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STATE OF MAINE

Inter-Departmental Memorandum Date April 22, 1975

To Richard W. Billings, Acting Exec. Dir. Dept. LURC

From Sarah Redfield Dept. Attorney General

Subject The applicability of the permit requirements of Title 12 MRSA §685-B to hauling roads in management districts.

This is in response to your memo dated March 6, 1975, in which you requested an opinion as to whether the Land Use Regulation Commission (LURC) has the authority to require permits for the construction of haul roads in management districts. Unless the Commission has by regulation determined that the construction of hauling roads does "not need regulating to achieve the purpose, intent and provisions" of the LURC statute, such construction, as a "development", would require a permit from LURC pursuant to the provisions of section 685-B.1.C.

The Land Use Regulation Commission is authorized to plan for and regulate development in the unorganized and deorganized territories of the State of Maine, 12 M.R.S.A. §681 et seq. "Development" is defined as:

"any land use activity or activities directed toward using, reusing or rehabilitating air space, land, water or other natural resources, excluding, however, such specific uses or classes and categories of uses as the Commission may by regulation determine do not need regulating to achieve the purpose, intent and provisions of this chapter," 12 M.R.S.A. §682.7.

The construction or operation of any development in the unorganized or deorganized territories may not be commenced without a permit issued by the Commission, 12 M.R.S.A. §685-B.1.C. Such a permit may be issued on such terms and conditions as the Commission deems appropriate in order to satisfy the statutory criteria for approval, 12 M.R.S.A. §685-B.4.

Some question as to the applicability of these permit requirements to hauling roads is raised by the statutory exemption which provides that:

"Land use standards adopted pursuant to this chapter for management districts shall in no way limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms." 12 M.R.S.A. §685-A.5.

This section exempts the construction and maintenance of hauling roads from the limiting operation of "land use standards." It does not exempt hauling roads from the permit requirements of section 685-B.

The conclusion that hauling roads are not exempt from permit requirements is supported by the principles of statutory construction. Reading the LURC statute as a whole indicates that the Legislature intended to distinguish between requirements imposed by land use standards adopted pursuant to section 685-A.3 and the permit requirements of section 685-B. Generally, the standards are to be developed as part of the districting or zoning process; they are, among other things, to "encourage" the most desirable and appropriate use of air, land and water resources," to provide for the "reduction of noise, air pollution, water pollution and other environmental intrusions" to "encourage minimal adverse impact of one use upon the use of surrounding areas," and to eventually "ameliorate existing adverse impact," see 12 M.R.S.A. §685-A.3 (emphasis added).

Although some of the provisions of section 685-B.4 are similar to those of 685-A.3, the basic scope and approach of these two sections, is not the same. The criteria for approval of a development are designed primarily to ensure the maintenance of the status quo in relation to various resources. To obtain a permit the specific development proposed must, among other things, make "adequate provision" regarding air and water pollution and avoid "undue adverse effect on existing uses," see 12 M.R.S.A. §685-B.4 (emphasis added).

In other words, exemption from the standards is distinct in conceptual orientation from exemption from the permit requirements. That the Legislature intended this distinction is demonstrated by the legislative history of section 685-A.5. Prior to 1973 this section provided that:

"No land use guidance standard shall deprive any owner or lessee of any interest in real estate of the use to which it is then lawfully devoted at the time of adoption of said standard. Occupied year-round single residences and operating farms presently in existence and use, while so used, and new accessory buildings or structures or renovations of existing buildings or structures which are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses shall be exempt from land use guidance standards.

"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 or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms.

"In adopting district boundaries and land use guidance standards, the commission shall give consideration to public and private planning reports and other data available to it, and where not inconsistent with the purposes and intent of this chapter shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use."
(emphasis added)

Chapter 569 of the Public Laws of 1973 amended the first paragraph of this section to provide that such uses "shall be exempt from the requirements of section 685-B, subsection 1." The second paragraph of the section was not similarly amended, thus leaving the operations and uses discussed in this paragraph subject to the permit requirements of 685-B. The exemption would only be applicable insofar as compliance with the standards is required by §685-B.4.E.

Sarah Redfield

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