

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 31, 1974

To Tim Glidden Dept. Land Use Regulation Comm.
From Sarah Redfield, Staff Attorney Dept. Attorney General
Subject National Flood Insurance Program

This is in response to your memorandum of August 15, 1974 in which you requested an opinion concerning the role of the Land Use Regulation Commission (LURC) in ensuring the participation of the unorganized and deorganized areas of Maine in the National Flood Insurance Program.

The Flood Disaster Protection Act of 1973 (42 U.S.C. §4001 et seq., P. L. 92-234) provides, in part, that after July 1, 1975 no financial assistance for acquisition or construction in identified flood-prone areas shall be approved by any other agency of the federal government "unless the community in which such area is situated is then participating in the National Flood Insurance Program."^{1/} 42 U.S.C. §4106.

The Flood Disaster Protection Act defines "community" as "a State or political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards." 42 U.S.C. §4003 (a) (1).^{2/}

The plantations in Maine (which are subject to LURC's jurisdiction) do not have the authority to adopt a zoning ordinance or building code. (See Attorney General's Opinion from Lee M. Schepps to James S. Haskell, May 7, 1973, a copy of which is attached.) Obviously, unorganized townships themselves do not possess such powers. These areas therefore are without the requisite power to themselves take the prerequisite steps to enable their residents

^{1/} This program was established by the National Flood Insurance Act of 1968, 42 U.S.C. §4001 et seq., P. L. 90-448 (1968) as amended by P. L. 91-152 (1969).

^{2/} "State" is defined in this statute as including "the several States . . . ," 42 U.S.C. 4121 (a) (2).

to participate in the National Flood Insurance Program. However, pursuant to the federal statutory provision, the State itself may take those steps.

The issue is whether or not LURC may act for the State in this matter. The answer is yes.

The flood insurance program is administered by the private insurance industry with the assistance and support of the Federal government, see e. g. 42 U.S.C. §§4052, 4053. The "community" does not participate financially or administratively. Its responsibility is, rather, to ensure that the insurance may be made available to area residents; this is accomplished by the community's meeting the prerequisites for participation. As delineated in the Code of Federal Regulations, these prerequisites involve: (1) the adoption of land use control measures consistent with the federal criteria, 24 C.F.R. Part 1910; (2) a commitment to consider flood hazards in land use decisions, to cooperate with Federal, state and other agencies studying flood areas, and to submit an annual report regarding management measures undertaken; and (3) the submission of certain documentary materials including copies of legislative and executive actions indicating a need and desire for flood insurance, citations to statutory authority for regulating land use, a summary of the history of flooding and management efforts undertaken in the area, various maps of the area, data concerning population and residences in the area, and the address where flood maps will be available for inspection, 24 C.F.R. §1909.22.

The State of Maine has delegated authority to designate land use districts and to prescribe standards regulating its unorganized areas to the Land Use Regulation Commission, 12 M.R.S.A. §685-A.1 and §685-A.3. This authority specifically includes authority to designate "protection districts" including flood plains and other critical areas, 12 M.R.S.A. §685-A.1.A.

The other prerequisites also involve actions which LURC has taken or is taking as part of its own efforts to fulfill its statutory duties. The authority to then submit this information to the Federal government would appear to be inherent in its powers to act to ensure the health, safety and welfare of the residents of the plantations and unorganized townships, see 12 M.R.S.A. §681.

Accordingly, as the State agency with the jurisdiction to zone the unorganized and deorganized areas and with the legislative mandate to district and regulate flood plains therein, LURC is the appropriate agency of the State to adopt zoning restrictions and land use control measures and to submit the requisite documentary materials to the Federal Insurance Administrator.

Sarah Redfield

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SR/cmf