

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

Reports
to the
ONE HUNDRED AND FOURTH LEGISLATURE
Volume One

January, 1969

Legislative Research Committee

Publication 104-20 (Vol. I)

STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORTS
TO THE
ONE HUNDRED AND FOURTH LEGISLATURE
VOLUME ONE

JANUARY, 1969
LEGISLATIVE RESEARCH COMMITTEE
PUBLICATION 104-20 (VOL.I)

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 Elected September 19, 1968
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 Appointed July 17, 1968
 Samuel A. Hinds, Assistant Finance Officer
 Appointed November 20, 1968; Effective, January 1, 1969

LETTER OF TRANSMITTAL

January 1, 1969

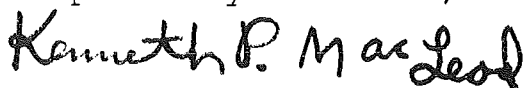
To the Members of the 104th Legislature:

It is my honor to transmit herewith the first volume of studies authorized by the 103rd Legislature for Legislative Research Committee study and determination during this past biennium.

This volume, designated as Legislative Research Committee publication 104-20 (Vol. I), combines in a single publication the findings and recommendations developed in ten specific areas of study which are individually reported in committee publications numbered 104-1 through 104-10.

The Members of the Committee wish to express their appreciation for being chosen to participate in these assignments and sincerely hope the reports contained herein will prove of benefit to the Members of the Legislature and the people of the State of Maine.

Respectfully submitted,



KENNETH P. MACLEOD, Chairman
Legislative Research Committee

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

Report on
WILDLANDS USE REGULATION
to the
ONE HUNDRED AND FOURTH LEGISLATURE

January, 1969

Legislative Research Committee

Publication 104-1

STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON
WILDLANDS USE REGULATION
to the
ONE HUNDRED AND FOURTH LEGISLATURE

JANUARY, 1969
Legislative Research Committee
Publication 104-1

SUBCOMMITTEE ON WILDLAND USE REGULATION

CHAIRMAN - Harrison L. Richardson

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David J. Kennedy

Emilien A. Levesque

Raymond M. Rideout, Jr.

Carlton D. Reed, Jr.

Joseph Sewall

Horace A. Hildreth, Jr., Ex Officio

Kenneth P. MacLeod, Ex Officio

ORDERED, the Senate concurring, that the Legislative Research Committee be directed to study the subject matter of Bill, "An Act to Create the Wildlands Use Regulation Commission," Senate Paper 506, Legislative Document 1260, to determine whether the best interests of the State would be served by the enactment of such legislation; and be it further

ORDERED, that the Committee be directed to report the results of its study, together with any legislation deemed necessary, to the 104th Legislature.

BACKGROUND

Legislative Document 1260, AN ACT to Create the Wildlands Use Regulation Commission, was introduced in the 103rd Legislature and referred to the Joint Standing Committee on Natural Resources. The majority of that committee reported L. D. 1260 as "ought to pass" with committee amendment "A" (S-251). Following the indefinite postponement of this bill, the Legislature by the preceding Joint Order (H.P. 1239) directed the Legislative Research Committee to review the desirability of legislation to control the use of land and water resources in the unorganized territories.

In attempting to define the problem involved and to design a responsible and realistic solution, public meetings were held by a Subcommittee of the Legislative Research Committee in Bangor, Augusta and Portland. In addition to these meetings, the Subcommittee met five times in executive session. The dates of the public hearings and executive sessions are included in Appendix "C". Appendix "D" is a partial list of the agencies and organizations making presentations at public hearings. The Legislative Research Committee received the helpful assistance of many departments and agencies of State Government and was particularly aided by the University of Maine. Many private citizens and citizen groups committed to the preservation of the unique natural resources of this State cooperated with the Committee. Some of the owners of lands involved cooperated by making available certain records and materials. The Committee had occasion to refer to a number of source materials, a partial

list of which is attached as Appendix "E".

The Subcommittee of the Legislative Research Committee charged with responsibility for analysis of this problem had occasion to meet with members of an ad hoc committee of wildlands owners and managers. During the course of these several meetings no specific objections to L. D. 1260, as amended, were raised. The ad hoc committee representing the wildlands ownership did not make any constructive proposals for the solution of the problem.

THE PROBLEM

Slightly more than one-half of the total land mass of the State of Maine lies within what are called unorganized territories and mainland plantations. This area, totaling about ten million acres of forests, lakes, rivers and streams, comprises a truly unique natural resource. The great majority of these lands are owned by sixteen corporations and four individuals. At the present time, these lands are not subject to any local governmental control. Greatly improved transportation facilities, expanded and improved highway systems, and increased leisure time for hundreds of thousands of people in the more urban areas to the south of the State of Maine are conspiring to subject these lands and waters to ever increasing development pressures. While organized portions of the State are able, as cities and towns, to impose land and water use regulation on themselves, the wildlands have no such government and are without effective protection. While these lands represent the basic raw material resource of the economically indispensable forest products industry of this State, the Legislative Research Committee

feels that the use to which these lands is put should not be left to the vagaries of corporate policy.

Recent developments have made even more clear the fact that taxation pressures are affecting a kind of de facto zoning. This occurs when tax assessment authorities value forest products properties bordering water on a residential front-foot basis when in fact the lands are being held as a raw material resource.

THE SOLUTION

The Legislative Research Committee has carefully reviewed L. D. 1260, as amended, and feels that this legislation, with several amendments suggested by evidence received at public hearings and developed during the course of extensive research, represents a reasonable and practical first step which must be part of a comprehensive cooperative effort by the State of Maine, private industry, and the people of this State to intelligently develop with balance and good judgment the tremendous potential of these lands. The Committee endorses the adoption by the Legislature of the legislation attached, with comments, as Appendix "A". The State's authority to enact such legislation has been verified by the Attorney General's opinion attached as Appendix "B".

The Committee concludes on all of the above evidence that reasonable regulation of these wildlands is a first priority legislative objective and further concludes that any additional delay by the Legislature in taking appropriate action will have serious and possibly tragic consequences. Clear and convincing photographic proof of the pressures to which these lands are being subjected is found in the photographic essay attached to

this report as Appendix "F" (Legislative Research Committee Publication 104-1A). The experience in other states, and in other parts of the State of Maine, leads the Committee to the conclusion that unless action is taken now these lands will fall victim to shortsighted, unplanned, and destructive use resulting in water pollution and substandard development. The Committee concludes that unless action is taken at this time the continued pressures of population, profit and taxation will result in the loss of this great natural resource to man's capacity to foul his environment.

In reviewing this question the Committee has also had occasion to examine the State's leasing policies of public lands, and in that regard the Committee would like to record its recommendation that the lessee of state lands, at the annual renewal of camp lot leases on the Public Reserve Lands of the State, be required to make an affirmative statement of compliance with the State Plumbing Code.

AN ACT to Create the Wildlands Use Regulation Commission.

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

R. S., T. 12, c. 206-A, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 206-A, to read as follows:

CHAPTER 206-A

WILDLANDS USE REGULATION

SUBCHAPTER I

GENERAL PROVISIONS

§681. Scope and purpose

The Legislature finds that it is desirable to extend the principles of sound planning, zoning and subdivision control to the unorganized and mainland plantation areas of the State in order to preserve public peace, health, safety and general welfare, and to prevent the further spread of unplanned residential, recreational, commercial and industrial development detrimental to the use or value of these wildlands; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along lakes, ponds, rivers and streams, and public and private roads of substandard structures or structures located in too close a proximity to such waters or roads; and, to prevent the despoliation, pollution and inappropriate use of lakes, ponds, rivers and streams in these mainland plantation and unorganized areas; and, to preserve ecological balance in these mainland plantation and unorganized areas.

(Comment) L. D. 1260 as amended by the Natural Resources Committee had what is numbered here as section 681 as part of the preamble. We feel that the purpose of this legislation should be stated within the body of the legislation itself. There are some minor language changes. Professor Coulter of the University of Maine pointed out, at our Bangor hearing, the necessity of planning and development which takes account of the preservation of ecological balance.

§682. Definitions

1. Access road. An access road shall include any public or private way which is open to or generally used by the public and which is capable of being traveled by ordinary motor vehicles at sometime during the year.

(Comment) L. D. 1260 refers to a "2-wheel-drive passenger" automobile as being the test of whether or not a road is or is not an "access road." We do not feel that the test should be limited to passenger automobiles. It is certainly clear that a great many people have 4-wheel-drive pick-up trucks and that these are, in fact, used as means of transportation to and from rather substantial lakeside homes.

2. Remote lakes, ponds, rivers and streams. A remote lake, pond, stream or river is one no part of which lies within 500 feet of any access road.

(Comment) L. D. 1260 as amended set the distance at 300 feet. We feel that this is not realistic. L. D. 1260 did not include rivers and streams and we have included them because clearly the problem extends to such waters.

3. Subdivision. A subdivision is a division of an existing parcel of land into 3 or more parcels within any 5-year period whether this division is accomplished by platting the land or by a sale of the land by metes and bounds or by leasing except where no one of such parcels is less than 10 acres in size.

(Comment) This was the first paragraph of section 686, subsection 4. It has been placed here because it is more in context in this position.

4. Wildlands. The wildlands are the mainland plantation and unorganized portions of the State of Maine.

(Comment) The addition of the definition of the term "wildlands" is in response to the suggestion of attorneys for the International Paper Company.

5. Zoned area. The zoned area shall include all land within 500 feet of the traveled edge of any access road and within 500 feet of the normal shoreline of any lake, pond, river and stream, except remote lakes, ponds, rivers and streams. Zoned area shall include the surface of the waters of any lake or pond of less than 640 acres.

(Comment) This extends the distance to 500 feet and adds rivers and streams.

SUBCHAPTER IIWILDLANDS USE REGULATION COMMISSION§683. Creation of Wildlands Use Regulation Commission

To carry out the purposes stated in section 681 there is created the Wildlands Use Regulation Commission, hereinafter in this chapter called the "commission." The commission is charged with implementing this chapter in all of the mainland plantation and unorganized portions of the State. The commission shall consist of 3 permanent members: The Director of Parks and Recreation, the Forest Commissioner and the State Planning Officer; and 4 members serving staggered 4-year terms to be appointed by the Governor with the advice and consent of the Council. The latter 4 members shall respectively represent the public, conservation interests, forest products industry interests and general landowner interests. The initial appointee to the commission representing the public shall be appointed for a one-year period; the initial appointee representing conservation interests shall be appointed for a 2-year period; the initial appointee representing the forest products industry interests shall be appointed for a 3-year period; and the initial appointee representing general landowner interests shall be appointed for a 4-year period.

(Comment) The second sentence of this section is added in order to identify the scope of the commission's duties.

§684. Commission officers, meetings and rules

The commission shall elect annually, from its own membership, a chairman and secretary and such other officers it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than 1/2 of the membership. Such meetings shall be held no less frequently than 4 times a year. The commission may adopt whatever rules it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the commission, which minutes shall be a public record available and on file in the office of the commission. Members of the commission shall not be paid a salary but shall be reimbursed for all expenses incurred in carrying out their respective responsibilities.

(Comment) We believe that the word "rules" should be substituted for the word "regulations" as it appears in L. D. 1260, as amended.

§685. Commission budget, financing and executive director

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks. The commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to hire an executive director who shall be the principal administrative, operational and executive employee of the commission. The executive director must have a professional

degree in planning or in a related field or must have at least 3 years practical experience in the field of planning or land use management, or both. The executive director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The executive director with the approval of the commission may hire whatever competent professional personnel and other staff he deems necessary and he may obtain office space, goods and services as required.

SUBCHAPTER III

COMMISSION POWERS AND DUTIES

§686. Zoning powers and duties

1. Zoning regulation. The commission, based on principles of sound and comprehensive planning, shall, upon a majority vote of its members, adopt a zoning regulation which shall be applicable in any subarea or group of subareas within the zoned area. The zoning regulation may regulate the following within the zoned area:

(Comment) L. D. 1260 made reference in this section to amendments. The question of amendments is handled in subsection 5 infra. We recommend the replacement of the word "ordinance" in L. D. 1260 with "regulation" as being more appropriate.

A. Location and use of real estate for agricultural, industrial, commercial, forestry, recreational, residential and other purposes;

B. Type of construction, height, width, minimum floor area and bulk of all structures;

C. Lot size, depth and width of lots, and minimum size of open space, unbuilt-upon area, to be retained on all real estate parcels;

(Comment) L. D. 1260, as amended, did not make reference to depth and width of lots as a permissible consideration.

D. Setback of structures along access roads and along the shores of water bodies;

(Comment) L. D. 1260 makes reference to "major roads". The term "access roads" is consistent with the rest of this legislation.

E. Use of boats and size of outboard motors on lakes or ponds of less than 640 acres.

Among other things the regulations shall be designed to encourage the most appropriate use of land and water resources; to prevent overcrowding or substandard development of real estate; to prevent development from polluting lakes, ponds, rivers and streams; to preserve natural conditions where appropriate or beneficial; to preserve ecological balance; to protect forest resources and timber reserves for industrial use.

(Comment) This adds "rivers and streams" to the language of L. D. 1260 as amended and also puts in the provision concerning ecological balance.

2. Notice of intent to zone. At least 3 months before public hearings on any proposed zoning regulation the commission shall give notice of its intent to zone any portion of zoned area by first-class mail directed to the owners of the affected land according to their names and addresses as shown on the records of the Bureau of Taxation. Such notice shall reasonably define the portion of the zoned area to be involved and shall invite the owner thereof to submit to the commission a description of the use or uses to which his land within the zoned area is being put, and any plans which the landowner may have with respect to the future use of these lands.

(Comment) L. D. 1260 provides for a six-months notice of public hearing which would, in our judgment, be unnecessarily long. Three months certainly provides adequate notice.

3. Notice of hearing. After 3 months' notice of intent to zone, notice of a zoning hearing, which shall be open to the public, shall be given in a similar manner as described in subsection 2 to landowners in the zoned area to be affected. Such notice shall state the date, time and place of the hearing, which shall be in the county where the area affected lies. The notice shall reasonably define the portion of the zoned area involved, and shall be mailed at least 14 days before the hearing is scheduled.

(Comment) This makes the same change with respect to time.

4. Considerations. In adopting a zoning regulation covering any portion of the zoned area, the commission shall give consideration to public and private planning reports and other data available to it, and shall consider existing uses of the land and any reasonable plans of landowners with respect to future uses of the land. In any event, land in the zoned area used or held exclusively for forest products industry uses, if so stated by the owner thereof, shall be zoned for such use. Nothing in this or in any regulation adopted shall in any way limit the right, method or manner of cutting or removing timber, or the erection of buildings or other structures used entirely for forest products industry purposes in the zoned area.

(Comment) L. D. 1260 refers to structures used "primarily for forest products industry purposes." We feel that this may lead to abuse. Clearly, it works no hardship to insist that if a building is used at least part of the time as a hunting camp it should comply with reasonable sanitation restrictions. L. D. 1260 uses the term "ordinance" for which we substitute the term "regulation."

5. Amendments. The commission may from time to time upon its own motion, or upon the application of the owner of land in a zoned area, amend any zoning regulation as it applies to any subarea. A public hearing on any amendment with notice given as outlined in subsection 3 shall be held after giving 3 weeks' notice of intent to amend in a similar manner as described in subsection 2, to all landowners within one mile of the area to be affected by the proposed amendment.

6. Map. Before adoption of a zoning regulation or amendment thereto, the commission shall prepare a zoning map outlining each zone to be established or modified. These maps shall be on file and available for inspection by any interested party in the offices of the commission and in the appropriate registry of deeds of the county in which the land lies.

7. Application. No regulation shall apply to structures and uses existing at the time the regulation is adopted, but shall apply to new structures and uses and to changes in structures and uses made after passage, except that occupied year-round single family residences and operating farms presently in existence and use shall be exempt from regulations while so used to the extent that new accessory buildings or renovations of existing buildings are necessary to the satisfactory and comfortable continuation of these exempt residential and farm categories. The changes in structure and use to which a zoning regulation applies may be further defined in the regulation.

(Comment) We use the term "regulation" in place of the term "ordinance" as it appears in L. D. 1260.

8. Public service corporation exemptions. Real estate used or to be used by a public service corporation may be wholly or partially exempted from regulation when, upon timely petition to the commission and after a hearing, the commission determines that such exemption is necessary or desirable for the public welfare or convenience.

9. Governments. Any portion of the zoned area which subsequently becomes a part of an organized municipal entity and which was zoned pursuant to this enabling legislation shall

continue to be controlled by the zoning regulation until such time as the new municipal entity, which the zoned land is now a part of, shall alter or amend the zoning regulation. Any zoning regulation shall be only advisory with respect to actions of the State Government.

10. Building permit. Any individual or corporation who would build upon zoned land with the exception noted in subsection 4 covering buildings used exclusively for forest products industry purposes, must apply to the commission for a permit for such building or structure. A permit application shall be in writing and shall be signed by the applicant and directed to the executive director of the commission. It shall show with reasonable clarity the type and location on the lot of the proposed building or structure and shall note in all respects the compliance of the proposed building or structure with the zoning regulation in effect. The executive director, with the concurrence of the commission, shall approve or disapprove of each application. If the character of the land or building is unique or unusual, approval may be conditioned on compliance with such additional requirements, other than those spelled out in the zoning regulations, as the executive director and commission deem necessary. The commission may overrule a decision of the executive director by a 2/3 vote of its membership. Failure of the executive director to issue a written notice of approval or disapproval by the commission, directed to the applicant, within 90 days from the date of filing the application constitutes a disapproval or refusal of the permit.

(Comment) This adds to L. D. 1260 a number of provisions. First of all, it requires the applicant to describe with reasonable clarity the type of building proposed in order that the Executive Director can make an intelligent decision for review by the commission. L. D. 1260 provided no flexibility that would permit the commission, through the Executive Director, to tailor a set of requirements for a unique or unusual situation. We feel that the additional flexibility provided by the proposed language is extremely desirable. L. D. 1260, as amended, did not indicate clearly the responsibilities of the Executive Director and the commission. We feel that the commission should, ordinarily, approve the decisions of the Executive Director who will be a highly qualified professional. If the Executive Director is not performing as the majority of the commission wish, he can be fired. The proposal described in this subsection is possibly more awkward but it at least insures the actual active participation of the commission and, in our judgment, this is a desirable feature. During the course of legislative hearings it may become necessary to more precisely define the duties of the Executive Director in order to avoid confusion with those of the commission.

11. Nuisance. Any real estate or personal property existing in violation of a regulation enacted pursuant to this enabling legislation is a nuisance and may be abated by either public or private action.

12. Inspection. For purposes of inspection and to insure compliance with a zoning regulation, any member of the commission, the executive director, appointed staff or consultant personnel of the commission may obtain access at reasonable hours to any zoned lands and structures.

(Comment) Recent cases have indicated that a landowner is entitled to the sort of protection embodied in this provision. "Access at reasonable hours" means just that. Camara vs Municipal Court of San Francisco 387; U. S. 523 and Sec vs Seattle 387; U. S. 541.

13. Taxation. In the assessment of land, the State Tax Assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Restrictions shall include but are not necessarily limited to zoning restrictions limiting the use of land and any recorded contractual provisions limiting the use of lands entered into with a governmental agency pursuant to state law. There shall be a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that the value of the land is attributable to the legally permissible use or uses.

(Comment) Recent developments have, in our judgment, very clearly indicated that we have a kind of de facto zoning being practiced by tax assessors. When wildlands property is taxed at residential property rates it is going to be sold and we prefer to have this judgment with respect to land use made on the basis of intelligent

planning rather than by precipitous reaction to sky-rocketing property taxes. We believe that forest lands being used solely as forest products industry resources should be protected from discriminatory tax pressures. We suggest that we go ahead and put this in the legislation at this time rather than wait until later and use it as a "trading device." Past experience leads us to believe that at least some of them are going to oppose this legislation anyhow, even though it, like the other provisions of this legislation, is clearly in their commercial best interests.

§687. Subdivision control, powers and duties

1. Subdivision control regulation. The commission, based on standards of health, safety and general welfare as these standards apply to the process of subdividing land, and after adoption of a zoning regulation for the zoned area or any portion thereof, shall, upon a majority vote of its members, adopt and from time to time may amend, subdivision control regulations which shall be applicable in that portion of the zoned area. The subdivision control regulations shall be consistent with the zoning regulations and may regulate to achieve minimum standards in the development of subdivided land with particular attention to such factors as structural design, building location, building materials, utilities, drainage, pollution control, water supply, lot sizes, extension of access roads, boat and automobile parking arrangements and other improvements.

(Comment) This provision adds to L. D. 1260, as amended, permission to the commission to concern itself with structural

design, building location, building materials, and boat and automobile parking arrangements and other improvements adopting minimum standards for subdivision development.

By using the term "structural design" we hope to indicate very clearly that it is not the purpose of this legislation to control, in any way, the individual builder's concept of what is attractive. We mean to control design only with reference to the structural strength of the design.

2. Publication. Subdivision control regulations or any amendments thereto shall become effective in the areas designed to be affected 30 days after a certified copy of the regulations and a map denoting the lands affected are filed in the registry of deeds of the appropriate county.

3. Governments. Any portion of the zoned area which subsequently becomes a part of an organized municipal entity and which was subject to subdivision control regulation pursuant to this enabling legislation shall continue to be controlled by such regulations until such time as the new municipal entity shall alter or amend the existing regulation.

(Comment) There are minor language changes in each of the two preceding subsections.

4. Subdivision approval. Any individual or corporation who would subdivide lands, any part of which are subject to subdivision control regulations adopted pursuant to this enabling legislation, must apply to the commission for a permit allowing such subdivision. An application for a subdivision permit shall be in writing signed by the applicant and directed to the executive

director of the commission. It shall show with reasonable clarity the full scope of the proposed subdivision and shall note in all respects the compliance of the proposed subdivision with the subdivision control regulations in effect. The executive director with the concurrence of the commission shall approve or disapprove each application. If the character of the land or design and layout of the subdivision is unique or unusual, approval may be conditioned on compliance with such additional requirements, other than those spelled out in the subdivision regulations, as the executive director and commission deem necessary. The commission may overrule a decision of the executive director by a 2/3 vote of its membership. Failure of the executive director to issue a written notice of commission action, directed to the applicant, within 90 days from the date of filing the application constitutes a disapproval or refusal of the permit.

(Comment) This is a companion section to subsection 10 of section 686.

5. Recording. A register of deeds shall not record any plat or any writing purporting to convey land, except by a mortgage thereof, located in the unorganized territory or mainland plantation areas of the State unless the same bears an attested statement by the draftsman or the owner of such land that no portion of the same is located in a zoned area subject to a subdivision ordinance, or that the same is not a subdivision as defined in this chapter, or unless the commission's approval is evidenced thereon.

The recording of a plat or plan in violation of this subsection is void.

6. Violation. Any conveyance of unrecorded subdivided land or subdivided land recorded in violation of this chapter shall be void and any structures erected on such land after conveyance shall constitute a nuisance which may be abated by either public or private action.

(Comment) There are minor language changes in this, in order to make clear the intention of the section.

SUBCHAPTER IV

WILDLAND ZONING AND SUBDIVISION CONTROL REGULATION APPEALS

§688. Appeal to Superior Court

An appeal may be taken by any injured party from the refusal of the commission to grant a building or subdivision permit or from the granting of such permit upon conditions thought to be unreasonable to the Superior Court of the county in which the affected lands are located. Such appeal must be taken within 45 days of receipt of notice of the commission's action and shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other actions so heard. The court may affirm, set aside or modify the acts of the commission being appealed from. Costs may be awarded to the prevailing party by the court as justice requires.

(Comment) L. D. 1260, as amended, contains what we believe is an unworkable and unrealistic method of taking an appeal from decisions of the commission with reference to zoning and subdivision control regulations.

L. D. 1260 creates a board of appeals consisting of 5 members, 3 of whom are the county commissioners from the county in which the affected land lies. The provision in L. D. 1260 would, in our judgment, lead to virtually endless litigation. We propose by this legislation to provide the aggrieved party with an opportunity to have direct resort to the courts of this State. It should be remembered that the court, in making a decision to affirm, set aside, or modify the decision of the commission, can and would take note of the grounds for appeal set forth in L. D. 1260 such as: the decision of the commission was unreasonable; the decision of the commission creates an undue hardship; the decision of the commission was arrived at as a result of fraud or coercion. In our judgment, neither party to a zoning or subdivision control dispute is served by delay. This recommended legislation is very similar to the provisions for appeal from decisions of the Water and Air Environmental Improvement Commission (Title 38, section 45, as amended, effective October 7, 1967).

STATE OF MAINE

APPENDIX "B"

26

Inter-Departmental Memorandum Date May 8, 1967

To Attorney General Erwin

Dept. _____

From Leon V. Walker, Jr., Assistant

Dept. _____

Subject Constitutionality of L. D. 1260

Representative Richardson has requested an opinion as to the constitutionality of L. D. 1260, which would create a Wildlands Use Regulation Commission. This is, in effect, zoning enabling legislation and is not dissimilar to other zoning statutes appearing in 30 M.R.S.A., and in my opinion is a valid delegation of legislative powers.

In support of this conclusion are the following Maine cases:

Crommett v. Portland, 150 Me. 217, which holds that the Slum Clearance and Redevelopment Act was a valid delegation of legislative power.

Bolduc v. Pinkham, 148 Me. 17, holding that neither the Fifth or Fourteenth Amendments of the U. S. Constitution, nor the Maine Constitution, prohibit zoning legislation.

Portland v. Sivovlos, 136, Me. 4, which states that zoning regulations, deriving vitality from enabling statutes, and having substantial relation to public health, safety and general welfare, do not transcend the police power.

Wright v. Michaud, 160 Me. 164, stating that zoning ordinances are held to be constitutional universally throughout the United States.

I have studied the cases cited by Mr. Atwood and am convinced that they do not apply here.

Leon V. Walker, Jr.

LVWJr:H

SUBCOMMITTEE MEETINGS

PUBLIC HEARINGS:

October 27, 1967 - City Council Chambers, City Hall, Bangor, Maine

December 9, 1967 - Bonney Hall, Room 209, University of Maine,
Portland, Maine

March 4, 1968 - Legislative Research Committee Hearing Room 228,
State House, Augusta, Maine

EXECUTIVE SESSIONS: Held in Augusta, Maine

August 16, 1967 - Organizational

September 20, 1967

February 15, 1968

April 18, 1968

September 5, 1968

APPENDIX "D"

PARTIAL LIST OF ORGANIZATIONS OR AGENCIES SUBMITTING WRITTEN
AND/OR ORAL STATEMENTS TO THE SUBCOMMITTEE

The following organizations, agencies or persons submitted
written and/or oral statements:

OCTOBER 27, 1967 - CITY COUNCIL CHAMBERS, CITY HALL, BANGOR, MAINE

Department of Biology, Bowdoin College, Brunswick, Maine
John L. Howland, Professor of Biology

University of Maine, Orono, Maine
Thomas J. Corcoran, Assistant Director and Associate
Professor, Forest Economics

Dorothea Marston

Resource Development Cooperative Extension Service, University
of Maine, Francis E. Montville, Extension Economist

Natural Resources Council of Maine
Robert G. Mohlar, M.D.

Natural Resources Council of Maine
Marshall F. Burk, Executive Secretary

University of Maine, Associate Professor of Agricultural Business
and Economics, Johannes Delphendahl, Dr.

DECEMBER 9, 1967 - BONNEY HALL, ROOM 209, UNIVERSITY OF MAINE,
PORTLAND, MAINE

Forest Service
Austin H. Wilkins, Commissioner

MARCH 4, 1968 - AUGUSTA, MAINE

Bureau of Taxation
Ernest Johnson, State Tax Assessor

Maine Soil and Water Conservation Committee
Charles Boothby, Executive Secretary

University of Maine, Portland
Professor Orlando E. Delogu, Law School

APPENDIX "E"

INDEX TO SOURCE MATERIALS:

"Comprehensive Outdoor Recreation Plan for Maine," Maine State Park and Recreation Commission and the University of Maine, University of Maine Press, November, 1966.

"Soil Suitability Guide for Land Use Planning in Maine," Miscellaneous Publication 667 (Rev.), Maine Agricultural Experiment Station, February, 1967.

"Comparison of Recreational Development Plans for a Northern Maine Wilderness Track," Edward I. Heath, Bulletin 628, University of Maine, October, 1964.

"Wildland Planning Issues," James S. Haskell, Jr., Department of Landscape Architecture, Graduate School of Design, Harvard University (Masters Thesis).

"The Taxing Power as a Land Use Control Device," Delouge, 45 Denver Law Journal 279 (1968).

"Planning and Law in Maine," Delogu, University of Maine Bulletin 653, 654, 660.

Johnson "Taxation of the Wildlands," Memorandum prepared for the Legislative Research Committee, March, 1968 and materials cited therein.

APPENDIX "F"

Text of photo essay
now being published.

REPORT ON THE WILDLANDS

Appendix F to Legislative Research Committee Publication
104-1, the report of the Subcommittee on Wildlands Use
Regulation

Prepared by John McKee

15 November 1968 Augusta, Maine

STATE OF MAINE

LEGISLATIVE RESEARCH COMMITTEE PUBLICATION 104-1A

(View of Katadin)

Maine has always been proud of its wildlands--the
Big Woods, land of Indian and trapper, of white
pine tall enough for masts on His Majesty's ships, of
mountain lion, moose, and eagle. Much of the wildness
was still there when Thoreau went in by birchbark
canoe, a little over a century ago. And much of it
remains. There is spruce and fir, moose and beaver,
lake and mountain and whitewater enough to satisfy
generations of Americans. More and more, as northeastern
U. S. develops, the Maine woods are becoming an almost
unparalleled resource, both for tree production and
for recreational opportunity. But who is to come forward

to say that this resource must not be squandered? Can we guarantee that the next generations will be able to set out a canoe and know that adventure is just around the bend?

(Whitewater briefing)

(Dirt road)

One reason there is any wildness left in the wildlands is that access has always been difficult. Roads designed for log hauling challenge the automobile.

(Medway interchange)

But that's changing. Fast roads are reaching further into the wildlands. And many people who may not care to travel by paddle or snowshoe now have their choice of outboard, trail cycle, snowmobile, floatplane, or all the variants on truck campers. There's hardly a tote road that can't become a thoroughfare into the back country. And some of the lakes that a man used to boast of having fished are now being ringed by cottages, camps, and trailers.

(Camp construction on Middle Jo-Mary Lake)

(Rockwood Strip)

The wildlands, meaning Maine's unorganized towns and mainland plantations, make up a little more than half of the State's land area. Some of this has been subject to development for many years. It might surprise an outsider to learn that these areas, which may appear to have all the problems of a fair-sized municipality,

lack the municipality's authority to deal with them. And as development in the wildlands quickens, the problems become acute.

(9 shots of camps in different counties)

Camps and cottages have appeared in many parts of the wildlands. Some are isolated hunters' camps put up alongside a back road. Some come in threes, fours, fives along a shoreline. Some come all around a lake.

(5 shots of camps under construction)

Some were built years ago, but many are just being built. Apparently no one knows just how fast camps are going up in the wildlands. Figures on the number of camplots leased in the unorganized towns are on file in the State Bureau of Taxation, however. They suggest that this number may have doubled over the past ten years. What is certain is that a lot of building is going on in the wildlands.

(Skiers' camp nearing completion)

Aside from the occasional backwoods hunter's camp, the shorefront cottage has been the typical development in the wildlands. Now a third kind of camp is proliferating. As major ski areas develop in different parts of the wildlands, skiers' camps sprout around them. They are often put just as close to the plowed road as possible. This is understandable, but it also raises health, safety, and other problems.

(Subdivision stake)

(Sign: Subdivision E)

So there's an active market for real estate in the wildlands. Lots for lease. Lots for sale. Subdivision. Some say it's inevitable.

(8 shots of For Sale signs)

Recreational development in the wildlands may be inevitable. The economic pressure is certainly there. But the point is too often missed. Development need not spoil the wildlands. Properly done, development can fit into the surroundings. It can provide safe and healthful recreation for camp owners and their visitors. It can preserve most of the wilderness appearance -- something especially vulnerable along the shorelines -- for the benefit of those who can't buy in on all the good places. It can allow more people to come in and still spoil less land, which could soon make all the difference to a region's economy. It can do this without seriously affecting the output of pulpwood and timber. What's required is more care in development. It's bound to pay off.

(Camp Bad Example)

(Lakeshore outhouse)

(Roadside outhouse)

An outhouse too close to water or roads presents an obvious danger. There's no reason why this should be tolerated today. A number of other building practices,

are all too common in the wildlands. Foundations and other structural parts may not be adequate -- a sort of built-in dilapidation. Equally important, the buildings may go up in a bad place. Pollution is one danger when a cottage is too close to water or roadway; loss of the woods character of the wildlands is another. Shorelines are particularly vulnerable. A reasonable setback, together with some screening by natural foliage, is likely to improve the view from both directions. And without it, before long perhaps hardly anyone will be able to feel the immensity and the seclusion of the Maine woods.

(Shot of foundation. Shot of no setback or screening)

(Shots of direction arrows with family names)

No one doubts that there are plenty of people in the wildlands. It also seems clear that there will be more and more people seeking the wildlands experience. The question is whether or not the wildlands will continue to offer their challenge. It's still the Big Woods, but it may not be for long.

(Young canoeist setting into whitewater)

(Photographs for this report were taken in the wildlands during July and August, 1968, under contract to the Legislative Research Committee of the Maine State Legislature.)

REPORT ON THE WILDLANDS



State of Maine

Legislative Research Committee Publication 104-1A

REPORT ON THE WILDLANDS

Appendix F to Legislative Research Committee Publication 104-1,
the report of the Subcommittee on Wildlands Use Regulation

Prepared by John McKee
15 November 1968

State of Maine
Legislative Research Committee Publication 104-1A



Katahdin from Abol Pond

Maine has always been proud of its wildlands -- the Big Woods, land of Indian and trapper, of white pine tall enough for masts on His Majesty's ships, of mountain lion, moose, and eagle. Much of the wildness was still there when Thoreau went in by birchbark canoe, a little over a century ago. And much of it remains. There is spruce and fir, moose and beaver, lake and mountain and whitewater enough to satisfy generations of Americans. More and more, as northeastern U. S. develops, the Maine woods are becoming an almost unparalleled resource, both for tree production and for recreational opportunity. But who is to come forward to say that this resource must not be squandered? Can we guarantee that the next generations will be able to set out a canoe and know that adventure is just around the bend?



East Outlet, Kennebec River at Moosehead Lake

One reason there is any wildness left in the wildlands is that access has always been difficult. Roads designed for log hauling challenge the automobile in any season.



T4 R11 (Piscataquis County)



I-95 interchange, Medway (Penobscot)

But that's changing. Fast roads are reaching further into the wildlands. And many people who may not care to travel by paddle or snowshoe now have their choice of outboard, trail cycle, snowmobile, floatplane, or all the variants on truck campers. There's hardly a tote road that can't become a thoroughfare into the back country. And some of the lakes that a man used to boast of having fished are now being ringed by cottages, camps, and trailers.

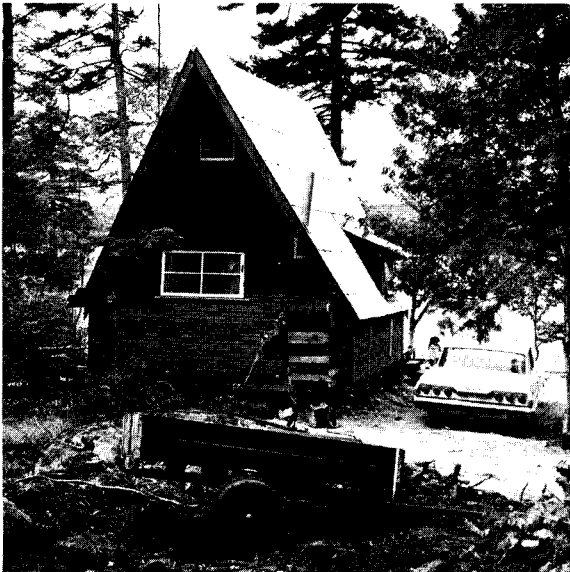


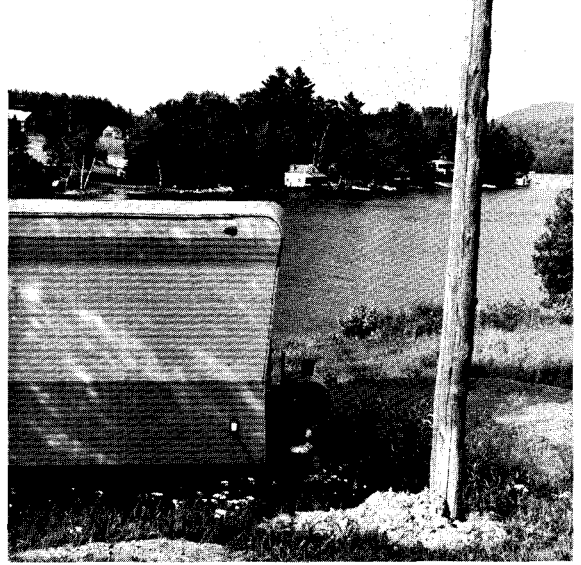
Middle Jo-Mary Lake, T4 Indian Purchase (Penobscot)

The wildlands, meaning Maine's unorganized towns and mainland plantations, make up a little more than half of the state's land area. Some of this has been subject to development for many years. It might surprise an outsider to learn that a place which may appear to have all the problems of a fair-sized municipality lacks the municipality's authority to deal with them. And as development in the wildlands quickens, the problems become acute.



Rockwood Strip (Somerset)





Camps and cottages have appeared in many parts of the wildlands. Some are isolated hunters' camps put up alongside a back road. Some come in threes, fours, fives along a shoreline. Some come all around a lake.

(Preceding pages)

Number 14 Plantation (Washington)

Millinocket Lake, T1 R9 (Piscataquis)

Smith Pond, T3 Indian Purchase (Penobscot)

Lake Cathance, Number 14 Plantation (Washington)

Moosehead Lake, Lily Bay (Piscataquis)

Pleasant Pond, Caratunk Plantation (Somerset)

Jerusalem (Franklin)

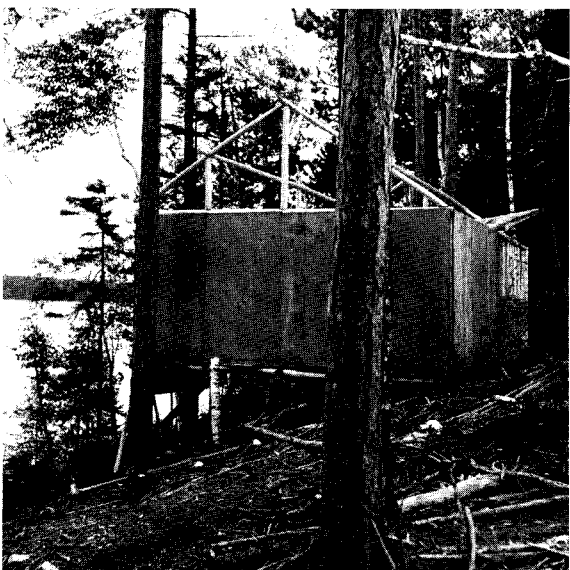
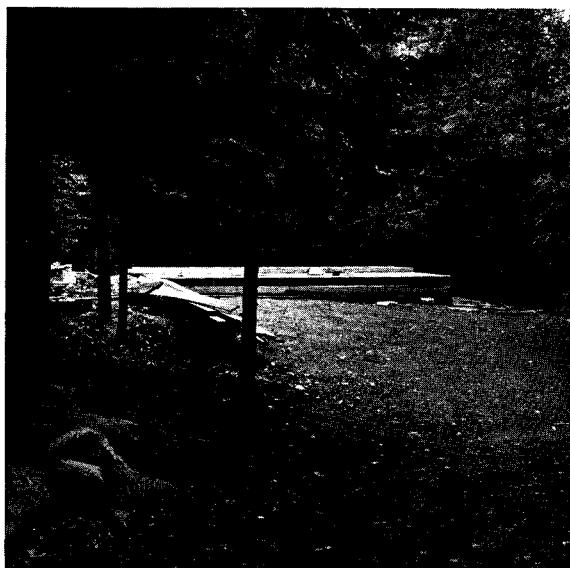
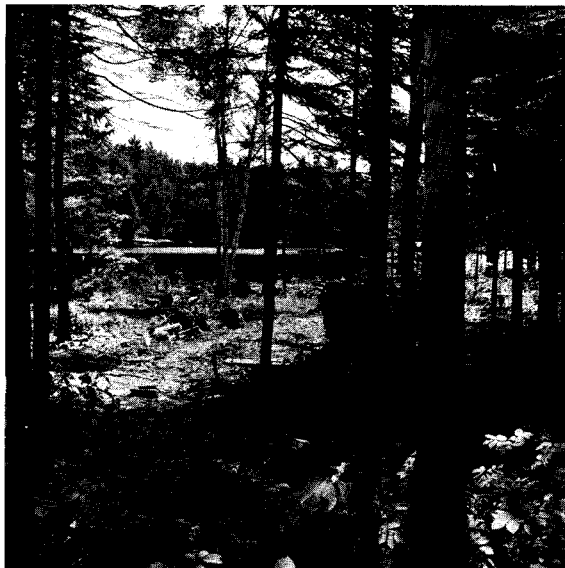
Lower Sysladobsis Lake, T5 ND (Washington)



Bottle Lake, Lakeville Plantation (Penobscot)

Some were built years ago, but many are just being built. Apparently no one knows just how fast camps are going up in the wildlands. Figures on the number of camp lots leased in the unorganized towns are on file in the State Bureau of Taxation, however. They suggest that this number may have doubled over the past ten years. What is certain is that a lot of building is going on in the wildlands.

Moosehead Lake, Harfords Point (Piscataquis)
Elliottsville Plantation (Piscataquis)
Moosehead Lake, Lily Bay (Piscataquis)
Turkey Tail Lake, T4 Indian Purchase (Penobscot)



Aside from the occasional backwoods hunter's camp, the shore-front cottage has been the typical development in the wildlands. Now a third kind of camp is proliferating. As major ski areas develop in different parts of the wildlands, skiers' camps sprout around them. They are often put just as close to the plowed road as possible. This is understandable, but it also raises health, safety, and other problems.



Little Squaw (Piscataquis)



Long Pond, Sandy River Plantation (Franklin)

So there's an active market for real estate in the wildlands. Lots for lease. Lots for sale. Subdivision. Some say it's inevitable.



Lower Lead Mountain Pond, T28 MD (Hancock)

(Following pages)

Rangeley Plantation (Franklin)

Long Pond (Somerset)

Long Pond, Sandy River Plantation (Franklin)

Little Squaw (Piscataquis)

Elliottsville Plantation (Piscataquis)

Sugarloaf Township (Franklin)

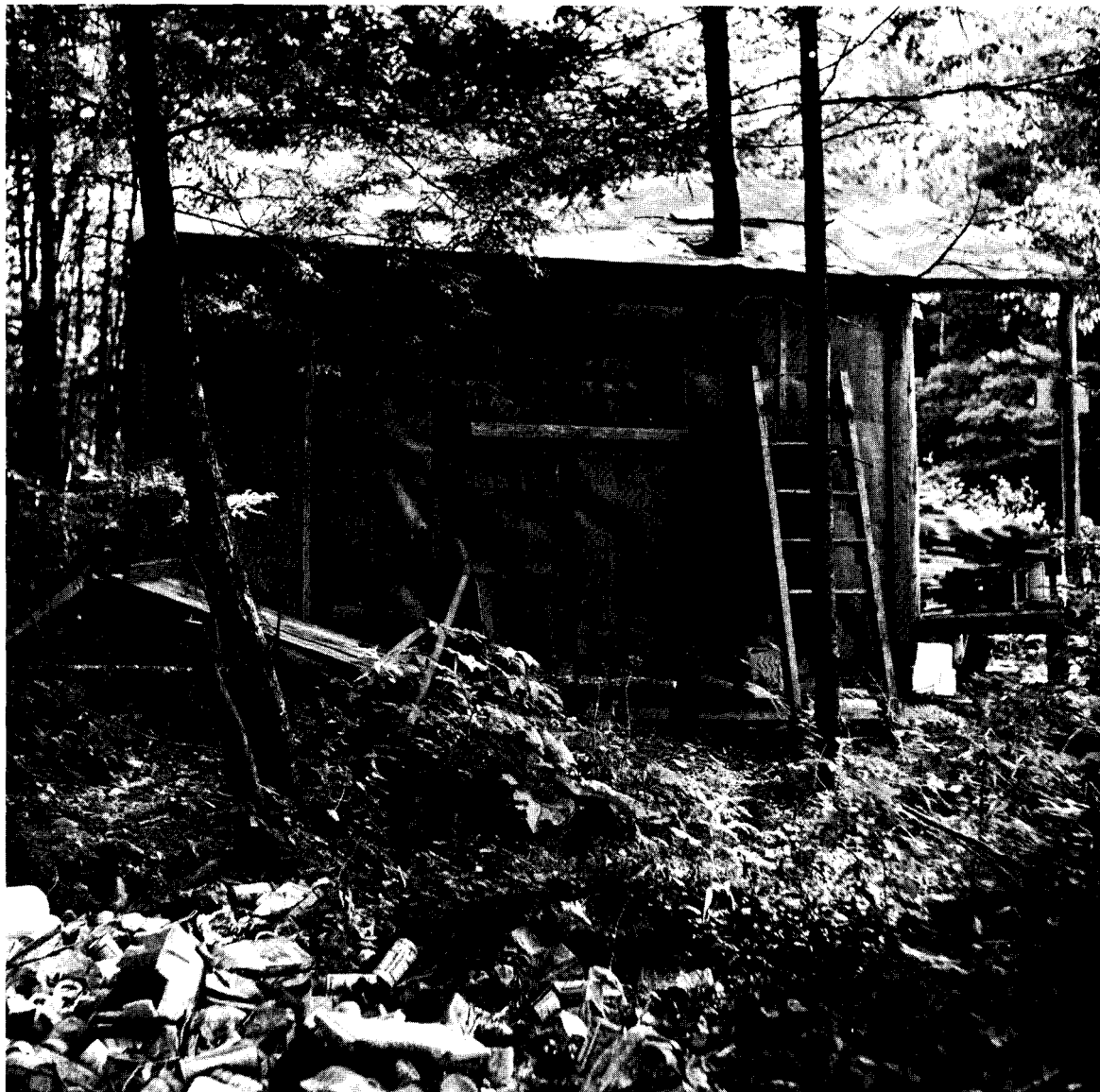
Wyman (Franklin)

Long Pond, Sandy River Plantation (Franklin)





Recreational development in the wildlands may be inevitable. The economic pressure is certainly there. But the point is too often missed. Development need not spoil the wildlands. Properly done, development can fit into the surroundings. It can provide safe and healthful recreation for camp owners and their visitors. It can preserve most of the wilderness appearance for those who can't buy in on all the good places. It can allow more people to come in and still spoil less land, which could soon make all the difference to a region's economy. It can do this without seriously affecting the output of pulpwood and timber. What's required is more care in development. It's bound to pay off.



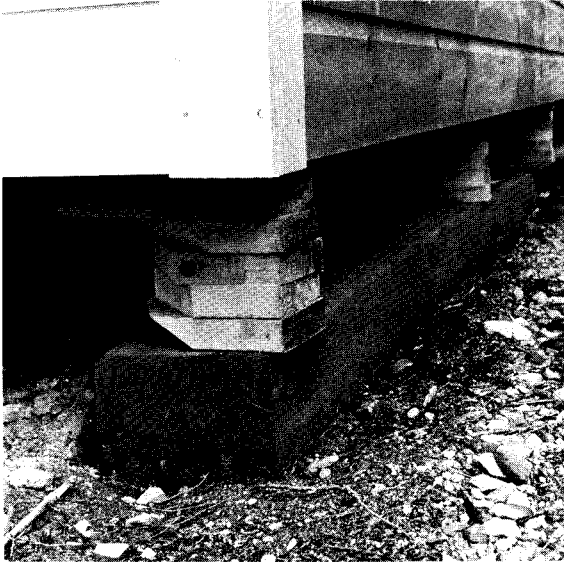
T1 R5 W (Aroostook)



Moosehead Lake, Lily Bay (Piscataquis)



Smith Pond, T3 Indian Purchase (Penobscot)



Bottle Lake, Lakeville Plantation (Penobscot)

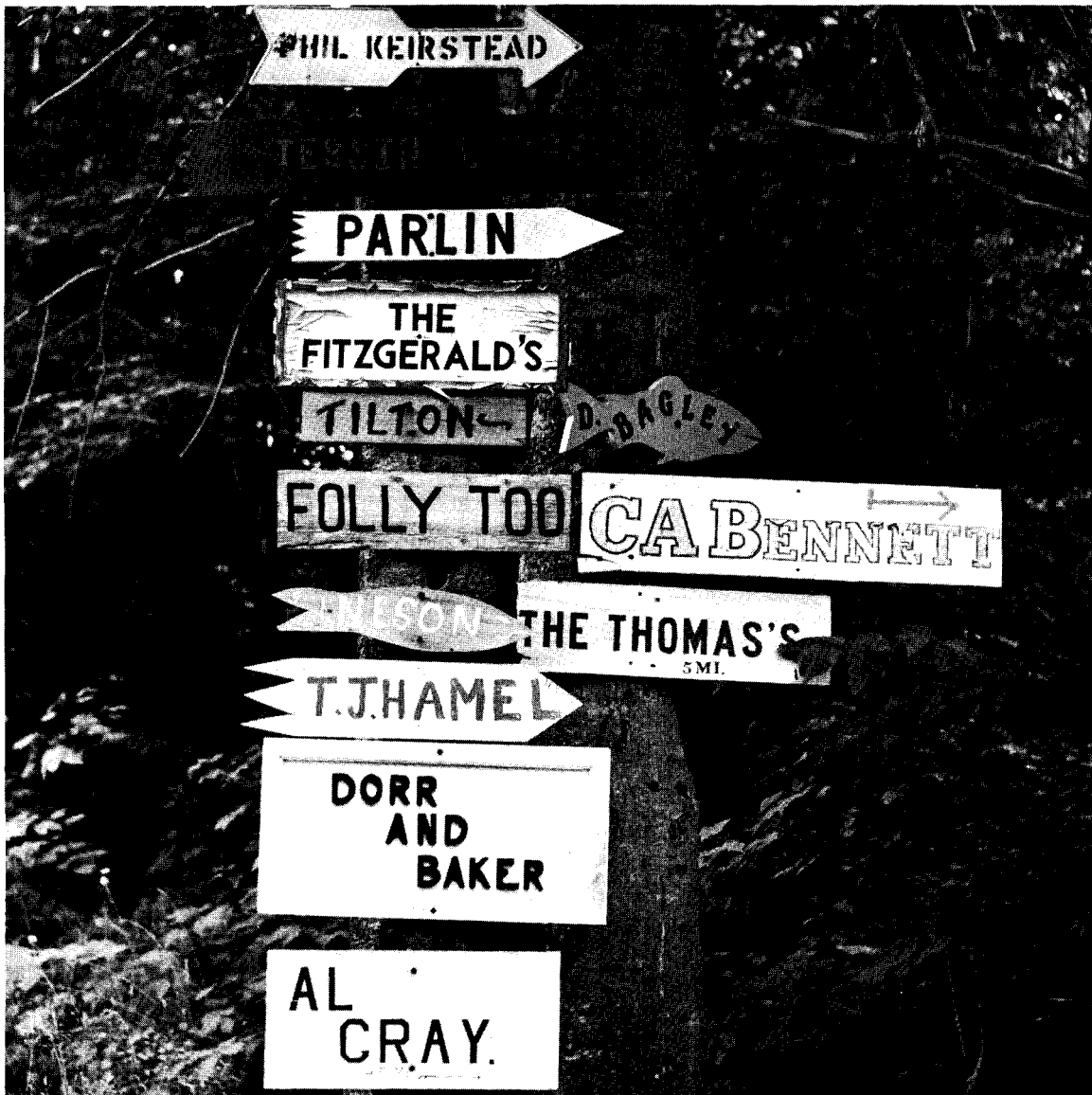
An outhouse too close to water or roads presents an obvious danger. There's no reason why this should be tolerated today. A number of other building practices are all too common in the wildlands. Foundations and other structural parts may not be adequate -- a sort of built-in dilapidation. Equally important, the buildings may go up in a bad place. Pollution is one danger when a cottage is too close to water or a roadway; loss of the woods character of the wildlands is another. Shorelines are particularly vulnerable. A reasonable setback, together with some screening by natural foliage, is likely to improve the view from both directions. And without setbacks, soon hardly anyone will be able to feel the immensity and the seclusion of the Maine woods.



Mooselookmeguntic Lake, Rangeley Plantation (Franklin)



Lakeville Plantation (Penobscot)



PHIL KEIRSTEAD

PARLIN

THE
FITZGERALD'S

TILTON

D. BAGLEY

FOLLY TOO

C.A. BENNETT

NELSON

THE THOMAS'S
5 MI.

T.J. HAMEL

DORR
AND
BAKER

AL
CRAY.

Frenchtown (Piscataquis)

No one doubts that there are plenty of people in the wildlands. It also seems clear that there will be more and more people seeking the wildlands experience. The question is whether or not the wildlands will continue to offer their challenge. It's still the Big Woods, but it may not be for long.



East Outlet, Kennebec River at Moosehead Lake

Photographs for this report were taken in the wildlands during July and August, 1968, under contract to the Legislative Research Committee of the Maine State Legislature.