

MAINE STATE LEGISLATURE

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PRELIMINARY DRAFT REPORT
OF THE
COMMITTEE ON PUBLIC LANDS

ORGANIZATION OF THE MAINLAND UNORGANIZED TERRITORIES

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ORGANIZATION OF THE MAINLAND UNORGANIZED TERRITORIES

The organization of the unorganized and deorganized territory was proposed in section 20, et seq., of L.D. 1812, "AN ACT to Organize the Unorganized and Deorganized Territories of the State and to Provide for Management of the Public Reserved Lands." This bill was referred to the Joint Select Committee on Public Lands, which removed these sections for further study. See Appendix A, infra. The amended document was enacted as Chapter 628 of the Public Laws of 1973.

The Committee and staff have devoted considerable attention to both the need for organization of these lands at this time, and the manner in which such organization might be effected. The findings and recommendations of this study are presented below.

I. THE AREA

The mainland "unorganized territory" presently consists of 411 townships and tracts without local government, totaling more than nine million acres and containing a year-round population of approximately 5,622^{1/} persons. Raw materials for Maine's important forest products industry are the major economic resource of this land of forests, mountains, lakes, rivers and streams. Recreational use is also an important interest; hunting, hiking, fishing, boating, canoeing,

1/ From "Permanent Population in Maine and LURC Jurisdiction," The Land Use Regulation Commission, 1972. As explained in the text, infra, this figure may not be accurate.

snowmobiling and numerous other leisure-time activities suited to this type of environment are enjoyed throughout the area. Varying degrees of second home development in some sections, primarily on leased lakeshore lots, are present, as are three major ski areas - Sugarloaf, Saddleback and Squaw Mountains - and much of their related development.

Private Land. The bulk of the unorganized territory is owned or managed by less than twenty corporations and individuals.

Public Lands. Baxter Park, the Allagash Wilderness Waterway, Grafton Notch State Park, Lily Bay State Park, the Moosehorn Wildlife Refuge and the White Mountain National Forest constitute approximately 255,000 acres of public land in the unorganized territory.

There are approximately 355,000 acres of public lots - one thousand acres reserved for each township - situated in the unorganized territory.^{2/} Grass and timber rights on some 320,000 acres of this total have been sold by the State to private interests. The status of these rights is currently in litigation, the Attorney General claiming that they have terminated by their own terms.

Approximately one-third of the public lots are unlocated; in these cases the State is a holder of an undivided common interest in the townships in which the public lots have not been located, and is entitled to those attributes of ownership normally accruing to a tenant in common.

Roads. Portions of the unorganized territory are accessible by public ways. In addition, landowners have built and maintained roads in most of the townships. Some of these routes, however, are seasonable or unsuited for passenger car travel.

Population. A great portion of the territory has few or no permanent residents; only 75 townships have more than 5 permanent inhabitants. Remoteness, lack of employment and services, the prohibition of year-round occupancy in recreational leases, and other discouragement of permanent settlement by the landowners are seen as having contributed to this situation. Some townships, however, do have significant permanent settlement; 19 townships have more than 100 residents, 5 have more than 200. The recreational quality of the area attracts seasonable populations which more than treble the permanent population and may raise it as much as sixfold if transient visitors are counted.^{3/}

Moreover, because of modern conveniences, remoteness of location no longer necessarily implies isolation, hardship or cultural deprivation. Improved road conditions, four-wheel drive vehicles and snowmobiles now make the area accessible year round. Thus, new technologies, changing life styles, and a growing demand for land may lead to an increase in the year-round population.

Division. Socially and geographically, the unorganized territory does not present a homogeneous and unified character. Although pockets of settlement are generally on the periphery and served by public roads, physiographic factors, road access, and the location of "organized" municipalities create regional subdivisions of the territory with separate identities. One can distinguish on such grounds, for example, the separate regions of the upper St. John River; Moosehead Lake; Washington and Southern Aroostook Counties; Rangeley; and Jackman.

For purposes of administration, the territory is currently divided into numerous types of districts whose boundaries often vary depending on the needs or traditions of the administrating agency or governmental unit.

Government. The defining administrative characteristic of this sparsely settled and remote area is the absence of local government. Because of the lack of a suitable framework for local assumption of responsibility, residents have been deprived of a basic privilege of citizenship -- participation in local government. The state and other governmental units have undertaken the responsibility of providing services, including property valuation, tax assessment and collection, education, fire protection, law enforcement and public road construction and maintenance. The Land Use Regulation Commission, which focuses exclusively on planning and the regulation of future development in that area, is an important recent creation of the Legislature. The establishment of this agency reflects the new value of and new pressures upon the territory in a period of national affluence, increased leisure time, greater mobility and rapidly expanding population.

II. PROBLEMS

Public hearings and study by the Committee have revealed several areas of substantial concern relating to the unorganized territory and the public lots. As recreational uses, development, and wood and wood fiber production have increased, these issues

have become more important. Estimates of growing future demand suggest that these problems will be exacerbated unless adequate solutions are soon found.

1. Management of the Public Lots for Public Benefit:

355,000 acres of "public reserved land" are situated in the unorganized territory; land use demands and responses in the territory directly affect the management of these public lots.

One study of the management and utilization of Maine's forest resource has noted (1) low hardwood growth rates in some sections due to lack of management attention, (2) a decline in saw log quality, and (3) the shipment of a substantial portion of Maine grown raw material out of the State for finishing.^{4/} New attention to stud and lumber mills in Maine, however, indicates that these conditions may be changing.

Up to 320,000 acres of public lots are managed directly by the private forest industry; up to 80,000^{5/} additional acres of public lots are leased by the State Bureau of Forestry to private timber operators. To the extent that the economic interests of the citizens of the State are better served by improved management and fuller utilization of the forest resources, these changes should be encouraged and reflected in the management of the public lots and the unorganized territories generally.

The demand for forest products of Maine has risen dramatically in the last 15 years. The State has an obligation to its citizens to

^{4/} "Timber Resources of Maine," U.S. Forest Service, 1970.

^{5/} Some 45,000 of these acres are situated in plantations.

assure the sound management of this resource contained on the public lots. Furthermore, in those townships where the lots are unlocated, it is the responsibility of the State to see that its obligations as holder of an undivided common interest in the entire township are discharged in the public interest.

The increase in recreational use of the unorganized territory also places new demands upon the State in its management of the public lots, both located and unlocated. Issues such as private road use, campsites, lakeshore access, wildlife management, the preservation of important natural and scenic values and watershed protection concerning the entire unorganized area are related to the same issues concerning the public lots. State and local administration of the unorganized territory ought to give adequate attention to these issues to insure that the public lots are managed in the public interest.

2. Dissatisfaction with Private Road Policies:

Local dissatisfaction with some private road use policies in the unorganized territories was voiced at several public hearings. A recent increase in vandalism to both private camps and forest product industry equipment and structures was noted; this, as well as frequent littering, was attributed to an increase in public recreational use. Some specific instances of vandalism, however, were seen as related to local discontent over road access controls.

3. The Need for More Accurate Data:

Demographic data for the unorganized territories is incomplete and inaccurate. The 1970 census figures generally cited are broad and reflect neither the current scope of settlement on a township basis nor recent population shifts. Department of Education and Cultural Services figures, for example, show scholars receiving state support for tuition who reside in townships which other sources indicate as having no residents. Inquiry has shown that some townships, where significant numbers of residents are listed by several of these other sources, in fact have no inhabitants presently, or considerably less or more than are attributed to them. Accurate and current census data is essential for the planning and management decisions of several state and federal agencies.

4. Absence of Local Decision Making Authority in Educational Matters:

The Department of Education and Cultural Services and residents of the unorganized territory have both expressed the desire for more local participation in the responsibilities of schooling in the unorganized territory. Department figures show a total of 1,384 students from the territory receiving state educational support. There are six state-run elementary schools in the area. The possibility of the closing of some of these schools because of their small size has been a point of extreme local concern. Recently the Maine Management Cost Survey recommended closing all of these schools.

5. Need for Better Channels of Communication between Residents and State Government:

The distance of much of the territory from Augusta and the sparse and scattered nature of settlement create administrative difficulties. Local residents are often unfamiliar with recent

legislation, unable to come to the capitol for information, assistance and hearings, and incapable of fully expressing local concerns. These shortcomings are particularly evident with regard to proposed land uses, the design of appropriate regulations, the enforcement of compliance and the reporting of infractions. The Land Use Regulation Commission of the Department of Conservation, and the Departments of Health and Welfare and Environmental Protection especially feel the need for local agents to whom residents could turn for assistance and information.

6. Undervaluation and Inequitable Taxation:

Appraisal and collection of property taxes in the unorganized territory is done by the Bureau of Property Taxation. Because of severe understaffing, many parts of the territory receive too little attention by the field personnel of the Bureau assigned to that area. Expanded development in some portions, especially near major recreational areas such as Sugarloaf and Moosehead, has greatly increased demands on the Bureau's appraisers. In many instances lack of familiarity with the local development situation compounds the appraiser's difficulties. Inequities and undervaluation result from the shortcomings associated with property valuation. Presently three appraisers are responsible for the entire unorganized territory; the Bureau of Property Taxation feels that this is inadequate.

III. SOLUTIONS

The Committee believes that a proper response to these concerns would result in greater administrative efficiency on the part of the State agencies and greater cooperation between residents

of the unorganized territories and State agencies. Increased participation by residents in administrative proceedings and decision-making, and increased local responsibility for those functions that can be carried out locally are essential to accomplishing these objectives. What is needed is a new approach to government in the unorganized territory which would provide convenient and suitable administrative units for state government and an appropriate structure for local government.

Organization as initially proposed in L.D. 1812 would have created numerous plantations in the unorganized territory, each including many townships. In some cases these plantations would have contained existing plantations. These large plantations (in area at least) would have had the same powers and responsibilities of current plantations, including the raising of revenue by taxation, schooling, road building and maintenance, law enforcement and support of the poor. Although the inclusion of numerous townships within a single governmental unit, when so little population is present in many townships, appears justified to build a base for increased participation, the powers and responsibilities of these plantations do not constitute a realistic approach to efficient local government consistent with the evolving concept of municipal administration for such sparsely settled areas. Recent study of current plantation government suggests that these units, which have grown to resemble closely town government, except in the conspicuous absence of home rule authority and eligibility for certain federal programs, are inappropriate governmental units for modern purposes. That townships have in recent

years organized as towns rather than plantations further supports this view. Indeed, the original premise of the traditional plantation, namely, as a transitional form of government between unorganized township and incorporated towns, is obsolete.^{3/} It is anticipated therefore, that the more populated plantations will eventually become towns. The less populated plantations may continue to operate with practical limitations, alleviated to some extent by state assistance.

The assistance of the State, in areas of sparse settlement, through the establishment of uniform assessment, valuation and tax collection, is consistent with a state-wide trend. Equalization of property taxation to insure uniformity of some services (education) and the establishment of primary assessing districts reflect increased state participation in municipal responsibilities.

IV. CONCLUSIONS

In light of the above considerations and study, the division of the mainland unorganized territory into governmental units could prove an effective vehicle to extend the privileges of participation

3/ "Maine plantations *** tend to be far from short-lived or temporary governments. Of the 33 plantations surveyed, the most recently established plantation has been in existence for 27 years. Plantation longevity as reported in the survey is as follows:

33 Maine Plantations Longevity	
Years in Existence	Number of Plantations
27-50 years	3
51-75 years	7
76 years & over	14
Longevity not known	9
TOTAL	33"

(Haag, James L. "A Study of Plantation Government in Maine", Bureau of Public Administration, University of Maine at Orono, May, 1973)

in local government to the present and future citizens of the area, and may promote more efficient state administration.

V. RECOMMENDATION

The Committee recommends that a public hearing be held on draft legislation that would create a new type of governmental and administrative unit for the mainland unorganized and deorganized territory to determine whether such legislation could effectively provide the privilege of participation in local government and could insure sound and equitable administration of this unique and valuable portion of the State.

VI. TIMBER RIGHTS QUESTION TO BE DECIDED BY COURTS

The question of whether or not this legislation would have any effect on timber and grass cutting rights on 320,000 acres of public lots is one that can be answered only by the courts. In connection with this point, it is of interest that in the case of Cushing, et al. v. Lund, et al., now pending in the Superior Court for Kennebec County, the Attorney General has taken the position that the timber cutting rights have terminated because by their own terms the grantees of the rights were entitled to cut only that timber standing when the grants were made back in the 1800's.

This legislation could not result in a taking of property without due process. The deeds granting the timber cutting rights provide that those rights shall terminate upon organization of the areas into plantations. Any decision by the courts that this legislation would result in the termination of cutting rights by their own terms would be simply a determination that the legislation resulted in a bona fide organization of the territory;

there would be no "taking" of property involved whatsoever. On the other hand, if the courts were to conclude that no bona fide organization resulted under this law, presumably the rights would continue, unless previously terminated as is contended by the Attorney General. Obviously, any taking of property under any statute would require the payment of just compensation and there is nothing in this legislation that could violate that basic constitutional principle.

VII ANALYSIS OF DRAFT LEGISLATION

A. Grand plantations. This legislation organizes the mainland unorganized and deorganized territories of the State into 8 grand plantations. See Appendix B, infra. The areas of the grand plantations represent logical units for planning and administrative purposes and consider the existing configurations of communications and transportation networks, physiographic elements and social identifications. These new political subdivisions have a council-manager form of governmental structure with specified and limited powers. The residents of each grand plantation would elect a 7-member council which, in turn, would select a manager from a list of qualified individuals or would appoint an individual to serve as manager; such individual would have 2 years in which to meet the qualifications of the office.

B. Duties and powers.

1. Council. The council will meet once a month to consider items on an agenda prepared by the manager. It will oversee the day to day activities

of the manager as is appropriate and necessary, and will recommend specific actions for the manager to take in his role as the community's liaison with the various state agencies, including in particular the Departments of Conservation (Land Use Regulation Commission), Environmental Protection, Inland Fisheries and Game, Health and Welfare, and the Bureau of Property Taxation. The council will act as the school committee with responsibility after three years for the general administration of schooling in the grand plantation. These responsibilities will be carried out in coordination with, and, with regard to certain matters, subject to the approval of the Commissioner of Education and Cultural Services. It will also make recommendations to the county commissioners with regard to the location, construction and maintenance of bridges, roads, and pedestrian paths to great ponds and public lots. At the request of the council, the commissioners will provide public services such as fire protection (except forest fire protection) and dumps for solid waste disposal. The council will execute the procedures required by law for the licensing of automobile graveyards and junkyards and negotiate road access policies for the public with landowners in their grand plantation.

The requirements for council membership will be the same as those under general law for municipal officers and for school committee members. The terms of the council will be staggered as is provided for school

committee members under general law to assure continuity of expertise and policy.

2. Manager. The manager will function as clerk, constable, registrar of voters, treasurer, census taker, keeper of records, and liaison to, and in specified instances, representative of state agencies. The manager will have the authority to appoint qualified deputies to assist him in carrying out his duties.

a. Clerk. As clerk, the manager will perform the same duties as municipal clerks under general law. For example, he will record births, deaths, and marriages; issue fishing and hunting licenses; collect the excise tax; record dogs; record transactions under the Uniform Commercial Code; and serve as moderator until the moderator is chosen at the annual meeting of the grand plantation.

b. Constable. As constable, the manager will have all the duties and responsibilities of constables under general law with the exception of criminal arrest.

c. Registrar of voters. As registrar of voters, the manager will carry out the same duties as do registrars of voters in municipalities under general law.

d. Treasurer. As treasurer, the manager will account for all monies received as official grand plantation fees and payments and will make disbursements from the grand plantation treasury as provided in this

legislation. The manager would be covered by a blanket indemnity bond.

e. Census taker. As census taker, the manager will take, maintain and keep current a census of all residents in the grand plantation.

f. Keeper of records. As keeper of records, the manager, in addition to keeping the records required of him as clerk, will record and file all applications and permits within the grand plantation prepared for and granted by the Departments of Conservation, Environmental Protection, Inland Fisheries and Game, Health and Welfare and other relevant state agencies. Upon reasonable notice, he will make the grand plantation records available to any person for his inspection and use.

g. Liaison officer. As the liaison between the grand plantation and the relevant state agencies, the manager may assist individuals in preparing and transmitting applications; act as a review agent for applications and proposed plans and standards of such agencies; represent the public interest of the residents of the grand plantation at public hearings held by such agencies; report apparent violations of the laws and regulations of such agencies; and perform such other duties as may be mutually agreed upon by the manager in such capacity and such agencies. The manager will also act as or appoint qualified agents to serve

as plumbing inspectors for the grand plantations. The manager shall aid the Department of Health and Welfare in administering the general assistance program for the grand plantation. Finally, the manager will report any new information regarding developments in the grand plantation to the Bureau of Property Taxation.

C. Participation in local government. A resident of a grand plantation will have the privilege of voting at the organizational meeting of his grand plantation and at each annual meeting thereafter, such meetings to be held in the same manner as in towns under general law, for council members and on any resolution or other matter that may be brought up for vote at such meetings. A resident will have the privilege of participating in the selection of a name for his grand plantation at a special meeting to be held within six months of the organizational meeting. He will be able to utilize the various services provided by the manager as clerk and liaison officer within the grand plantation and avail himself of the records of the grand plantation at any time. A resident would register and vote in state and national elections at a polling place within his grand plantation or, if he lives more than 25 road miles from the polling place, he may vote by absentee ballot within his grand plantation.

APPENDIX A

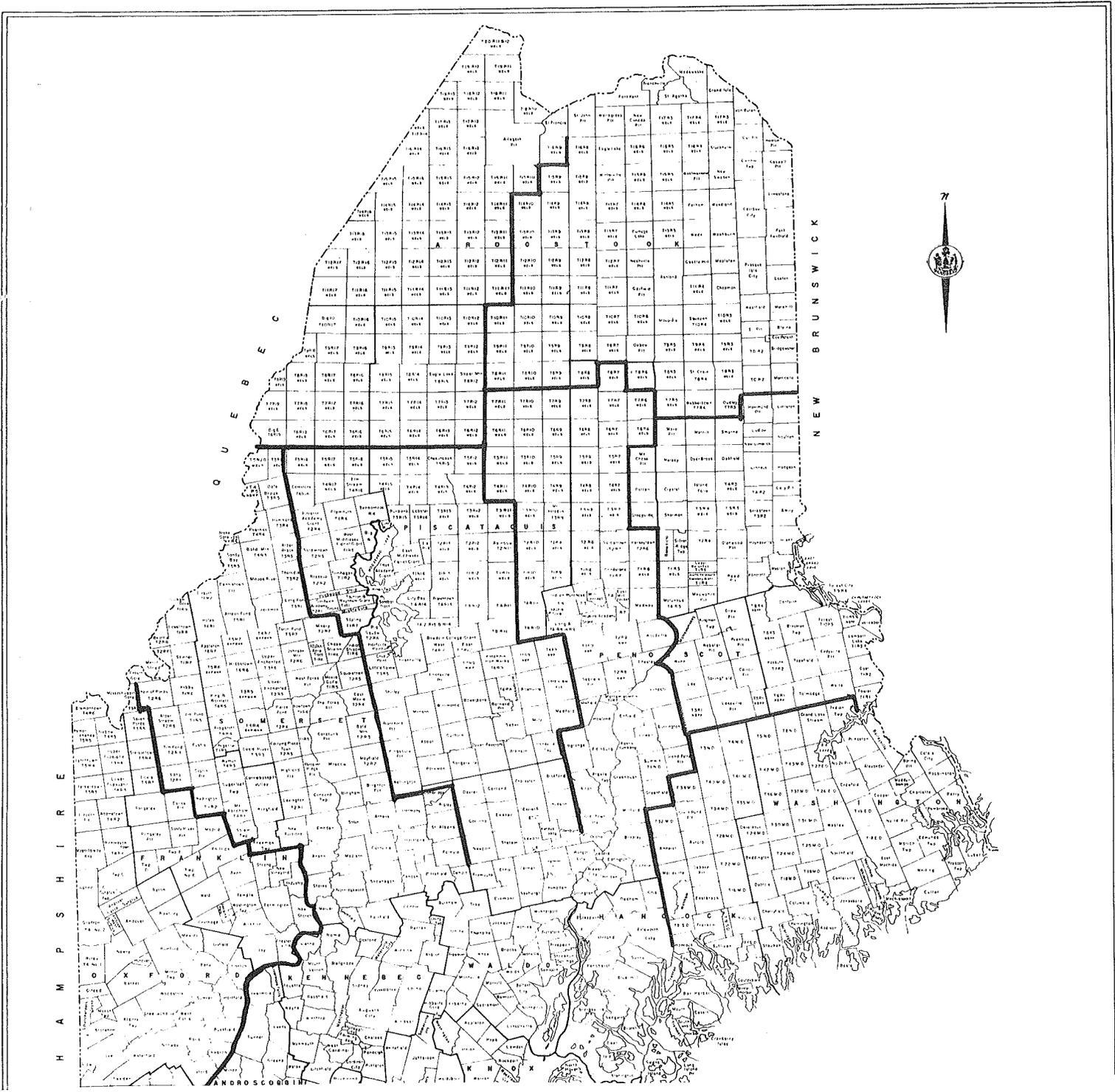
H.P. 84, ORDER, relating to Joint Special Committee on Public Lands, as amended by Senate Amendment "A"

ORDERED, the Senate concurring, that a Joint Select Committee on Public Lands, consisting of ten members, three of whom shall be Members of the Senate appointed by the President of the Senate and seven of whom shall be Members of the House appointed by the Speaker of the House, is hereby created and appointed for the purpose of reviewing and reporting on legislation referred to it or introduced in the 106th Legislature in connection with public lands including public lots. The Committee is not only authorized to review all legislation introduced in connection with the public lots but is directed to study and report on the present legal status of the public lots; the legal rights of the citizens of Maine in the public lots; and the alternative uses to which the public lots may be put to in the public interest and to report to the Legislature its views and recommendations in regard to what action, if any the Legislature should take in regard to the use of public lands including public lots and to draft legislation to implement its recommendations.

The Committee shall act as expeditiously as possible and shall make its recommendations and report to the 106th Legislature on all legislation so referred to it in accordance with Joint Rule 17 and additionally make a final report to either the regular or special session in such manner as the Committee deems appropriate.

The Committee shall proceed in its work with the assistance of the Attorney General's Department, the Director of Legislative Research, the Legislative Finance Officer and any other state department, board, commission, authority or agency from which information may be required to carry out and expedite the Committee's duties. Furthermore, said Committee may employ such assistants, clerks, attorneys, agents and advisors as it shall deem necessary and set the conditions of their employment with the approval of the President of the Senate and the Speaker of the House. If it is necessary for the Committee to meet when the Legislature is not in session, the Committee members shall be reimbursed for their actual expenses in service to the Committee, with the exception of mileage which shall be paid at the same rate received by state employees. The Committee is authorized to conduct public hearings at such times, places and in such manner as it deems appropriate to fulfill its duties.

There is allocated to the Committee from the Legislative Account the sum of \$10,000 to carry out the purposes of this Order.



Proposed grand plantations will consist only of the presently unorganized and deorganized townships and tracts within the indicated boundaries.