

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 967

H. P. 797

House of Representatives, March 5, 1979

On Motion of Mr. Blodgett of Waldoboro, referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Kiesman of Fryeburg.

Cosponsor: Mr. D. Dutremble of Biddeford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning the Saco River Corridor Commission.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 38 MRSA c. 6 is enacted to read:

CHAPTER 6

SACO RIVER CORRIDOR

§ 951. Purpose

The Legislature finds that the Saco, Ossipee and Little Ossipee Rivers are largely unspoiled by intensive or poorly planned commercial, industrial or residential development; that existing water quality on the inland portions of these rivers is extremely high; that these rivers and their associated wetlands constitute an important present and future source of drinking water; that they support large and diverse aquatic populations; and that they are heavily used for fishing, swimming, canoeing, camping and other forms of outdoor recreation.

The Legislature finds that the wetlands associated with these rivers constitute important water storage areas; that they moderate the flow of these rivers in time of flood and drought; that they replenish the groundwater; and that they provide nutrients and essential habitat for numerous species of fish, migratory birds and other forms of wildlife.

The Legislature finds that the periodic flooding of these rivers contributes to the fertility of the adjacent lands; that the unrestricted flow of water within the floodway in the upper portions of these rivers is an essential factor in limiting the severity of flooding in the lower portions of these rivers; and that because the floodplains are largely undeveloped, the flooding which now occurs results in relatively little loss of life, personal injury and damage to property.

The Legislature finds that these rivers and their adjacent lands possess outstanding scenic and aesthetic qualities and that certain areas along these rivers are of outstanding scenic, historic, archaeological, scientific and educational importance.

The Legislature finds that the towns along these rivers are experiencing rapid population growth and that the rivers themselves are subject to increasing development pressures which threaten to destroy the quality of these rivers and the character of the adjacent lands.

In view of the dangers of intensive and poorly planned development, it is the purpose of this chapter to preserve existing water quality, prevent the diminution of water supplies, to control erosion, to protect fish and wildlife populations, to prevent undue extremes of flood and drought, to limit the loss of life and damage to property from periodic floods; to preserve the scenic, rural and unspoiled character of the lands adjacent to these rivers; to prevent obstructions to navigation; to prevent overcrowding; to avoid the mixture of incompatible uses; to protect those areas of exceptional scenic, historic, archaeological, scientific and educational importance; and to protect the public health, safety and general welfare by establishing the Saco River Corridor and by regulating the use of land and water within this area.

§ 952. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Accepted road. "Accepted road" means a state, county or town road which is under the control of state, county or municipal authorities and maintained at public expense.

2. Accessory use or structure. "Accessory use or structure" means a use or structure of a nature customarily incidental and subordinate to a principal use or structure.

3. Automobile graveyard. "Automobile graveyard" means a yard, field or parcel of land used as a place of storage for 3 or more unserviceable, discarded, worn out or junked motor vehicles.

4. Billboard. "Billboard" means a sign, structure or surface, or combination thereof, used for advertising purposes exceeding 15 square feet in area.

5. Bog. "Bog" means a periodically or continually wet, spongy area exceeding 1,000 square feet in area with soil composed mainly of decayed vegetable matter.

6. **Building.** “Building” means any structure, regardless of the materials of which it is constructed, which has a roof or partial roof supported by columns or walls, used or intended to be used for the habitation, enclosure or shelter of persons or animals or to provide uses which include, but are not limited to, working, office, display, sales, storage or parking space.

7. **Development.** “Development” means the carrying out of any significant earthmoving, grading, dredging, filling, building, construction or mining operation; the deposit of refuse or solid or liquid wastes on a parcel of land other than agricultural utilization of animal wastes; the making of any material change in noise levels, thermal conditions or emissions of waste material; the commencement or change in the location of advertising; or the alteration of a shore, bank or floodplain of an estuary, river or pond.

8. **District.** “District” means a specified area of land or water within the corridor, delineated on the district boundary map, within which certain regulations and requirements apply under this chapter.

9. **100-year floodplain.** “100-year floodplain” means any land adjacent to the Saco River, Ossipee River or the Little Ossipee River which is of lower elevation than the profiles of the 100-year flood established for that location by the United States Army Corps of Engineers, or by other state or federal agency, or which was actually covered by flood waters in the flood of March, 1936. Where the location of the boundary of the 100-year floodplain is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of the location of the boundary.

10. **Home occupation or enterprise.** “Home occupation or enterprise” means an occupation, enterprise or profession which is carried on in a dwelling unit or accessory structure by a person residing in the dwelling unit, incidental and secondary to the use of the dwelling unit for residential purposes, which conforms to the following performance standards:

A. Not more than 2 full-time employees or the equivalent thereof not living on the premises shall be employed in the home occupation or enterprise;

B. All exterior signs and displays shall comply with the performance standards enacted by or established pursuant to this chapter; and

C. There shall be no nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation generated which is incompatible with the character of the area in which the home occupation or enterprise is located.

11. **Junkyard.** “Junkyard” means a yard, field or other parcel of land used as a place for storage for:

A. Discarded, worn-out or junked plumbing and heating supplies or household appliances and furniture;

B. Discarded scrap and junked lumber;

C. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubbish, debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and

D. Garbage dumps, waste dumps and sanitary fill.

12. Marsh. "Marsh" means a periodically wet or continually flooded land area exceeding 1,000 square feet with the surface not deeply submerged, covered dominantly with sedges, cattails, rushes or other hydrophytic plants.

13. Mean high waterline. "Mean high waterline" means the average high tide level.

14. Normal high water line. "Normal high water line" means the line on the shore or bank of the fresh-water portion of a river at the point or elevation where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. Where the location of the normal high water line is at issue under this chapter, the district boundary map adopted by the commission shall be prima facie evidence of its location.

15. Public right of way. "Public right of way" is an improved roadway maintained for passage by motor vehicles in which the owner of fee does not control the right of passage.

16. Structure. "Structure" means any object of a significant nature constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location or in the ground, which may include, but is not limited to, buildings, mobile homes, walls, fences, billboards, signs, piers and floats.

17. Swamp. "Swamp" means a periodically or continually wet area exceeding 1,000 square feet in area which supports tree growth.

18. Wetlands. "Wetlands" means marshes, bogs, swamps and other areas exceeding 1,000 square feet, periodically covered by water which exhibit predominantly aquatic vegetation.

§ 953. Saco River Corridor established

There is hereby created the Saco River Corridor, herein referred to as the "corridor," which shall include the Saco River from the landward side of the rock jetty in Saco Bay to the New Hampshire border; the Ossipee River from its confluence with the Saco River to the New Hampshire border; and the Little Ossipee River from its confluence with the Saco River to the New Hampshire border at Balch Pond.

The corridor shall also include the lands adjacent to these rivers to a distance of 500 feet as measured on a horizontal plane from the normal or mean high water line of these rivers or to the edge of the 100-year floodplain if that extends beyond 500 feet, up to a maximum of 1,000 feet.

§ 954. Creation of the Saco River Corridor Commission

To carry out the purpose stated in section 951, there is hereby created the Saco River Corridor Commission, hereafter in this chapter called the "commission." The commission is charged with implementing this chapter within the Saco River Corridor and shall have and exercise all the powers and authorities necessary to carry out the purposes of this chapter and the powers and authorities granted herein. The commission shall consist of one member and one alternate from each municipality whose jurisdiction includes lands or bodies of water encompassed by the Saco River Corridor. Members and alternates shall not be personally liable for the official acts of the commission.

Appointments to the commission shall be made by the municipal officers of each municipality who may consult with the planning board of that municipality. The initial members and alternates shall be appointed within 30 days of the effective date of this chapter. Members of the commission and alternates shall serve staggered 3-year terms. The term of office of the initial members and alternates shall be determined by lot with 1/3 of the initial members and alternates selected respectively for one, 2 and 3-year terms. The member and alternate from the same municipality shall serve the same term.

Appointed and elected officials of the municipalities with lands within the corridor shall be eligible to serve as members of the commission, and such service shall not be considered a conflict of interest. The members shall be sworn to the faithful performance of their duties as such by a dedimus justice and 7 members or alternates qualified to vote shall constitute a quorum for the transaction of business.

§ 954-A. Officers and meetings

The commission shall elect annually, from its own membership, a chairman and secretary and such other officers as it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than ½ of the membership. The meetings shall be held no less frequently than 8 times a year. The minutes of all proceedings of the commission shall be a public record available and on file in the office of the commission. Members of the commission shall not be paid a salary, but may be reimbursed for expenses incurred in carrying out their responsibilities.

Alternate members shall be allowed to participate in all proceedings of the commission, but shall vote only in the absence of the regular member from the municipality which they represent. Public hearings conducted under the authority of this chapter may be held by a single member, alternate or hearing officer designated by the commission.

§ 954-B. Commission budget; financing and executive director

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks.

The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks, and make such agreements in respect to the administration of such funds, not inconsistent with this chapter, as are required as conditions precedent to receiving such funds, federal or otherwise. The commission may contract with municipal, state and federal governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to employ an executive director who shall be the principal administrative, operational and executive employee of the commission. The executive director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The executive director, with the approval of the commission may hire whatever competent professional personnel and other staff as may be necessary and he may obtain office space, goods and services as required.

§ 954-C. Rule-making powers

1. The commission shall have the power, after notice and public hearing to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of this chapter. The rules and regulations may cover but shall not be limited to:

- A. The form and content of applications;
- B. The conduct of meetings and hearings;
- C. The determination of parties to hearings;
- D. The provision, form and content of both public notice and notice to individuals, groups and property owners affected by proposed action of the commission;
- E. The issuance and revocation of permits and certificates of compliance;
- F. The issuance of decisions and findings of facts;
- G. The adoption, amendment and interpretation of district boundaries;
- H. The amendment and revision of the comprehensive plan;
- I. The adoption and amendment of a schedule of fees;
- J. The adoption and amendment of additional performance standards for permitted uses under section 962-A; and
- K. The grant or denial of variances.

2. In adopting rules and regulations under this section, the commission shall consider, in addition to the other requirements set forth in this chapter, the following factors:

- A. Expense and facility of administration;
- B. Convenience to landowners and individuals affected;

- C. Encouragement of public participation; and
- D. Cooperation with municipal and state officials.

§ 954-D. Additional powers and duties

1. —additional. In order to implement this chapter, the commission may, in addition to the powers and duties otherwise authorized by this chapter:

- A. Adopt an official seal;
- B. Compel attendance of witnesses and require production of evidence;
- C. Designate or request municipal, state or federal agencies to receive applications, provide assistance, make investigations and submit recommendations;
- D. Conduct joint hearings with municipal officers or other appropriate state or local agencies where joint approval may be required; and
- E. Sue and be sued in its own name, plead and be impleaded.

§ 955. Acquisition of property interests

The commission may acquire conservation easements or other interest in real estate in the name of the State by gift, purchase, grant, bequest, devise or lease for any of its purposes and may convey administration thereof to any appropriate agency.

A conservation easement under this section may be a development right, covenant or other contractual right, including a conveyance with conditions or with limitations or reversions, as may be desirable to conserve and properly utilize open spaces and other land and water areas in the corridor.

§ 956. The comprehensive plan

The comprehensive plan submitted to the 106th Legislature by the Saco River Environmental Advisory Committee shall be used as a guide by the planning boards of the municipalities within the corridor in making recommendations for district boundaries and by the commission in establishing final boundaries. The comprehensive plan shall not be regarded as a final and complete design for the future of the land and water areas within the corridor, but as the basis of a continuing planning process to be carried out by the commission in conjunction with local officials, regional planning districts, councils of government and the State Planning Office.

The commission shall not amend or revise the comprehensive plan, unless:

- A. The proposed amendment or revision has been submitted to the Southern Maine Regional Planning Commission, the Greater Portland Council of Governments and other appropriate agencies, which shall forward their comments and recommendations, if any, to the commission within 30 days;

B. The proposed amendment or revision has been submitted to the State Planning Office, pursuant to Title 5, section 3305, subsection 1, paragraph G, which shall forward its comments and recommendations, if any, to the commission within 30 days; and

C. The commission has considered all the comments.

The commission shall have the authority, after notice and public hearing, to revise, expand or amend the comprehensive plan on the basis of new information, improved professional techniques or changing conditions in the corridor.

§ 957. Use districts and classifications

1. Classification. The land and water area within the Saco River Corridor shall be classified by the commission according to the following land and water use districts:

- A. Resource protection;**
- B. Limited residential; and**
- C. General development.**

2. Use. Within each of these districts, the possible uses of land and water shall be divided into the following 3 categories:

- A. Uses for which no permit from the commission is required;**
- B. Uses allowed by permit; and**
- C. Prohibited uses.**

§ 957-A. Resource Protection District

1. Areas to be included. The Resource Protection District shall include the following areas:

- A. Wetlands, swamps, marshes and bogs;**
- B. Areas where the entire width of the corridor on one or both sides of the river is within the 100-year floodplain;**
- C. Land in private ownership designated for inclusion within this district by the owner thereof and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value;**

D. Land held in federal, state and municipal ownership which is designated for inclusion within this district by the controlling state, local or federal agency or board and accepted by the commission because of its importance as a fish and wildlife habitat or its educational, scientific, scenic, historic or archaeological value, or its open space value;

E. Land subject to easements or other restrictions which limit permissible uses to those allowed within this district; and

F. Areas of importance as a fish or wildlife habitat or containing exceptional educational, scientific, scenic, historic or archaeological resources, which are nominated in writing to the commission by a municipality within which the area is located.

(1) Areas of importance as fish and wildlife habitat shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

- (a) The area is of importance to a specific species of fish, migratory birds or other wildlife which inhabits the Saco River Corridor;**
- (b) The maintenance and preservation of the populations of such species will promote the public welfare; and**
- (c) More intensive development would result in the total or partial loss of the wildlife resources to be protected.**

(2) Areas of exceptional scenic importance shall be included within the Resources Protection District upon a finding by the commission that all of the following requirements are met:

- (a) The area is of exceptional scenic value because of distinct and clearly identifiable geological formations, vegetation or other natural features, such as bluffs, cliffs, rapids, falls, rock out-croppings or islands;**
- (b) The natural features are visible from the river or from an accepted road during the months of June through September;**
- (c) Preservation of the scenic value of the area will promote the public welfare; and**
- (d) More intensive development would result in the total or partial loss of the scenic value of the area.**

(3) Areas of exceptional historic importance shall be included within the Resources Protection District only upon a finding by the commission that all of the following requirements are met:

- (a) The area to be included is associated with persons or events of national, state or local historic significance;**
- (b) The area to be included, or the persons or events associated with the area, have been described or alluded to in historic documents, state or local histories, historic novels or other published materials;**
- (c) Protection of the historic values of the area will contribute to public understanding and appreciation of the history of the Saco River Valley and its people; and**

(d) More intensive development would result in the total or partial loss of the historic value of the area.

(4) Areas of exceptional archaeological importance shall be included within the Resource Protection District upon a finding by the commission that all of the following requirements are met:

(a) The area to be included is one of exceptional importance as a source of fossils or prehistoric Indian remains;

(b) The protection of the area would promote the public welfare by increasing public understanding and appreciation of the past of the Saco River Valley and its inhabitants; and

(c) More intensive development would result in the total or partial loss or inaccessibility of such fossils or Indian remains.

(5) Areas of exceptional scientific and educational importance shall be included within the Resource Protection District only upon a finding by the commission that all of the following requirements are met:

(a) The area contains rare or unusual flora, fauna or other natural features of scientific or educational importance;

(b) That protection of the area will promote scientific and educational purposes; and

(c) More intensive development would result in the total or partial destruction of the educational or scientific value of the area.

2. Uses for which no permit from the commission is required. Uses within the Resource Protection District for which no permit from the commission is required shall include:

A. Open space uses which do not involve development including erosion and flood control, parks, game management, harvesting of cranberries and wild crops, tent camping, picnic areas, fishing, hunting, and other forms of outdoor recreation compatible with the purposes of this district;

B. Piers, docks and floats in compliance with state and federal requirements and applicable performance standards;

C. Forestry, agriculture, horticultural and aquacultural uses not involving development; and

D. Maintenance, reconstruction or relocation of existing public ways or bridges.

3. Uses allowed by permit. Uses within the Resources Protection District which may be allowed by permit shall include:

A. Structures related, necessary and accessory to the uses for which no permit is required;

- B. Dredging, filling or alteration of wetlands related, necessary and accessory to permitted uses;**
 - C. Any fill or deposit of materials related, necessary and accessory to permitted uses;**
 - D. Sand, gravel and topsoil (loam) excavations;**
 - E. Necessary expansion or enlargement of nonconforming uses; and**
 - F. Reconstruction of nonconforming structures damaged or destroyed by casualty.**
- 4. Prohibited uses. Prohibited uses within the Resource Protection District shall include:**
- A. Structures designed for human habitation;**
 - B. Buildings not related, necessary and accessory to uses for which no permit is required;**
 - C. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within the district;**
 - D. Billboards;**
 - E. Commercial uses other than those undertaken and permitted pursuant to subsections 2 and 3;**
 - F. Industrial or manufacturing uses;**
 - G. Dumping or disposing of any liquid or solid wastes other than agricultural utilization of animal wastes; and**
 - H. Uses prohibited in the Limited Residential or General Development District.**

§ 957-B. Limited Residential District

1. Areas to be included. The Limited Residential District shall include lands within the corridor which may be suitable for development, but which are not necessary for the growth of areas of intensive development. The Limited Residential District shall serve as the residuary district and shall include all areas within the corridor which are not included in the Resource Protection or General Development Districts.

2. Uses for which no permit from the commission is required. Uses for which no permit from the commission is required within the Limited Residential District shall include those uses for which no permit from the commission is required within the Resource Protection District.

3. Uses allowed by permit. Uses within the Limited Residential District which may be allowed by permit shall include:

- A. Uses allowed by permit within the Resource Protection District;**
 - B. Roads;**
 - C. Commercial establishments related, necessary and accessory to uses allowed without permit, except as prohibited by subsection 4;**
 - D. Home occupations or enterprises;**
 - E. Single family residences and accessory structures meeting all of the following performance standards:**
 - (1) The minimum lot frontage on the river measured at the normal or mean high water line shall be 100 feet;**
 - (2) The minimum setback of any building from the river shall be 100 feet from the normal or mean high water line;**
 - (3) The combined river frontage and setback of any building shall be not less than 500 feet;**
 - (4) The structures and fill shall not encroach on the 100-year floodplain;**
 - (5) Where there is an accepted road or public right of way, as of March 19, of 1974, within 500 feet of the normal or mean high water mark of the river with different land ownership on either side of the road or public right of way, the landowner on the far side of the road or public right of way from the river shall have an aggregate of setback from the river and frontage on the far side of the road or public right of way equal to 500 feet;**
 - (6) Where there is a recorded subdivision, as of March 19, 1974, frontage, for the purposes of determining compliance with this section, shall mean lot frontage on the side of the lot nearest to and most nearly parallel to the river; and**
 - (7) Where a landowner, as of March 19, 1974, owns a lot abutting land owned by a public utility, and such public utility land lies between the abutting landowners lot and the river, frontage, for the purpose of determining compliance with this section, shall mean the frontage on the side of the lot abutting such public utility land which is nearest to and most nearly parallel to the river;**
 - F. Libraries and firehouses;**
 - G. Public utility structures;**
 - H. Necessary expansion or enlargement of nonconforming uses; and**
 - I. Reconstruction of nonconforming structures damaged or destroyed by casualty.**
- 4. Prohibited uses. Prohibited uses within the Limited Residential District shall include:**

- A. Hotels, motels, mobile home parks and trailer courts;
- B. Restaurants, cafeterias or other commercial establishments involved in the preparation or sale of food or other beverages;
- C. Commercial uses other than those under taken and permitted pursuant to subsections 2 and 3;
- D. Any fill or deposit of materials, or dredging or alteration of wetlands, not permitted as accessory to uses allowed within this district;
- E. Manufacturing and industrial uses;
- F. Hospitals and clinics;
- G. Billboards; and
- H. All uses prohibited in the General Development District.

§ 957-C. General Development District

1. Areas to be included. The General Development District shall include those areas within the corridor which exhibit a clearly defined pattern of intensive residential, commercial or industrial development and such reserve growth areas as may be deemed necessary by the commission after considering whether or not:

- A. There is suitable area outside the corridor which could adequately accommodate the anticipated growth of the area of intensive development;
- B. The growth of the area of intensive development within the corridor is both necessary and desirable;
- C. The reserve growth area qualifies for inclusion in the Resource Protection District;
- D. The reserve growth area is suitable for the uses permitted within this district;
- E. The uses permitted in this district within the reserve growth area would result in water quality degradation; and
- F. The uses permitted in this district within the reserve growth area would reasonably interfere with the fish or wildlife habitat or educational, scenic, scientific, historic or archaeological values of those areas eligible for inclusion within the Resource Protection District.

2. Uses for which no permit from the commission is required. Uses and accessory structures within the General Development District for which no permit from the commission is required shall include:

- A. Uses for which no permit from the commission is required within the Resources Protection District;
- B. Roads;

- C. Single family residences;
 - D. Home occupations or enterprises;
 - E. Multi-unit residential dwellings;
 - F. Restaurants and cafeterias;
 - G. Retail commercial establishments, such as stores, supermarkets and pharmacies;
 - H. Municipal Buildings;
 - I. Schools;
 - J. Hospitals and clinics;
 - K. Funeral homes;
 - L. Warehouses;
 - M. Churches;
 - N. Libraries;
 - O. Public utility structures; and
 - P. Any fill or deposit of material accessory, necessary and related to permitted uses not exceeding 100 cubic yards of material.
3. Uses allowed by permit. Uses allowed within the General Development District by permit only shall include:
- A. Manufacturing and industrial uses;
 - B. Sand, gravel and topsoil (loam) excavations;
 - C. Dredging, filling or other alteration of wetlands;
 - D. Any fill or deposit of material in excess of 100 cubic yards;
 - E. Oil or petroleum storage facilities;
 - F. Processing plants; and
 - G. Airports.
4. Prohibited uses. Prohibited uses within the General Development District shall include:
- A. Dumping or disposing of any liquid or solid wastes other than agricultural uses of animal wastes and sanitary wastes in accordance with all federal, state and municipal requirements;
 - B. Auto graveyards;
 - C. Junkyards;

D. Extractive uses of mining other than sand, gravel and topsoil (loam) excavations allowed by permit;

E. Oil refineries; and

F. Smelting operations.

§ 957-D. Omitted uses

1. Omitted uses. Uses not specifically mentioned or covered by a general category in the enumeration of permitted and prohibited uses for each district shall be deemed prohibited unless allowed by special permit upon a showing by the applicant that the soils are suitable for the proposed use and that it will not unreasonably interfere with the use and enjoyment of their property by adjacent landowners or involve any significant:

A. Degradation of air and water quality;

B. Harmful alteration of wetlands;

C. Increase in erosion or sedimentation;

D. Danger of increased flood damage;

E. Obstruction of flood flow;

F. Damage to fish and wildlife habitat;

G. Despoliation of the scenic, rural and open space character of the corridor;

H. Overcrowding;

I. Excessive noise;

J. Obstruction to navigation; or

K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District.

The burden of proof shall be upon the applicant to show entitlement to a permit under this section.

§ 958. Existing uses

Any existing building or structure or use of building or structure lawful March 19, 1974, or of any subsequent amendment of this chapter or of any regulation adopted hereunder, may continue although such use of structure does not conform to this chapter or the regulations adopted hereunder. Any existing building or structure may be repaired, maintained and improved, but an existing building, structure or nonconforming use may be extended, expanded or enlarged only by permit from the commission. A nonconforming use, other than a single family residential use, which is discontinued for any reason for a period of one year shall be deemed abandoned and may not be resumed thereafter except in compliance with the requirements of this chapter.

If, as a result of flood, fire or other casualty, the value of a nonconforming building or structure is reduced by more than 75%, it may be rebuilt and the nonconforming use housed therein may be continued only by permit from the commission. If a nonconforming building or structure is decreased in value less than 75% by flood, fire or other casualty, it may be rebuilt in substantially the same location and in the same size without a permit from the commission, even though it would otherwise violate the requirements of this chapter, provided that the rebuilding shall be commenced within 12 months of the casualty.

If 2 or more contiguous lots or portions thereof are in single ownership on or after March 19, 1974, and if all or part of the lots do not meet the criteria of lot width, area, frontage or other measures required under this chapter or if a building thereon could not meet the aggregate requirements established by this chapter, the lots involved shall be considered to be one parcel for the purposes of this chapter.

To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the design, construction or intended use of any building or structure with respect to which substantial construction was legally carried out prior to March 19, 1974. An intended use within the meaning of this section shall be any use for which such building or structure is designed as evidenced by the construction or by plans or specifications in existence as of March 19, 1974.

§ 959. Permits required

After March 19, 1974, no person shall engage in any use of land or water for which a permit is required under this chapter without first obtaining a permit from the commission and complying with all federal, state and municipal regulations.

§ 959-A. Requirements for granting permits

1. Permits. The commission shall grant permits for uses allowed under this chapter upon a showing by the applicant that the soils are suitable for the proposed use and that it will be in compliance with all applicable performance standards and requirements established under this chapter. The commission shall also find that the proposed use will not involve any unreasonable:

- A. Degradation of air and water quality;
- B. Harmful alteration of wetlands;
- C. Increase in erosion or sedimentation;
- D. Danger of increased flood damage;
- E. Obstruction of flood flow;
- F. Damage to fish and wildlife habitat;
- G. Despoliation of the scenic, rural and open space character of the corridor;

H. Overcrowding;

I. Excessive noise;

J. Obstruction to navigation; or

K. Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District.

The burden of proof shall be upon the applicant to show entitlement to a permit under this section, but if the applicant makes the requisite showing, a permit shall be issued by the commission.

§ 959-B. Permits with conditions

Permits granted under this chapter may be made subject to such reasonable conditions concerning setback, location, spacing, size of structure or development, type of construction, time of completion, landscaping, retention of trees, screening, reclamation, erosion control, noise level, quantity and quality of discharge, sewage disposal and manner and method of operation, as the commission deems necessary to avoid the dangers enumerated in section 959-A. For the purpose of enforcement, permits issued by the commission and conditions thereof shall be considered as orders of the commission.

§ 960. District boundary maps

Maps showing district boundaries within the Saco River Corridor shall be kept in the office of the commission and the maps or conformed copies of them shall be available for public inspection during normal business hours. Copies of those portions of such maps including the area of each municipality shall be furnished by the commission to the municipal officers thereof and shall be available for public inspection at the office of the town clerk or at the town office.

§ 961. Relation to municipal, state and federal regulations

Nothing in this chapter 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 district established pursuant to this chapter. Where there is a conflict between a provision adopted under this chapter 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. All performance standards, rules and regulations proposed for hearing by the commission shall be submitted to the Department of Environmental Protection, the State Planning Office, the Greater Portland Council of Governments and the Southern Maine Regional Planning Commission at least 7 days prior to the hearing for review and comment. The commission shall not promulgate any rule or regulation establishing air or water quality standards within the corridor in conflict with the rules and regulations of the Department of

Environmental Protection without the prior approval of the Director of the Department of Environmental Protection or the Board of Environmental Protection.

§ 962. General performance standards

1. Standards. Unless otherwise specified, the following performance standards shall be applicable to all uses of land and water areas within the corridor, whether or not a permit is required from the commission.

A. No building shall be located closer to the Ossipee, Little Ossipee or Saco rivers than 100 feet from the normal or mean high water line, not shall any building in the Limited Residential or Resource Protection Districts be located less than 30 feet from any accepted road. Within the Resource Protection and Limited Residential Districts there shall be no construction or placement of residential structures within the 100-year floodplain.

B. Within the Resource Protection District or Limited Residential District no part of a septic system or other system or underground sewage disposal shall be located within the 100-year floodplain.

C. On the Ossipee and Little Ossipee Rivers and fresh-water portions of the Saco River:

(1) No privately-owned pier, dock or float shall extend more than 10% of the width of the river at any time or extend into the water more than 10 feet perpendicular to the shore, whichever is less; and

(2) All piers, docks or floats shall be temporary and capable of seasonal removal.

D. Agriculture.

(1) All agriculture practices shall be in conformance with existing state and federal laws and regulations relating to the use of insecticides, herbicides, fertilizers and cleaning agents, and with state and federal laws and regulations to the placement of disposal of wastes in waterways or on the banks thereof.

(2) Where soil is tilled, an untilled buffer strip of natural vegetation shall be retained between the tilled ground and the normal or mean high water line of the river. The width of this strip shall be a minimum of 25 feet, measured directly from the normal or mean high water line of the river.

E. Clearing of trees and conversion to other vegetation is allowed for agriculture. Clearing of trees and conversion to other vegetation is allowed for approved construction or other uses requiring access to the shore, subject to the following limitations. A cleared opening not greater than 30 feet in width for each 100 feet of shoreline may be created in the strip extending 50 feet inland from the normal or mean high water line for each residential use or other use requiring access to the shore. Where natural vegetation is removed, it shall be replaced and maintained with other vegetation.

F. The following standards shall govern timber harvesting within 250 feet of the normal or mean high water line of any water body within the corridor.

(1) Harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained.

(2) In any stand, harvesting shall remove not more than 40% of the volume of trees 6 inches in diameter and larger, measured at 4½ feet above ground level in any 10-year period.

(3) No significant accumulation of slash shall be left within 50 feet of the normal or mean high water line of any water body within the corridor. At distances greater than 50 feet from the normal or mean high water line of such water bodies extending to the limits of the corridor, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground.

(4) Harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters.

§ 962-A. Additional performance standards

The commission, after notice and public hearing, may establish such additional performance standards as it deems necessary to carry out the purposes of this chapter, provided that such standards are consistent with the standards established in section 962.

I. Standards. In establishing additional performance standards under this section for any permitted use, the commission shall endeavor to develop standards which will assure that the uses under consideration will be located on suitable soils and will not result in unreasonable:

- A. Degradation of air and water quality;**
- B. Harmful alteration of wetlands;**
- C. Increase in erosion or sedimentation;**
- D. Obstruction of flood flow;**
- E. Destruction of fish and wildlife habitat;**
- F. Despoliation of the scenic, rural and open space character of the corridor;**
- G. Overuse of the rivers for recreation;**
- H. Overcrowding;**
- I. Excessive noise;**
- J. Obstruction to navigation; or**

K. Interference with the educational, scenic, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District.

§ 962-B. Amendments to district boundaries and performance standards

The commission may initiate, and any municipal agency, an organization qualified under section § 966-A or any property owner or lessee may petition for a change in the boundary of any land use district or for amendments to any additional performance standard adopted pursuant to section 962-A.

No change in a district boundary shall be approved unless substantial evidence shows that the area is better suited for uses other than those permitted in the district in which it is situated, or changes in conditions have made the present classification unreasonable.

No amendment to performance standards shall be approved unless substantial evidence shows that:

1. Conditions not in evidence. Conditions exist which were not evident when the performance standard was adopted;
2. Purpose not served. The performance standard does not serve the purpose of this chapter; or
3. Amendment preferable. The amendment would better fulfill the purpose of this chapter.

§ 963. Variance from performance standards

1. Variance. A relaxation of the performance standards enacted by this chapter or adopted pursuant thereto may be granted by the commission, after notice and public hearing, upon a finding by the commission that the following provisions are met:

A. Application of the performance standard to the land or water area in question will result in undue hardship to the applicant, provided that hardship to the applicant, provided that hardship shall not be construed to include:

- (1) Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest beginning with the owner of record on the effective date of this chapter or of a performance standard adopted pursuant thereto from which a variance is sought; or
- (2) Any hardship that is not unique to the petitioner's land;

B. The variance, if granted, will not subvert the intent of this chapter stated in section 951 or as manifested in the standards from which a variance is sought; and

C. The proposed use, if a variance is granted, will not unreasonably interfere with the use and enjoyment of their lands by adjacent landowners, or result in any unreasonable:

- (1) Degradation of air and water quality;
- (2) Harmful alteration of wetlands;
- (3) Increase in erosion or sedimentation;
- (4) Danger of increased flood damage;
- (5) Obstruction of flood flow;
- (6) Damage to fish and wildlife habitat;
- (7) Despoliation of the scenic, rural and open space character of the corridor;
- (8) Overcrowding;
- (9) Excessive noise;
- (10) Obstructions to navigation; or
- (11) Interference with the educational, scenic, scientific, historic or archaeological values of those areas designated and approved for inclusion within the Resource Protection District.

No variance shall be granted because of other nonconforming uses within a district or because of similar uses in an adjoining district. The burden of proof shall be on the applicant to show entitlement to a variance under this section. The owner of a building lot of record which is wholly within the corridor on residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For the purposes of enforcement, variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

§ 963-A. Special use variance

1. No variance where prohibited. No variance shall be granted in order to permit a use within a district in which such use is expressly prohibited, except in accordance with this section. A special use variance may be granted, after notice and public hearing, to permit a single family dwelling within the Resource Protection District upon a finding by the commission that the grant of such a special use variance is necessary to avoid undue hardship to the applicant, provided that hardship shall not be construed to include:

- A. Any hardship attributable to any act, course of conduct or failure to act of the applicant or his predecessor in interest, beginning with the owner of record on March 19, 1974; or
- B. Any hardship that is not unique to the petitioner's land.

A special use variance under this section may be granted by the commission only in cases where such a variance is necessary to avoid a deprivation of property in violation of the Constitution of Maine, Article I, Section 6, a taking of private property without compensation in violation of the Constitution of Maine, Article I, Section 21, a violation of due process clause of the 14th Amendment of the Constitution of the United States, or a violation of other applicable state or federal constitutional provisions.

The owner of a building lot of record which is wholly within the corridor on March 19, 1974, shall be entitled to a variance for a single family residence which may be granted by the commission without public hearing. Any variance granted by the commission may be granted subject to such reasonable conditions concerning matters enumerated in section 959-B as the commission finds necessary to avoid the dangers enumerated in section 957-D. For purposes of enforcement, special use variances granted hereunder and the conditions thereto shall be treated as orders of the commission.

§ 964. Certificate of compliance

It shall be unlawful to use or occupy, or permit the use or occupancy of, any land, structure or part thereof created, erected, changed, converted or wholly or partly altered or enlarged in its use or structural form, which use or structure requires a permit under this chapter until a certificate of compliance has been issued therefor by the commission or its staff, stating that the requirements and conditions of approval have been met.

A certificate of compliance may contain such reasonable terms and conditions as the commission finds necessary to avoid the dangers enumerated in section 959-A. If a certificate of compliance is denied by the commission or its staff, the denial shall be in writing with a statement of the reasons for such denial. The commission or its staff shall act within 30 days of an application for a certificate of compliance. The grant or denial of the certificate may be based upon information obtained by commission members, staff, consultant personnel or designated municipal officials.

The commission may establish standards within which authority shall be delegated to its staff, to issue or deny certificates of compliance. Any person aggrieved by a decision of the staff shall have the right to a review of such decision by the commission within 30 days of such decision.

For the purposes of enforcement, certificates of compliance and conditions thereto shall be treated as orders of the commission.

§ 965. Fees

The commission may establish reasonable fees for permit applications, variance applications and certificates of compliance. The funds derived from the collection of such fees shall be paid to the General Fund of the State. The commission may also establish a reasonable schedule of fees for providing copies of this chapter,

maps of district boundaries, the comprehensive plan, copies of rules and regulations, performance standards, official publications or other materials which may be requested by the public. The fees for any such materials shall be retained by the commission and used to defray the expense of printing, copying, mailing or otherwise providing such materials to the public.

§ 966. Parties to proceedings

The parties to any proceeding before the commission may include the applicant, if any, any landowner whose land will be directly affected by the proposed action of the commission, any landowner whose lands are adjacent to, directly across the river from, or within 500 feet of lands to be directly affected, any municipality or agency thereof whose jurisdiction includes lands or bodies of water to be directly affected and any citizens' group or organization qualified under section 966-A.

Nothing in this section shall be construed so as to limit the right of any member of the public to appear or be heard at any public hearing of the commission, subject only to such reasonable rules and regulations as the commissioner may hereafter establish.

§ 966-A. Citizens' groups or organizations

1. **Participation.** A citizens' group or organization may participate in all hearings held by the commission, request and receive notices, bring judicial proceedings and exercise all other rights of parties to proceedings before the commission, provided that the group or organization is designated as qualified by an order of the commissioner under this section.

2. **Organizations qualified.** The commission shall issue an order designating a citizens' group or organization as qualified under this section if it finds that:

A. The group or organization has filed an application showing:

(1) That it has significant and definable interest in the Saco, Ossipee or Little Ossipee Rivers and their adjacent lands; and

(2) That it has at least 50 members in the municipalities whose lands comprise the Saco River Corridor or at least 15 members in a municipality which will be directly affected by a proposed action of the commission.

3. **Contents.** Every application for designation as a qualified organization under this section shall contain the name and address of a representative or office for the receipt of notices and other communications and the names and addresses of the organization's officers, directors and members.

4. **Time period.** The commission may establish a period of time after which qualifications under this section will expire unless renewed, and in such cases shall give notice of the necessity for renewal not less than one month prior to the expiration date.

§ 967. Enforcement, inspection and penalties for violations.

Standards, rules, regulations and orders issued by the commission pursuant to this chapter shall have the force and effect of law. No development may be undertaken except in conformance with this chapter, the standards, rules, regulations and orders issued by the commission pursuant to this chapter and no real estate or personal property shall exist or be used in violation thereof. For the purposes of inspection and to assure compliance with this chapter and any standards, rules, regulations and orders issued by the commission pursuant to this chapter, commission members, staff, consultant personnel and designated municipal officials may conduct such investigations, examinations, tests and site evaluations deemed necessary to verify information presented to the commission, and may obtain access to any lands and structures subject to this chapter. A violation of any provision of this chapter or of standards, rules, regulations and orders shall be punishable by the revocation of any permit, certificate of compliance or variance issued by the commission and by a fine of up to but not more than \$100 for each day of the violation. A person who willfully or knowingly falsifies any statement to the commission shall be punished by the revocation of any permit, certificate of compliance or variance granted by the commission in reliance on such statement and by a fine of up to but not more than \$1,000.

The commission shall be deemed a state commission within the meaning of Title 5, section 191, provided that subject to written approval of the Attorney General and within the limits of the commission's budget, the commission may retain private counsel for the conduct of commission meetings, hearings and advice on other legal matters. In addition to enforcing the other penalties provided, either the commission or the Attorney General may institute any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any violation of this chapter or the standards, rules, regulations and orders issued by the commission pursuant to this chapter.

§ 968. Appeals to Superior Court

Except where otherwise specified by statute, any party or person aggrieved by any order or decision of the commission, in regard to any matter upon which there was a hearing before the commission and of which a record of said hearing is available, may, within 30 days after notice of the filing of such order or decision, appeal therefrom to the Superior Court by filing a notice of appeal stating the points of appeal. Notice of the appeal shall be ordered by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits thereto and the decision of the commission. The court's review shall be limited to questions of law and to whether the commission acted regularly and within the scope of its authority and the commission's decision shall be final so long as supported by substantial evidence. The court may affirm, reverse or remand the commission's decision for further proceedings. Appeals from all other orders or decisions of the commission, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

Sec. 2. P&SL 1973, c. 150, as amended by P&SL 1973, c. 208, and by PL 1977, c. 276, is repealed.

Sec. 3. Application. This Act shall apply only to the terms of office of persons appointed to the Saco River Corridor Commission after the effective date of this Act and shall not effect the tenure of office of persons appointed to the commission prior to the effective date of this Act.

Sec. 4. Transitional provisions. All actions of the commission taken before the effective date of this Act, and all rules and regulations currently in effect and operative on the effective date of this Act, shall be valid and shall continue in effect until rescinded, amended or changed according to law.

STATEMENT OF FACT

This bill shifts the existing Saco River Corridor Act from private and special law to public law, which requires reprinting of the entire Act to accommodate changes in the numbering. This shift is to make the law accessible in its full amended form to the general public. The bill also amends the law to:

1. Allow the Saco River Corridor Commission to utilize the most accurate flood hazard area maps available, particularly detailed maps being developed by the National Flood Insurance Administration for flood insurance purposes;
2. Clarify that the criteria governing home occupations are, in fact, performance standards subject to the variance provisions of the law;
3. Correct a numbering error; and
4. Correct a provision that makes most buildings in General Development Districts nonconforming due to their close proximity to streets.