

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2167

6
7 S.P. 855

In Senate, March 10, 1986

8 Submitted by the State Planning Office, pursuant to Joint Rule 24.

9 Referred to the Committee on Energy and Natural Resources. Sent down
for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsored by Representative Vose of Eastport, Senator Usher of
Cumberland and Representative Michaud of Medway.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Enhance the Sound Use and
18 Management of Maine's Coastal
19 Resources.
20

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

23 PART I

24 Sec. 1. 5 MRSa §3315 is enacted to read:

25 §3315. List of Heritage Coastal Areas

26 The State Planning Office shall develop and main-
27 tain the official list of Heritage Coastal Areas.

28 1. Definition. As used in this section, unless
29 the context indicates otherwise, the following terms
30 have the following meanings.

31 A. "Heritage Coastal Areas" means areas contain-
32 ing an assemblage of geological, botanical,

1 zoological, historical or scenic features of ex-
2 ceptional state or national significance.

3 2. Guidelines for identifying Heritage Coastal
4 Areas. The State Planning Office, in consultation
5 with the Maine Historic Preservation Commission,
6 shall review existing reports and documents on coast-
7 al natural, historical and scenic areas in order to
8 document Heritage Coastal Areas. The State Planning
9 Office shall also undertake the necessary studies and
10 inventories to document the scenic and natural values
11 of candidate areas.

12 When evaluating candidate Heritage Coastal Areas, the
13 following guidelines shall be considered:

14 A. Areas eligible for or listed on the Register
15 of Critical Areas; and

16 B. Areas eligible for or listed on the National
17 Register of Historic Places.

18 Nomination forms for each Heritage Coastal Area shall
19 contain a description of the area and its signifi-
20 cance, its size and location and the names of the
21 landowners of the features within the area.

22 3. Municipal and landowner consultation. No area
23 may be included on the list of Heritage Coastal Areas
24 until the State Planning Office notifies the landown-
25 er of the features and officials of the municipality
26 where the area is located at least 60 days prior to
27 designation.

28 4. Designation of Heritage Coastal Areas. The
29 Director of the State Planning Office, with the ad-
30 vice and approval of the Critical Areas Advisory
31 Board, shall designate Heritage Coastal Areas.

32 The designation of Heritage Coastal Areas officially
33 identifies and documents assemblages of exceptional
34 natural, historical or scenic areas on the coast that
35 merit special attention for conservation.

36 5. Protection of features within Heritage Coast-
37 al Areas. The features identified within Heritage
38 Coastal Areas shall be protected on a voluntary ba-

1 sis. Government agencies at all levels shall consider
2 the importance of protecting the character of Heri-
3 tage Coastal Areas in land use control and other ac-
4 tions which they take.

5 Sec. 2. 30 MRSA §4956, sub-§3, as amended by PL
6 1983, c. 458, §12, is further amended to read:

7 3. Guidelines. When promulgating any subdivision
8 regulations and when reviewing any subdivision for
9 approval, the planning board, agency or office, or
10 the municipal officers, shall consider the following
11 criteria and before granting approval shall determine
12 that the proposed subdivision:

13 A. Will not result in undue water or air pollu-
14 tion. In making this determination it shall at
15 least consider: The elevation of land above sea
16 level and its relation to the flood plains, the
17 nature of soils and subsoils and their ability to
18 adequately support waste disposal; the slope of
19 the land and its effect on effluents; the availa-
20 bility of streams for disposal of effluents; and
21 the applicable state and local health and water
22 resources regulations;

23 B. Has sufficient water available for the rea-
24 sonably foreseeable needs of the subdivision;

25 C. Will not cause an unreasonable burden on an
26 existing water supply, if one is to be utilized;

27 D. Will not cause unreasonable soil erosion or
28 reduction in the capacity of the land to hold wa-
29 ter so that a dangerous or unhealthy condition
30 may result;

31 E. Will not cause unreasonable highway or public
32 road congestion or unsafe conditions with respect
33 to use of the highways or public roads existing
34 or proposed;

35 F. Will provide for adequate sewage waste dis-
36 posal;

37 G. Will not cause an unreasonable burden on the
38 ability of a municipality to dispose of solid

1 waste and sewage, if municipal services are to be
2 utilized;

3 I. Will not have an undue adverse effect on the
4 scenic or natural beauty of the area, aesthetics,
5 historic sites or rare and irreplaceable natural
6 areas or any public rights for physical or visual
7 access to the shoreline;

8 J. Is in conformance with a duly adopted subdivi-
9 sion regulation or ordinance, comprehensive
10 plan, development plan, or land use plan, if any;
11 and

12 K. The subdivider has adequate financial and
13 technical capacity to meet the above stated stan-
14 ards-;

15 L. Whenever situated, in whole or in part, with-
16 in 250 feet of any pond, lake, river or tidal wa-
17 ters, will not adversely affect the quality of
18 that body of water or unreasonably affect the
19 shoreline of that body of water.

20 Furthermore, when lots in a subdivision have
21 frontage on an outstanding river segment, as de-
22 fined in subsection 1-A, the proposed subdivision
23 plan shall require principal structures to have a
24 combined lot shore frontage and setback from the
25 normal high-water mark of 500 feet. To avoid
26 circumventing the intent of this provision, when-
27 ever a proposed subdivision adjoins a shoreland
28 strip narrower than 250 feet which is not lotted,
29 the proposed subdivision shall be reviewed as if
30 lot lines extended to the shore. These frontage
31 and set-back provisions shall not apply either
32 within areas zoned as general development or its
33 equivalent under shoreland zoning, Title 12, sec-
34 tion 4813, or within areas designated by ordi-
35 nance as densely developed. The determination of
36 which areas are densely developed shall be based
37 on a finding that, as of the effective date of
38 this Act, existing development meets the require-
39 ments of subsection 1-;

40 M. Will not, alone or in conjunction with exist-
41 ing activities, adversely affect the quality or
42 quantity of ground water-; and

1 N. The subdivider will determine, based on the
2 Federal Emergency Management Agency's Flood
3 Boundary and Floodway Maps and Flood Insurance
4 Rate Maps, whether the subdivision is in a
5 flood-prone area. If the subdivision, or any part
6 of it, is in such an area the subdivider will de-
7 termine the 100-year flood elevation and flood
8 hazard boundaries within the subdivision. The
9 proposed subdivision plan shall include a condi-
10 tion of plat approval requiring that principal
11 structures on lots in the subdivision shall be
12 constructed with their lowest floor, including
13 the basement, at least one foot above the
14 100-year flood elevation.

15 Sec. 3. 30 MRS §4956, sub-§3-B is enacted to
16 read:

17 3-B. Dedication of land for public use on coast-
18 al shoreland. The municipal reviewing authority may
19 require a person proposing a subdivision situated, in
20 whole or in part, on coastal shorelands, to dedicate
21 land or an interest in land, to pay fees in lieu of
22 dedication of land or to provide a combination of
23 land and fees to the municipality for public access
24 or use as a condition of approval under this section,
25 provided that:

26 A. The municipal legislative body has adopted a
27 comprehensive plan under section 4961 that con-
28 tains a park, open space or shoreland access plan
29 and the requirements of this section are consist-
30 ent with that plan; and

31 B. The municipal subdivision regulations con-
32 tain:

33 (1) Standards for determining the reason-
34 able portion of a subdivision to be dedi-
35 cated to public use and the amount of any
36 fee to be paid in lieu of the dedication;

37 (2) Provisions to place all fees collected
38 in lieu of dedication in a special municipal
39 fund to be used only for the acquisition of
40 land or an interest in land or development
41 and maintenance of existing land for the

1 purpose of public access to or use of coast-
2 al shoreland; and

3 (3) Provisions to develop a schedule speci-
4 fying how, when and where the municipality
5 will use the dedicated land, interest in
6 land or fees in lieu of dedication.

7 For purposes of this subsection, "shoreland" means
8 those areas defined as shorelands under the mandatory
9 zoning and subdivision control law, Title 38, chapter
10 3, subchapter I, article 2-B.

11 By December 1, 1986, the State Planning Office shall
12 prepare and distribute minimum guidelines to assist
13 municipalities in implementing this subsection.

14 Sec. 4. 30 MRSA §4961, sub-§1, as amended by PL
15 1981, c. 598, §1, is repealed and the following en-
16 acted in its place:

17 1. Definitions. As used in this subchapter, un-
18 less the context otherwise indicates, the following
19 terms have the following meanings.

20 A. "Comprehensive plan" means a compilation of
21 policy statements, goals, standards, maps and
22 pertinent data relative to the past, present and
23 future trends of the municipality with respect to
24 its population, housing, economics, social pat-
25 terns, land use, water resources and their use,
26 transportation facilities and public facilities
27 prepared by the municipal planning board, agency
28 or office. The comprehensive plan, being as much
29 a process as a document capable of distribution,
30 may at successive stages consist of data col-
31 lected, preliminary plans, alternative action
32 proposals and, finally, a comprehensive plan to
33 be adopted. In its final stages, it may consist
34 of a series of subsidiary but interrelated plans
35 such as, but not limited to, a water and sewerage
36 system plan, a land use plan, a shoreland manage-
37 ment plan that considers functionally
38 water-dependent uses and public access to and use
39 of the shoreline, a community facilities plan, a
40 transportation plan, an urban renewal or rehabil-
41 itation plan, an air or water pollution control

1 plan and a park and open space plan. The compre-
2 hensive plan shall include recommendations for
3 plan execution and implementation such as, but
4 not limited to, a capital improvements program,
5 renewal and rehabilitation programs, land use
6 control ordinances and building, safety and hous-
7 ing codes. The comprehensive plan shall include
8 mechanisms which will ensure continual data col-
9 lection, reevaluation in light of new alterna-
10 tives and revision. The comprehensive plan may
11 include planning techniques such as, but not lim-
12 ited to, planned unit development, site plan ap-
13 proval, transfer of development rights, open
14 space zoning, clustered development, conditional
15 zoning, contract zoning and zoning to protect ac-
16 cess to direct sunlight for solar energy use.

17 B. "Functionally water-dependent uses" means
18 those uses that require, for their primary pur-
19 pose, location on submerged lands or that require
20 direct access to, or location in, coastal waters
21 and which therefore cannot be located away from
22 these waters. These uses include, but are not
23 limited to, commercial and recreational fishing
24 and boating facilities, finfish and shellfish
25 processing plants, dock and port facilities,
26 shipyards and boat building facilities, marinas,
27 water-based recreational uses, navigation aides,
28 basins and channels, industrial uses dependent
29 upon water-borne transportation or requiring
30 large volumes of cooling or processing water that
31 cannot reasonably be located or operated at an
32 inland site and uses which primarily provide gen-
33 eral public access to marine or tidal waters.

34 Sec. 5. 37-B MRSA §744, sub-§2, as enacted by PL
35 1983, c. 460, §3, is repealed.

36 Sec. 6. 37-B MRSA §744, sub-§2-A is enacted to
37 read:

38 2-A. Assistance to local governmental units. As-
39 sistance to local governmental units shall be gov-
40 erned as follows.

41 A. Whenever the President of the United States
42 declares that a major disaster exists in the
43 State, the Governor may:

1 (1) Apply for a public assistance grant
2 from the Federal Government under Public Law
3 93-288 on behalf of both the State and local
4 governmental units for the purposes of re-
5 pairing or replacing publicly owned facili-
6 ties within the disaster area or relocating
7 public facilities outside of the disaster
8 area;

9 (2) Obligate state financial resources, as
10 a condition for receiving such a federal
11 grant, up to, but not in excess of, 25% of
12 the total public assistance requested; and

13 (3) Enter into an agreement with the af-
14 ected local governmental units to obligate
15 local financial resources up to, but not in
16 excess of, 10% of the total public assist-
17 ance requested, provided that the local
18 share shall not exceed 10% of total local
19 annual operating revenues, exclusive of edu-
20 cational budgets.

21 B. If the President of the United States de-
22 clares that a major disaster exists in the State,
23 the Governor may:

24 (1) Apply for a loan from the Federal Gov-
25 ernment on behalf of a unit of local govern-
26 ment if he determines that the unit will
27 suffer a substantial loss of tax and other
28 revenues as a result of a major disaster and
29 has demonstrated a need for financial as-
30 sistance to perform its governmental func-
31 tions;

32 (2) Receive and disburse the proceeds of
33 any approved loan to an applicant local gov-
34 ernment;

35 (3) Determine the amount needed by any ap-
36 plicant local government to restore or
37 resume its governmental functions and certi-
38 fy the amount to the Federal Government,
39 provided that no application amount may ex-
40 ceed 25% of the annual operating budget of
41 the applicant for the fiscal year in which
42 the major disaster occurs; and

1 (4) Recommend to the Federal Government,
2 based upon his review, the cancellation of
3 all or any part of repayment when, after 3
4 full fiscal years following the major disas-
5 ter, the revenues of the local government
6 are insufficient to meet its operating ex-
7 penses, including additional municipal ex-
8 penses related to the disaster.

9 Sec. 7. 38 MRSA §393, next to last ¶, as enacted
10 by PL 1977, c. 123, §2, is amended to read:

11 The board shall assure that the proposed activity
12 complies with the shoreland zoning law and the appli-
13 cable local shoreland zoning ordinance and shall is-
14 sue no permit without first causing the municipality
15 in which the proposed alteration is to occur to be
16 notified of the application and without considering
17 any comments filed within a reasonable period by the
18 municipality.

19 Sec. 8. 38 MRSA §427, sub-§1, ¶¶D and E, as en-
20 acted by PL 1985, c. 481, Pt. A, §86, are amended to
21 read:

22 D. Unreasonably harm any wildlife habitat; ~~and~~

23 E. Lower the quality of any waters- ; and

24 Sec. 9. 38 MRSA §427, sub-§1, ¶F is enacted to
25 read:

26 F. Violate the shoreland zoning law or the ap-
27 plicable local ordinance.

28 Sec. 10. 38 MRSA §436, sub-§1, as reallocated by
29 PL 1985, c. 481, Pt. A, §24, is repealed.

30 Sec. 11. 38 MRSA §436, sub-§§1-A to 1-F are en-
31 acted to read:

32 1-A. Commercial fishing activities. "Commercial
33 fishing activities" includes activities directly re-
34 lated to commercial fishing and those commercial ac-
35 tivities commonly associated with or supportive to
36 commercial fishing, such as the manufacture or sale
37 of ice, bait and nets and the sale, manufacture, in-

1 stallation or repair of boats, engines and other
2 electronic devices commonly used on boats.

3 1-B. Densely developed area. "Densely developed
4 area" means any commercial, industrial or compact
5 residential area of 10 or more acres with a density
6 of at least one principal structure per 2 acres.

7 1-C. Floodway. "Floodway" means the channel of a
8 river or other water course and the adjacent land ar-
9 eaas that must be reserved to allow for the discharge
10 a 100-year flood without cumulatively increasing the
11 water surface elevation of the 100-year flood by more
12 than one foot.

13 1-D. Functionally water-dependent uses. "Func-
14 tionally water-dependent uses" means those uses that
15 require, for their primary purpose, location on sub-
16 merged lands or that require direct access to, or lo-
17 cation in, coastal waters and which cannot be located
18 away from these waters. These uses include, but are
19 not limited to, commercial and recreational fishing
20 and boating facilities, finfish and shellfish pro-
21 cessing plants, waterfront dock and port facilities,
22 shipyards and boat building facilities, marinas,
23 water-based recreational uses, navigation aides, ba-
24 sins and channels, industrial uses dependent upon
25 water-borne transportation or requiring large volumes
26 of cooling or processing water that can not reason-
27 ably be located or operated at an inland site and
28 uses which primarily provide general public access to
29 marine or tidal waters.

30 1-E. Maritime activities. "Maritime activities"
31 includes the construction, repair, storage, loading
32 and unloading of boats, chancellery and other commer-
33 cial activities designed and intended to facilitate
34 maritime trade.

35 1-F. Pond. "Pond" means any inland body of water
36 which has a surface area in excess of 10 acres, ex-
37 cept where the body of water is man-made and in addi-
38 tion is completely surrounded by land held by a sin-
39 gle owner, and except those privately owned ponds
40 which are held primarily as waterfowl and fish breed-
41 ing areas or for hunting and fishing.

1 Sec. 12. 38 MRSA §440, as reallocated by PL
2 1985, c. 481, Pt. A, §28, is amended by adding at the
3 end the following new paragraphs:

4 Zoning ordinances adopted or amended pursuant to
5 this section shall designate as a resource protection
6 zone or its equivalent, as defined in the guidelines
7 adopted pursuant to section 442, all areas within the
8 floodway of the 100-year flood plain along rivers and
9 in the velocity zone in areas subject to tides, based
10 on detailed flood insurance studies and as delineated
11 on the Federal Emergency Management Agency's Flood
12 Boundary and Floodway Maps and Flood Insurance Rate
13 Maps. This provision does not apply to areas zoned
14 for general development or its equivalent, as defined
15 in the guidelines adopted pursuant to section 442, as
16 of the effective date of this paragraph, or within
17 areas designated by ordinances as densely developed.
18 The determination of which areas are densely devel-
19 oped shall be based on a finding that, as of the ef-
20 fective date of this paragraph, existing development
21 meets the definition in section 436, subsection 1-B.

22 All communities shall designate floodway areas,
23 as set out in this section, as resource protection
24 zones as of the effective date of a community's entry
25 into the regular program of the National Flood Insur-
26 ance Program or July 1, 1987, whichever comes later.

27 In those areas that are within the floodway, as
28 delineated on the Federal Emergency Management Agen-
29 cy's Flood Boundary and Floodway Maps and Flood In-
30 surance Rate Maps, all proposed activities which are
31 permitted within the shoreland area must be shown not
32 to increase the 100-year flood elevation. In addi-
33 tion, all structures built in the shoreland area
34 shall be built with their lowest floor, including the
35 basement, one foot above the 100-year flood eleva-
36 tion.

37 Sec. 13. 38 MRSA §440-A is enacted to read:

38 §440-A. Public access

39 In addition to controls required in this chapter,
40 municipalities may extend or adopt zoning and subdi-
41 vision controls to protect any public rights for
42 physical and visual access to the shoreline.

1 Zoning ordinances adopted or extended pursuant to
2 this section shall be pursuant to and consistent with
3 a comprehensive plan.

4 **Sec. 14. 38 MRSA §447 is enacted to read:**

5 §447. Functionally water-dependent use zones

6 Municipalities are encouraged to give preference,
7 when appropriate, to functionally water-dependent
8 uses and may extend zoning controls to accomplish
9 this.

10 A municipality may, within coastal shoreland ar-
11 eas, adopt zoning ordinances for functionally
12 water-dependent uses. Municipalities may establish
13 districts within these zones to give preference to
14 commercial fishing and other maritime activities.

15 In creating such a zone, a municipality shall
16 consider the demand for and availability of
17 shorefront property for functionally water-dependent
18 uses.

19 Zoning ordinances adopted or extended pursuant to
20 this section shall be pursuant to and consistent with
21 a comprehensive plan.

22 **Sec. 15. 38 MRSA §474, sub-§1, as amended by PL**
23 **1983, c. 453, §5, is further amended to read:**

24 1. Wetlands permit. If the applicant for the
25 wetlands permit demonstrates, to the satisfaction of
26 the board or municipality as appropriate, that the
27 proposed activity will not unreasonably interfere
28 with existing recreational and navigational uses; nor
29 cause unreasonable soil erosion; nor unreasonably in-
30 terfere with the natural flow of any waters; nor un-
31 reasonably harm wildlife or freshwater, estuarine or
32 marine fisheries; nor lower the quality of any wa-
33 ters; and that it will comply with the shoreland zon-
34 ing law and the applicable local ordinance, the board
35 or municipality shall grant the permit upon such
36 terms as are necessary to insure that the proposed
37 activity will comply with the foregoing standards.

1 In municipalities that have been delegated the au-
2 thority to issue permits under this Article, within
3 30 days after receipt of a completed application for
4 a permit, the municipality shall either issue the
5 permit or deny the permit setting forth the reasons
6 therefor or order a hearing thereon within 30 days of
7 the order for which hearing adequate public notice
8 shall be given. Within 30 days after the adjournment
9 of the hearing, the municipality shall either issue
10 the permit or deny the permit setting forth the rea-
11 sons therefor. In the event that a permit applied
12 for is denied by the municipality, the applicant may
13 request a hearing before the municipality with rea-
14 sonable public notice given.

15 The board shall issue no permit without notifying the
16 municipality in which the proposed alteration is to
17 occur and considering any comments filed within a
18 reasonable period by that municipality.

19 No permit issued by a municipality may become effec-
20 tive until 30 days subsequent to its issuance, but if
21 approved by the board in less than 30 days then the
22 effective date shall be the date of approval. A copy
23 of the application for the permit and the permit is-
24 sued by the municipality shall be sent to the board
25 immediately upon its issuance by registered mail. The
26 board shall review that permit and either approve,
27 deny or modify it as it deems necessary. Failure of
28 the board to act within 30 days of the receipt of the
29 permit by the municipality shall constitute its ap-
30 proval and the permit shall be effective as issued.

31 When winter conditions prevent the board or munici-
32 pality from evaluating a permit application, the
33 board or municipality, upon notifying the applicant
34 of that fact, may defer action on the application for
35 a reasonable period. The applicant shall not during
36 the period of deferral fill or cause to be filled,
37 dredge or cause to be dredged, drain or cause to be
38 drained or otherwise alter that coastal wetland.

39 Sec. 16. 38 MRSA 474, sub-§2, as enacted by PL
40 1979, c. 504, §3, is amended to read:

41 2. Sand dunes permit. If the applicant for a
42 sand dunes permit demonstrates to the satisfaction of

1 the board or municipality, as appropriate, that the
2 proposed activity will not unreasonably interfere
3 with existing recreational or wildlife uses; unrea-
4 sonably interfere with the natural supply or movement
5 of sand within or to the sand dune system; unreason-
6 ably increase the erosion hazard to the sand dune
7 system; or cause an unreasonable flood hazard to
8 structures built in, on or over any coastal sand dune
9 or neighboring property; and that it will comply with
10 the shoreland zoning law and the applicable local
11 ordinance, the board or municipality shall grant the
12 permit upon such terms as are necessary to insure
13 that the proposed activity will comply with the fore-
14 going standards.

15 Sec. 17. 38 MRSA §484, sub-§6 is enacted to
16 read:

17 6. Shoreland zoning. The proposed development
18 will comply with all requirements of the shoreland
19 zoning law and the applicable local ordinance.

20 Sec. 18. 38 MRSA c.c. 19 and 21 are enacted to
21 read:

22 CHAPTER 19

23 COASTAL MANAGEMENT POLICIES

24 §1801. Declaration of policy

25 The Legislature declares that the well-being of
26 the citizens of this State depends on striking a
27 carefully considered and well reasoned balance among
28 the competing uses of the State's coastal area. The
29 Legislature directs that state and local agencies and
30 federal agencies as required by the United States
31 Coastal Zone Management Act of 1972, PL 92-583, with
32 responsibility for regulating, planning, developing
33 or managing coastal resources, shall conduct their
34 activities affecting the coastal area consistent with
35 the following policies to:

36 1. Port and harbor development. Promote the
37 maintenance, development and revitalization of the
38 State's ports and harbors for fishing, transportation
39 and recreation;

1 2. Marine resource management. Manage the marine
2 environment and its related resources to preserve and
3 improve the ecological integrity and diversity of ma-
4 rine communities and habitats, to expand our under-
5 standing of the productivity of the Gulf of Maine and
6 coastal waters and to enhance the economic value of
7 the State's renewable marine resources;

8 3. Shoreline management and access. Support
9 shoreline management that gives preference to
10 water-dependent uses over other uses, that promotes
11 public access to the shoreline and that considers the
12 cumulative effects of development on coastal re-
13 sources;

14 4. Hazard area development. Discourage growth
15 and new development in coastal areas where, because
16 of coastal storms, flooding, landslides or sea-level
17 rise, it is hazardous to human health and safety;

18 5. State and local cooperative management. En-
19 courage and support cooperative state and municipal
20 management of coastal resources;

21 6. Scenic and natural areas protection. Protect
22 and manage critical habitat and natural areas of
23 state and national significance and maintain the sce-
24 nic beauty and character of the coast even in areas
25 where development occurs;

26 7. Recreation and tourism. Expand the opportuni-
27 ties for outdoor recreation and encourage appropriate
28 coastal tourist activities and development;

29 8. Water quality. Restore and maintain the qual-
30 ity of our fresh, marine and estuarine waters to al-
31 low for the broadest possible diversity of public and
32 private uses; and

33 9. Air quality. Restore and maintain coastal air
34 quality to protect the health of citizens and visi-
35 tors and to protect enjoyment of the natural beauty
36 and maritime characteristics of the Maine coast.

37 §1802. Definitions

1 As used in this chapter, unless the context oth-
2 erwise indicates, the following terms have the fol-
3 lowing meanings.

4 1. Coastal area. The "coastal area" encompasses
5 all coastal municipalities and unorganized townships
6 on tidal waters and all coastal islands. The inland
7 boundary of the coastal area is the inland line of
8 coastal town lines and the seaward boundary is the
9 outer limit of the United States territorial sea.

10 2. Coastal management. "Coastal management"
11 means the planning, development, conservation and
12 regulation of coastal resource use by Federal, state,
13 regional and local governments.

14 3. Coastal resources. "Coastal resources" means
15 the coastal waters of the State and adjacent shore-
16 lands, their natural resources and related marine and
17 wildlife habitat that together form an integrated
18 terrestrial, estuarine and marine ecosystem.

19 §1803. Report

20 The State Planning Office shall provide a report
21 no later than December 1, 1988, to the Legislature
22 detailing the status of policy accomplishments pursu-
23 ant to this chapter. As a part of this report, the
24 Department of Environmental Protection and the De-
25 partment of Conservation shall prepare reports on im-
26 plementation of this chapter for which they are re-
27 sponsible.

28 CHAPTER 21

29 COASTAL BARRIER RESOURCES SYSTEM

30 §1901. Declaration of policy

31 The Legislature declares that certain areas of
32 the Maine coast, because of their fragile nature,
33 valuable habitat and their storm buffering abilities
34 should be protected and conserved in their natural
35 state and that it is inappropriate to use state funds
36 to encourage or support activities incompatible with
37 the ability of these areas to sustain these activi-
38 ties.

1 §1902. Limitations on state expenditures affecting
2 the system

3 Except as provided in section 1903, no expendi-
4 tures or financial assistance may be made available
5 under authority of any state law or program within
6 the coastal barrier resources system, including, but
7 not limited to:

8 1. Structures. The construction or purchase of
9 any structure, appurtenance, facility or related
10 infrastructure;

11 2. Roads, airports, boat landings. The construc-
12 tion of any road, airport, boat-landing facility or
13 other facility on or bridge or causeway to, any
14 coastal barrier; and

15 3. Erosion. The carrying out of any project to
16 prevent the erosion of, or to otherwise stabilize,
17 any inlet, shoreline or inshore area.

18 §1903. Exception to state prohibition

19 1. Expenditure of state funds for coastal barriers
20 for the following activities. State funds may be
21 expended on coastal barriers for the following activ-
22 ities:

23 A. The maintenance, replacement, reconstruction
24 or repair, but not the expansion, of state-owned
25 or state-operated roads, structures or facilities;
26 and

27 B. Any of the following actions or projects pro-
28 vided they are consistent with the purposes of
29 this chapter:

30 (1) The study, management, protection or
31 enhancement of fish and wildlife resources
32 and habitats, including, but not limited to,
33 acquisition of fish and wildlife habitats
34 and related lands and stabilization projects
35 for fish and wildlife habitats;

36 (2) Recreational uses that do not involve
37 an irretrievable commitment of natural re-
38 sources;

1 (3) Scientific research, including, but not
2 limited to, geologic, marine and fish and
3 wildlife; and

4 (4) Nonstructural projects for shoreline
5 stabilization that are designed to mimic,
6 enhance or restore natural stabilization
7 systems.

8 2. Authorization of state expenditures. The Gov-
9 ernor may, after consultation with the appropriate
10 state agencies and the affected community, approve
11 state expenditures or financial assistance available
12 within the coastal barrier resources system for as-
13 sistance for emergency actions essential to the sav-
14 ing of lives, the protection of property and the pub-
15 lic health and safety.

16 §1904. Maine Coastal Barrier System

17 The Maine Coastal Barrier System shall include
18 the following coastal barriers:

19 1. Carrying Place Cove. Carrying Place Cove;
20 Town: Harrington;

21 2. Birch Point. Birch Point; Town: Perry;

22 3. Lubec Barriers. Lubec Barriers; Town: Lubec;

23 4. Baileys Mistake. Baileys Mistake; Town: Lubec
24 and Trescott;

25 5. Grassy Point. Grassy Point; Town: Cutler;

26 6. Seal Cove. Seal Cove; Town: Cutler;

27 7. Sprague Neck. Sprague Neck; Town: Cutler;

28 8. Jasper. Jasper; Town: Machiasport;

29 9. Starboard. Starboard; Town: Machiasport;

30 10. Bare Cove. Bare Cove; Town: Roque Bluffs;

31 11. Roque Bluffs. Roque Bluffs; Town: Roque
32 Bluffs;

- 1 12. Popplestone/Roque Island. Popplestone/Roque
2 Island; Town: Jonesport;
- 3 13. Flake Point. Flake Point; Town: Steuben;
- 4 14. Over Point. Over Point; Town: Steuben;
- 5 15. Pond Island. Pond Island; Town: Deer Isle;
- 6 16. Thrumcap. Thrumcap; Town: Cranberry Isles;
- 7 17. Seven Hundred Acre Island. Seven Hundred
8 Acre Island; Town: Isleboro;
- 9 18. Nash Point. Nash Point; Town: Owls Head;
- 10 19. Little River. Little River; Town:
11 Georgetown;
- 12 20. Hunnewell Beach. Hunnewell Beach; Town:
13 Phippsburg;
- 14 21. Small Point Beach. Small Point Beach; Town:
15 Phippsburg;
- 16 22. Head Beach. Head Beach; Town: Phippsburg;
- 17 23. Stover Point. Stover Point; Town: Harpswell;
- 18 24. Jenks Landing/Waldo Point. Jenks Land-
19 ing/Waldo Point; Town: Cumberland;
- 20 25. Cape Elizabeth. Cape Elizabeth; Town: Cape
21 Elizabeth;
- 22 26. Crescent Beach. Crescent Beach; Town: Cape
23 Elizabeth;
- 24 27. Scarborough Beach. Scarborough Beach; Town:
25 Scarborough;
- 26 28. Etherington Pond. Etherington Pond; Town:
27 Biddeford;
- 28 29. Crescent Surf. Crescent Surf; Town:
29 Kennebunk;

1 MAINE SHORELINE PUBLIC ACCESS PROTECTION PROGRAM

2 §5201. Shoreline Access Protection Fund

3 1. Fund established. To accomplish the purposes
4 of this chapter, there is established a nonlapsing
5 Maine Shoreline Public Access Protection Fund, re-
6 ferred to in this chapter as the "fund." All income
7 received by the Department of Conservation for the
8 purposes of this chapter shall be recorded on the
9 books of the State in a separate account and shall be
10 deposited with the Treasurer of State to be credited
11 to the fund. These funds shall be made available to
12 the commissioner for the purpose of implementing the
13 Maine Shoreline Public Access Protection Program, es-
14 tablished under section 5202.

15 2. Expenditure of funds. All money credited to
16 the fund shall be used to preserve and protect public
17 access to coastal shoreland areas in accordance with
18 the guidelines established by the commissioner pursu-
19 ant to section 5202. As provided in section 5202, not
20 less than 50% of all revenue available from the fund
21 shall be dispersed to municipalities located in the
22 coastal area, as defined in Title 38, section 1802.
23 No more than 10% of the revenues available in the
24 fund may be used for the development of acquired ac-
25 cess areas.

26 §5202. Program guidelines

27 1. Program established. There is established,
28 within the Department of Conservation, the Shoreline
29 Access Protection Program, referred to in this chap-
30 ter as the "program" for the purposes of encouraging
31 and supporting the acquisition and development of
32 shoreland areas by the State Government and local
33 governments. Any acquisition or development of shore-
34 land areas supported by this program shall be under-
35 taken solely to enhance, preserve or protect public
36 access to coastal shoreland areas. The commissioner
37 shall establish, amend or repeal rules of the depart-
38 ment necessary to accomplish the purposes of this
39 chapter.

40 2. Program guidelines. To accomplish the pur-
41 poses of this chapter, the commissioner shall estab-

1 lish guidelines for the appropriate expenditure of
2 money available in the fund. In establishing these
3 guidelines, the commissioner shall consider, among
4 other things:

5 A. Access to shoreline for clambers and for oth-
6 er economic purposes;

7 B. Public access to shoreline for scenic and
8 recreational purposes;

9 C. The purchase of easements and property devel-
10 opment rights; and

11 D. The establishment and limited development of
12 public access ways and areas.

13 3. Coastal municipality participation. Notwith-
14 standing any guidelines established pursuant to this
15 chapter, at least 50% of all revenue available from
16 the fund shall be dispensed to municipalities located
17 in the coastal area, as defined in Title 38, section
18 1802, for the acquisition or development of shoreline
19 access areas. The amount granted to such a municipal-
20 ity pursuant to this section shall not exceed 50% of
21 the total cost of the acquisition or development
22 project.

23 4. Public access. All projects financed through
24 this program shall be made equally open for use by
25 all Maine citizens.

1

STATEMENT OF FACT

2 Maine's coastal area consists of only 12% of the
3 State's land area, yet contains 48% of the State's
4 population and more than 60% of the State's jobs. To-
5 day, coastal Maine is experiencing intense develop-
6 ment pressure which threatens its limited and fragile
7 land and water resources. Thoughtful management of
8 future growth on Maine's coast is necessary to pre-
9 vent the degradation of these resources upon which so
10 many of the State's citizens and Maine's economic vi-
11 tality depend.

12

PART I

13 Several important state and local coastal re-
14 source management issues are not now adequately ad-
15 dressed in state laws.

16 This Part provides a framework to balance and ad-
17 dress state and local interests in developing and
18 conserving Maine's coastal resources. It establishes
19 state coastal management policies, to be implemented
20 by the State and coastal municipalities and describes
21 technical amendments to state environmental laws and
22 programs affecting the Maine coast. These policies
23 pertain to:

- 24 1. Port and harbor management;
- 25 2. Marine resource management;
- 26 3. Shoreline management and access;
- 27 4. Hazard area development;
- 28 5. State and local cooperative management;
- 29 6. Scenic and natural areas protection;
- 30 7. Recreation and tourism;
- 31 8. Water quality; and
- 32 9. Air quality.

1 These policies would guide the activities of
2 state and municipal agencies in dealing with coastal
3 resource management, as well as the allocation of
4 federal and state funding programs.

5 In the area of natural areas protection, the bill
6 enacts sections to define Heritage Coastal Areas and
7 to identify and protect Heritage Coastal Areas.

8 The bill amends the Maine Revised Statutes, Title
9 30, section 4961, to clarify elements of a municipal
10 comprehensive plan.

11 The bill amends the Maine Revised Statutes, Title
12 30, section 4956 to consider public access ways to
13 the shore when a subdivision is proposed; to describe
14 responsibilities of a subdivider in flood prone ar-
15 eas; and to allow municipalities to require the dedi-
16 cation of land, interest in land or fees for public
17 access to or use of coastal shorelines.

18 Concerning flood hazard assistance, the bill en-
19 acts a cost-sharing system between state and local
20 governments for the nonfederal share of replacement
21 costs under the Federal Disaster Assistance Program.

22 In the area of shoreland zoning, the bill amends
23 the Maine Revised Statutes, Title 38, sections 393
24 and 472, to assure an activity complies with the
25 shoreland zoning law and Title 38, section 436, by
26 defining "floodway," "densely developed areas" and
27 "functionally water-dependent uses."

28 The bill also requires the designation of re-
29 source protection or its equivalent in floodways and
30 velocity zones in tidal areas and requires that new
31 floodway development not increase the 100-year flood
32 elevation.

33 The bill authorizes municipalities to protect,
34 preserve or enhance public interests and rights for
35 access to coastal waters.

36 The bill allows municipalities to give preference
37 to water-dependent uses through zoning and also
38 amends the Maine Revised Statutes, Title 38, sections
39 474 and 484 to assure an activity complies with the
40 shoreland zoning law.

