

Construction activities in shore areas

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Summary of audit results

The National Audit Office (hereinafter NAO) assessed whether the organisation of building at shores and banks of water bodies ensures that public interests are protected efficiently and the possibilities of environmental damage and illegal construction are eliminated.

What did we audit?

The institutions audited were local governments, the Ministry of the Environment, the Ministry of the Interior (including county governments) and the Ministry of Economic Affairs and Communications.

Why is this audit important?

In Estonia, there are many shores and banks of water bodies preserved in natural state. These areas are national assets, which serve as important valuable habitats, provide migration trails for wild animals and recreational opportunities and ensure the spatial availability of nature sites, as well as the protection of the aquatic environment. A large part of shores and banks belongs to the EU Natura 2000 network of nature protection areas. In the national Environmental Action Plan for 2007–2013, the state has set an objective to ensure that the number of shore areas in natural state would not decrease compared to the year 2005. In order to meet this objective and protect the values related to shores and banks, building is allowed in these areas only in exceptional circumstances.

Compared to many other European countries, the shore areas in Estonia are in a better state, which should be maintained. The government of the United Kingdom, for example, has decided to spend approximately 50 million pounds over the next 10 years in order to provide the public with access to and recreational opportunities along the whole coastline.

What did we find out and conclude as a result of the audit?

As a result of the audit, the NAO found that the natural values of shores and banks and other public interests are adequately protected neither against private interests nor illegal construction, while these values may be affected to the extent that they are costly or impossible to restore. The problem is caused by the fact that the public is not sufficiently involved in the spatial planning of shores and banks and the construction is permitted without considering the needs for and the effects of making such an exception. The supervision of building on shores and banks as exercised by local governments is not efficient and illegal construction activities are not followed by effective penalties.

Main observations regarding the construction activities on shores and banks of water bodies and the shortcomings in planning are the following:

- **In planning construction onto shores, local governments do not always establish local interests and do not consider the environmental impact of these activities.** Many local governments do not have a comprehensive plan to direct the development in a consistent manner, which is why it is impossible to compare private interests with public interests and eliminate violations of public interests when preparing detailed plans. In preparing detailed plans that involve decreasing of building exclusion zones, the local governments do not consider on their own whether the exception is justified and do not assess the environmental impacts of the planned activity. The procedures of preparing detailed plans are inclined to favour private interests, as the public does not participate in this process as actively as in preparing the comprehensive plan and it is impossible to assess the cumulative impact resulting from many buildings. This is why amending comprehensive plans repeatedly with detailed plans runs a risk of replacing the natural environment of shores and banks gradually with the man-made environment and overloading both the mainland and the aquatic environment to the extent that natural values are affected.
- **The restrictions set on building on shores and banks are neither uniform nor clear.** The criteria the law provides for decreasing building exclusion zones are not implemented in consistent and transparent ways, while contradictory decisions have been made in apparently similar circumstances. The Minister of the Environment has repeatedly decided to decrease building exclusion zones without providing any substantive justification for that. Furthermore, the definitions of densely populated area, built-up area and building exclusion zone, as provided by the law, are vague, which is why the restrictions of the legal acts regulating building on shores and banks are implemented in different and selective ways in different parts of Estonia.
- **County governments' supervision over detailed plans is not efficient.** Regardless of the duty the law imposes on local governments to send all detailed plans that amend the comprehensive plan to the county governor for supervision, this is not done. Therefore, it has not been ensured that the state could control whether the solutions of comprehensive plans established in collaboration with the public are amended only if this proves to be necessary and does not endanger the conservation of green zones and corridors designated with county plans.
- **Supervision of illegal and unauthorized buildings is insufficient and local governments make procedural mistakes in issuing construction permits.** Many local governments do not check systematically whether the building is carried out according to the construction permit and within the restrictions set in the permit. Therefore, violations are not discovered and processed early enough to make it possible and reasonable to restore the situation preceding the violation. The surveillance activities of the Technical Surveillance Authority and the Environmental Inspectorate do not compensate the omissions of local governments. Many unwelcome buildings are raised on shores due to the procedural mistakes of local governments. The local governments are not capable to ensure that all procedural

norms are observed and issue construction permits that do not comply with legal requirements. County governments in turn do not exercise any supervision over the construction documents of local governments, so the violations remain undiscovered. This has enabled to raise buildings on shores and banks, which should not be there.

- **Illegal or unauthorized construction is not followed by a reaction, which would express state's intolerance in response to such illegal activity.** Fines and penalty payments are insignificant compared to construction prices and thus do not help to prevent or stop illegal construction. It is easy to legalise unauthorized and illegal buildings, which is why in many cases the construction is started before a construction permit is issued or no permit is requested at all. Demolition of unauthorized buildings has been required only in few cases, while most of such buildings have been legalised afterwards. In issuing permit to a building that is already completed, the local governments do not assess whether the construction on shore would have been acceptable if the person had acted in compliance with the law. The fact that legalisation is so easy intensifies the sense of impunity.

Responses from the Minister for Regional Affairs, the Minister of the Environment, the Minister of Economic Affairs and Communications and the representatives of local governments:

The Minister for Regional Affairs agrees with the observations made in this audit and intends to take into consideration several recommendations through the work of the commission, which has been convened with a purpose to amend the Planning Act and the Building Act. The Minister regards it especially important to make planning supervision more efficient at the county level and change the organisation of planning of shore areas in a way that building exclusion zones could be decreased only on the basis of comprehensive plans. The Minister also prioritises the need to integrate strategic environmental assessment into the planning process.

The Minister of the Environment concurs with the observations of the audit and is willing to implement several NAO's recommendations in order to eliminate the shortcomings identified in this report. Opposed to the Minister for Regional Affairs, the Minister of the Environment does not find it reasonable to permit the decreasing of building exclusion zones only on the basis of comprehensive plans. An essential solution would be to make local governments more competent in the supervision of planning and construction, to revise the restrictions on building on shores and banks as follow from the Nature Conservation Act and to involve more public into the process of spatial planning.

The Minister of Economic Affairs and Communications assesses the possibilities to implement the recommendations made in this audit in his letter of reply and is willing to undertake additional analyses and also to amend the Building Act in order to follow several recommendations. Improvements of the Construction Register are under way as well. In the opinion of the Minister, he lacks the capacity to design solutions, which could help local governments to ensure the presence of persons supervising construction activities, as this is in the competence of the

Minister for Regional Affairs. However, the **National Audit Office** calls attention to the need for finding solutions for the cooperation of the Ministers in this area.

Most of the audited **rural municipalities** agreed with the conclusions of the audit, while several of them explained the reasons for the present situation. In order to solve the situation, many municipalities regarded it especially important to specify the definitions of legal acts, provide local governments with training and prepare guidelines for them regarding the requirements of planning, construction and environmental impact assessment.

The NAO also requested the opinion of the **Association of Municipalities of Estonia**, which complied with the conclusions and did not complement the recommendations made in this audit report.

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Overview of the subject field

Shores and banks

A shore – the lands immediately adjoining the Baltic Sea, Lake Peipus, Lake Lämmijärv, Lake Pskov, Lake Võrtsjärv are called shores.

A shore or a bank of a water body – a land zone immediately adjoining a sea, lake, river, reservoir, brook, spring or land improvement system, which is used pursuant to special requirements and protected under the Nature Conservation Act.

Shores and banks are protected in order to preserve the natural biotic communities present, to curb the harmful impact of human activity, to promote human settlement systems that consider the specific character of shores and banks and to guarantee unrestricted movement within and unrestricted access to these territories.

The natural state of shores and banks

Did you know that?

About half of Estonia's coastline belongs to the EU Natura 2000 network of protected areas.

The River Pärnu is designated as a Natura 2000 site almost at its full length.

About 20% of the shore areas and about 45% of the aquatic zone of Lake Peipus and Lake Lämmijärv are Natura 2000 areas.

1. Estonia's coastline is estimated to be 3780 km. In addition, there are the **shores** and **banks** of about 1500 lakes and the banks of streams with a total length of about 31 000 km.¹ The shore and bank areas are related to significant public interests (including environmental protection), as well as private interests. In addition to great biodiversity, coastal areas serve as essential stopover sites for migratory birds and as wintering sites for waterfowl. The quality of the aquatic environment is in direct dependence upon the state of shores and banks; for example, it is endangered by the emerging wastewater due to the sensitivity of the areas. Besides the nature conservation value, shores and banks also serve as important recreational areas. Hence, it is crucial to pay greater attention than it would be usually necessary to the construction activities in these areas.
2. The NAO assessed planning and construction within the land zone immediately adjoining the water bodies from the ordinary boundary of water to the boundary up to which the usage restrictions following from the Nature Conservation Act apply. The activities of local governments in preparing comprehensive and detailed plans related to shores and banks and managing construction were audited. Closer attention was paid to 15 rural municipalities covered by the audit sample. In addition, state's activities in approving the plans and construction permits and exercising supervision were examined as well.
3. Pursuant to the Nature Conservation Act, the limited management zone of a shore or bank is 50–200 metres depending on the water body. However, many international treaties hold a broader definition of shores because of the objective to protect ecosystems. For example, according to the recommendation of the Helsinki Commission², a coastal planning zone should include an area, which extends 3 km from the ordinary boundary of water landwards and at least 100–300 metres seawards.
4. The openness of Estonia's coastal areas, as well as the natural state and diverse natural communities of shores and banks have been preserved mainly due to the restrictions imposed on their use during the period of Soviet occupation, when human impact on these areas remained minimal. For this reason, Estonia's shore areas are in better state compared to several other European countries, where the dense settlement resulting from decades of development has caused problems to the nature as well as to humans, while public access to these areas is largely restricted.
5. In order to avoid similar problems that have occurred in other countries, Estonia's shore areas are designated as a part of the so-called green network pursuant to the national spatial plan (Estonia 2010). The objectives of the network are to ensure that the natural self-regulation ability of the environment is preserved, valuable natural habitats are protected, the moving tracks of wild animals are preserved, possibilities

¹ Estonian Encyclopaedia 2002. Tallinn: Estonian Encyclopaedia Publishers, no 11, p. 125

² HELCOM recommendation 15/1

of nature-friendly management, lifestyle and recreation as well as the spatial accessibility to natural areas are enabled, valuable landscapes are conserved, while settlement and land-use are guided at the same time. A majority of green network areas belongs also to the EU Natura 2000 network of protected areas.

6. After Estonia regained its independence, shore areas became significantly more utilized than previously and building was busily started. The pressure to build has thereafter constantly increased, particularly because of urban sprawl, which has also affected shore areas to a great extent.³ The NAO could not obtain a detailed overview of the new buildings raised on shores during 2004–2006, because the Construction Register does not enable to make such an enquiry. However, the Environmental Inspectorate has processed 76 cases of illegal construction on shores or banks of water bodies from January 2004 to September 2006.

The organisation of the protection of shores and banks and the management of planning and construction activities

Estonian legal acts

7. The preparation of plans for building on shores and banks and the building is regulated with the **Planning Act**, the **Nature Conservation Act** and the **Building Act** together with subsequent regulations. The Planning Act regulates the preparation of plans of various levels, appoints the institutions responsible for the proceeding and determines the organisation of the supervision of these plans. The Nature Conservation Act provides special conditions and procedures for cases, when the building is planned on the shore or bank of a water body. The Building Act provides requirements for buildings, as well as for the design, construction and use of buildings, and establishes the organisation of state supervision and construction supervision. In addition to the above, the **Environmental Supervision Act**, which establishes the duties of the Environmental Inspectorate, and the **Environmental Impact Assessment and Environmental Management System Act**, which requires the assessment of environmental impacts, also cover the construction activities on shores.

EU and other international requirements

8. States also cooperate at the EU and other international levels in order to advance sustainable spatial development. This cooperation has produced several intergovernmental agreements and recommendations. For example, the EU Integrated Coastal Zone Management Strategy calls its member states to prepare development plans for coastal management and to appoint a state institution responsible for the implementation of these plans. According to the recommendation developed for the implementation of the Helsinki Convention⁴, building on shores should not be allowed except when there exists an overwhelming public interest and when no less sensitive site can be found for the construction.⁵ Likewise, the recommendations of the VASAB 2010 cooperation

³ Sustainable Development Indicators. Statistics Estonia; Tallinn: 2006, p. 76–77

⁴ Convention on the Protection of the Marine Environment of the Baltic Sea Area

⁵ HELCOM recommendation 15/1

Means to protect the public interest

The width of the building exclusion zone of shores and banks is

- 200 meters on the sea coast within Narva-Jõesuu city, and on sea-islands;
- 100 meters on sea coast, and the shores of Lake Peipus, Lake Lämmijärv, Lake Pskov and Lake Võrtsjärv;
- 50 meters on the banks of water bodies within cities and towns, and in clearly defined built up areas of small towns and villages (except in special cases provided by the law);
- 50 meters on the banks of lakes and reservoirs with an area of more than ten hectares, rivers, brooks and artificial recipients of land improvement systems with a catchment area of more than 25 square kilometres;
- 25 meters on the banks of lakes and reservoirs with an area of up to ten hectares, rivers, brooks, artificial recipients of land improvement systems with a catchment area of up to 25 square kilometres, as well as on the banks of springs;
- The building exclusion zone of a water body with areas of repeated flooding comprises the flooded area and the width of the zone provided by the law.

network for planning the coastal areas of the Baltic Sea emphasise the importance to preserve the natural state of these areas. The national strategies – the Environmental Action Plan 2007–2013, the Nature Conservation Development Plan until 2035, as well as the Estonian Environmental Strategy until 2030 – set an objective to implement all principles included in the abovementioned international documents.

9. It is the duty of the state and local governments to protect public interests in shore areas. Sustainable and balanced spatial development requires the consideration of economic, social as well as environmental concerns in the planning process, and **long-term planning** in addition to satisfying short-term interests. The Planning Act provides rules for **public participation** in order to identify and take into account the interests of as many members of the society as possible.

10. To protect shore areas, the Nature Conservation Act provides restrictions on the use of them: the special management zone, the building exclusion zone and the water protection zone. From the viewpoint of this audit, the issues of **building exclusion zone** and its decreasing are the most crucial. The main objective of the building exclusion zone is to protect the natural communities of shores and banks against excessive development pressure and to ensure their accessibility to the population.

11. In addition to the restrictions imposed by legal acts, the Planning Act provides a **multistage planning system** for the protection of public interests, according to which the more comprehensive plan should serve as a basis for preparing a more specified plan. At the county level, the most important plans in respect of this audit are the thematic plans, which establish green networks and valuable landscapes and are titled “The Environmental Conditions Directing Settlement and Land Use”. In managing the directions in and the conditions for the development within municipalities’ territory, the most important document is the comprehensive plan.

12. Construction can be planned within the building exclusion zone of a shore or bank only if the developer has obtained an approval for decreasing the building exclusion zone. Such an approval can be requested in the course of preparing comprehensive plans or detailed plans. First, the local government has to consider if it is reasonable to decrease the building exclusion zone and, after it has approved the decrease, the Minister of the Environment and the county governor will also form their opinions. The local government will issue further approvals or permits necessary for the construction after the detailed plan is approved and established.

13. The duties of various levels as relate to preparing plans and building on shore areas are distributed between several different authorities.

14. **The local government** organises all planning within the administrative territory of a parish or a city, including the balancing of different interests and the supervision of planning and construction. It is the duty of local governments to process building design documents and construction permits. The construction supervision involves issuing of permits as well as further control over whether the activities are carried out in compliance with the permit.

15. **The Ministry of the Interior** is responsible for the organisation and supervision of planning activities at the national level.

16. **The county governments** subordinate to the Ministry of the Interior are responsible for the organisation and supervision of the same activities at county level, including the preparation and establishment of county plans and thematic plans. Besides that, the county governor supervises also the comprehensive and detailed plans adopted by local governments.

17. **The Ministry of the Environment** coordinates activities within protected areas. In preparing comprehensive and detailed plans, it is in the competence of the Minister of the Environment to approve the decrease of the building exclusion zone of a shore or bank. If there is a protected natural object located within the planned area, then the detailed plan is coordinated with the respective **county environmental department** of the Ministry of the Environment. The local government or the county governor can request the county environmental department to approve the plan also in other cases.

18. **The Environmental Inspectorate** is tasked to supervise the use of shores and banks and the implementation of protection requirements, and to conduct extra-judicial proceedings in cases of violations.

19. **The Ministry of Economic Affairs and Communications** is involved in administrating the protection of shore areas by being the regulator of construction requirements and maintaining the state register of construction works (hereinafter the Construction Register), as well as in relation to carrying out state supervision of construction (the latter being the duty of the Technical Surveillance Authority subordinate to the Ministry).

Protection of public interests in planning construction onto shores and banks

Public interest represents the common interest of all people. The law does not provide any further definition of public interest.

20. Spatial planning of shores or banks of water bodies is in the interests of the local community, the people outside of the community, the local government or the state. The objects of the **public interest** are mostly access to the water body and the possibility to use the shore or bank for recreation, as well as to preserve the values of natural or cultural heritage or traditional land-use that are located on this shore or bank. Regarding shore areas, the state can also hold strategic interests in addition to the interests of environmental protection, for example, in respect of national defence, natural resources, or international commitments. Various public interests can be protected only through the cooperation between state authorities, local governments and the public.

21. The public interest can be efficiently protected if it is expressed clearly and unambiguously. The public interest protected by the state is expressed in development plans or strategies, the legal acts prepared pursuant to these strategies, county plans (including thematic plans) and approvals, which are given to the planning documents instituted by local governments. The public interest of the local level is expressed most explicitly in comprehensive plans, assuming that local people were numerous and effectively involved in the preparation of these plans.

Local governments do not protect public interests to sufficient extent

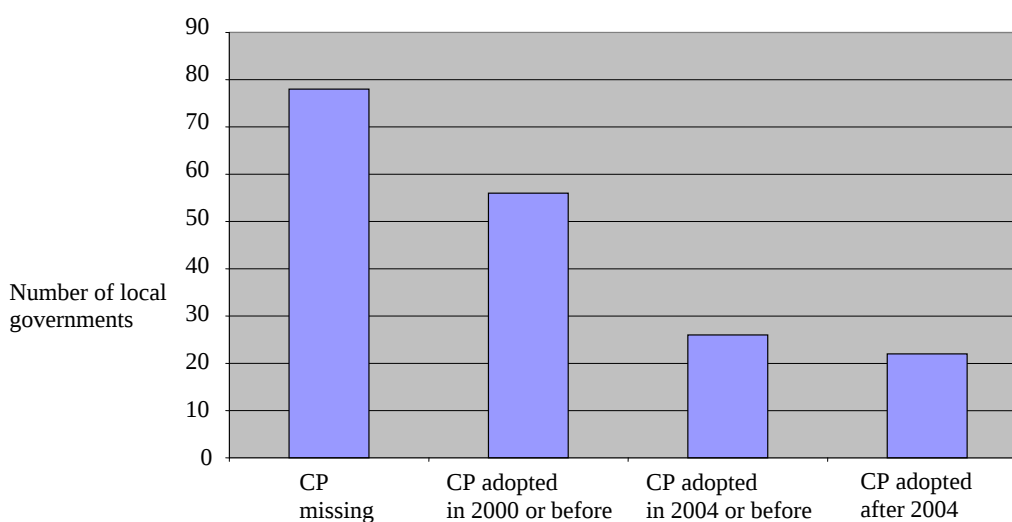
Comprehensive plans are missing

Many local governments lack the comprehensive plan based on public interests

22. Pursuant to the Planning Act that entered into force on 1 January 2003, all local governments had to adopt comprehensive plans by 1 July 2007 the latest. The comprehensive plan should express public interests related to shores and banks such as the access to shore paths, as well as recreation sites, mooring sites and ports. Likewise, the plan should identify these shores and banks, where it is allowed to establish settlements according to the principles of densely populated areas and these, where construction is not permitted due to nature conservation values or great public interest and which are to be preserved in the natural state. In determining the population density and the extent to which the natural environment is to be preserved, a strategic environmental assessment should also be followed, among other criteria, in order to prevent excessive environmental load. The comprehensive plan should contain development directions of planning for the years to come, which, being closely discussed with the local population and various state authorities, constitute the public interest in total.

23. Out of the 182 rural municipalities questioned by the NAO, only 57% had a valid comprehensive plan. Slightly more than a half of these plans were adopted before the year 2000, i.e. at the time when the development pressure was significantly smaller than today (see Figure 1). According to the municipalities that answered NAO's questionnaire, 15 of them had a specific comprehensive plan for shores areas and 8 were preparing it. Regarding the 15 local governments involved in the audit sample, 7 of them had a valid comprehensive plan covering the entire territory of the municipality in 2006.

Figure 1. Comprehensive plans (CP) adopted by local governments



Source: NAO

24. The audit sample involved several communities, where the local government has not been able to adopt the comprehensive plan in spite of extensive development pressure. For example, large areas of dense population have been built in Ülenurme parish, while some of these areas have also reached riverbanks. At least on one occasion, the local people

attempted to protest against the permission to build apartment houses on a shore area, but were too late. In Otepää parish, the number of applications for construction permits has multiplied within the last years, but a partial comprehensive plan exists only for the Pühajärve region. In Ridala parish, there is more building going on by now than in Haapsalu town, whereas the pressure has affected mostly shore areas. According to the local government there, it is hard to stand against the developers, but the officials have been supported by some partial comprehensive plans already adopted, as well as by the county plan. Likewise, in recent years, the developers have called for new densely populated areas on the banks of water bodies in Võru parish. In the opinion of the local government, this is related to the lack of land suitable for residential building in Võru town.

25. According to local governments, preparing of comprehensive plans is hindered by the shortage or lack of expertise, as well as of money. In some municipalities, the proceedings of comprehensive plans have also been suspended within the last year because of the shortage of planners, which has resulted from the abovementioned deadline for adopting the comprehensive plans pursuant to the Planning Act. In Kuusalu and Harku, the establishment of new comprehensive plans has been significantly delayed due to the protracted negotiations with the state in relation to planning the state land yet to be reformed and expanding an existing quarry.

26. In the circumstances of great development pressure and due to the lack of comprehensive plans, there is no confidence that the built environment will develop according to the expectations of citizens, that public interests are preferred to private interests and that the natural environment will not be irreversibly affected. The local governments are not able to direct the construction activities undertaken on shores and banks in longer perspective, because they lack coherent and consistent understanding of development directions and a document, on the basis of which to justify the protection of public interests. Ultimately, the produced living environment may not satisfy anybody.

Comprehensive plans are not updated

27. In addition to the local governments without comprehensive plans, there are many municipalities, which have adopted the comprehensive plan but this does not provide anymore up-to-date solutions. Hence, these local governments often need to amend the comprehensive plan with detailed plans. As outdated comprehensive plans cannot direct actual development, the living environment will be developed according to developers' visions and with limited public participation. In order to ensure that comprehensive plans are up-to-date and to identify the possibilities of promoting development in compliance with the plan, the Article 29 of the Planning Act provides an obligation to review the plans regularly. The local government shall review its comprehensive plans within six months after regular local government council elections are held. In order to guarantee that plans are updated adequately, the review should be carried out as an effective process together with the involvement of the public.

28. According to the results of the questionnaire sent to local governments, 12% of municipalities decided to amend the comprehensive plan as a result of the review, while 16% decided to prepare a new

comprehensive plan. Almost half of the local governments did not make any amendments to their comprehensive plans after the review, which could mean either that the development in these parishes has taken place according to the plan or alternatively, that no effective reviewing and updating was actually undertaken. For example, the local governments of parishes with extensive development pressure that were included in the audit sample, like Harku, Jõelähtme, Kuusalu, Tahkuranna and Audru, regarded the adopted solutions of their comprehensive plans as outdated even though the decisions of reviews were taken in 2006.

29. Outdated planning solutions are constantly amended with detailed plans. For example, according to the Harku municipality, almost half of the detailed plans amend the comprehensive plan that was established in 1996. According to Jõelähtme local government, the comprehensive plan adopted in 2003 has been amended in the course of the preparations of about 10% of detailed plans.

30. In many rural municipalities with extensive development pressure that were included in the audit sample, the prospective residential areas on shores are already fully planned, but the pressure is increasing continuously. According to the Estonian Land Board, many local governments have a problem that shores or banks in private or municipal ownership are allowed to be planned with residential building in full, while recreational areas and accesses to shore paths are aimed to be created at the expense of state lands (including the state land yet to be reformed). The problem of planning only on the basis of detailed plans is addressed in the next chapter.

Advantages of the comprehensive plans of shores and banks

31. The public interests related to shore areas can be more accurately and clearly described in comprehensive plans prepared exclusively for shores or banks, which are of smaller scale than the regular comprehensive plans. In preparing a plan only for shore areas, the public realizes better what are the interests in a particular area and, as a result of this, is also keener to express these interests. The comprehensive plans of shores and banks would help to balance private interests in relation to particular areas and to determine their building exclusion zones, accesses, recreational sites, green corridors, as well as other public interests on a much more detailed scale. Greater accuracy and more careful consideration also ensure that it is not necessary to amend the solutions of comprehensive plan in the near future.

32. According to the rural municipalities covered by the audit sample that had valid comprehensive plans, such a document has helped to turn down unsuitable development projects. In addition, it has also solved several problems resulting from the inaccuracies in the law. For example, the Noarootsi municipality determined the boundaries of the areas of repeated flooding in its comprehensive plan for shore areas.

33. Protecting public interests in shore areas is not only the duty of the state. Integrated planning solutions can be developed only on local governments' own initiative.

Public interests are not identified in the course of preparing detailed plans

The planning framework established in cooperation with the public is changed too easily

34. Contrary to comprehensive plans, detailed plans are ordered by private persons and prepared pursuant to private interests. Hence, the solutions of detailed plans should take into account public interests, which are identified earlier and established in the comprehensive plan. It should be possible to amend the solutions of comprehensive plans only after the case has been carefully considered and a public hearing has been organised as effectively as it would be done during the preparations of the comprehensive plan. Exceptions, including the decreasing of building exclusion zone, can be accepted only if they are necessary (not only possible) because of public interests.

35. The audit revealed that public's role in developing the living environment on the basis of detailed plans is limited. People do not attend the public hearings of detailed plans so actively as the hearings of comprehensive plans, while no broad-based discussion takes place so that different interests could be opposed and mutually balanced. The questionnaire sent to local governments showed that third persons do not participate actively in the public display of the detailed plans related to shore areas. Likewise, observing the municipalities covered by the audit sample proved that the persons who are not directly associated with the preparation of the plan have attended only few planning meetings, being in most cases the owners of neighbouring estates.

36. Pursuant to the Planning Act, the preparation of a detailed plan that amends the comprehensive plan differs from the proceeding of a detailed plan that is in compliance with the comprehensive plan only in the following respect: the former has to be sent to the county governor for supervision. In reality, the solutions are developed similarly to the regular process of preparing detailed plans – the general public is not involved and the plan is not properly explained. While informing the public about the detailed plan amending the comprehensive plan, it is not explained, what are the amendments and their implications. Therefore, people cannot relate their interests with the superficial and formal description that is published in newspapers or on message boards among other information. If the comprehensive plan is constantly amended, then it cannot be assumed that there exists a watchdog public group, which reacts to every notification. In preparing plans, public interests must be protected by the local government not by the local population.

37. The negative implications of the planning dominantly based on detailed plans have occurred, for example, in Viimsi parish, where due to overloaded waste water collection systems the pollution reaches the sea and where local people are fighting actively for preserving the remaining green areas.

38. In NAO's opinion, the public is not sufficiently involved on a larger scale even if people are properly informed about detailed plans. The local people should be confident that their interests are secured with the comprehensive plan and that they do not have to assess critically every detailed plan under preparation in order to preserve natural shore areas. The purpose of public proceeding is not to serve as a supervision exercised by citizens, but to provide opportunities for the involvement of

No reasons are given for amendments in comprehensive plans; incl. decreases in building exclusion zones

Discretion – a right and a responsibility to consider all relevant circumstances in every decision-making.

citizens. Public interests can be extensively identified only in the course of preparing the comprehensive plan.

39. Pursuant to the law, the amendments of comprehensive plans and decreases of building exclusion zones are exceptions, which can be accepted only if there is a justified need for them. In general, building is permitted only in places that are provided for this purpose by the comprehensive plan and this should be taken into account already when buying property. Due to their **discretion**, the local governments have to assess developers' plans critically as early as possible and, if necessary, to refuse initiating detailed plans that clearly contradict the comprehensive plan. The reasons for amending the comprehensive plan and the process of reaching such a decision have to be traceable and described in the decisions of processing the plan (in initiating, accepting and establishing the plan). If the plan is accompanied with a request to decrease the building exclusion zone, then also the need for this exception has to be justified in the decision.

40. Private interests are expressed in a more powerful and definite way than public interests. Additionally, the local governments generally delegate their right to prepare the detailed plan to a private person, which inclines the whole process even more in favour of realizing private interests. Due to limited public participation and lack of specialists the planning process based on discretion runs a risk that eventually nobody protects public interests.

41. The local government has to decide first if the decrease in the building exclusion zone is justified. Requesting the approval of the Minister of the Environment comes second. The audit revealed that, in most cases, the applications submitted to the Ministry of the Environment lacked the reasons as to why the local government wants to decrease the building exclusion zone. It can be concluded that local governments do not assume a significant role in making the decision to decrease the building exclusion zone and do not consider the decrease before submitting the application to the Ministry. This causes various problems, among other reasons also because of the role of the Ministry of the Environment, which is first of all to secure environmental protection interests, whereas other public interests have to be protected by the local government on its own. It should not be acceptable to amend the comprehensive plan for decreasing the building exclusion zone only in order to allow somebody to build on the plot owned by her. The person who acquired the plot with restricted building rights may not assume that the restriction established in public interests can be changed in any case to favour her.

42. Likewise, within the audit sample, most of the decisions of adopting and establishing detailed plans did not include reasons for amending the comprehensive plan and did not indicate that the local governments would have used their discretion when setting the conditions. This has happened partly because the local governments do not consider it necessary to provide any justifications, as the decisions are rarely protested. Another reason is limited understanding of administrative procedures, including the use of discretion. An exception holds for Mustjala parish, where the local government has learned to attach more

importance to the justification of its decisions after having experienced several court proceedings.



A house constructed in the building exclusion zone of Lake Tamula at the consent of the local government and without decreasing the zone

NAO

43. Unjustified and constant amending of comprehensive plans may result in a situation, where the areas used as public recreational sites will become built up and the people, who initially planned to live in the middle of nature, find themselves in a densely populated settlement. The closest surroundings of buildings are in personal and intensive use of their owners; hence the public use (including passage to shore paths) is inconvenient for both walkers and owners. Therefore, it is vitally important that detailed plans would be prepared by following and adhering to the solutions established with the comprehensive plan, as pertains to the areas provided for residential building, the building exclusion zone, the extent of built-up areas, as well as the distance between buildings. This is possible only if the local government coordinates and controls the planning rigorously. According to ten rural municipalities included in the audit sample, the local governments are mostly able to convince developers to waive their applications for initiating unsuitable solutions with the help of consultation and explaining.

The environmental impact of detailed plans is not ascertained

Environmental impact is not assessed sufficiently

44. In preparing a detailed plan, one should also consider how the planned activity impacts the environment and provide measures to minimize negative impacts. Pursuant to the Planning Act, the detailed plan shall establish environmental conditions, and if there are activities with large environmental load, then an environmental impact assessment process should be undertaken as well. In respect of the sites protected under EU Natura 2000 network, a detailed plan can be adopted only if the establishing authority has ascertained on the basis of objective information that the favourable conservation status of the habitat will be preserved. The local government is able to set environmental conditions or decide over the necessity of carrying out environmental impact assessment only if the potential impacts are described and analysed during the preparations of the detailed plan. The law currently in force enables to decrease the building exclusion zone of shores or banks also on the basis of a detailed plan, but this is regarded as an exceptional activity on a sensitive area, where the environmental impact shall be considered with due regards.

45. The audit revealed that local governments do not pay attention to the environmental impact when preparing or establishing detailed plans, including in cases where the building is planned within a protected area or on the bank of a water body protected under Natura 2000 network. The NAO analysed 25 detailed plans, which divided the immovable property located on a shore or bank into more than six housing plots, but in all cases, the plan did not include an overview of the impacts resulting from the building or its further use, neither set the relevant environmental conditions to be established together with the plan. These plans, as well as other detailed plans established for smaller areas, did not consider environmental aspects at all or mentioned them only in regard to finding solutions for waste and sewage. No attention was paid to such impacts as, for example, the damage caused to soil (including that caused by too much walking) and landscape changes, which would possibly accompany

the construction. Several plans concluded without any reasoning that the construction and further use of the building have no significant impact on the environment. Likewise, the necessity of strategic environmental assessment had been considered only in few cases, while the assessment was undertaken only in two cases.

46. Among the reasons for little analysis are, on the one hand, the omissions of the persons compiling the plans, and on the other hand, the fact that local governments do not require elimination of such shortcomings. The local governments have limited requirements partly because of the lack of specialists, so they are not capable to turn attention to this issue. One third of the municipalities that replied NAO's questionnaire had not employed a specialist responsible for environmental matters. Although majority of the respondents claimed that they rely on the positions of county environmental departments, an analysis of documents within the sample area demonstrated that most of the local governments had never asked the county environmental department for help. Exceptions hold for some plans prepared in Kuusalu, Harku, Ridala and Võru parishes, where in few cases, the local government had assessed the probability of negative environmental impact on its own, or consulted with the county environmental department or an expert.

47. As detailed plans do not describe substantively and extensively all possible negative impacts resulting from the activity, the decision-makers (both local governments and county environmental departments) lack information, on the basis of which to impose restrictions on construction or to decide over the necessity of launching more large-scale strategic environmental assessment procedures. Such a non-compliance with the law has caused problems, for example, in Pärnu county, where waterside trees were cut down, heavy vehicles were driven and soil was disposed on riverbanks so that a large landslide resulted, while the earth slid at approximately 80 metres within the territory of three estates.

Individual detailed plans do not reveal cumulative negative environmental impacts

48. If the building exclusion zone of a certain area is decreased on several occasions, then it is not sufficient to analyse environmental impacts only in the course of preparing detailed plans. The building's actual impact on the shore environment can be identified only if the cumulative impacts of all activities within this area are assessed. Few residential buildings planned on shores or banks will not always cause an environmental load that would exceed the carrying capacity of a protected species or biotic community or the aquatic environment. Likewise, a single house built on shore may not affect the characteristic natural features of the site. However, if another building is raised in its vicinity, or a third one or eventually tens of them, then the load imposed on the environment is significantly larger due to the damage caused by construction, the damage caused to the soil by too much walking, as well as the resulting amounts of wastewater and household waste. Only a strategic environmental assessment carried out in the course of preparing the comprehensive plan can effectively identify the cumulative impact of various activities. Hence, it is equally important from an environmental perspective that local governments would adhere to the solutions approved in comprehensive plans and would not amend the comprehensive plan on the basis of single cases.

49. Environmental impact assessment protects not only nature's interests, but also the persons who are likely to be interfered with negative environmental impacts. A discussion in Häädemeeste parish demonstrates the need for assessing cumulative environmental impacts. While the municipality does not have the comprehensive plan, the local government intends to construct a camping place that would serve the need for public recreational sites at a municipally owned plot on a shore area. The residents of neighbouring estates are afraid that the recreational settlement would cause noise, environmental pollution and environmental load within a territory significantly larger than the planned site. Therefore, they request that a plan shall be prepared and environmental impacts assessed in respect of a larger territory. The local government has however not agreed to this, as the development takes place only on a particular plot. Likewise, the above-mentioned problems with wastewater in Viimsi parish render that negative cumulative impacts were not assessed. The problems may be partly caused by the fact that the wastewater issues of the residential area that is created by the detailed plan have been attempted to be solved by providing every plot with individual sewage system or septic drain field, although such a densely populated settlement would actually require designing of a central sewage network.

50. In addition to analysing cumulative impacts, the strategic environmental assessment of comprehensive plans is essentially more objective than the impact assessment of detailed plans. Namely, the activities planned with the detailed plan are assessed by an expert paid by the developer, whereas the environmental impact assessment of a comprehensive plan is always ordered by the local government. Thus, several auditees regarded it as a significant shortcoming that, in most cases, the results of the strategic environmental assessment of a detailed plan tend to favour the developer.

51. NAO's recommendations to the Minister for Regional Affairs:

- To reinforce the supervision over the preparations of comprehensive plans and analyse the reasons as to why the comprehensive plans are not prepared. In order to ensure better protection of public interests related to shore areas, the NAO suggests the following.
 - To ensure that county governors would control whether local governments meet the requirement provided by the Planning Act, Article 29 to revise comprehensive plans periodically. In order to guarantee substantive revision and updating, to provide local governments with a methodology for revising comprehensive plans.
 - To support and encourage (e.g. by preparing guidelines or providing training) local governments to prepare comprehensive plans on a more detailed scale (1:10 000) as relates to shore areas. Following the HELCOM recommendation 15/1, to regard as coastal planning zones the coastal strips of at least 3km width. This would help to specify the restrictions set on these areas, to determine more clearly the development objectives of shores and banks as areas serving important public

interests and being simultaneously under intense development pressure, and to identify environmental impacts. Additionally, this would facilitate the further work of local governments.

- Through the supervision of planning exercised by county governments, to ensure that comprehensive plans related to shore areas would be amended only if the local government has justified the need for this. This would help to make sure that local governments have considered the protection of public interests in prior to such amendments.
- By organising training or preparing guidelines for local governments, to advance a practice that, in processing the detailed plans related to the limited management zones of shores and banks, the proceedings of informing people would be carried out with more care than usually also in the cases where the planning does not involve decreasing of building exclusion zone. In informing the public about such detailed plans, the notification should also include descriptions of the actual content of the planned activities and the restrictions on the public use of a given shore or bank resulting from these activities.
- To advise the local governments that have delayed preparing the comprehensive plan due to the shortage of human or financial resources, to consider preparing a comprehensive plan exclusively for shores and banks in collaboration with other local governments.

Reply from the Minister for Regional Affairs: As regards the situation on 1 October 2007, the comprehensive plan was established in 127 local governments. At the same time, 98 local governments were preparing the comprehensive plan, whereas 29 of them expected to adopt the document by the end of 2007. The local governments indicate as the main reasons for the suspensions in preparing comprehensive plans the high costs of environmental impact assessments, the hindrances caused by the lack of applied experience, shortage of human resources (planning or development specialist) in municipalities and the delays in obtaining the approval of the plans from state authorities.

Pursuant to the Planning Act, Article 29, local governments are obliged to revise their plans and submit the findings to respective county governors within six months after regular local government council elections are held. Revisions of adopted plans should identify the outcomes of the planned development, the possibilities of further implementation of the plans, the needs to invalidate a detailed plan or to amend its basic content, as well as other issues related to the implementation of the plans.

At present, amendments are being prepared into the Planning Act, which in addition to the regulations already in force will provide a new requirement that local governments need to plan additional measures to reduce significant negative impacts if during the implementation of the plan such impacts have occurred on the economic, social, cultural or natural environment. A main indicator for assessing the relevance of a comprehensive plan is the proportion of the detailed plans amending the comprehensive plan. The requirements provided by the law make it

possible to conclude whether the plan is relevant or not in respect of its content and whether a new comprehensive plan should be instituted.

For the implementation of the comprehensive plan, the methodology “Recommendations for preparing comprehensive plans” (Tallinn 2000) advises local governments to prepare also a separate action plan or implementation plan, which is described in a more detailed way in the methodology “Recommendations for building up the planning process” published in 2004, and to determine a time period, during which it is reasonable to revise the action plan or implementation plan.

In 2000–2002, four rural municipalities (Leisi, Pühalepa, Kõrgessaare and Vihula) carried out a pilot project on shore areas. The results of the project were presented at a national seminar, as well as at seminars in counties. In addition to local governments, county environmental departments also participated in the project actively.

Based on previous experience, in determining the area to be planned, it is reasonable to follow rather natural physical boundaries and the needs of the local government; thus, it is not always possible to rely on the 3km zone recommended by HELCOM.

During the regular trainings provided for the planning specialists of county governments, supervision of plans has been always addressed as one of the main topics, while attention has been drawn to the fact that planning decisions have to be considered and justified, by pointing out also the judgments of the Supreme Court.

With the amendments drafted into the Planning Act, it is intended to set an obligation that if the detailed plan is prepared within the limited management zone of a shore or bank as regards the provisions of the Nature Conservation Act, there should be at least one public hearing carried out and the preparation of the plan should not be ordered by a private person. This amendment helps to take into account public interest in planning shore areas.

Regarding previous practice, the plan of Võrtsjärve Lake shore areas has been adopted as a common comprehensive plan by several local governments, applies to all parishes surrounding the lake, and is formulated in the development plan of the region agreed between the local governments. In Saaremaa, there has been prepared a zoning of island's coastline, which was financed by the Environmental Investments Centre and ordered by the Association of the Local Municipalities of Saaremaa, but most of the local governments have nevertheless not established it as a formulated plan and processed it pursuant to the requirements, except Pihla and Orissaare municipalities. The conclusion is that in order to ensure the establishment and further implementation of the plan, the main initiative must be taken by local governments.

Further advice for choosing the right type of plan and deciding how detailed the plan should be is provided by the methodology “Recommendations for building up the planning process” (Tallinn 2004).

52. NAO's recommendation to the Minister of the Environment in collaboration with the Minister for Regional Affairs: Regarding environmental impacts, to work out guidelines for local governments,

which would explain them how to make environmental conditions in detailed plans and help to consider the needs for launching a strategic environmental assessment. If necessary, to provide local governments with appropriate training.

Reply from the Minister of the Environment: We consider the recommendation relevant. The competence of local governments regarding the Environmental Impact Assessment and Environmental Management System Act shall be raised. The Ministry of the Environment will plan concrete activities for preparing the guidelines and training in its next work plan.

Reply from the Minister for Regional Affairs: In 2003, the Ministry published a methodology “Recommendations for preparing detailed plans”, which also describes typical environmental impacts that require setting environmental conditions in detailed plans. Likewise, it describes the environmental aspects that need to be considered when a detailed plan is prepared. The methodology published in 2004 also includes a list and descriptions of impacts, which need to be taken into account when preparing the plan.

53. NAO’s recommendations to the Minister of the Environment:

- To initiate amendments into the Nature Conservation Act, so that the application submitted to the Minister of the Environment for decreasing a building exclusion zone shall include the position of the respective county governor. This would help to ensure that before the Minister of the Environment considers the aspects of nature conservation it would have been already checked whether other public interests are protected and whether the activity complies with the county plan.
- To ensure that when the detailed plans that amend comprehensive plans are submitted to county environmental departments for their approval it would be checked whether environmental conditions have been addressed sufficiently and if necessary, a position would be taken regarding the need for strategic environmental assessment.

Reply from the Minister of the Environment: Pursuant to the Nature Conservation Act, Article 40, the application for decreasing a building exclusion zone can be submitted only on the basis of an established comprehensive plan. According to the Planning Act, Article 8, paragraph 4, the comprehensive plan may include a proposal for amending the established county plan, if there is a justified need for that. The county governor exercises supervision over the preparations of comprehensive plans and checks whether the comprehensive plan is in compliance with the county plan. Our position is that an obligation to request the county governor’s position outside of the regular supervision proceedings within the planning process may further discourage the local governments to take responsibility for assessing the applications for decreasing building exclusion zones substantively. Alternatively, we find that a more specified regulation should impose a duty on local governments to check the requests for decreasing building exclusion zones in respect of whether public interests are protected and whether the activities observe the county plan.

Pursuant to the Planning Act, if the planned territory includes a nature protection site or an individual protected natural object, or if the plan proposes to place a natural site or object under protection, or if there are state-owned mineral resources or subsurface mining areas located within the planned territory, then local governments must seek an approval from the administrator of the protected area (i.e. county environmental department). In said cases, the county environmental departments currently also check whether environmental conditions are covered or not when the plans are submitted for their approval. During the information days organised by the Nature Conservation Department of the Ministry of the Environment, the specialists of county environmental departments have been reminded that they need to pay more attention to the issue of environmental conditions when approving the plans. We note that, pursuant to the Planning Act currently in force, there is no obligation to coordinate the plan with the county environmental department in other cases, as the department lacks the necessary administrative competence to give any binding judgements on such matters.

State's interests in shore areas are not clearly determined

The criteria of decreasing building exclusion zones are neither transparent nor clear

54. The protection of shores can be ensured if the planning of these areas follows consistent terms and restrictions based on clear principles all over Estonia. Clear criteria guarantee that the natural values of shores are evenly protected, help local governments in using their discretion and reasoning their positions, and ensure equal treatment of persons. In the national Environmental Action Plan for 2007–2013, the state has also set an objective to apply coherent principles to plans of different levels. The national action plan provides as one of its targets that the number of shore areas in natural state shall not decrease as compared to the year 2005.

55. Building on shores or banks of water bodies is not completely prohibited pursuant to the law currently in force. The Nature Conservation Act provides local governments with a right to decrease the building exclusion zone, if there is a justified need for this and the Minister of the Environment has approved the adopted comprehensive or detailed plan. However, permitting building on shores or banks cannot be justified only by stating that the construction will not affect the objectives of shores' protection listed in the law. The decision must provide a substantive reasoning on the basis of which it was concluded that private interests would not damage public interests if building was to occur in this particular place. The law defines the criteria for regulating different situations only in general terms, so the criteria acquire their actual meaning only in every particular instance. It should be clear not only to the parties of the decision, but also to the public, other local governments as well as state authorities what means to follow "vegetation, borders of immovable property or established settlement" in every particular case. In order to signal the public and developers in the same way, it is especially important that building exclusion zones are decreased according to clear, transparent and consistently applied criteria.

The building exclusion zone of shores or banks can be increased or decreased,

- considering the protection objectives of shores or banks and
- following vegetation, relief, borders of land use plots and estates, existing roads and technical networks and established settlement.

Did you know that?

In 2004, local governments submitted 66 applications for decreasing the building exclusion zones to the Ministry of the Environment, out of which 51 were approved.

Respectively, in 2005, local governments submitted 77 applications, out of which 50 were approved.

Further, in 2006, local governments submitted altogether 83 applications, out of which 50 were approved (including 5 partly approved).

Most of the requests to decrease a building exclusion zone were from Harju, Saare, Pärnu, Lääne and Hiiu counties.

56. So far, majority of the cases of decreasing the building exclusion zone have been related to developing the shore belt on the basis of a detailed plan. In NAO's opinion, the restrictions set on the building on shores and banks and the work of the Ministry of the Environment in deciding whether building exclusion zones can be decreased have in many places contributed to the objective to preserve Estonia's shore areas in natural state. For instance, several densely populated settlements that would load shore areas have been prevented from being established. Likewise, notice has been taken of the closure of accesses, local settlement structure and the need for recreational sites in cases, where the local governments have neglected these interests.

57. The audit revealed that in approving the decreasing of building exclusion zones, the Ministry of the Environment does not always follow consistent principles and it is not often clear what was the substantive reason for the approval or the refusal. Likewise, in the administrative area of the Ministry of the Environment, granting of exceptions is justified in uneven and contradictive ways. In more than half of the observed cases, the Ministry of the Environment or county environmental departments had only cited the criteria of the law in their justifications. In several cases, it was only added that there are no protected species or biotopes located in this area and that the higher range of vegetation will be preserved. Same arguments have been repeatedly used reversely for refusing to decrease the building exclusion zone. The justifications did not reveal in any case that **all** criteria of decreasing building exclusion zones provided by the Nature Conservation Act would have been substantively analysed.

58. A decision without substantive reasoning is not necessarily wrong regarding the protection of shores, but it does not provide the confidence that all criteria of decreasing building exclusion zones have been considered. Below, the ambiguity of the criteria is illustrated in Table 1, which presents some examples of the audited cases, where the use of criteria seems to have been contradicting or inconsistent on the basis of decision's materials.

Table 1. Cases of decreasing building exclusion zones

The criteria considered in deciding about decreasing the building exclusion zone	The description of detailed plan's solution and the content of the decision decreasing the building exclusion zone
To preserve the forest growing on a shore or bank, which is part of the green network according to the county plan.	In Harku municipality, it was <u>approved</u> to establish 5 plots to be built up as densely populated areas and 5 plots to be built up as sparsely populated areas within the area of protected forests, which present a key biotope and which according to the county plan's thematic plan are the core areas of the green network. In Võru municipality, it was <u>refused</u> to decrease the building exclusion zone in order to establish 7 residential plots, because these areas were highly valuable recreational and nature sites according to the county plan's thematic plan. In Kuusalu municipality, it was <u>refused</u> to decrease the building exclusion zone, because the plan would have involved cutting to undetermined extent in a valuable pine forest, which according to county plan's thematic plan was also designated as an area of the green corridor.

To take into account the conservation status of protected species and established features of settlement	In Harku municipality, it was <u>approved</u> to build 2 residential buildings with annexes on a plot which was located next to Muraste nature conservation area, although the materials indicate that the boundary of the neighbouring plot follows the building exclusion zone and similarly, that there was enough space on this plot to build outside of the building exclusion zone. In Mustjala municipality, it was <u>refused</u> to decrease the building exclusion zone for 1 residential building by reasoning that the construction would not be in compliance with the purposes of shores protection, even though there were no protected species or biotic communities located in this area. In Häädemeeste municipality, it was <u>refused</u> to decrease the building exclusion zone for building 2 summer cottages, because the boundary of neighbouring estates followed the zone and the building would have set a negative precedent in a region, which so far had remained relatively untouched. In addition, the developer had the option to construct outside of the building exclusion zone without damaging natural values.
The building would take place on a protected site	In Harku municipality, it was <u>agreed</u> to decrease the building exclusion zone for 1 building on a site, which is from three sides surrounded by strictly protected forest, because the natural preconditions enabled construction without affecting the forest and the characteristics of the shore. In Otepää municipality, in the special management zone of Otepää nature conservation area, the administration of the protected area <u>refused</u> to legalise 1 unauthorized building, because the protection rules did not enable to make exceptions and the construction had already destroyed semi-natural habitats and damaged the natural characteristic features of the banks of the lake there. Previously, the administration of Otepää nature conservation area had held a position that there are no arguments against the legalisation from the perspective of landscape protection.
To take into account the established boundaries of settlement in the case of illegal buildings	In Ülenurme municipality, it was <u>approved</u> to decrease the building exclusion zone on the basis of comprehensive plan in response to illegal buildings raised in the zone, because it was found that they follow earlier settlement boundaries (which had also developed illegally, as there was no prior approval of them). In Audru municipality, it was <u>refused</u> to decrease the building exclusion zone in case of 5 buildings (including 2 existing illegal ones), because the local government did not want to set a negative precedent and took into consideration the needs to preserve natural biotic communities, to direct settlement according to the characteristics of the shore, to eliminate negative impacts resulting from human activity and to ensure free movement when it made its decision.

Source: NAO

59. As the audit did not aim to assess the actual natural state of the planned areas or the actually existing public interests in them, there may still exist a substantive reasoning for why the authorities approved or refused to decrease the building exclusion zone, but this was not described in the decision. Quite the contrary, the table reveals that the presented justifications were contradictory and not transparent. Likewise, several audited local governments regarded as a problem that they are often not able to predict the decisions of the Ministry of the Environment,

including those of county environmental departments. Therefore, the local governments lack a clear understanding as to when the decreasing of building exclusion zone would be altogether out of question and when not.

60. Making of numerable exceptions always involves a risk that the long-term broader objective will be neglected and when single decisions accumulate, then at one point the situation will be encountered which was first aimed to be avoided. Hence, the decision-making over decreasing building exclusion zones should not rely only on considering whether the construction affects the objectives of shores protection on one particular estate. In taking decisions, the principle “first come first served” cannot be followed in respect of building on shores, as persons shall not be discriminated. NAO’s position is that commonly set objectives can be met only if changes in building exclusion zones are based on clear and transparent criteria and, as a general rule, made only in the course of preparing comprehensive plans. Exceptions based on detailed plans should be allowed only if they are necessary because of public interest.

The restrictions on building provided by legal acts can be interpreted in several ways

61. A way to express state’s interest is by legal acts and regulations, which impose general restrictions on the activities on shores. Restrictions can be efficiently implemented only if their extent, reason and content are clearly formulated. In the context of building on shores and banks, it should be clear by reading the legal act, what sorts of buildings are not permitted and what is the extent of the zone, where the restrictions on construction apply.

62. It appeared in the course of the audit that decision-makers (including local governments, the Ministry of the Environment, county governments) have problems mostly with determining the notion of densely populated area and the extent of building exclusion zone in relation to areas of repeated flooding. Thus, the values of shores and banks are not evenly protected over Estonia due to different interpretations. In addition, as the restrictions are unevenly applied, this enables to treat persons unequally.

The extent of building exclusion zone on areas of repeated flooding is unclear

63. In preparing a plan on shore area, one should take into account the extents of building exclusion zone and limited management zone, while the latter is broader than the former. In addition to the extents of zones determined in metres, the law provides that the limited management zone, water protection zone and building exclusion zone of repeatedly flooded water bodies comprise both the area of flooding and the width of the zone provided in the law.

64. The Ministry of the Environment interprets the above-mentioned provision of the Nature Conservation Act as follows: in general, the building exclusion zone provided in the law should be added to the area of repeated flooding. However, in preparing the comprehensive plan or detailed plan, it may turn out to be possible to decrease the building exclusion zone created in this way on the basis of actual natural conditions. At the same time, relying on the interpretation of the Ministry, the Lääne county government refused to approve a plan prepared for a shore area in Ridala parish, stating that because of repeated flooding the

building exclusion zone of the Baltic Sea reaches in every case up to 1.5 metres of contour curve, which is supplemented by 200 metres of building exclusion zone provided by the law. To the contrary, several auditees, including county environmental departments, found that first it should be observed that the planned building would not be located within a flooded area. Thus, the terms of the law are unevenly applied in practice. Noarootsi municipality, for example, has prepared a comprehensive plan of shore areas, where the extent of building exclusion zone was determined following the 1.5 metres contour line. As a result of this, it was necessary to decrease the boundary of the general building exclusion zone as provided by the law in some places and to increase it in other places. Following the floods that resulted from the storm in January 2005, the boundary of the area of repeated flooding was also mapped separately, mostly overlapping the 1.5 metres contour line. The Ministry of the Environment agreed with the planned decreases of the building exclusion zone. Therefore, in Noarootsi, it was permitted to build in places of at least 1.5 metres of altitude, where no floods occurred and no protected biotic communities or important public recreational site were located. At the same time, in Ridala, it was generally possible to build only at 200 metres distance from the boundary of the flooded area as followed from county government's interpretations.

Densely populated area is vaguely defined

65. The Nature Conservation Act prohibits establishing new densely populated areas on shores or banks of water bodies. Only the Government of the Republic can make an exception, if there is a justified need for that. The notion of densely populated (built up) area is used in the Nature Conservation Act, Planning Act and Land Reform Act, but none of these legal acts provides a criteria-based definition (see Table 2). Thus, the decision-maker gives the notion its content newly for every individual case and the use of definitions has become inconsistent. Regarding the detailed plans covered by the audit, no local government had itself determined the planned site as a built-up or densely populated area.

Table 2. The use of the definition of densely populated area in different acts

Nature Conservation Act	Planning Act	Land Reform Act
Clearly defined built up areas of cities, towns, small towns and villages.	Uses the definition within the meaning of the Land Reform Act.	Densely populated areas in the meaning of this Act are areas that are designated as densely populated areas by an adopted plan. In the absence of a comprehensive plan or if it is impossible to designate a densely populated area on the basis of a county plan, the areas deemed to be densely populated areas are those which are covered by valid general plans of cities, towns or small towns, projects of detailed plans, general plans for groups of enterprises, planning and building projects for rural settlements and other valid planning projects. In the absence of the plans specified above, the county governor should designate densely populated areas following the proposal of the local government council.

Source: NAO

66. For defining densely populated areas, one of the important criteria should be the number of building plots. Regarding the audited sample, the Ministry of the Environment had in many local communities approved detailed plans, which decreased the building exclusion zone on couple of plots but planned the rest of the development area with several buildings into the limited management zone of shore areas, where no settlement existed previously. For example, in Audru, Ridala, Tahkuranna, Harku and Ülenurme communities, detailed plans were approved, which provided that more than 10 new buildings will be constructed on areas without any previous settlement, whereas more than 5 of them will be built on plots located within the limited management zone. At the same time, the Ministry of the Environment has declined to take a position on its own and, in the case of Alajõe, Audru, Tahkuranna and Võru communities, delegated the decision-making regarding the prospective densely populated areas to the Government of the Republic, whereas in several cases the immovable property was planned to be divided into less than ten plots, while up to 5 plots were located within the limited management zone. Thus, in some cases 5 plots have been regarded as a densely populated area and in some cases not.

67. In addition to the number of plots, also the size of plot is an important criterion in defining densely populated areas. However, the interpretations of the ministries are also inconsistent in this regard. For example, in response to a plan prepared by the Võru municipality, the Ministry of the Environment took a position that to create 5000–7000 m² plots means clearly to establish a densely populated area, so the local government was required to prepare its comprehensive plan and on the basis of this, to approach the Government of the Republic. Likewise, the Jõelähtme municipality has turned to both the Harju county government and the Ministry of the Interior in a similar matter. As a result of consultation it was concluded that the settlement could be regarded as a sparsely populated area if the planned plots will be at least 0.5–0.7 ha, i.e. exactly the same size as they were in the comparable plan in Võru parish.

68. The prohibition of the Nature Conservation Act on establishing densely populated areas on shores is also vague because it is not clear, in which case a new densely populated area is established or whether only an existing one is expanded. In NAO's opinion, new densely populated areas are also created in cases, where for example a residential district is first built on an open field, but at some point developed so that it expands onto a shore or bank, where no buildings were raised before.

69. To the contrary, Ülenurme and Harku municipalities, for example, have followed an opposite interpretation. They have not submitted such development projects to the Ministry of the Environment, which is why large new residential districts have been raised into the limited management zones of the banks of Porijõe and Harku streams without obtaining the approval from the Government. None of the audited municipalities has so far turned to the Government in order to assess whether the new densely populated area would be acceptable. According to the Ministry of the Environment, such proceedings should be undertaken in the Võru parish, where in one case 7 plots and in another case 11 plots are planned onto the banks of a lake and a river, as well as in the Alajõe parish, where 51 residential plots are established on stream

banks, and in Tahkuranna parish, where 13 residential plots are planned to be established.

70. Due to the vague definition and uneven practice, local governments, county governments as well as the Ministry of the Environment leave the matter of densely populated areas often unconsidered. As a result of this, the prohibition of establishing new densely populated areas on shores is observed only selectively, while new settlements emerge without careful consideration and necessary approvals into places, where they should be raised only in exceptional circumstances.

County governments' supervision of detailed plans needs to be made more efficient

71. Coherent planning solutions are guaranteed by a multistage planning system, where the more general plan gives guidelines for preparing the more detailed type of plan. It is the duty of county governments to observe that the plans prepared at the level of local governments (both comprehensive plans and detailed plans) would comply with the principles of legal acts and those set in county plans. These principles should simultaneously reflect the state's interests related to shore areas. At the county level, the interests related to the natural environment are determined as green networks and valuable landscapes in the thematic plans of county plans entitled "The Environmental Conditions Directing Settlement and Land Use". Said thematic plans have been prepared in all counties, except for Saaremaa.

Local governments are obliged to submit to the county governor

- information about all instituted detailed plans within two weeks from the date on which the decision to launch the planning is taken;
- for determining approvals, detailed plans that amend the comprehensive plan and, in case there is no comprehensive plan, all detailed plans;
- for supervision, all detailed plans which are not prepared in compliance with the adopted comprehensive plan, or in the respect of which not all objections made at the public hearing are taken into account;
- copies of all decisions establishing detailed plans.

72. The NAO finds that the efficiency of supervision is mostly jeopardized by not ensuring that all detailed plans, which do not comply with the comprehensive plan, are submitted for supervision. In these local communities, where the comprehensive plan is yet to be established, it can be better observed that detailed plans reach supervision, as all processed plans have to be sent to the county governor.

73. If the comprehensive plan is adopted, only detailed plans that do not comply with the comprehensive plan have to be submitted to the county governor for supervision. The questioning of local governments showed that one third of the municipalities that have adopted comprehensive plans have not amended the plan on any occasion during 2004–2006. In NAO's opinion, however, the number of actual amendments may be different, because the local governments and county governments have different understandings regarding whether the detailed plan complies with the comprehensive plan or not. Interviews revealed that part of the local governments regard the changes in the intended use of land as amendments of the comprehensive plan, while others do not. Likewise, the plans decreasing building exclusion zones are not everywhere considered to be amending the comprehensive plan, and subsequently, not submitted to the county governor.

74. In regard to more than half of the municipalities covered by the audit, the NAO uncovered cases, where detailed plans that planned to decrease the building exclusion zone or establish a new, potentially densely populated area into the limited management zone of a shore or bank were not submitted to the county governor for supervision. Ülenurme municipality, for example, adopted a plan of a new densely populated area to be established into limited management zone without sending the

document to the county governor, whereas the local community also lacked the comprehensive plan. No approval was requested from the Ministry of the Environment either. The violation was discovered only when the local residents asked the county governor to check whether the activity was legitimate after a subsequent amendment of the plan was initiated. As the deadline to protest planning solutions had elapsed, the county governor could only reprimand the local government.

75. In the opinion of more than half of the county governments in Estonia, there is no system, which would guarantee that the detailed plans not complying with the comprehensive plan would reach them for supervision. Nevertheless, all county governments find that they have been able to ensure the preservation of the green areas designated by thematic plans, but consider the green zones to be endangered because of increasing development pressure. According to the Ministry of the Interior, the preservation of green zones is mostly jeopardized in the vicinity of Tallinn, Tartu and Pärnu cities, and more recently, the pressure has emerged also around Viljandi town.

76. The NAO finds that one of the reasons why there is no efficient supervision is that the Planning Act does not provide a definition of the detailed plan amending the comprehensive plan so that it would be unambiguously understandable for all parties involved in the supervision process. Without clear definition, the county governments have to judge on their own whether the given detailed plan amends the comprehensive plan or not in order to ensure consistent interpretation. Concerning the organisation of supervision currently in effect, the county governments can make such judgements only by analysing the decisions and initial statements instituting detailed plans that have been submitted to them. According to the responses of the county governments, however, more than half of them only register the decisions formally. The Lääne county government, which aims to ensure by informing the local governments constantly that all decisions and initial statements establishing detailed plans have to be sent to the county governor, presents a positive example. The county government assesses every received decision on the basis of the planned layout and initial statements to find out whether it is necessary to send the plan already approved to the county governor for further supervision. In comparing the location of the planned plot and the initial statements of detailed plans with the comprehensive plan, the county government is able to decide, whether there are solutions planned which would amend the more general plans and thus require more thorough supervision afterwards, or not.

77. The insufficient supervision exercised by county governors runs a risk that local governments introduce detailed plans that are disadvantageous to public interests. Besides local governments, county governments are the only ones which are able to control that all detailed plans related to shores or banks are coordinated with county environmental departments and that all plans changing the building exclusion zone reach the Ministry of the Environment in order to obtain the necessary approval. The county governor's supervision is also the only process, where the advocates of various state interests can be brought together. For example, in many county governments, the plans are assessed by a commission, which assembles the representatives of various state authorities, including county environmental departments

(e.g. Harju, Lääne and Põlva county governments). The NAO finds that if decisions are taken by such a commission, this ensures that all relevant state authorities have the opportunity to declare their position, and at the same time, makes it possible to assess during the supervision of the decisions establishing detailed plans, whether the conditions set in approvals have been taken into account in the planning solutions.

78. NAO's recommendations to the Minister of the Environment:

- To initiate amendments into the Nature Conservation act, so that the building exclusion zone could be decreased only during preparing and establishing comprehensive plans. This would help to increase the public participation in decision-making and ensure the observance of long-term objectives and development directions and the consideration and assessment of negative cumulative impacts resulting from the building on shores and banks. As the preparations of comprehensive plans and strategic environmental assessments are ordered by local governments, this would help to ensure the representation of public interests much more efficiently.
- In case the above-proposed amendment is not made,
 - to initiate amendments into the Nature Conservation Act so that the local governments that lack comprehensive plans are not authorized to adopt detailed plans that decrease the building exclusion zones of shores and banks. To date, the local governments have used to suspend the proceedings of detailed plans on their own initiative (e.g. in Jõelähtme local community regarding the thematic plan of the Rebala Heritage Reserve).
 - to work out clear, transparent and consistently applicable criteria for permitting to decrease the building exclusion zone on the basis of detailed plans, which would help the local governments to assess more efficiently on their own whether the prepared plan complies with the shore protection objectives set in the law and national interests, and according to this, also to give substantive reasons for their requests.
- To refuse to decrease the building exclusion zone in cases, where the local government has not justified the needs for this in its request. This would help to ensure that local governments analyse the need for amending the comprehensive plan by following public interests, to avoid making decisions that would contradict with public interests, and at the same time, also to reduce significantly the workload of the Ministry of the Environment.
- To ensure that, in the administrative area of the Ministry of the Environment, only the necessity (not the possibility) is followed when considering whether it is acceptable to build within a building exclusion zone or not, and that the decisions are justified on the basis of actual circumstances.

- To guarantee that in approving the detailed plans related to the limited management zones of shores or banks, county environmental departments would check whether the plan projects a new densely populated area into the limited management zone.
- To prepare guidelines on determining the extent of building exclusion zones, which would help to balance the different practice of local governments, county governments and county environmental departments in this regard.

Response from the Minister of the Environment: The Ministry of the Environment cannot agree fully with the [first] recommendation because local governments have difficulties with preparing and adopting comprehensive plans, so the problem could not be solved as quickly as necessary. Pursuant to the Planning Act, Article 45, local governments are obliged to ensure that comprehensive plans are adopted for cities no later than by 1 January 2006 and for rural municipalities no later than by 1 July 2007. Hence, the local governments are committed to establish comprehensive plans pursuant to the Planning Act. However, there are numerous local governments in Estonia, which have not established comprehensive plans since the Planning Act came into force. Therefore, we find that if the decreasing of building exclusion zones is bound with the establishment of comprehensive plans, this will actually cause a situation, where even when the decreasing would be reasonable the decision-making may take years and illegal building activities as well as other violations may occur because of that. Thus, concerning the protection of natural values and public goods, the imposition of strict restrictions may eventually produce completely opposite effects.

We consider the [first part of the alternative] recommendation relevant and conditionally applicable. The possibilities to implement such a requirement shall be further considered. Likewise, we find it necessary to analyse, if it makes sense to employ different approaches in regard to different prohibited areas (e.g. in the case of densely populated areas or shore areas, not to authorize the local governments that lack comprehensive plans to establish detailed plans that decrease the building exclusion zone of shores and banks).

We consider the [second part of the alternative] recommendation relevant. However, local governments are not always institutionally capable to assess state's interests, so in order to take this into account, an alternative approach should be provided as well.

The [third] recommendation is relevant, although it should be preferred to raise the capacity of local governments. It may also turn out to be too complicated to impose such sanctions effectively, as the requirements can probably be met only in formal ways. We agree that local governments have to submit justified applications, but we find that the Ministry of the Environment should not refuse to decrease the building exclusion zone only because the reasoning is deficient. Rather, the Ministry should return the application for decreasing building exclusion zone that does not provide reasons for why the decrease is necessary to the local government for further complements, and after that, consider whether the request is justified.

[Regarding the fourth recommendation we would like to explain that], in making the decisions of decreasing building exclusion zones, the Ministry of the Environment has so far followed a principle that the objectives of shores protection shall be secured. Previously, the decisions have been also made on the basis of actual circumstances, but we admit that we should have paid more attention to the motivation when drawing up the decisions. However, we would like to bring to notice that today it is considered to be of vital importance to motivate the decisions, and the responses to local governments' applications contain reasons, which have based the given decision. We have analysed the situation and identified specific exceptional cases, where the decreasing of building exclusion zone was not essentially necessary but nevertheless inescapable because of the possibility to do so. We note hereby that regarding the different zones of shores and banks it has to be always kept in mind that natural conditions never enable to establish restrictions with universal measures determined in metres. Namely because the natural conditions on the shores of various water bodies are so different, depending not only on the typology of the region's nature, but also on the historical development of settlement and many other criteria, the restrictions of countable metres imposed in legal acts cannot be regarded as an end in itself. To assess the "necessity" for revising the restrictions has a remarkably more subjective meaning than to assess the "possibility" for revising the restrictions. In other words, the Nature Conservation Act provides unambiguously the objectives of shores protection. The purpose for establishing zones with different restrictions is to accomplish namely these objectives and the extent of the building exclusion zone has to be such that it would ensure the attainment of the objectives. Quite probably, "necessity" and "possibility" are not opposite criteria, as if only the assessment of one of them would enable to ensure the protection of shores and banks much more efficiently.

We concur with the [fifth and sixth] recommendation. In approving the detailed plans related to the limited management zones of shores or banks, county environmental departments have to assess, whether the activity planned into the zone may create a new densely populated area. We agree that, if the Nature Conservation Act is amended, guidelines on how to implement the Act's chapter "Shores and banks" shall be prepared

79. NAO's recommendations to the Minister for Regional Affairs

- To specify in the Planning Act what is understood to be the detailed plan contradicting the comprehensive plan so that it should be sent to the county governor for supervision.
- To assess, whether the county plans and the thematic plans of county plans prepared by county governments describe all restrictions that the state has enforced. County plans that include clear state interests would help the local governments to prepare comprehensive plans that would fulfil the objectives provided in the Planning Act, Article 6, paragraph 3.
- To make the supervision of detailed plans exercised by county governments more efficient, by levelling the practice of the county governments in processing the notifications of the decisions instituting detailed plans and by ensuring that the county governments themselves would actively take steps to get

the detailed plans under supervision, not rely only on local governments. Similar to the practice of Harju, Lääne, Pärnu, Valga and Viljandi county governments, to encourage also other county governments to contribute to the submission of plans by informing the local governments intensively and providing them with training.

Response from the Minister for Regional Affairs: With the amendments projected into the Planning Act, it is intended to define the notion of the basic content of the plan, in the case of which the detailed plan alters the established comprehensive plan.

County plans and thematic plans are prepared in long-term perspective (for 7–15 years). As the Estonian legislation is constantly being amended, it can be doubted if it is reasonable to describe all state restrictions in county plans. The state interests related to spatial development and long-term development directions are not clearly formulated by the state or missing altogether, which is why the county governments have difficulties in reflecting the so-called restrictions respectively in county plans. Definitely, the cooperation has to be made mutually more effective.

To the knowledge of the Spatial Planning Department, county governments have been informing local governments both by letters and during trainings about the need to forward the decisions initiating plans to the county governments.

80. NAO's recommendation to the Minister for Regional Affairs in collaboration with the Minister for the Environment: To work out consistent criteria, on the basis of which it would be possible to determine what should be regarded as a densely populated area. To initiate amendments into the Planning Act and Nature Conservation Act in order to homogenize the use of terminology.

Response from the Minister for Regional Affairs: Densely populated area is a legal term yet to be defined. However, the notion has been aimed to be specified, although without actual results, for example, in the Land Reform Act, Article 7, paragraph 4 as follows: “densely populated areas are areas which are designated as densely populated areas by an adopted plan”. Such a use of terminology does not provide any ideas for understanding the notion of densely populated area, and hence, does not ensure legal clarity. The Planning Act has given up the notion of densely populated area, and instead, introduces a formulation “an area where detailed planning is mandatory”. Regarding the building in shore areas, it should be first analysed what is aimed to be regulated in reality and whether the current proceedings in designating densely populated areas are reasonable. Following the analysis, it would be possible to work out the respective criteria or characteristics.

Response from the Minister of the Environment: The Ministry of the Environment agrees that it is necessary to homogenize the use of the terms provided by various legal acts. The built up area or densely populated area has to be defined in a consistent way throughout various legal acts, which includes providing an explanation and a list of characteristics, in the case of which the district can be regarded as a built up area.

Activities of the state and local governments in preventing illegal construction

Illegal and unauthorized buildings are not discovered early enough

Illegal building – a building raised under a permit, which is issued on false grounds, as well as an unauthorized building.

Unauthorized building – a building raised without permit.

81. During the last year, the press has published tens of articles about cases, where persons have started with constructing buildings on shores or banks without having obtained the necessary approvals. Several such buildings block movement on shores or banks as well as recreation. In the circumstances of the legal regulation currently in force and prevailing practice, it is quite unlikely that **illegal or unauthorized buildings** are demolished. Therefore, it is important to discover the buildings emerging without permit or in a wrong place at early stage, so that it would be still possible and reasonable to restore the previous situation.

82. More than half of the questioned rural municipalities had discovered unauthorized buildings over the last three years. Both the municipalities included in the audit sample and the Environmental Inspectorate provided several examples of cases, where persons had built on shores without having the required permits. The fact that unauthorized and illegal buildings are raised refers to weaknesses in construction supervision and the use of sanctions. If no effective penalties follow, then the person ignoring the law can expect that the illegally raised building will be later legalised.

Construction supervision exercised by local governments is insufficient

83. It is the duty of local governments to ensure that the construction activities undertaken within their territory are carried out in compliance with legal requirements and that no illegal buildings are raised. This obligation is based on an assumption that local governments have the best overview of what is going on in their parish or city. The local governments obtain the necessary information through processing the permits required for building and, as they are the closest authorities to local residents, also through routine communication. Construction supervision shall not be confined to only assessing the information provided on paper but be complemented with controlling whether the actual situation corresponds to the documented one. Likewise, one can prevent the buildings raised without any permits only by carrying out constant inspection on the spot.

On-site situation is not inspected

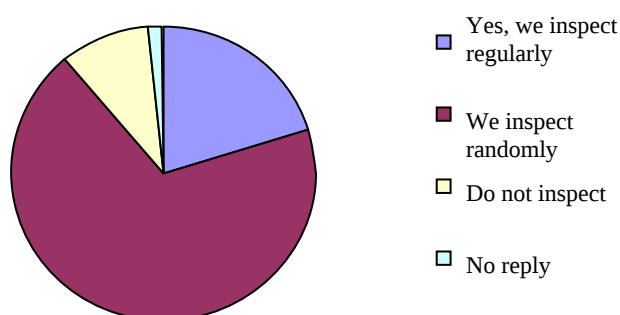
84. The audit revealed that many local governments do not check systematically, whether the construction is carried out according to the permit and within the restrictions set in the permit. Construction supervision is often confined to processing the permits and the on-site situation is inspected only when the person applies for a further use permit or when someone submits an explicit complaint. As the developers mostly do not request use permits and submit no notifications about launching the construction either, the local governments do not have a sufficient overview of the activities that take place after the construction permit has been issued. This enables to raise buildings on shores and banks, which should not be there.

85. None of the local governments covered by the audit sample carries out regular inspection of unauthorized building. Regarding the detection of unauthorized and illegal buildings, less problems were considered to occur in the communities around Tallinn, where there are more officials

working with spatial development issues and where the information reaches local governments more efficiently, probably because of higher population density. Most illegal buildings are also discovered in Harku and Jõelähtme municipalities⁶.

86. In Otepää and Ülenurme parishes, for example, the development pressure has multiplied over the last years, but almost no on-site inspection has been carried out. Similar situation was observed during the audit in Ridala parish, where the development pressure is also high, but only the vice mayor is currently responsible for all building and planning issues. Basically, between issuing the construction permit and the use permit, many local governments exercise construction supervision only occasionally or not at all. Illegal buildings are discovered in most local communities also by chance, when some resident has made a complaint or some municipality official happens to pass the building under construction. The questionnaire sent to local governments showed that systematic control is carried out in less than one fourth of the rural municipalities (see Figure 2).

Figure 2. Regular construction supervision for discovering unauthorized buildings



Source: NAO

Small buildings raised in building exclusion zone are not discovered

87. According to the Environmental Inspectorate, there are mostly problems with small buildings on shores and banks, as the law requires no permits for their construction. Pursuant to the Building Act, for a small building with an area occupied by the construction works of 20–60 m², a written consent has to be obtained from the local government, while no building design documentation is generally required to be prepared for the construction of such object. In the case of larger construction works, both building design documentation and construction permit are required. Regarding construction works with an area of less than 20 m², no consent needs to be requested, although the local government should be notified about the construction of all small buildings within five days.

⁶ According to the results of the questionnaire, 18 in Harku and 31 in Jõelähtme. Questions were concerned with all illegal buildings not only the ones located on shores or banks.



In Võrumaa, the Environmental Inspectorate found an unauthorized building that was raised in the building exclusion zone of a lake. The building is located in the same place, where the owners had displaced their illegally raised sauna as a result of an earlier injunction and fines.

NAO

88. As local governments do not inspect regularly the construction activities taking place within their territory, the illegal small buildings remain undiscovered. According to rural municipalities, they are often not notified about the construction works with an area of less than 20 m² and, when the developers request their written consent, they submit deficient documents, on the basis of which it is impossible to estimate the building's location or its planned size. A building with an area occupied by the construction works of up to 60 m² may however load the environment, as well as block movement.

89. The municipalities say that problems are also caused because developers claim the building to have a different function than actually planned in the building design documentation of small buildings, which are then mistakenly approved by the local government. In Võrumaa, for instance, a small building was approved by the city government and constructed within lake's building exclusion zone next to a public beach, although in the detailed plan it was claimed to be storage of water sports equipment (i.e. not a building). The Environmental Inspectorate has processed many cases related to buildings, which have a woodshed in one end and a summer cottage in another end, but are projected to be only woodsheds by their purpose of use.

90. In addition to not notifying the local governments and submitting misleading information, the developers try to evade the prohibition of building on shores also by raising buildings on wheels or stones. According to the definition of the Building Act, a building has to be attached to the site's subsoil. Pursuant to the judgment of the Supreme Court, in assessing the attachment to the subsoil, it has to be examined whether the building can be displaced without additional tools or not. Hence, the local governments need to use actively their discretion and be determined in making their decisions in order to eliminate such buildings.



In Hiiumaa, the land owner has "constructed" a house on wheels in the building exclusion zone

Environmental Inspectorate

Local governments lack construction inspectors

91. The efficiency of construction supervision is significantly influenced by the scarcity of officials employed for these issues. Smaller rural municipalities are not able to hire competent officials. Ridala rural municipality, for example, has been looking for a person to be employed in construction supervision already for more than a year. In Otepää, where the number of applications related to building has increased immensely, only one person had to issue all permits concerning construction activities and, at the same time, also inspect the on-site

situation up to 2007. If no qualified specialists have been hired, then many local governments have put the responsibility for construction supervision on vice mayors or also mayors, economic or land advisers, planning specialists or other officials of the local government in addition to their daily work. Among the local governments included in the audit sample, the Jõelähtme rural municipality considered the number of its 14 officials responsible for planning and building issues to be adequate regarding the numerous tasks involved, and so did Harku and Kuusalu municipalities, which have employed separate inspectors for carrying out construction supervision.

92. Several municipalities lacking full-time specialists have found an alternative way to mitigate the problems of construction supervision. In Läänemaa, for example, the association of local governments has employed a construction inspector who provides the service to the municipalities. The respective official carries out construction supervision in about 6 parishes/towns. However, such a solution does not satisfy all local governments, because the development pressure in some of them is multiple times higher than in others, so that the offered service does not suffice them. At the same time, in the opinion of smaller rural municipalities among them, e.g. Noarootsi, the cooperation has so far been productive.

93. In Otepää parish, the municipal police started to inspect the on-site situation of construction from January 2007 onwards. Municipal police officers are specially trained to process cases of misconduct and they drive around the municipality's territory also because of their other tasks.

94. Some local governments purchase construction supervision from sole proprietors or enterprises. According to the results of the questionnaire, 15 municipalities are using this option. For instance, the Salme rural municipality orders the supervision from a private person working in this field on the basis of contract for service and the Võru municipality from an engineering bureau. Considering expenses, such an approach can be justified, but it may not be the best solution concerning the possible conflict of interests and unclear responsibility. For example, the conflict of interests emerges when the person carrying out the job is simultaneously active as a contractor or developer in the same local community.

State supervision of building on shores and banks does not compensate the lack of supervision carried out by local governments

95. Besides local governments, also the Environmental Inspectorate and the Technical Surveillance Authority are tasked to supervise the activities related to construction. The former carries out construction supervision in protected areas and on shores and banks of water bodies, while the other is obliged by the law to carry out state supervision regarding the violations of the requirements of the Building Act. The competences of the three supervision bodies are not further determined in the Building Act and the Nature Conservation Act and are thus partially overlapping.

96. The scope of the Technical Surveillance Authority's competence in detecting illegal buildings is unclear. The Building Act gives the Authority a right to check whether the building is in compliance with its design documentation and to issue an injunction in case the building does

not meet the relevant requirements or incurs danger to human life, health, wealth or the environment. However, the Authority claims that its role is only to inspect construction enterprises and check for construction safety, whereas the Ministry of Economic Affairs and Communications considers it more broadly. Local governments and the Authority basically do not exchange any information, as they are active in different fields. Cooperation takes place only at the level of individual problematic objects. The competence of the Authority is intended to be more specifically regulated with the amendments planned into the Building Act, as well as in the course of merging some administrative authorities of the Ministry of Economic Affairs and Communications.

Environmental Inspectorate's role

97. The competence and duties of the Environmental Inspectorate and those of local governments regarding the construction on shores and banks coincide to a great extent. Although the Inspectorate carries out supervision over the observance of environmental restrictions, this presumes that all necessary permits and approvals have been issued beforehand. Additionally, the Inspectorate controls the legitimacy of the proceedings organised by the local government, if necessary.

98. The NAO finds that the supervision carried out by the Environmental Inspectorate on shores and banks complements substantially the supervision exercised by local governments. For example, the Environmental Inspectorate processes significantly less cases in these parishes, where the local government conducts more extensive supervision. Likewise, the Environmental Inspectorate could not give examples of cases, where the supervision activities of the local government and those of the Inspectorate had duplicated each other. Many local governments regard their collaboration with the Environmental Inspectorate as effective and in cases where the local government lacks the competence for dealing with misdeed or issuing injunctions it will contact the Inspectorate. According to several smaller municipalities, due to the close communication within the communities, it is difficult to introduce sanctions against the persons you know, so the proceedings are readily delegated to the Environmental Inspectorate.

99. The protection of shores and banks constitutes a part of the Environmental Inspectorate's daily work, while the related activities are mostly planned on timely basis, but sometimes also on the basis of particular objects in its annual work plan. The Inspectorate expects to improve its surveillance resources significantly by putting into use a helicopter, as it plans to include also flights over shore areas into the helicopter's time schedule and routes. Nevertheless, the Inspectorate finds that all shore and banks cannot be inspected, which is why it focuses mostly on coastal areas. In recent years, however, the number of violations can be observed to be increasing also on the banks of rivers and lakes. Regarding the audited period, the Environmental Inspectorate has processed altogether 76 violations related to building on shores or banks.

100. The NAO is assured that the supervision carried out by the Environmental Inspectorate cannot and does not have to compensate fully the omissions of local governments. Compared to local governments, the Environmental Inspectorate has only 7 departments and 8 bureaus subordinate to the departments all over Estonia, while the supervision of

building on shores and banks accounts only for a small part of the tasks of environmental inspection, and likewise, the Inspectorate does not obtain so much information on different objects as the local governments do.

Many illegal buildings emerge on shores and banks due to the procedural mistakes made by local governments

101. According to the Environmental Inspectorate, many cases processed by them reveal that the illegal situation has occurred due to a procedural mistake made by the local government. For example, the construction permit lacks the required approvals, the building design documentation is not in accordance with the detailed plan or no necessary plan has been prepared at all, or the documentation is deficient. In such cases, the Environmental Inspectorate can only notify the local government of these shortcomings and request it to eliminate them. If the illegally raised house is already close to being completed, then it is hard to require that it should be demolished.

Little capacity in local governments

102. Several smaller local governments admit that they are not able to keep track of all enforced and amended legal norms because of the numerous duties imposed on them and would like to have much more training than previously provided. As a positive example, the Environmental Inspectorate has constantly organised trainings for local governments in different parts of Estonia, where both environmental protection requirements and the proceedings of misdeed are discussed.

103. The local governments say that much of the building design documentation is of very low quality, while they mostly lack sufficient competence to conduct construction expert analyses on superficial projects, and accordingly, to require that the documents should be improved. The NAO also found out by examining the documents that many building design documentations have deficient layouts, where the valid restrictions are not mapped. Therefore, it was not possible to judge on the basis of building design documentation, whether the building had been planned into building exclusion zone or not.

104. For instance, the Otepää rural municipality issued the construction permit for an area, where the detailed plan did not foresee any building. According to the explanations of the municipality, they did not notice the inconsistency between the detailed plan and the building design documentation. There are several examples from the same local community, where persons have started to build on banks, relying only on the municipality's misleading oral consent. As these buildings are located within the territory of the Otepää natural park, the construction has to be approved also by the administrator of the protected area. In Võru community, a case was found, where the layout of the building design documentation concerning shore area had a wrong scale. The Environmental Inspectorate has processed several cases, where the local government has ignored the fact that the building is planned into building exclusion zone, and subsequently, has not requested the necessary approval from the Minister of the Environment.

County governors do not supervise whether the issuing of construction documents is legitimate

105. Pursuant to the law, county governors carry out supervision concerning the legitimacy of the particular acts of local governments. The law does not regulate more specifically the process of supervision, neither does it specify, when and to what extent the supervision should be carried out. In this situation, the county governor supervises individual acts generally only by following complaints from persons. The questioning of county governments revealed that persons have approached the county governor only on few occasions.

106. In NAO's opinion, the protection of public interests should be supervised not only regarding the preparation of plans, but also the processing of construction documents. If the local governments issue construction permits that overlook either the obligation to prepare the detailed plan or the solutions of the detailed plan already established, this may affect the public interests in shore areas to the same extent or even more than an ill-prepared plan. According to the Building Act currently in force, no state supervision is carried out over the issuing of permits related to construction, which is why only private persons, who have the opportunity to contest the decision in court in order to protect their interests, check the permits that are falsely issued.

107. The procedural mistakes of local governments are mostly conditioned by their low competence. The local governments could be greatly helped by adequate feedback received through county governor's supervising activities and additional trainings. The NAO brings to notice that the law already provides the county governments with necessary means, which would help to control whether the activities of local governments are legitimate. These means should however be used more efficiently.

The Construction Register does not support construction supervision

108. Pursuant to the Building Act, the main purpose of the state register for construction works (hereinafter the Construction Register) is to maintain records of buildings under construction or in use. This provides that the Construction Register could serve as an efficient tool for local governments and state authorities in carrying out construction supervision. Unfortunately, the data of the Register is incomplete and does not reflect the present situation. In the course of the audit, it occurred that the Register does not enable creating an overview of the buildings constructed on shores and banks.

109. In planning construction supervision, one cannot always rely on the Construction Register, because the included data does not reflect adequately the actual situation. Hence, the Environmental Inspectorate generally does not rely on the Register when carrying out supervision, but requests the information directly from local governments. The main disadvantage in planning the supervision is that the Construction Register does not enable to observe the state of the building (whether the building has been already raised or is yet to be raised). This is partly caused by the omissions of local governments, as they do not require that the developer would submit a notification about launching the construction, neither control whether the completed building has the permit for its further use. As the Construction Register includes considerably fewer use permits compared the number of construction permits issued, this gives a misleading impression as if most of the buildings had not been completed.

110. The Construction Register does not enable linking the permit with a particular immovable property or natural location, as the coordinates of buildings are not recorded. Since 2003, local governments have been obliged to enclose also the coordinates of the construction works when they enter data into the Construction Register. However, the local governments disregarded this obligation often and the processor of the Register did not control it either. The system introducing GIS that is being developed by the Ministry of Economic Affairs and Communications should facilitate the identification of buildings' locations significantly.

111. Regarding the maintenance of the Construction Register, an important shortcoming is that changes related to construction works cannot be entered. For example, the amendments in construction volumes that are made in the construction permit are not recorded in the Register. As the system of the Construction Register enables altering the data only within 20 days after it is entered, but an administrative act can be amended within a longer period of time pursuant to the Administrative Procedure Act, the information included in the Register may have been changed afterwards. Likewise, it is not possible to remove the document from the Register, if the developer has withdrawn her application. Besides that, the local governments have difficulties with registering the buildings the construction permits of which have been issued earlier, but not entered into the Register, so the data on earlier buildings is incomplete. For example, the Register lacks data on whole districts of summer cottages.

112. The Construction Register is not connected with other state registries, therefore the included data can be misleading. For example, the Register does not record the changes in building ownership, neither the changes in the name or size of the cadastral unit.

113. NAO's recommendations to the Minister of Economic Affairs and Communications in collaboration with the Minister for Regional Affairs:

- To assess the efficiency of the construction supervision carried out by local governments, the Technical Surveillance Authority and county governments, as well as the extent to which their tasks overlap. To amend the Building Act so that the supervision functions of all supervising authorities (including also county governments) would be clearly described. If overlapping is eliminated, this helps to use the resources of different authorities more efficiently.
- In collaboration with the associations of local governments, to work out solutions that would help to provide all local governments with persons responsible for construction supervision. For example, to promote the cooperation between local governments in carrying out the supervision. In addition to making competent specialists more available, this would also help to save money.

Response from the Minister of Economic Affairs and Communications: The Ministry of Economic Affairs and Communications is willing to analyse the duties of supervision imposed

on local governments and the Technical Surveillance Authority with the provisions of the Building Act. If these provisions prove to have shortcomings, then we will look for opportunities to solve the problem with amending the regulation. The Ministry of Economic Affairs and Communications is also ready to seek better solutions for specifying the role of county governors in the process of supervision, but we emphasize that the county governments are in the administrative area of the Ministry of the Interior. The duties and competences of the county government and county governor are provided with the Government of the Republic Act. To regulate the supervision functions of county governors, there needs to be a mutual consensus between both ministries.

[Regarding the second recommendation], we note that the Minister for Regional Affairs leads the structural units of the Ministry of the Interior, which deal with local governance and regional management, as well as with planning and coordinating regional development. The Ministry of Economic Affairs and Communications does not have the competence to work out solutions in this area.

Response from the Minister for Regional Affairs: According to current experience, the associations of local governments are not interested in having the respective specialists among their staff members. More efficiently has been implemented another mechanism, where several local governments have employed the specialist collectively. We find that only the administrative bodies authorized to exercise public power can be tasked to fulfil supervision functions, so in essence that cannot be in the competence of the associations of local governments. The main purpose of the association of local governments is rather to represent the common interest of its members, the units of local governments, through implementing soft measures.

NAO's comment: we cannot agree with the opinion of the Ministry of Economic Affairs and Communications as if the Ministry lacks competence in working out better solutions concerning the construction supervision carried out by local governments. Pursuant to the Building Act, local governments are the bodies exercising construction supervision, and accordingly, the implementation of the legal provisions is directly dependent on the capacity of local governments. Thus, it is important that appropriate solutions would be worked out in the collaboration of the Ministry of the Interior and the Ministry of Economic Affairs and Communications.

114. NAO's recommendation to the Minister for Regional Affairs: To guarantee that the state provides support for training local governments systematically as regards to administrative proceedings and those of misdeed. The trainings should be organised in different regions of Estonia, so that also the officials of the local governments located far from Tallinn could attend them.

Response from the Minister for Regional Affairs: Under the measure "Enhancing administrative capacity" the State Chancellery is organising trainings for the specialists of local governments, which also enables to provide trainings related to the legal aspects of administrative proceedings and those of misdeed. The respective proposal – to continue with this topic also in the next year – is forwarded to the State Chancellery. The Ministry of the Interior has organised trainings related

to the issues of planning and administrative proceedings in association with county governments.

115. NAO's recommendations to the Minister of Economic Affairs and Communications:

- To initiate amendments into the Building Act, so that also in the case of the construction works occupying a smaller area than 20 m² on shores and banks as areas of building restrictions the developer needs to request the written consent from the local government. The amendment should regulate, what sort of information the request definitely has to contain (e.g. the building's layout on the plot, the restrictions enforced concerning the right to build on this plot, the building's description and purpose of use). This would help local governments in evaluating the quality of the application and provide sufficient information, on the basis of which to decide, whether it is necessary to require also the building design documentation or not. At the same time, this would enable the local governments to gain better overview of the building activities planned on shores and banks and to conduct more efficient supervision.
- To prepare guidelines, which would help local governments to make use of the discretion they have been provided with: to evaluate the quality of the building applications submitted to them and, if necessary, to require that these documents should be improved or building design documentation prepared.
- To develop further and make more flexible the solutions of the Construction Register. First of all, to ensure that the Construction Register is interlinked with other state registries and to solve the problem in relation to registering the buildings that have been granted construction permits earlier.

Response from the Minister of Economic Affairs and Communications: The Ministry of Economic Affairs and Communications agrees that the respective articles of the Building Act [as provided in the first recommendation] need to be amended.

[Regarding the second recommendation, our position is that] it has been provided in the Administrative Procedure Act that discretion is an authorisation granted to an administrative body by the law to consider making a resolution or choose between different resolutions. Discretion shall be exercised in accordance with the limits of authorisation, the purpose of discretion and the general principles of justice, taking into account relevant circumstances and considering legitimate interests. The administrative body shall consider every particular case separately, as every situation is different. The Ministry cannot dictate the local governments how they could use the discretion they are granted.

[In relation to the third recommendation] we inform that in order to improve the Construction Register, the Ministry of the Environment has launched a public procurement no 101756 (purchasing development and support services for the software system of the Construction Register, entitled "Services related to software"), under which it is planned to analyse the work processes and requirements of the Register, develop its

software and create new solutions. In addition, an IT audit has been ordered concerning the software of the Construction Register. The purpose of the audit is to assess the suitability of the principles for building up the Register's software, as well as its sustainability, and to make recommendations for improving the quality of the data and making the use of the software more convenient.

Penalties for illegal and unauthorized construction are not effective

The fines and penalty payments applied to illegal activities are too small and do not serve as preventive measures

116. In the cases of illegal or unauthorized building, the supervising authorities shall have the opportunity to manipulate the person to stop the illegal activity by imposing penalty payments on them. The fine imposed in the case of a violation shall be big enough to influence the people to refrain from committing illegal activities altogether.

Did you know that?

- As provided in the Building Act, the maximum limit for penalty payment is 10 000 EEK;
- In the case of building without permit or non-compliance with the requirements, the maximum fine imposed on a natural person is up to 18 000 and on a legal person up to 500 000 EEK;
- The Nature Conservation Act allows to fine the natural person with up to 18 000 and the legal person with up to 50 000 EEK if the requirements of shores protection have been violated.

117. The NAO finds that the fines and penalty payments applied to the cases of illegal and unauthorized building are too small compared to construction prices and thus have no preventive or punitive effect. Therefore, the state and local governments lack an efficient means of influence, which would help to curb illegal building. Also the Chancellor or Justice has emphasized that the inefficiency of the limits of fines and penalties in construction field is a problem.

118. Over the last years, construction prices have multiplied, while the buildings are even more valuable in the immediate vicinity of water bodies, so the shore areas are generally under the greatest development pressure. However, the limits of fines and penalty payments provided in the law have not increased together with the construction prices and thus do not correspond to the market situation anymore. Therefore the fines can easily be included in the calculations of construction prices without raising the prices significantly.

119. According to the Environmental Inspectorate, the inspectors generally impose fines between 3000–10 000 EEK, but if the sums are contested in court, then they are usually lowered even more. During the audit, the NAO got to know of several cases, where the developers had completed illegal buildings regardless of penalty payments and fines that had been repeatedly charged already since the initial stage of the construction.



Recreational centre that is raised without permit is within the territory of Lahemaa national park, on the bank of a spawning river of fish species that belongs to the protected category I.

NAO

It is easy to legalise illegal and unauthorized buildings

120. The owner of illegal or unauthorized building should not develop an expectation that the building she has illegally raised can always be legalised afterwards. The protection of shores and banks is efficiently provided only if before launching the construction, the impacts of this activity on protected values are assessed and construction is allowed only in places, where the building does not affect public interests. In addition to fines, the illegal and unauthorized buildings emerging on shores and banks could be avoided by advancing the understanding that the building being raised in this way can be removed.

121. The NAO finds that the removal of buildings, which are dangerous, temporary or raised without construction permit according to the Building Act, does not have the effect of sanction, as this measure is not used in reality. Majority of illegal and unauthorized buildings are later legalised without considering the justifications. In such a process, public interests are neither represented nor protected.

122. The questionnaire uncovered, that during the audited period, local governments had required the demolition of unauthorized building located on a shore or bank only on six occasions. The rural municipalities included in the audit sample have never issued a precept to demolish such construction works. The Environmental Inspectorate has issued altogether 12 injunctions for the removal of buildings, but on several occasions, the owner has agreed as a result of negotiations to tear down the building herself even before the injunction. Regarding at least one of the cases, the person agreed to dismantle an unauthorized summer cottage and sauna, which were already completed. The NAO did not find any cases, where the removal of building would have been organised by the state or local government, following the regulation of substitutive enforcement.

Many people do not wait for obtaining the permit

123. According to the supervising authorities, most of the cases of building without permit are such, where the developer has already taken steps for obtaining the construction permit from the local government, but has not waited for the permit being issued. For example, the developer has started to prepare the detailed plan or submitted an application for construction permit. Such proceedings of legalising completed buildings are carried out in the same way as in cases, where the planning and

construction follows the law. For example, it is not explained in submitting documents for approval that the buildings described in the documentation are already completed – in all cases observed by NAO, there was never mentioned in the application documents submitted for preparing a plan or obtaining a construction permit that they are concerned with existing buildings. In several cases, the local governments had also turned to the Ministry of the Environment in order to decrease the building exclusion zone, without explaining that the buildings are already under construction or altogether completed.

Local governments do not assess whether the legalisation is justified

124. When discovering unauthorized buildings, the local governments generally request the developer to apply for a construction permit, either verbally or by issuing precepts. Only in few studied cases, the proceedings of issuing the permit were started with preparing the detailed plan in retrospect. Most of the audited local governments did not consider it to be necessary to fine the illegal activity. Only in one case, the planning was launched together with carrying out a strategic environmental assessment. In none of the studied cases, had the local governments concluded on the basis of the proceedings that the raised building should not be there.

125. The NAO considers especially negative precedents to be the cases where unauthorized buildings are legalised without preparing the detailed plan, as the public does not have any opportunity to participate in the process of decision-making, while environmental impacts are generally also not assessed and the number of approving authorities as well as the information submitted to them is significantly more limited. The fact that the building already exists cannot be accepted as the sole reason for legalisation; the issuer of the permit shall also assess the suitability of the building and its compliance with public interests, as well as the need for legalisation. For instance, in some cases it may be possible to dislocate the building out of the building exclusion zone. The legalisation shall be accepted only in cases, where the owner of the unauthorized building could have probably also raised the building if behaving correctly.

The process of demolition under the regulation of substitutive enforcement is unclear

126. In general, the building raised without construction permit has to be demolished by the owner at her own expense. If the owner does not fulfil the duty imposed on her, then the demolishment is organised by the local government following the process of substitutive enforcement. According to local governments, it is complicated to carry out the demolition under the regulation of substitutive enforcement because the law lacks clear implementing provisions in this regard. The local governments claim that they loose court cases, because they have made procedural mistakes in the supervision process. As the issues of demolition are regulated only in general terms and ambiguously in the law, the local governments are afraid that they will be later forced to compensate the demolition. Smaller local governments also explained that they do not require the demolition because by knowing the people personally they have difficulties with making such decisions. Hence, they prefer that the removal of buildings is required and organised by the Environmental Inspectorate.

127. Several auditees claimed that the obligation to demolish is not implemented because of unpropitious practice. The NAO finds it necessary to emphasise that the previous practice of the Supreme Court concerning the demolition of buildings is based on cases, where the

building was raised under construction permit or design criteria, but mistakes had been made during issuing the permit. The Supreme Court has not formed its position regarding the demolition of completely unauthorized buildings. Likewise, it does not follow from the existing court practice that to dismantle every type of illegal building would excessively offend private ownership – the Supreme Court has stressed that in invalidating construction permits and demanding the demolition, both public and private interests have to be considered and the consequences of the decision have to be taken into account as well.

128. More important than to apply substitutive enforcement immediately is that the local governments would have the will to assess, whether the building that was raised in illegal or unauthorized way jeopardizes public interests, including the environment, and consequently, if it would be reasonable to demand the removal of the building. In the practice of the Environmental Inspectorate, there are several instances, where after fines and penalty payments were implemented and negotiations were held, the developer herself removed the building from the building exclusion zone or dismantled it. There are also cases, where the Environmental Inspectorate has convinced the person to demolish the building damaging the environment only as a result of negotiations and explaining the content of legal acts.

129. The NAO finds that as the financial sanctions are inadequate and the proceedings of demolishing buildings are not regulated, the state does not express explicitly its intolerance in response to illegal construction activities. The fact that local governments as the main bodies exercising construction supervision do not implement sanctions and that illegal or unauthorized buildings are easy to be legalised afterwards, intensifies the sense of impunity even more.

130. NAO's recommendations to the Minister of Economic Affairs and Communications:

- To assess the effectiveness of the penalty payments and the limits of fines applied to the instances of illegal and unauthorized building. To initiate amendments into the Building Act in order to increase the penalty payments and fines to the extent, which would ensure the preventive effect of these sanctions.
- To prepare more specific regulations and guidelines regarding how to process the demolition of buildings under the regulation of substitutive enforcement. This would help the local governments to avoid making procedural mistakes in implementing the substitutive enforcement and would give them more confidence in this process. Demolition of illegal buildings as a sanction would then become more efficient.

Response from the Minister of Economic Affairs and Communications: The Ministry of Economic Affairs and Communications agrees to assess the effectiveness of the penalty payments and the limits of fines applied to the cases of illegal and unauthorized building. If it turns out to be necessary, then we will look for an opportunity to solve the problem by amending the regulation.

We also agree to analyse the need for the guidelines [described in the second recommendation].

131. NAO's recommendation to the Minister of Economic Affairs and Communications in collaboration with the Minister of the Environment:

To work out amendments into the Building Act, so that the legalisation of the illegal buildings situated on shores or banks can be accepted only if this would comply with the comprehensive plan, pass the process of detailed planning and be approved by the Ministry of the Environment (the county environmental department). To legalise an illegal building located within building exclusion zone should be possible only if a permit had been obtained for that also by observing the law.

Response from the Minister of Economic Affairs and Communications:

At present, there are no provisions in the Building Act concerning the legalisation of illegal buildings. In making amendments in the recommended way, the focus should be on the Planning Act, while the possible amendments of the Building Act can have a supportive effect on the Planning Act.

Response from the Minister of the Environment: The Ministry of the Environment finds that illegal buildings can be legalised only in exceptional cases and on the basis of discretion. At the same time, it is essentially wrong to process detailed plans in retrospect and this lowers the administrative capacity of various institutions. The problem of so-called illegal buildings becomes relevant also in relation to the Soviet-time illegal building activity, so that reasonable solutions shall be found for legalising such buildings, if necessary. In legalising illegal buildings and civil engineering works, the Ministry of the Environment relies on a general principle, that the legalisation can take place only in cases, where the permit for raising the building would have been obtained also by observing the legal requirements. The Ministry of the Environment has indeed followed this principle.

/signed digitally/

Tarmo Olgo
Director of Audit of the IV Audit Department

Description of the audit

Purpose of the audit

The purpose of the audit was to assess, whether the state and local governments protect public interests in planning the building on shores and banks of water bodies and whether the supervision of building on shores and banks is efficient.

Criteria for judgement

In giving its judgement, the National Audit Office relied on the following criteria:

- Local governments have established relevant comprehensive plans that cover also shores and banks.
- The solutions of the comprehensive plan are amended only when there is a justified need for that, and by involving the public into this process and identifying the environmental impact resulting from the amendments.
- Legal acts provide clear and unambiguous restrictions on the building on shores and banks. Exceptions for decreasing building exclusion zones are made on the basis of coherent and transparent criteria.
- Efficient supervision is carried out concerning the legitimacy of the preparations of detailed plans and the consideration of public interests in this process.
- The state and local governments exercise efficient supervision over illegal and unauthorized building. During the whole construction process, it is observed whether the building meets the requirements.
- Illegal buildings are discovered, illegal construction is halted and the situation preceding the illegal activity is restored.
- There exist efficient financial sanctions for preventing illegal and unauthorized building.

Scope and approach of the audit

The audit analysed the activities of local governments, the Ministry of the Environment and county governments in preparing detailed plans related to shores and banks and the activities of local governments, the Environmental Inspectorate and the Technical Surveillance Authority in exercising supervision over building on shores and banks.

The audit focused on two main questions:

1. Is the spatial development of shore areas planned by following long-term objectives and considering public interests?
2. Does the organisation of construction supervision ensure that shores and banks are accessible to the public and the natural values of these areas are protected?

The audit covered the years from 2004 to 2006. The audit was not concerned with the protection of shores and banks within cities and towns.

In order to answer the main questions of the audit, following procedures were carried out:

- Analysis of legal acts, court judgements and national plans related to shore areas.

- The following persons were interviewed and asked for explanations (their position is given as applies to the time of the meeting):
 - Ülle Harak, act. Head of Nature Conservation Department, Ministry of the Environment;
 - Katrin Teder, Specialist of Nature Conservation Department, Ministry of the Environment;
 - Urve Sinijärv, Chief Specialist of Nature Conservation Department, Ministry of the Environment;
 - Jüri Lass, act. Head of Planning Department, Ministry of the Interior;
 - Maila Kuusik, Adviser of Planning Department, Ministry of the Interior;
 - Nele-Kai Loorits, Head of Building Division of the Building and Housing Department, Ministry of Economic Affairs and Communications;
 - Siim Reinaas, Head of Construction Register Division of the Information Systems and Registry Department, Ministry of the Economic Affairs and Communications;
 - Heino Alaniit, Head of Planning Department, Harju County Government;
 - Aarne Mesilane, Head of Legal Department, Harju County Government;
 - Alan Rood, Chief Specialist of Supervision Division of the Planning Department, the Harju County Government;
 - Harri Pendis, Chief Specialist of Supervision Division of the Planning Department, Harju County Government;
 - Tiina Troškin, Chief Inspector, Centre of the Environmental Inspectorate;
 - Tiia Kaar, Head of Harjumaa County Department, Environmental Inspectorate;
 - Margo Dengo, Head of Construction Safety Department, Technical Surveillance Authority;
 - Rita Annus, Adviser to the Director General, Estonian Land Board;
 - Helle Übius, act. Adviser of Planning and Land Reform Department, Estonian Land Board;
 - Natalja Varkki, Mayor of Alajõe Rural Municipality;
 - Margus Kiir, Municipal Secretary of Alajõe Rural Municipality;
 - Jüri Kirss, Advisor for Building and Municipal Services, Audru Rural Municipality;
 - Urmas Aava, Mayor of Häädemeeste Rural Municipality;
 - Merle Looring, Advisor for Development and the Environment, Häädemeeste Rural Municipality;
 - Georg Ruuda, Mayor of Võru Rural Municipality;

- Inge Vill, Advisor for Development and Enterprise, Võru Rural Municipality;
- Peeter Haug, Registrar of Võru Rural Municipality;
- Ülo Laanemets, Head of Land and Planning Department, Jõelähtme Rural Municipality;
- Ilari Domaskin, Specialist for Building and the Environment, Kasepää Rural Municipality;
- Kadi Raudla, Municipal Architect of Kuusalu Rural Municipality;
- Ilmar Pungar, Head of Land Division, Mustjala Rural Municipality;
- Marika Meister, Adviser for Land and Development, Noarootsi Rural Municipality;
- Kalev Sepp, Construction Inspector, Association of Läänemaa Local Governments;
- Jüri Kluge, Land Adviser of Salme Rural Municipality;
- Toomas Schmidt, Mayor of Ridala Rural Municipality;
- Aivar Sein, Vice Mayor of Ridala Rural Municipality;
- Aivar Pärli, Mayor of Otepää Rural Municipality;
- Peeter Aunapu, Municipal Engineer of the Building and Management Service, Otepää Rural Municipality;
- Marek Merilo, Land Adviser of Otepää Rural Municipality;
- Urmas Kuldmaa, Municipal Police Officer, Otepää Rural Municipality;
- Sulev Roos, Vice Mayor of Harku Rural Municipality;
- Urmas Rasina, Head of Development and Planning Department, Harku Rural Municipality;
- Vjatšeslav Fomtsenkov, Inspector of Construction Supervision, Harku Rural Municipality;
- Kristina Ott, Municipal Architect of Harku Rural Municipality;
- Arvid Arroval, Adviser for Development, Tahkuranna Rural Municipality;
- Hendrik Haldma, Adviser for Building, Ülenurme Rural Municipality;
- Karin Ruuder, Land Adviser of Ülenurme Rural Municipality;
- Märt Mandel, Head of Building and Planning Department, Võru City Government;
- Ülevi Eljand, Chief Architect-Adviser, Võru City Government;
- Lea Visnap, act. Head of Võrumaa Department, Environmental Inspectorate;
- Ain Ruthe, Chief Inspector of Võrumaa Department, Environmental Inspectorate;
- Ena Poltimäe, Director of Võrumaa Environmental Department, Ministry of the Environment;

- Anu Holvandus, Specialist for Water, Võrumaa Environmental Department, Ministry of the Environment;
 - Jaan Pikka, Head of Harjumaa Environmental Department, Ministry of the Environment;
 - Raivo Kallas, Head of Saaremaa Environmental Department, Ministry of the Environment;
 - Liis Keenberg, Head of the Work Group for Planning Supervision, Estonian Green Movement – FoE Estonia;
 - Peep Lepik, Consultant-Planner, Hendrikson & Ko;
 - Toomas Paaver, City Architect of Kuressaare City Government.
- Analysis of documents of local municipalities that comprised detailed plans covering shore areas and proceedings of construction permits, as well as applications for decreasing building exclusion zones within the sample of 15 rural municipalities. The following municipalities were included in the sample: Alajõe, Audru, Harku, Häädemeeste, Jõelähtme, Kasepää, Kuusalu, Mustjala, Noarootsi, Otepää, Ridala, Salme, Tahkuranna, Võru and Ülenurme.
 - The sample was designed as an expert sample. The purpose for designing the sample was to analyse cases that are related to the shores and banks of various water bodies, by considering also the different development pressure in local communities, the extent of nature conservation restrictions imposed on shore areas, as well as the number of problems identified during the preparatory studies of the audit. The information of the Estonian Land Board on the number of purchase-sale deals within the building exclusion zone of shores and banks and the total value of these transactions, the applications submitted to the Ministry of the Environment for decreasing building exclusion zones, as well as the existence of shore areas that are important for the public and/or for nature conservation purposes served as the basis for designing the sample.
 - Analysis of the documents of the Ministry of the Environment, which are related to approving the decreasing of building exclusion zones.
 - Local governments were questioned. A questionnaire was sent via e-mail to all rural municipalities of Estonia. 182 municipalities responded to the questionnaire.
 - All county governments were questioned. No answer was received only from the Saare county government.
 - Analysis of the data of the Construction Register.
 - 2 focus groups were organised for assembling the standpoints of different parties. During the meetings, public interests and the problems with identifying environmental impacts were discussed, and the problems of construction supervision related to shore areas were analysed.

Completion of the audit:

The procedures of the audit were completed in April 2007.

Audit team:

The audit team comprised of Tuuli Rasso, Audit Manager, and Airi Andresson, Rait Sannik and Rainer Kuuba, Auditors. In addition, Kadri-Piibe Luik, temporary Junior Auditor, also contributed to audit's procedures.

Contact details

Additional information regarding the audit is available from the Communication Service of the National Audit Office

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An electronic copy of the audit report (pdf) is available online from www.riigikontroll.ee.

The number of this audit in the internal records system of the National Audit Office is OSIV-2-1.4/07/94.

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