STATE OF MAINE

Inter-Departmental Memorandum

Date September 11, 1972

To James S. Haskell, Jr. Dept. L.U.R.C.

From E. Stephen Murray, Assistant ESM Dept. Attorney General

Subject Opinion as to whether land currently being utilized for commercial forest product purposes may be placed in "Protection Districts" by L.U.R.C.; your memorandum of 8/31/72.

In a memorandum of August 31, 1972 you asked my opinion as to whether or not the Land Use Regulation Commission, hereinafter called the Commission, has the power, pursuant to 12 M.R.S.A. § 685-A, to place lands which might be said to be "currently being utilized for commercial forest product (purposes)" in "Protection Districts" when those lands are found to be "areas where development would jeopardize significant natural, recreational and historic resources, including flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State"?

In my opinion the Commission does have the power, and indeed the responsibility, to do so, for the following reasons:

1. When statutes are construed, they must be read as an integrated whole. A reading of Chapter 206-A of Title 12 of the Maine Revised Statutes as an integrated whole indicates that the Commission has, as it must have in order to accomplish its goals as set forth in Section 681, the power and responsibility of weighing a variety of land use and land attribute factors in determining the appropriate land use district in which particular areas should be placed. To find that the Commission is precluded from placing certain significant land areas which are to either a small or large extent "currently being utilized for commercial forest product. . . uses" would be wholly contrary to and in violation of the Legislature's directives to the Commission "to preserve ecological and natural values" (§§ 681, 683), "to encourage the well managed multiple use of privately owned forest land and timber resources" (§§ 681, 683), and to "protect and preserve significant natural, scenic and historic features. . . "(§ 685-A.3.C.).

2. Section 685-A.1 of Title 12 of the Maine Revised Statutes directs the Commission to "determine the boundaries of areas. . . that fall into land use guidance districts and designate each area. . . (and) set the standards for determining the boundaries. . . . (emphasis supplied)" The Legislature did not say that the Commission shall delineate the boundaries in

strict accord with detailed and specific guidelines laid down in the statute, i.e., perform a strictly ministerial function and execute a legislatively detailed plan with a pen and ruler. If this were so, there would be no reason for the Commission to conduct public hearings prior to the drawing of boundary lines. (§ 685-A.7). Rather, the Legislature, while setting forth some general guidelines, has ordered the Commission to "set" the detailed standards for determining the boundaries, determine those boundaries and designate each area as one of four major types of land use districts.

3. Without construing the statute as delegating authority to the Commission to weigh all land use attributes as to particular land areas, the statute would be contradictory and impossible to apply. Specifically, it is evident that particular land areas will qualify for inclusion in 2 or more districts, e.g., a land area containing "significant natural or recreational resources" and thus qualifying for inclusion in a Protection District (§685-A.1.A) may at the same time be under current utilization for commercial timber harvesting and thus qualify for inclusion in a Management District (§ 685-A.1.B.) and at the same time be property "adjoining development districts for growth needed when the development district is saturated. . . (or property). . . for which development plans have been submitted. . . or where additional development is otherwise formulated or anticipated" and thus qualify for inclusion in a Holding District (§ 685-A.1.C.). In order to not paralyze the law in such situations, the statute must be read as giving the Commission flexibility to make a considered judgment as to the appropriate district for such lands.

3. Section 685-A.5 of Title 12 of the Maine Revised Statutes indicates a legislative contemplation that lumbering operations be regulated in some areas; and to read the statute as requiring the Commission to place all lands "currently being utilized for forest product. . . uses" in Management Districts could be said to prevent Commission regulation of any lumbering operations. Section 685-A.5, as enacted by P.L. 1971, c. 458, § 5, states:

> "Land use guidance standards adopted pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber. . . (emphasis supplied)".

The statute as previously written in § 686.4.A, as enacted by P.L. 1969, c. 494 and repealed by P.L. 1971, c. 458, § 7, stated:

> "Nothing in this chapter or in any regulation adopted shall in any way limit the right, method or manner of cutting or removing timber. . . . "

It is evident that as initially written, the statute prohibited the Commission from regulating timber operations anywhere. As redrafted, however, this prohibition was confined to land falling within Management Districts and hence by implication was lifted or repealed as to other areas, thus evidencing legislative intent that timbering operations be subject to regulation in these other areas. Inasmuch as all of the so-called "wildlands" owned by the commercial timber interests are claimed by them to be currently in use for forest product purposes (see transcript of July 19 hearing on the Commission's proposed land use guidance district boundary standards and uses), except for those areas where there are no trees and those areas in which these interests are engaging in exclusively recreational development, to find that all such lands must be placed in Management Districts would result in subversion of the legislative intent that timber operations be regulated in some areas.

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