

LAKES MANAGEMENT ADVISORY COMMITTEE

Comprehensive Shoreland Protection Act: Challenges and Recommendations

Since the Comprehensive Shoreland Protection Act (RSA 483-B) was enacted, the Lakes Management Advisory Committee (LMAC) has discussed the merits and shortcomings of the Act. Listed below are some suggested challenges, supported by rational and/or explanation statements, with one more suggested recommendation(s) for the Committee's consideration.

MINIMUM STANDARDS

1. **Challenge: Strengthen the provisions relative to water quality.**
 - Many factors affecting water quality are not dealt with sufficiently, leading to the potential for continued water quality compromise. Factors such as continued loss of vegetation buffers at the immediate shoreland, large areas of impervious surfaces close to shoreland, and the existence and continued use of old, substandard septic systems continue to threaten water quality and must be remediated for the CSPA to be fully effective.
 - Statewide regulations to protect the fragile immediate shoreland zone would enhance the effectiveness of the CSPA and preserve the water quality and aesthetics of our waterbodies.

Recommendations

- Establish a maximum percentage of impervious surface within the 250 foot CSPA jurisdictional area and/or all runoff shall be treated and infiltrated.
- Add a definition for impervious surface to include any street, road, structure, driveway, accessory building, and certain landscaping including, but not limited to lawns, covered and uncovered patios and walkways.
- Existing developed sites that are nonconforming to the impervious surface area would be grandfathered, but restricted in further site development other than maintenance in its existing state, unless that development makes the site more conforming with the CSPA standards.
- Establish a 75 foot no-disturb shoreland buffer for all lakes and rivers, except for a six foot wide unpaved winding path leading to the shore for each property. Dead, diseased, unsafe, or fallen trees may be removed when certified by a licensed arborist, town conservation official, or certified CSPA agents.
- Establish a mandatory phasing in of rebuilding old septic systems

- a) for lakes with the highest evidence of ongoing septic contamination, based on water quality data, and
- b) when converting seasonal dwellings to year round dwellings based on the age and capacity of the system and expected increase of usage to include bedrooms and bathrooms and other water consuming devices.

2. Challenge: **Consistency of regulations and zoning ordinances is needed**

- Land use regulations and/or zoning ordinances tend to vary from town to town. One town's regulations may conflict with a neighboring town's ordinances. Consistency of regulations and/or ordinances is needed on a watershed scale and/or state wide basis.

Recommendations

- Water quality data is used to develop regulations for threatened or impacted waterbodies. Land use regulations and/or zoning ordinances should be amended to ensure that they are consistent among all towns located on the shoreland of the affected waterbody.

3. Challenge: **Existing minimum standards for removal of the natural woodland buffer is confusing.**

- Basal area is confusing to calculate for residential property owners. Residential ownership often changes, when this occurs it is difficult to determine the percentage of saplings that have been removed in the past 20 years.

Recommendations

- Establish a 75 foot no-disturb shoreland buffer for all lakes and rivers, except for a six foot wide unpaved winding path leading to the shore for each property. Dead, diseased, unsafe, or fallen trees may be removed when certified by a licensed arborist, town conservation official, or certified CSPA agent.
- Upon enactment of the revisions to the CSPA all current property owners are required to submit a record to include pictures of the status of the natural woodland buffer, impervious surfaces, and other environmental factors, such as septic system effectiveness.
- Prior to the title transfer the current owner shall create a record to include pictures for DES of the status of the natural woodland buffer and the percentage of impervious surfaces.
- Define the beginning of the 20 year period of allowable cutting if not already done so for a given property as the date of the current owner's title.

PERMITTING/ENFORCEMENT

4. **Challenge: Enforcement penalties are too lenient.**

- Due to the nature of the business of shoreland property development, stringent fines must be in effect to discourage violations of the CSPA. Present fines are inadequate deterrents to violations of the CSPA provisions, especially with regard to clear cutting.

Recommendation

- Add a definition for clear cutting to RSA 483-B: 4 and revise RSA 483-B: 18 to include a fine for clear cutting.
- Change the basis of CSPA violation fines to equal a percentage of the cost of the building project, since present fines are considered by many simply a “cost of doing business.” Fines in the range of 50% of the total cost of the building project and restoration should prove to be a significant deterrent.
- Add a mechanism to review and adjust CSPA fines every five (5) years to maintain the effective deterrence of CSPA fines. This is especially important due to the volatile nature of property values and housing costs.

5. **Challenge: Lack of enforcement**

- Due to the critical importance of shoreland preservation, significant resources must be committed to enforce the provisions of the CSPA. Enforcement officials must be trained and updated on any changes to the CSPA.

Recommendations

- A permitting process for shoreland development would provide a tool for enforcement as well as a potential funding base. Enact a permitting process similar to the wetlands permitting process. Charge the applicant a realistic and adequate fee which would provide supporting revenue for the administration and enforcement of CSPA. A minimal portion of the fee would go to the town and the remainder would go DES. The money would be used to fund an additional DES staff person to review applications that fall within the provisions of the CSPA. The town would then forward the submitted application to the local Conservation Commission for review and comment.
- On site verification of the application by a certified CSPA agent must be completed within 30 days of the receipt of the application.
- DES should establish a certification program for all those involved in the administration and enforcement of the CSPA. Individuals who attend a training

session and pass an exam administered by DES would be certified CSPA agents. Recertification training would be required on an annual basis so that certified CSPA agents stay current and up-to-date.

- Simplify the complaint/violation process to expedite investigation and resolution.

NONCONFORMING STRUCTURES

6. **Challenge: Many existing structures are nonconforming**

- With the passage of new provisions to the CSPA many existing structures would become nonconforming.
- The continued existence of large numbers of nonconforming structures limits the ability to improve water quality in the future.

Recommendations

- Grandfather existing nonconforming structures upon the approval of the new provisions to the CSPA.
- Grandfathered nonconforming structures may be maintained in their existing state and no structural changes allowed unless that development makes the site more conforming with the CSPA standards.
- Expansion or improvement of grandfathered nonconforming structures, in a manner not consistent with the above, must be heavily sanctioned, with any revenue from these sanctions used to fund CSPA enforcement.
- Sanctions for recurrent offenses should include the removal of the grandfathered nonconforming structures and the restoration of the affected shoreland to its unaltered natural condition at the owner's expense.
- Ban dug-in boat houses, since they conflict with the intent of the CSPA.

EDUCATION

7. **Challenge: Lack of understanding/knowledge**

- Ignorance of the law is no excuse. Once fragile shoreland is disrupted, it is difficult or impossible to restore. Citizens should be educated regarding the ecological importance of the shoreland environment, so that each can potentially be a steward of the "public trust".

- The CSPA is complex and is often misinterpreted and misunderstood.

Recommendations

- DES has only one staff person to conduct education and outreach for the CSPA. This is a necessary component that will only increase in importance as changes to the CSPA are implemented. DES staff should be increased to address the provisions of the CSPA.
- Hold annual regional seminars for realtors, contractors, marine contractors, and towns to increase education and awareness of the provisions of the CSPA.