

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2311

H. P. 1817

House of Representatives, January 7, 1974

Referred to the Committee on Natural Resources. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Briggs of Caribou.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT to Establish a State Register of Critical Areas.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 5, c. 312, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 312 to read as follows:

CHAPTER 312

STATE REGISTER OF CRITICAL AREAS

§ 3310. Title

This chapter shall be known and may be cited as the "State Register of Critical Areas Act."

§ 3311. Findings; declaration of purpose

The Legislature finds that the State of Maine has an overriding interest in the best use and preservation of certain land and water areas of the State. It is hereby found and determined that sites or areas of unusual natural, scenic, scientific or historical significance and areas which are significantly affected by, or have a significant effect upon, existing or proposed major activities which tend to generate substantial development or urbanization are areas of such overriding state interest and importance. It shall be the policy of the State to encourage appropriate preservation or utilization of these areas through land use planning, regulation and protective acquisition or management, commensurate with controlled economic development and natural limitations. The Legislature directs that a state-wide inventory and an official, authoritative listing of such natural, scenic, scientific, historical areas and

other areas of overriding state interest be made by the State Planning Office as part of its overall responsibility for comprehensive state-wide planning and coordination of the planning efforts of state and local agencies. The official listing shall be known as the "Register of Critical Areas" and may be referred to as the "register." The State Planning Office will also assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

A Critical Areas Advisory Board shall be created to advise the State Planning Office in the identification of areas to be included in the register and to coordinate the use and enhance the protection of all designated critical areas included in said register. The Critical Areas Advisory Board shall also coordinate and recommend appropriate plans and regulations in cooperation with local units of government for the wise use and protection of critical areas.

§ 3312. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Advisory board. "Advisory board" shall mean the Maine Critical Areas Advisory Board hereinafter created.

2. Critical areas. "Critical areas" means areas containing or potentially containing plant and animal life or geological features worthy of preservation in their natural condition, or other natural features of significant scenic, scientific or historical value and areas which are significantly affected by, or have a significant effect upon, existing or proposed major developments which tend to generate substantial development or urbanization.

3. Local units of government. "Local units of government" shall mean any political subdivision of the State including but not limited to counties, municipalities, townships, together with all agencies and boards thereof.

4. Register of critical areas. "Register of critical areas" means the official record and inventory of critical areas established and maintained by the State Planning Office.

§ 3313. Maine Critical Areas Advisory Board

There is hereby created a Maine Critical Area Advisory Board to advise and assist the State Planning Office in the establishment, analysis and maintenance of the Register of Critical Areas. The Maine Critical Areas Advisory Board, hereinafter in this chapter referred to as the board, shall be convened by the State Planning Office and shall consist of 11 members, 8 of whom shall be permanent members.

1. Permanent members. The 8 permanent members of the board shall be the appointed designees or officers of the following state departments. The State Planning Office, the Department of Conservation, the Board of Environmental Protection, the Department of Transportation, the Department of Inland Fisheries and Game, the Department of Marine Resources, the Maine

Historic Preservation Commission and the Department of Educational and Cultural Services.

2. **Additional members.** There shall be 3 additional members of the board who shall serve for terms of 3 years respectively, except that initially, a member shall be appointed whose term shall expire at the end of one year, one member whose term shall expire in 2 years and a 3rd appointive member whose initial term will expire at the end of 3 years. One appointive member shall represent local government interests, one appointive member shall represent local government interests, one appointive member shall represent private conservation interests and one appointive member shall represent the University of Maine.

3. **Officers.** The board shall annually select from its membership a chairman and a secretary, and said board shall meet not less than twice a year at the call of the chairman or a majority of the members. The State Planning Office shall furnish clerical, technical and other services required by the board in the performance of its official duties.

4. **Quorum; records.** A quorum of the board for the transaction of business shall be 7 members. The secretary of the board shall keep a record of all proceedings of the board, which record shall be a public record.

5. **Rules and regulations.** The board may adopt and promulgate rules and regulations governing the conduct of its business.

6. **Expenses.** Members of the board shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

§ 3314. Register of critical areas

1. **Register of Critical Areas.** The State Planning Office, with the advice of the board, shall establish a Register of Critical Areas, which shall contain an inventory of sites and areas of significant natural, scenic, scientific or historic value duly classified as "critical areas" and as defined in section 3312. In determining the classification of an area or site as a critical area, the State Planning Office shall consider:

- A. The unique or exemplary natural qualities of the area or site;
- B. The intrinsic fragility of the area or site to alteration or destruction;
- C. The present or future threat of alteration or destruction;
- D. The economic implications of inclusion of a critical area in the register.

2. Each critical area listed in the register shall include:

- A. A general description of the area or site;
- B. A list of its unique or exemplary qualities and reasons for inclusion in the register;
- C. Its size and location;

D. Existing plans and regulations of local units of government which deal with or affect the area or areas so designated;

E. If no plans or regulations exist, the local unit of government shall upon receiving notification of the designation of an area or areas of critical concern within its jurisdiction:

(1) Within 6 months of said notification, prepare plans, regulations or other requirements necessary to protect or assure the wise use of the designated area or areas of critical concern.

(2) The local unit of government may request that the State Planning Office and the advisory board prepare and assist in the preparation of plans and regulations for adoption by the local unit of government;

(3) Plans or regulations prepared pursuant to this section shall become effective when enacted by the local unit of government and upon such date as the State Planning Office and the Advisory Board may provide in its order approving said plans and regulations;

(4) Planning grants. The State Planning Office shall prepare guidelines for dispersing funds to local units of government for as much as 100% but not less than 50% of the nonfederal cost of preparing and adopting plans and regulations for areas of critical concern pursuant to section 3314, for a period not to exceed 5 years from the date the State Planning Office and the Advisory Board approve the designation of an area of critical concern.

F. If any local unit of government fails to prepare plans and regulations that are acceptable to the State Planning Office and Advisory Board within one year of the order designating an area or areas of critical concern within its jurisdiction, the State Planning Office and the Advisory Board shall prepare and, after conducting a public hearing in the manner provided in Title 1, sections 401 to 404-A at a location convenient to those persons affected by such plans and regulations, adopt such plans and regulations applicable to that government's portion of the area of critical concern as may be necessary to effect the purposes of this Act. If such plans and regulations are adopted, they shall apply and be effective as if adopted by the local unit of government. Notice of any proposed order issued under this section shall be given to all units of government having jurisdiction over the area of critical concern;

G. Protection of landowners' rights:

(1) Nothing in this Act authorizes any governmental agency to adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of real or personal property in violation of the Constitution of this State or of the United States.

(2) Neither the designation of an area of critical concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration and recordation of a subdivision pursuant to

state laws, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued prior to the date of notice for public hearing as provided by subsection 2, paragraph F. If a developer has by his actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this Act authorizes any governmental agency to abridge those rights.

3. Recommendations. The State Planning Office shall recommend to appropriate state agencies which possess the authority to acquire property rights, through devise, gift, purchase or otherwise, and which also possess the authority to contract with private property owners, the acquisition of property rights or the establishment of management agreements which will insure the protection of critical areas on the register whose natural qualities are threatened with adverse alteration or destruction. The State Planning Office may also recommend plans and regulations, the acquisition of property rights, the purchase or exchange of development rights, or consummation of contractual management agreements regarding any critical area listed in the register to any state agency, political subdivision of the State or private citizens who have demonstrated interest in the protection of critical areas.

4. Alterations. The Critical Areas Advisory Board shall be advised by the present or prospective owner of any proposed alteration or change in the use or character of any area listed in the Register of Critical Areas that is not consistent with plans, regulations and conditions upon which the critical area is registered. No alteration or change in use or character shall take place prior to 60 days from such notification unless a release is issued by the Critical Areas Advisory Board.

5. Removal and review of listed areas. The State Planning Office, with the advice and approval of the Maine Critical Areas Advisory Board, will review and may remove any critical area listed in the register, when it shall determine that such protection as afforded under inclusion in the register is no longer necessary or appropriate.

Sec. 2. Appropriation. There is appropriated from the General Fund the sum of \$30,000 for the fiscal year ending June 30, 1975, to carry out the purposes of this Act.

STATEMENT OF FACT

The purpose of this Act is to identify areas of outstanding scientific and educational interest as well as areas under severe development pressure and encourage their protection and wise use for the continued enjoyment of future generations, as more fully described in section 3311 of this Act. The purposes and procedures of this Act will also serve to bring together and clarify the relationships between other already existing land and water use control measures. Inventories of critical areas have been completed by certain state agencies, as well as private groups, particularly in coastal area.