront towns have adopted more sensible rules, such as Lyme's 200 foot setback. However, many more towns have not addressed this issue, and are protected only by the inadequate and inadequately enforced state law. Maine's Mandatory Shoreland Zoning Act (enacted in 1971, more than 20 years before New Hampshire's), is more protective, with a setback of 100 feet for great ponds and rivers.

Maine's law also applies to all second and third-order streams, lakes, ponds, and non-forested wetlands over 10 acres, not just to lakes and a few selected large rivers. It established a 75-foot shoreland zone for these smaller streams with watersheds less than 25 square miles. Streams with larger watersheds are protected by a 250-foot shoreland zone. A policy that protects water quality on a large river will be even more effective on smaller ones, as it brings those benefits to the larger rivers into which they flow. CRJC believes that this concept is worthy of consideration.

Riparian buffer provisions can be clearer and easier to enforce

A thick buffer of native vegetation is a river's best hedge against water pollution and erosion, while it also protects privacy, property values, and scenic beauty. Natural ground cover is especially important to maintain for its role in trapping pollutants. New Hampshire's current buffer language is difficult to understand for anyone other than

foresters and loggers, and often inappropriate for residential lots. We hope the committee will consider the findings of New Hampshire's *Wildlife Action Plan* in devising easier to understand and more meaningful buffer protection.

Enforcement of shoreland protection provisions needs strong support

Conversations with DES staff indicate that it is not uncommon for a city or town to issue permits for projects that are in direct violation of this state law. Furthermore, one enforcement officer for the entire state is not enough for the job. Involving communities in enforcing the law will help educate local officials as well as landowners. Adding shoreland project permitting to the suite of permitting procedures at DES could also be a positive step. The question of where the responsibility for enforcement should lie is a difficult one, since some towns presently have little or no capacity for local enforcement, which could result in inconsistent management of water bodies held in public trust.

An interesting approach to this problem can again be found in Maine's law. Like New Hampshire, Maine is characterized by a large number of very small, rural towns with minimal town government that are often reluctant to impose restrictions on the management of private property. However, the state has successfully created a shared responsibility for regulation and enforcement with the towns through a simple system. This system deserves consideration by New Hampshire.

State communications with cities and towns should be consistent

In a letter dated January 31, 2005, the Connecticut River Joint Commissions wrote to NH DES regarding its November 1, 2004 letter to municipal officials throughout the state regarding the Comprehensive Shoreland Protection Act. DES' letter stated that "The protected shoreland is defined as those areas within 250 feet of a public water body such as...major streams and rivers that are not (emphasis added) designated under the Rivers Management and Protection Act."

Unfortunately, this is not true. The NH General Court applied the provisions of the Shoreland Protection Act to the Connecticut River in 2002. The Act also applies to the Cold and Ashuelot Rivers, the two other designated rivers in our watershed, and, following legislative action in 1998, to the Contoocook, North Branch, Lamprey, Swift, and Upper and Lower Merrimack Rivers. In hopes of eliminating confusion for the 26 municipalities that lie along the Connecticut River, we asked well over a year ago that DES write them to clarify this question, and assure them that the provisions of the Act do indeed apply to their permitting decisions and to their riverfront landowners. Despite subsequent requests, to our knowledge this has not yet been done.

Public education concerning shoreland protection along rivers could improve

CRJC has been working with our local river subcommittee members to help their local conservation commissions contact landowners along the river and other protected water bodies to alert them of the state law, but efforts such as these need consistent support from the state. Nearly a decade ago, the State of Maine published an attractive handbook for shoreland owners to help them understand that state's shoreland law. This presents an excellent example for New Hampshire.

There has long been a focus upon lakes and ponds in the shoreland office at DES, to the detriment of rivers and streams. We noted over a year ago that the Shoreland Protection Waterbody Query on DES's web site does not include rivers and streams, even when they are covered by the Act. In addition, the DES fact sheet # WD-SP-4, "Shorelands Under the Jurisdiction of the Comprehensive Shoreland Protection Act," is not clear what specific rivers are covered by the Act. It would be a great service to all if this valuable area of DES's web site could be updated and clarified with a listing of those designated rivers that are under the jurisdiction of RSA 483-B.

The public is often uninformed about the provisions of the act, and we receive regular complaints about homes built too close to the water or landowners who have cut down the shoreland buffer. A requirement for real estate agents to inform shoreland buyers about the law would go a long way toward averting such problems and reduce the need for enforcement actions.

Potential to improve stormwater-related provisions

Stormwater runoff is gaining increasing attention as a source of contamination. An updated Shoreland Protection Act could incorporate limits for impermeable areas. Research shows that streams draining watersheds with greater than 15% impervious surfaces suffer habitat degradation and poorer water quality.