

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

September 10, 1982

Honorable John L. Martin
Speaker of the House of Representatives
Speaker's Office
Augusta, Maine 04333

Re: Proposed St. John River Resource
Protection Plan

Dear Speaker Martin:

In your letter dated August 27, 1982, you have asked two questions with respect to the proposed St. John River Resource Protection Plan ("the Plan"): first, whether the Plan in general violates the enabling legislation of the Land Use Regulation Commission (the "Commission"), by permitting private regulation of land in the unorganized territories, instead of public regulation by the Commission; and, second, whether the specific provisions of the Plan contemplating the inclusion of certain public lands of the State in it violate the provisions of law governing the care and management of those lands. This Opinion will answer only the first question in view of the necessity to resolve the issue expeditiously so that the Commission can confidently consider the Plan at its next meeting on September 15, 1982. For the reasons which follow, it is our opinion that the Plan does not permit the private regulation of land use and therefore does not violate the Commission's enabling legislation.

In creating the Land Use Regulation Commission, the Legislature declared it to be in the public interest that the Commission "encourage the well planned and well managed multiple use of land and resources and to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities . . ."
12 M.R.S.A. § 681, 685-A(3). In pursuit of this objective,

Honorable John L. Martin
Speaker of the House of Representatives
Page Two
September 10, 1982

the Land Use Regulation Law directs the Commission to promulgate land use standards for each of various zoning districts. 12 M.R.S.A. § 685-A. By regulation, the Commission has created and adopted standards for the Resource Plan Protection Sub-district (P-RP). Land Use Regulation Commission Rules and Regulations ("Regulations"), § 10.16(F) (Nov. 25, 1981). This Regulation provides that "Resource Plans for such areas . . . may be submitted to the Commission for review [by the landowner or its lessee], and upon approval, such areas shall be designated as P-RP Protection Subdistricts." Regulations, § 10.16(F)(1). The Resource Plan for such a subdistrict must incorporate standards which, taken as a whole, are at least as protective as those standards which would otherwise be applicable. Regulations, § 10.16(F)(1) and (2). The Resource Plan must be approved by the Commission (Regulations, § 10.16(F)(6)), and upon approval the standards contained therein are fully enforceable by the Commission. 12 M.R.S.A. § 685-C(8).

The St. John Plan is a proposed Resource Plan for portions of the St. John watershed. Approval of that Plan by the Commission would create a resource plan protection subdistrict pursuant to the Regulations. The proposed St. John Plan contemplates that certain uses shall be allowed only upon issuance of a permit from the Commission, and that other uses are wholly prohibited. Proposed St. John Plan, § III(D) and (F). The result is no different than when the Commission zones an area as a Recreation Protection Subdistrict, pursuant to § 10.16(G) of the Regulations: certain uses are allowed without permit, other uses are allowed with a permit, and some uses are wholly prohibited, with the landowner having the right and ability to manage his land within these restrictions.

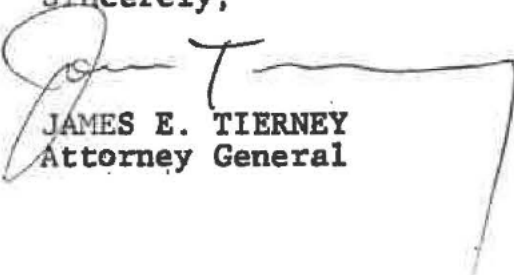
In view of the foregoing, it is our opinion that if the proposed St. John Plan is found by the Commission to meet the requirements for a Resource Plan set forth in the Commission's regulations, since those requirements do not involve an illegal surrendering of the Commission's statutorily mandated regulatory responsibility, the Plan would not violate the Commission's enabling legislation. It may be that the concern raised with respect to the Plan appears to be based upon a misunderstanding of the roles of the Commission and the landowner, and the effect of Commission approval of a Resource Plan. The Commission regulates land use: it places zoning restrictions on the landowner's use of its land. The landowner manages its land within

Honorable John L. Martin
Speaker of the House of Representatives
Page Three
September 10, 1982

the zoning standards. The Commission's approval of a Resource Plan, such as the St. John Plan, results in standards which are fully enforceable by it, with the landowners retaining the right to manage the land within the restrictions set down by the standards. Thus, the approval of a Plan does not constitute any violation of the Commission's statutory responsibilities.

We hope this has answered your question. Should we be able to be of further assistance to you, please do not hesitate to contact us.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/d