Critical Areas Program Impact on Property of other State agencies
5 MRSA 3310 et seq.

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To: Allen Pease, Director, State Planning Office
Maynard F. Marsh, Commissioner, Inland Fisheries and Wildlife

From: Donald G. Alexander, Deputy Attorney General

Re: Critical Areas Program

You have asked whether lands operated as wildlife management areas by the Commissioner of Inland Fisheries and Wildlife pursuant to 12 M.R.S. § 2155 are exempt from the provisions of the Act for a State Register of Critical Areas, 5 M.R.S. §§ 3310 et seq. It would appear that, in the absence of any provision in the Critical Areas Act to that effect, such areas are not so exempted.

The Commissioner of Inland Fisheries and Wildlife is made responsible by statute for the regulation of "hunting, fishing, trapping, boating, camping or other public use on wildlife management areas and sanctuaries." 12 M.R.S. § 2155. Such areas may be either State owned under 12 M.R.S. § 2151 or privately owned but designated wildlife management areas under 12 M.R.S. §2154. In 1973, subsequent to the establishment of these powers in the Commissioner, the Legislature passed the Critical Areas Act, 5 M.R.S. §§ 3310 et seq., establishing a "Register of Critical Areas," onto which the State Planning Office is empowered to place "areas of significant natural, scenic, scientific or historic value." 5 M.R.S. §3314(1). Areas so placed may thereafter not be altered "in use or character" unless the Critical Areas Advisory Board (which advises the State Planning Office) is given sixty days' notice. 5 M.R.S. §3314(4). The Act does not then further prohibit alteration; its purpose is evidently to afford the Board and the Office a limited amount of time to make arrangements to preserve the area.

The Department of Inland Fisheries and Wildlife argues that should the State Planning Office place a wildlife management area on the Register of Critical Areas, such placement would constitute an illegal invasion of the Commissioner's power to regulate such area. However, no mention of such wildlife management areas may be found in the Critical Areas Act. In fact, it is quite common for the activities, and even the property, of one state agency to

be regulated by another pursuant to statute. For example, state agencies undertaking developments of sufficient size to come within the Site Location of Development Law, 38 M.R.S. §§ 481 et seq. must secure the approval of the Board of Environmental Protection, such agencies being expressly included within the definition of "person" included in the Law, 39 M.R.S. §482(4). Significantly, however, the activities of at least one state agency is exempted from the Law: "state highways and state aid highways" are not required to obtain approval regardless of their size under 38 M.R.S.§482(2).

No such exemption is provided for the Department of Inland Fisheries and Wildlife in the Critical Areas Act. In fact the Act expressly contemplates that state agencies might acquire and hold critical areas in the name of the State. 5 M.R.S. §3314(3). The acquisition of such an area by a state agency would surely not divest the area of its critical status. Consequently, the mere fact that an area is owned or managed by the Department would not exempt it from the Act, and without a specific exemption, such an area must be said to be subject to the Act in the same manner as any privately owned critical area.

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