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STATE OF MAINE

Inter-Departmental Memorandum Date March 30, 1976

To Carl Laws, Executive Director

Dept. Saco River Corridor Commission

From John M. R. Paterson, Deputy

Dept. Attorney General

Subject Interpretation of Section 22 of the S.R.C.C. Act.

You have inquired as to whether a private park/recreation facility proposed for location in the Saco River Corridor and within the City of Biddeford is governed by either or both the Saco River Corridor Commission's zoning standards and the Zoning ordinance of the City of Biddeford. The proposed project includes a wharf, nature trails, picnic facilities, tennis courts, tent facilities, a recreation building, comfort stations, parking areas and a swimming pool. The site for the project is zoned as Limited Residential by the Commission and Suburban Residential by Biddeford. The particular uses allowed in those zones are set forth in the respective statute and ordinance. A review of those provisions indicates that the project as proposed is consistent with the Commission's Limited Residential Zone standards, but is not permitted in Biddeford's Suburban Residential Zone. While there is an area of overlap between these standards established by the Commission and Biddeford, this project is not in such class of jointly permitted uses.

The operative section of the Commission's act governing the relationship between the standards in the corridor and standards in municipalities which are within the Corridor are found in section 22 of the S.R.C.C. Act. That section reads:

"Nothing in this Act shall prevent municipal state or federal authorities from adopting and administering more stringent requirements regarding performance standards or permitted uses within use districts established by the Commission or within districts overlapping the districts established pursuant to this Act. Where there is a conflict between a provision adopted under this Act and any other municipal, state or federal requirement applicable to the same land or water areas within the corridor, the more restrictive provision shall take precedence."

Interpretation of §22 appears to turn on the meaning of the terms "more stringent requirements" and "more restrictive provisions". While these terms are not entirely clear, the general intent of the section seems to authorize governmental bodies other than the Commission to regulate, and impliedly prohibit, activities either not regulated or not prohibited by the Commission. Conversely, the Commission, in the event of inconsistencies between its standards and any other state or municipal standard, is entitled to regulate and prohibit activities otherwise permitted by other governmental bodies. Thus, we construe the terms "more restrictive provisions" and "more stringent requirements" to mean that ordinance or statute

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which most rigorously regulates, limits or even prohibits a particular land use. Such an interpretation seems to effectuate the general intent of the section to reserve to each government body the power to regulate and prohibit particular land uses even if an other does not.

Applying this general rule to the instant case, we are of the opinion that while the proposed land use is permitted by the Commission, it may be prohibited by the municipality of Biddeford. The reverse is equally true; if the proposed park were permitted by Biddeford, but prohibited by the Commission, the Commission's prohibition would be controlling.

As to your inquiry regarding "proper administrative procedure", we do not believe that there is any legally mandated procedural method for determining the existence of such conflicts and resolving them. A developer or land owner may initiate proceedings to obtain permits in whatever order he chooses. The agencies and governmental bodies should process such applications as a matter of course, subject to the terms of their operative statutes and regulations. Whether or not a permit is needed, or even available for a particular activity is, of course, dependent upon the terms of the relevant ordinance.



JOHN M. R. PATERSON
Deputy Attorney General

JMRP/bls