
HCPC NEWSLETTER

Hancock County Planning Commission

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PLANNING NEWS

By Tom Martin

NEW WATERFOWL AND WADING BIRD HABITAT RULES

There has been considerable discussion in the press recently about the new waterfowl and wading bird habitat rules. This article is based on the current rules (late 2006) as reported by the DEP. Further changes in the law governing the rules may occur in 2007. The HCPC will keep towns posted on these changes. The rules will be the topic of a HCPC workshop on January 31, 2007 (storm date: February 1, 2007). See related article on page 4.

Background

The DEP now regulates activities in and adjacent to high and moderate value waterfowl and wading bird habitat and in shorebird nesting, feeding and staging areas. These areas are mapped on a GIS data layer developed by the Maine Department of Inland Fisheries & Wildlife (DIF & W) and available from DIF & W or Maine DEP. Rules that define these habitats and establish licensing criteria are found in Chapter 335, copies of which are available by mail or on the DEP website at www.maine.gov/dep/blwq/docstand/nrapage.htm. The maps for Hancock County can be found at: hpcpcme.org/landuse/hancockcounty/index.htm

Waterfowl and wading bird habitats

A. Inland habitat: The DIF & W has identified high to moderate-value inland habitats, which are regulated under the Natural Resources Protection

Act (NRPA). A high to moderate-value inland habitat is a complex of freshwater wetland and open water areas, and includes a 250-foot wide zone surrounding the wetland complex. The zone may include upland areas outside of the wetland.

B. Tidal habitat: The DIF & W has rated the inter-tidal area along the coast that is of high or moderate-value to waterfowl and wading birds. A high to moderate-value tidal habitat includes only the identified tidal habitat areas.

Shorebird Nesting, feeding and staging area: The DIF & W has identified important inter-tidal areas that have a concentration of shorebirds that feed and congregate. These habitats are important to species such as sandpipers and plovers. These habitats include the inter-tidal zone and a 250-foot adjacent area.

What has changed?

Previously, DEP regulated activities in high and moderate-value waterfowl and wading bird habitats to the extent that they were located in a freshwater wetland. Only the wetland and the area within 75 feet of it were subject to NRPA jurisdiction. Now, all the significant habitats described above are regulated if they meet specific criteria and are located on a GIS data layer maintained by DIF & W.

What kind of permit is required for projects in these habitats?

There is currently no Permit By Rule (PBR) available for activities located in the habitats, so an individual NRPA permit is required. The DEP is currently working with DIF & W staff to develop new PBR standards to allow certain activities to occur within the habitat. Regulated activities in existing, developed areas, such as adding a garage, may be eligible for the PBR process once rules are adopted. The Department anticipates that new PBR standards will become effective in December 2006.

What if we need an individual permit?

If the proposed activity requires an individual permit, you will need to mitigate the activity just as is done for projects in other protected natural

resources. First, you must demonstrate a need for the activity to be within the habitat. If you own property outside of the habitat, you need to demonstrate why that area cannot be used. Second, if locating within the habitat can't be avoided, you must minimize the amount of development that occurs. Lastly, if after demonstrating you have avoided the habitat and minimized the amount of impact, it may be necessary to compensate for the impact. Compensation may involve preserving land or even improving the remaining habitat or buffer.

How can we learn more?

Contact the Bangor DEP office (888-769-1137) and speak to the "on call" person in the Land and Water Bureau, Division of Land Resource Regulation or call the HCPC.

BROOKINGS REPORT: A LOOK AT MAINE'S FUTURE

What is the report and why was it done?

The report was commissioned by the group *Grow Smart Maine*, a private, non-profit organization whose mission it "to promote sustainable prosperity and to protect the state's distinctive character and quality places". The report examines overall trends in the state and makes recommendations for the future. The HCPC has taken no formal position on the report's findings. This summary is presented to spark discussion. Those with alternative views are welcome to present them for inclusion in a future edition of the HCPC newsletter.

What did the report conclude about recent trends in Maine?

While Maine's population virtually stopped growing in the 1990s, it is now growing at a faster rate. Since the 1990s, the state has jumped from being the 46th state in its rate of growth to the 26th, the biggest acceleration of any state. Maine is now growing faster than any other New England state except New Hampshire. The state also has the nation's fifth highest in-migration rate. The state as a whole is attracting people with higher incomes and more young adults. As everyone in Hancock

County knows, housing prices in coastal regions have increased rapidly.

Our economy is shifting away from one based on goods productions and natural resource industries toward innovation-oriented service operations. While the number of jobs in the state has increased, overall pay increases have been modest, especially in rural areas. This is because the many of the older, high paying manufacturing jobs have been replaced by lower paying consumer service jobs.

Maine's rural towns are growing. Statewide, 1,300 square-miles of rural land were developed between 1980 and 2000. The only state in the 1990s to have lost a greater proportion of its rural land was Virginia. While development has revitalized many towns, it also has many costs such as new schools and longer commutes as people seek less expensive housing further away from their jobs.

The report identifies three state-level policy challenges: an inconsistent economic development policy, generally high government costs and an unbalanced revenue system, and barriers to development in traditional regional hubs combined with weak local and regional growth management. This has resulted in more growth outside of larger towns and cities while many built-up areas have received little investment in recent years.

What does the report recommend?

The three major recommendations are:

1. Establish a \$190 million Maine Quality Places Fund to promote revitalization of Maine's towns and cities, protect rural areas and promote land conservation. The study proposes this fund be funded by a 3-percent increase in the lodging tax.
2. Support a \$200 million Maine Innovation Jobs Fund to assist emerging sectors of the economy. This would be financed by government efficiency savings discussed under recommendation number 3.
3. Trim government to invest in Maine's economy and finance tax reduction. These

reductions would be accomplished by establishing a Maine Government Efficiency Commission to recommend ways to eliminate redundancies, reduce school administrative expenditures and promoting pilots for regional delivery of services.

The Brookings Report was unveiled at the 2006 Annual GrowSmart Maine Conference held in October. The conference offered over 800 attendees a variety of workshops on issues relating to lane use, transportation, the economy and health. Jim Fisher moderated a session on integrating transportation into building healthy communities.

The Brookings report is available online at <http://www.brookings.edu/metro/maine>

RECENT MAINE COURT CASES

By Madge Baker, Esq. Reprinted from the Southern Maine Regional Planning Commission Newsletter

Logan v. City of Biddeford, Maine Supreme Judicial Court, decided August 17, 2006

Contiguous lot case

Facts: Robert Logan owns four contiguous lots, two of which are vacant, lots 29 and 30. He applied for a building permit to build one residence on the vacant two lots, which lots when combined still did not constitute a conforming lot. The intervenors appealed the issuance of a building permit to the Zoning Board of Appeals. The ZBA found that while the Shoreland Zoning Ordinance allows for an exemption from the merger provisions, the General Zoning Ordinance does not. The ZBA decided that the more restrictive ordinance controls and ruled that the CEO should not have issued a building permit. The ZBA's decision was overturned at Superior Court. Justice Fritzsche ruled that the more specific provision in the Shoreland Zoning Ordinance controlled.

Issue: Do the two ordinance provisions in fact conflict, because if they do the stricter controls?

Ruling: The Shoreland Zoning provisions exempt lots from the merger provision if the lot or lots can accommodate a subsurface waste disposal system that complies with State regulations and are at least 20,000 square feet. Logan's lot would meet these requirements. The General Ordinance requires a conforming lot in order for a second residence to be built on the four lots (There is one residence there already.) The Court ruled that since the application of the General Ordinance and the Shoreland Zoning Ordinance achieve different results they do in fact conflict. When they conflict the stricter controls. Therefore, the ZBA was correct: the building permit should be denied.

Viles v. Town of Embden, Maine Supreme Judicial Court, decided August 31, 2006

Zoning case

Facts: Mr. and Mrs. Viles own lots 7 and 21. These lots were originally part of a larger tract of land on the shores of Embden Pond. Lot 7 has 50 feet of frontage on the pond. In 2003 the Viles obtained a permit to build a house and garage on Lot 7. The abutter, Mr. Hinman, in September wrote a letter complaining about the permit. It was discussed at the next Planning Board meeting. The CEO and the Viles made some amendments to the dimensions in the building permit, which reduced the size of both the house and the garage. Then the abutter filed two appeals to the ZBA seeking revocation of the original permit and the amended permit. The ZBA dismissed the appeals as untimely. Hinman appealed to Superior Court. Superior Court concluded that the appeal of the first building permit was timely pursuant to "the good cause" exception to the 60 appeal period requirement. (In this case there was no time limit in the ordinance, in which case 60 days is normally the standard.) The second appeal was also timely. The Superior Court remanded to the ZBA. The ZBA ruled that the building permit should be rescinded on the basis that Lot 7 was not a nonconforming lot of record. The Viles appealed.

Issues: Were Hinman's appeals filed in a timely manner? And was lot 7 a nonconforming lot of record and therefore buildable?

Ruling: The Court spent considerable effort analyzing whether this case met the "good cause" exception from filing a timely appeal. (Thus this case provides a very useful review of that law if you are interested.) The Justices ended up finding fault with the state shoreland zoning statute which does not require notification of permit applications or permit issuance to landowners in the immediate neighborhood. As a result, the abutter in this case had no way of knowing of its issuance until months after the permit was issued. What the Court found was the abutter, as soon as he saw the stakes in the ground, contacted the Town. The town officials thought his challenge had enough merit for the CEO to issue a stop work order and look into the matter. The fact that the abutter acted immediately led the Court to agree with Superior Court that there was "good cause" for applying an exception to the 60-day appeal period. The analysis of the question whether the lot is a nonconforming lot of record is also thorough. In this case Lot 7 was part of a tract in excess of 80 acres until after the Shoreland Zoning ordinance had been adopted. Therefore, the Justices ruled that Lot 7 was not a nonconforming lot of record, and it could not be built upon.

SUBDIVISION DEVELOPMENT AND PERSONAL PROPERTY RIGHTS:

Striking a Balance in Hancock County

by Tom Martin

***Striking a Balance* workshop scheduled for January 31 focusing on DEP Rules**

The Hancock County Planning Commission has scheduled its eighth workshop in the Striking a Balance series for January 31, 2007 (storm date: February 1, 2007) at the VFW hall, Washington Junction Road in Ellsworth from 5:00 PM – 8:30 PM. Pre-registration is required. Details on registration will be mailed to all towns and posted on our web site (www.hcpcme.org).

The anticipated topics are:

1. DEP's new stormwater rules, *speaker to be announced*;
2. Vernal pool rules, *Jeff Madore, Maine DEP*;
3. Waterfowl and Wading Bird rules, *Jeff Madore, Maine DEP*; and
4. Proposed Legislative Changes, *Representative Ted Koffman*.

HANCOCK COUNTY BROWNFIELDS INITIATIVE

While we often think of Hancock County as a pristine, rural area, it does have several potential brownfields sites. The term brownfields refers to abandoned or underutilized properties that may be contaminated. A report by the Maine DEP revealed that there were 86 potential brownfields sites in the 28 Hancock County towns that responded to the survey. These included auto repair operations (33), agricultural sites (fifteen), gas stations (thirteen) and junkyards (thirteen). There were also smaller numbers of manufacturing, wood and food operations and a tannery. Based on anecdotal reports, there are likely other sites.

As we go to press, the Hancock County Planning Commission is preparing an application for a county-wide brownfields assessment study. The first step in the study will be to conduct a more thorough inventory of possible sites. The next step will be to hire an engineering firm to conduct an in-depth analysis of several brownfields sites. The firm will identify potential contaminants and recommend clean-up measures. There are separate grants available for the actual site clean-up.

Cleaning up brownfields sites not only removes potential sources of contamination, but can complement other community improvement efforts. For example, brownfields redevelopment has been an important part of the Ellsworth waterfront improvement project. Other sites have the potential to be reused as business parks or green space.

If you have any ideas about sites that should be included in this study, please contact Tom Martin at the HCPC. Also, we would welcome anyone to participate in our steering committee. This committee is expected to meet three to four times a year and would help establish priorities for brownfields site selection.

CDBG NEWS

by Tom Martin

The Community Development Block Grant application season is now upon us. If you did not file a letter of intent by December 1, 2006, you are not eligible to apply for Public Facilities or Public Infrastructure funds this year. The HCPC is available to help towns with the other application packages. In addition to application writing experience, we are knowledgeable about income qualification requirements, citizen outreach strategies and the details of the various grant categories.

TRANSPORTATION NEWS

by Jim Fisher

Strategic Investment Plan for Corridors of Regional and Economic Significance (SIPCREs)

As part of the Maine Department of Transportation's long range planning process, regional planning councils were asked to facilitate a process to recommend long range transportation investments for MaineDOT.

A collaboration of HCPC, Washington County Council of Governments, Penobscot County Council of Governments and Mid-Coast Regional Planning Commission has recently completed the SIPCREs report and posted it online. We used a variety of data sources for this report, including our 2005 Regional Needs Assessment, adopted regional and municipal comprehensive plans, municipal requests to MaineDOT. We also met with a variety of community and regional organizations to discuss transportation priorities and refine the report.

Our recommendations are long term investments prioritized with respect to economic vitality; safety

and security; community and environmental preservation and enhancements; and transportation system sustainability. The report does not discuss investments that are already funded or that are small in scale. For example, ongoing and needed road maintenance, are already part of Maine DOT's project planning and investment process and are not considered in this study.

Penobscot River Corridor (Rte 15, Rte 1A, Brewer-Bucksport RR, Penobscot River)

1. East Coast Greenway: Study and construct an off-road bicycle and pedestrian trail along the Penobscot River from the city of Brewer's waterfront to the town of Bucksport waterfront.
2. Penobscot Narrows Transportation Plan: Implement transportation recommendations of the Penobscot Narrows Transportation Plan, including improved water access, transit services, trails and information program.
3. Improve Mobility and Safety on US Route 1A (Searsport to Bangor): This project will improve the efficiency and safety of the corridor.

Downeast Coastal Corridor (Route 1, Route 9, Connector Roads, Calais Branch)

1. Downeast Regional Airport: Construct new airport in greater Machias Region to serve regional passenger and freight needs. Re-use existing airport for mixed use development.
2. Eastport Regional Connector Road and Bridge: Reconstruct the former bridge connecting Eastport mainland, improve highway connections to Meddybemps and Route 9.
3. North – South Connector Routes: Improve state highways connecting Route 1 with Route 9 including Route 46, Route 193, Route 192 and Route 191.
4. Route 1 Mobility and Safety: Complete road improvements on coastal Route 1 between Bucksport and Eastport. Add passing lanes, turning lanes, paved shoulders and other improvements to facilitate traffic flow and safety.
5. Downeast Sunrise Trail: Convert rails to multi-use trails between Washington Junction in Hancock and Ayers Junction. Add visitor

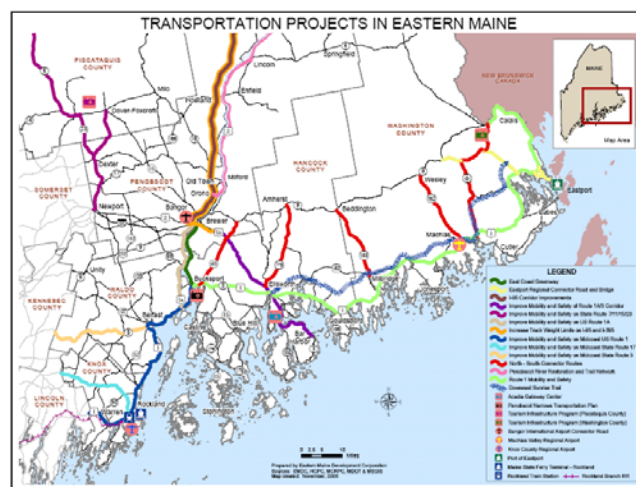
information, way-finding signage, parking facilities and other support infrastructure.

6. Tourism Infrastructure Program: Implement transportation related recommendations of the Fermata Study, Flanagan Report and other studies to enhance visitation to Washington County.

Acadia Express Corridor (Route 1A)

1. Improve Mobility and Safety of Route 1A/3 Corridor (Bangor to Bar Harbor): Complete road reconstruction between north Ellsworth and Ellsworth (center).
2. Acadia Gateway Center: Contribute funds to the construction of an intermodal facility and information center in the town of Trenton to serve visitors to Acadia National Park and surrounding areas.

The full SIPCRESS report is available at: www.hcpcme.org/transportation/needs.



Penobscot Narrows Plan Online

HCPC recently completed a draft of the Penobscot Narrows Passenger Transportation Plan. The Penobscot Narrows is the vital western edge of Hancock County and includes Bucksport, Orland, Verona Island and Prospect in Waldo County. Recent investments in the region, particularly the new Penobscot Narrows Bridge triggered a deeper analysis of the current passenger transportation infrastructure and explorations of potential future investments.

The Penobscot Narrows Passenger Transportation Plan seeks to identify opportunities for improving human and vehicular movement in Bucksport, Orland, Prospect and Verona Island. The plan summarizes current conditions, transportation demands in the region, and provides a number of recommendations for future investments.

The Penobscot Narrows area, like a large part of Hancock County, has tremendous recreational assets including Fort Knox, the “Wild-lands” of Great Pond Mountain, the Penobscot River, Toddy Pond, the Alamo Theater, historical societies, the river walk and more. Cruise ship visitation to Bucksport is increasing, tourism to Fort Knox remains strong and local festivals are growing in popularity. The Maine Department of Transportation is banking on the success of the new Penobscot Narrows Observatory to draw more visitors to the area and literally provide the big picture.

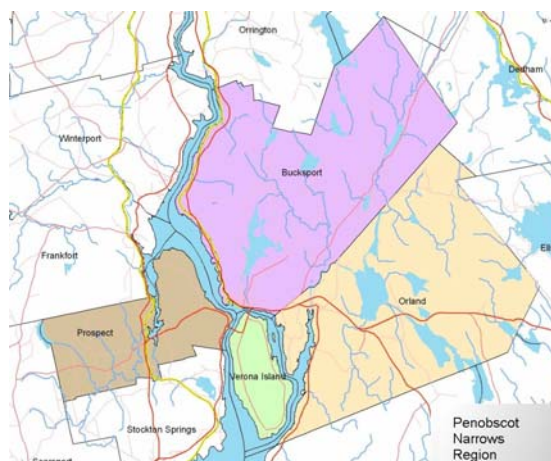
Continuing the process of building an interconnected network of these natural and recreational assets would have widespread benefits. Residents benefit with healthy places to exercise and relax, safer places for children to walk, and easier commutes for people who live near work and prefer not to drive. Visitors benefit with opportunities to walk, bicycle, and paddle and learn about regional history. The local economy benefits with expanding demand for restaurants, lodging, higher residential property values and a diversified mix of businesses and occupations.

The report recommends further consideration of some specific ideas offered by participants in the planning process. These include:

- Seek sustainable transit services between this region and Bangor,
- Extend local shuttle bus routes during the summer season to include Fort Knox, the Penobscot Narrows Bridge and possibly the Great Pond Mountain area,
- Complete the streets, closing gaps in the bicycle and pedestrian infrastructure, including exploration of the potential for a Brewer-Orrington-Bucksport trail,

- Test the feasibility of a small docking facility at Fort Knox to permit water-based visitation and direct connection to the Bucksport waterfront, and
- Improve traveler information systems including web-based, print media, traveler informational and interpretive signage.

The plan is still pending review, but for persons with high speed internet, you can find it posted at www.hpcme.org/transportation/penobscotnarrows



GRANT NEWS

by Tom Martin

2006 PROJECT CANOPY ASSISTANCE GRANTS AVAILABLE

Project Canopy Assistance Grants are available to state, county, and municipal governments, educational institutions, and non-profit organizations for developing and implementing community forestry projects and programs. Project Canopy, a cooperative partnership between the Department of Conservation’s Maine Forest Service and the Pine Tree State Arboretum, anticipates that \$200,000 will be available to support community forestry projects in the following categories:

Inner-city improvement

\$10,000 maximum award

Projects improve the health and livability of Maine’s most urbanized and underserved neighborhoods.

Planning and Education

\$8,000 maximum award

Projects support long-term sustainable community forestry management and efforts to increase awareness of the benefits of trees and forests.

Planting and Maintenance

\$3,000 maximum award

Projects increase the health and livability of communities through sound tree planting and maintenance.

To be eligible to apply for 2006 Project Canopy Assistance grants, all applicants must attend a grant workshop prior to submitting an application (excluding previous workshop attendees).

Grant workshops are scheduled for the 3rd and 4th weeks in January, will be held in various locations throughout the state, and will cover topics including grant writing, project development, sustainable community forestry management, and grant administration. Grant applications are due to the Maine forest Service at 5:00 pm on March 16, 2007.

For complete grant application and workshop information, please visit the Project Canopy website at www.projectcanopy.org. You can also learn more about the Project Canopy assistance program by contacting Becky Tavani by phone 207-287-4987, or by email at becky.tavani@maine.gov

HEALTH NEWS

by Jim Fisher

Common Health's Fourth Anniversary

Common Health is approaching its fourth anniversary on WERU 89.9 FM. For the past year this program has been organized and hosted by Jim Fisher at HCPC with support from Healthy Hancock and the University of Maine Cooperative Extension. This year we have featured a wide range of public health topics including

homelessness, the bird flu pandemic, locally grown food, substance abuse and violence. You can hear the broadcast live at 10:00 AM on the third Wednesday of each month. You can hear archival recordings of all of our broadcasts on the web at www.commonhealth.org. We invite your comments, questions and program requests.

SOLID WASTE

By Tom Martin

About 200 residents braved a dark and stormy Saturday to attend the MDI Household Hazardous Waste and Universal Waste Collection on October 28th. An estimated 297 units (a unit being five gallons or twenty pounds of household hazardous waste) were collected from 8 towns. There were also 411 units of universal waste collected from the 8 towns participating. Demand for universal waste disposal appears particularly high at the moment due to rapid obsolescence of computers.



Tony Smith, Director of Acadia Disposal District volunteering at the MDI HHW Collection

GIS MAPPING

Watershed Mapping

The Town of Dedham recently approached HCPC with a challenging question. Several town-owned parcels are under a forest management plan, but the town was not sure into which watersheds the parcels drained. This kind of basic information is important in determining how land should be managed and how future development will affect water quality. In Dedham's case the parcels appeared to be near a divide between two major

watersheds, the Penobscot River and the Union River. On further analysis, the parcels were on the boundary of two smaller pond watersheds both of which drain into the Union River. HCPC staff can often answer this sort of question quickly using our geographic information systems software and data provided by the Maine Office of GIS with data that we have created in-house.

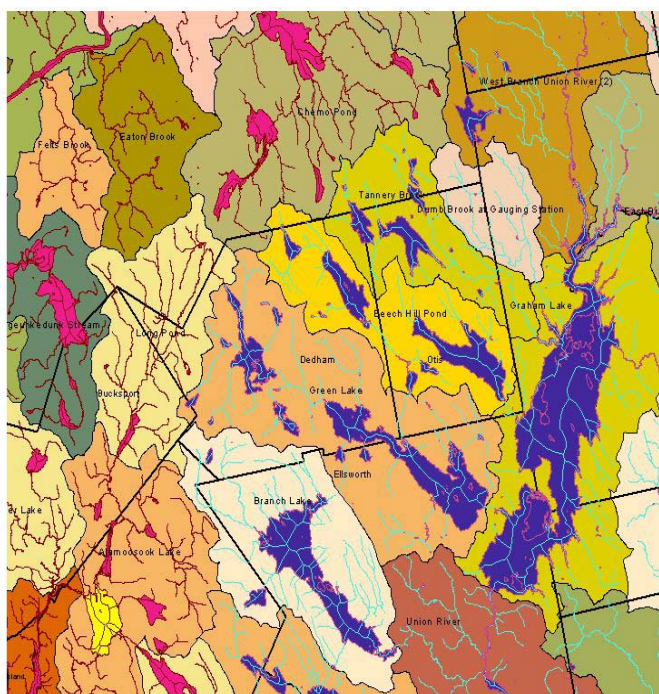
The critical piece of information that we were missing for Dedham was a digital tax or parcel map. The HCPC in collaboration with towns, College of the Atlantic, Frenchman Bay Conservancy, Blue Hill Heritage Trust and a mix of state grants has assembled parcel maps for many, but not all of our towns. We encourage towns to apply for parcel digitizing grants in order to improve the usefulness of the maps and to identify possible errors in the paper maps or town records. The State will probably solicit proposals for parcel maps this winter. HCPC can assist towns to prepare proposals and locate available contractors to carry out the work. Please contact Jim Fisher for further information. (see map on right)

Jennifer Boothroyd hired as Planner I

We are pleased to welcome Jennifer Boothroyd to our team. Jennifer is in the final stages of completing her Master of Public Administration degree from the University of Maine at Orono. She brings to the agency several years experience working for the Maine DEP. In addition to a strong environmental background, she is very proficient in statistics and full of enthusiasm. She begins full-time effective January 2, 2007. She will be working initially on transportation and healthy community projects.



Town of Dedham
Watershed Map



*Scenes from the HHW
Collection at MDI High
School on October 28th*

**HAPPY
HOLIDAYS!**