A LEGISLATIVE HISTORY AND ANALYSIS OF THE LAND USE REGULATION LAW IN MAINE

a report prepared by Esther Lacognata
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A. PUBLIC AWARENESS

1. INTRODUCTION

In 1967, Horace Hildreth, Jr., then State Senator from Cumberland, introduced legislation to the 103rd Session of the Legislature for the regulation of a limited segment of the wildlands of Maine. No particular individual or organization had asked Senator Hildreth to introduce the bill. Instead, he based his action on his own personal awareness. His past experience of being an attorney for the pulp and paper industry gave him sharp awareness of the need for public regulation of the future of these vast resources, about 50% of the land area of Maine. He recognized that the owners of Maine's wildlands "were sitting on a gold mine." He saw some landowners, although not necessarily the large corporate ones, as being quite ready to sell their holdings to real estate developers or to enter the real estate development business by themselves or their own subsidiaries. The value of land was rising rapidly, and development was already taking place. He saw that the purchase of land by speculators was enhanced by continued low taxation. The absence of any effective land use controls over the wildlands prompted him to introduce this first bill.

Although Mr. Hildreth based the initiation of the Land Use Regulation Commission on his personal experience, the public recognition of the need and ultimate acceptance of the legislation had to be based on a wide public awareness.

The following is a brief analysis of some of the factors which

contributed to the recognition of the need for, and ultimate acceptance of the Land Use Regulation Law.

2. NATIONAL AWARENESS

It is probably not an overstatement that the 60's was the decade that nurtured the environmental movement to full adulthood. Rachel Carson's "Silent Spring," published in 1962, pioneered the nation-wide awareness of the ecological interdependence of man and nature. She dramatically documented the lingering menace of pesticides, the product of man's advance technology, to the vital food chain.

This was the decade when Maine's Senator Muskie climaxed the concern over the irreversible effects of pollution on our water resources, by shepherding through Congress the Federal Water Quality Act of 1965.

By 1965-66, articles on conservation left the pages of trade journals to appear in the popular pictoral pages of such national publications as TIME and LIFE. For instance, TIME Magazine, September 17, 1965, carried a large feature article on the environment. It illustrated that "from sea to shining sea, the inevitable growth of U.S. humanity and industry has leveled trees, blasted our mountains and dammed off rivers." The article pictured the poets' repose transformed into junk yards, hot dog stands, and trailer camps. It was hopefully noting the efforts to roll back blight. The article credited the Kennedy Administration for having the first conference, under Secretary of the Interior, Stuart Udall, on conservation since Teddy Roosevelt days. When an issue is the topic of Presidential messages to Congress, it is fair to say that it is close to reaching the peak of public awareness.

President Johnson in his message to Congress in 1965 said: "A growing population is swallowing up areas of natural beauty with its demand for

living space and its placing increased demand on our overburdened areas of recreation and pleasure."

The New York Times commented editorially on the Johnson speech: "By defining government responsibility, he stimulates a new awareness of the responsibilities of individuals and interest groups." In his 1966 message on the environment to Congress, President Johnson stated:

> "We see that we can corrupt and destroy our lands, our rivers, our forests and the atmosphere itself -- all in the name of progress and necessity. Such a course leads to a barren America, bereft of its beauty, shorn of its sustenance."

He spelled out what he considered to be rights to clean air and water, the right of easy access to places of beauty and tranquility, the right to surroundings, free of man-made blight and rights to enjoy plants and animals in their natural habitat. He said, in this same message to Congress, that "No person or company has the right ... to abuse resources, or to waste our common heritage."

The growing "land grab" economy was also part of the national scene with serious potential consequences for Maine. Fortune magazine in November, 1966, recommended that investors put their money in land because it is "safe", has growth potential, and has a fixed supply with a constantly increasing demand. The article listed the large investment firms which are also real estate brokers, and advised people to invest a minimum of $50,000 in order to buy enough land to gain control.

3. AWARENESS IN MAINE

In the State of Maine there were several controversial measures debated in the early 60's, dealing with the use of the wildlands. The topic for the first annual meeting of the Natural Resources Council (NRC) in

1960 was the discussion of a yet-unpublished report from the National Park Service on the possibility of an Allagash National Park. NRC contracted with the Conservation Foundation to undertake a study on the area. This study focused on the mounting demands for recreational use and the lack of land use controls in the area.

In 1963, the 101st Legislature's deliberations on the best use of the Allagash Waterway can now be catagorized as a classic "payroll vs. pickerel" debate. Proposals were considered for the development of a number of sites for hydro-electric plants, as well as for the preservation of the waterway as a wilderness area. The outcome was the creation of the Allagash River Authority (M.R.S.A., T. 12 § 651), to "Provide for preservation and natural beauty and wilderness character of the Allagash Watercourse while retaining the natural, economic resources of the area." The authority was a device for maintaining state control for the so-called "Multiple-Use" of the Allagash, by regulating timber harvesting and other activities. The Authority, composed of the Commissioners of the Forestry, Inland Fisheries and Game, and Parks and Recreation Departments, and the Director of the School of Forestry of the University of Maine, held hearings all over the State. They ultimately recommended to the 102nd Legislature that the state institute control of the Allagash River Waterway. Portland Evening Express 10/15/63

In 1966, the public debate continued in a more amplified form: The Special Session of the 102nd Legislature proposed a Bond issue, in the amount of $1,500,000, to develop the maximum wilderness character of the Allagash Waterway. The issue, slated for the ballot in the November, 1966, election, received considerable public airing in the press. Major

political figures endorsed it. For instance, Senator Muskie said: "We can show the rest of the nation what a State can do to protect its resources without hindering economic growth." In an editorial in the Bangor Daily News, it was stated that the Allagash Waterway had established principles of zoning in the wildlands. Both political parties endorsed the bond issue in their state platforms; and it was passed by a large margin.

In the 102nd Legislature, the session immediately preceeding the introduction of the first Wildland Use Bill, the debate centered on the proposed increase of the State Wildlands Tax from 11 to 15 mills. The measure ultimately passed; but again the debate in the Legislature as reported by the press, did serve to heighten public awareness of the conflicting interests in Maine's vast wildlands. Proponents were pointing out that if this land, especially along lakefronts, were sold, its true value would be much higher than the present taxation would indicate. Opponents, such as Representative Scott, said that this legislation would discourage further expansion of the pulpwood industry and "may be the shot that kills the goose that lays the golden eggs." Generally, the debate revealed the extent of industry influence on some legislators. The opponents of this measure turned out to be the same legislators who introduced amendments which would weaken the Land Use Regulation legislation in later years.

The imperative to check uncontrolled and quick-profit development was the topic of a well-attended and publicized Symposium held at Bowdoin College in October, 1966: "The Maine Coast, Prospect and Perspectives." Many concerned citizens recognized the dangers of all to Maine. Dennis O'Harrow, Executive Director of the American Society of Planning Officials

said at this meeting,

> "...The citizens of Maine are now facing this...situation...the irresistable force and the immovable object. The irresistable force is the automobile, fueled by ever-increasing affluence and leisure time and manned by an ever-growing urban population. The immovable object is the land of Maine, blessed with unsurpassed beauty and anchored by a New England tradition and way of life that does not accommodate easily to change."

The readiness for action is indicated by the question Dr. Robert Mohlar, of the Natural Resources Council, asked the panelist: "We would like to know legislative measures taken by other states to remedy some of these problems that face the coast and certainly the inland lakes as well."

B. EXISTING LAND USE CONTROLS

1. INTRODUCTION

Conventional tools of land use, as we understand them today, were totally absent in the plantations and unorganized territory of Maine prior to 1967. State statutes enabling comprehensive planning and zoning were applicable only to municipalities. Unorganized territories were certainly not included; but even plantations, the unit of organization below the town level, were specifically excluded. As Title 1, of the Maine Revised Statutes, § 72 defines municipalities:

> "Municipalities except Title 30, Chapters 201-213, 235, 239 Subchapters IV, V, Chapter 241, Subchapter 1, 2, Chapter 243, includes cities, towns, and plantations."

The excluded Chapter 239 provides for planning, zoning, development control legislation.

Although an integrated comprehensive system of planning and land use controls was totally lacking, the area was not out of reach of the

legal arm of the State. There were (and still are) many statutes related directly or indirectly to the use of the land in the unorganized territory.

A search of the index of the Maine Revised Statutes uncovered at least 50 items which can be said to relate to land use. This isn't too surprising, since "land use" includes every conceivable activity which relates to the use or ownership in, on, over, or under both the land and the water closely dependent on the land around it.

For ease of description, an attempt was made to sort the laws relating to land use into the following categories:

- regulations based on the natural resources in the area;
- controls on activities taking place using the land;
- indirect tools affecting land use, such as taxation, means of acquisition, and public safety measures automatically extended to the wildlands; and
- measures which can be included under what is today called "planning"; mostly the inventory (gathering of information) component of planning.

Some of these categories overlap because activities and controls occur on resources.*

2. LAND USE CONTROLS BASED ON NATURAL RESOURCES

A. FOREST RESOURCES

Since the predominant resource in the wildlands are the forests, the Forestry Department of the State of Maine had the most knowledge and control over the area, prior to the establishment of LURC. The Department had advisory powers on forest management of private lands,

*Charts on file at the LURC office, and available to the public, list the statutes by category, the state department or agency responsible for the administration of the laws, and the major provisions of the statute.

powers aimed at fire prevention, and jurisdiction over all of the public lands in the area not included in State Parks.

The Department could carry out rehabilitation programs on private or public land at the owner's request. It could make information available to woodlands owners and could gather information on the extent of resource diminution due to fire or wasteful cutting.

Management techniques were practiced on public lands acquired through gift or purchase. Land thus acquired was typed into three categories and managed according to regulations of the Department. (Public lands are further discussed below as a separate resource)

The Forestry Department was responsible for the prevention and control of forest fires. To this end, the Governor could close forests for hunting and fishing or campfires. The Forestry Department established forest-fire prevention districts, had safety requirements in establishing dumps, required permits for fires in unauthorized places and prohibited the accumulation of slash and brush along roads or near dwellings. The Forestry Department also levied a tax on all property in Forestry Districts and unorganized areas, for the purpose of fire prevention.

In the interest of disease and pest prevention and control, the State entomologist, under the supervision of the Forest Commissioner, could offer help in controlling insects and forest diseases and could require control measures even if the owner was unwilling.

B. SOIL AND MINERAL RESOURCES

Control over soil erosion and mineral resources was very limited. The Soil Convervation District could offer soil erosion control information and programs to private land owners on a voluntary basis, and could carry

out erosion control practices.

Control over mineral resources extended only to State-owned lands. The Maine Mining Bureau could grant permits to prospect and mine, but only on State-owned lands. There was no control over mining operations on private lands. The Forestry Commissioner could sell gravel from public lots and grant mining rights on them.

C. WATER RESOURCES

Legislation regarding water resources included health standards for supply and disposal, pollution control measures, activities related to Great Ponds, rivers and streams, and the building of dams and mills.

The Health and Welfare Department could approve plans and specifications for water supply sources; and a health inspector had the right to enter upon any land to assure safety of public water supply. The Plumbing Code, promulgated by the Health and Welfare Department, was also theoretically applicable in the unorganized territory.

The nuisance laws of the State also included a fine for leaving open wells used for obtaining water.

The pollution prevention statutes of the Water Improvement Commission reached into the wildlands. The water quality of rivers, streams, and lakes was classified by the Commission. The law carried with it prohibitions of any action which would lower the water quality classifications. A license had to be obtained from the Commission for discharging wastes into any stream, river, pond, or lake, whether classified or not. The Commission also had the authority to prosecute anyone depositing slabs, sawdust, slash or shavings in or on the banks of inland or tidal waters.

The nuisance laws of the State also included a prohibition against intentionally dumping oil on any body of water, on any river bank, or onto any land from which it could percolate into the water.

The Soil Conservation Committee could carry out surveys and measures for the conservation, development, and utilization of water resources on private property, with the owner's consent.

Control over Great Ponds prior to 1967 extended only to those in Public Lots. The Forestry Commissioner could grant permits to dredge in ponds over 1000 acres; and the Maine Mining Bureau could give permits for mining and diverting water for mining purposes on State-owned land.

The Park and Recreation Commission could acquire, construct, and maintain public facilities for boats, including ramps and parking and access sites on Great Ponds.

A permit was required from the Commissioner of Inland Fish and Game to do any bulldozing in excess of 500 feet of any brook, river, or stream capable of floating a watercraft.

A number of State agencies had a say in the building of dams and mills. Any person intending to build or tamper with any dam had to file a notice with the Commissioner of Inland Fish and Game, who could require that a fishway be provided on these dams. The erection of a dam on non-navigable water was subject to restrictions by a court-appointed commission or jury. Damages to other owners caused by flooding, had to be paid by the builder on court orders. Additionally, a Governor-appointed State engineer could inspect a dam and order repairs, upon the petition of 10 resident taxpayers. Apparently, a person could build dams and do

what he pleased if no one complained. The exception was building dams for reservoir or water power purposes. Then a permit was required from the Public Utilities Commission. How any of this legislation was actually executed is not a topic of this paper, but it certainly is open to question in light of the vastness of the territory and the shortage of State personnel.

D. WILDLIFE RESOURCES

Since land use has definite effects on the management of wildlife in the area, the Commissioner of Fish and Game had considerable powers aimed at protecting and enhancing wildlife in the unorganized territory.

In addition to rules requiring fishways on dams, the Commission could make rules and regulations regarding conditions adversely affecting fish in waters. This power could conceivably have been a limitation on extensive commercial and industrial development, if exercised.

The Commissioner could delineate game preserve areas where shooting, hunting, or trapping wild animals was prohibited. The wardens of the Department of Inland Fish & Game had power to prosecute trespassers in these areas. The Department could acquire these lands by eminent domain. These areas in public ownership were controlled by department regulations including environmental controls over resources affecting wildlife. The department could also regulate and license commercial shooting areas.

There were limits on trapping on open agricultural lands or within 200 feet of a dwelling, and on destroying fences and walls, leaving gates open, and trampling crops. The power of the Sea and Shore Commissioner to close clam flats on polluted shores, certainly a land use control, was applicable, if need be, in the wildlands. The Atlantic Sea Run Salmon

Commission could adopt regulations and procedures for the purpose of preserving salmon.

E. PRIVATE LANDS

Land, regardless of the resource upon it, is a resource itself. The control over use of private lands was really non-existent. The statement that "man could do with his land as he pleased" certainly held true in the wildlands. The laws that existed prior to 1967 tended to restrict the non-owner of land more than the owner. The law protected and defined private property rights. Ownership of land had to be recorded by Registry of Deeds; procedures for claiming land were spelled out. Trespassing prohibitions include destroying and stealing from buildings, malicious actions on trees, shrubs, fences, gates, improved or cultivated lands, cutting or carrying away timber.

Two agencies of the state could enter private lands upon owner's consent. The Soil Conservation Committee could enter private lands to carry out flood and soil erosion prevention measures; and the State Highway Commission could require the planting of shrubs and trees along state aid highways subject to consent of abutting owners. This was the extent of what could be called land use controls.

F. PUBLIC LANDS

Public land is, of course, different from private land. Direct ownership of land is potentially the easiest means of controlling the use of that land. Some of the controls were already covered under Forestry and Fish and Game; and some will be discussed under land use activity -- such as recreation.

Most public lands, except for those under Parks and Recreation, were under the control and supervision of the Forestry Department. This

included all islands on the coast and on Great Ponds, unless privately owned.

The Department of Forestry was responsible for the management, regulations, planning, and surveying of the public lands. The Forestry Commissioner could sell or grant permits to cut timber in which case he kept track of the cutting and could require a performance bond for the conditions. It appears that cutting by permit on state-owned land was really the only area of direct control over forest management practices by the Forestry Department.

The Forestry Commissioner could also grant permits to dredge Great Ponds and could grant many other rights on public lands. He could lease camps on them without conditions for use of the land.

The Public Lands included the so-called Public Reserved Lots, "the 1000 acres in each township deeded by Massachusetts...for the exclusive benefit of the State of Maine." (30 MRSA, 4151) The Commissioner had the same rights on these lots as on public lands, including the selling of timber and grass rights, until the township where these public lots were located became organized or incorporated. When these areas, including Public Lots, were sold, the Commissioner along with three court-appointed impartial persons "located" these lots and filed plans at his office.* The rights to timber and grass on public lots were taxed; if the tax was not paid for more than one year, these rights were returned to the state.

G. SCENIC RESOURCES

Scenic resources, both public and private, were not "controlled". The Keep Maine Scenic Program was established in 1965, to be maintained

*The story of public lots in Maine is a fascinating one. Readers in Maine are well aware of it since their "rediscovery circa, 1971." Out of state readers are referred to Lee Schepps, "Report on the Public Lots," Attorney General's Office, State House, Augusta, Maine 04330 (1972)

by the Parks and Recreation Commission, for the purposes of fostering cleanliness in outdoor areas and protecting scenic beauty throughout Maine. The Keep Maine Scenic Committee had advisory powers only.

The Highway Commission's option to have grass, shrubs, vines and trees planted along state and state aid highways could be considered "scenery management."

3. LAND USE CONTROLS BASED ON LAND USE ACTIVITIES

The next set of statutes dealing with land use are those related to activities dependent on land, such as roads and highways, recreation, building construction, outdoor advertisement, construction related to public utilities, and any statutes dealing with development of any sort.

A. ROADS AND HIGHWAYS

The Highway Commission, first of all, had the authority to acquire lands for highway purposes. This was a tool of land use control listed under "means of acquisition." The Commission had to file any and all plans for roads with the county commissioners. It could lay out, construct, and maintain highways, and enter lands for surveying purposes.

In unorganized territory, the county commissioners could, upon petition, lay out, alter, or discontinue roads. The cost was to be paid by the owner, based on yearly assessment by county commissioners.

Private landowner's road-related activities came under the jurisdiction of the Highway Commission, County Commissioner, or privately appointed road commissioner in the unorganized territory. Private abutters to state roads could seek to have culverts installed to provide access to their property; owners of ski areas may petition the Highway Commission for construction of access roads, the cost of which was split between the state, the owner and the township.

Private abutters were required to get a permit from the Highway Department for any activity which interferes with drainage of roads. They could get together to build a road and hire a surveyor, who then had the same powers as a road commissioner. The powers of the road commissioner amount to supervising the building of the road, (23 MRSA, § 2701). There were no controls over the activities of the Highway Department. There were no means of assessing the relationship between projected roads and their possible effects on other property or land use.

B. PARKS AND RECREATION

The State Parks and Recreation Commission had custody and control of State parks (except Baxter State Park) in the area. It could acquire lands for that purpose by purchase or eminent domain, and could control, by means of regulation and enforcement, all activities in State parks. The Allagash River Authority had comprehensive land use controls over the limited area called the Allagash Wilderness Waterway.

Three other state agencies also had a hand in recreation activity in the wildlands. The Forestry Department maintained campgrounds on public forest lands; the Highway Commission acquired and maintained roadside picnic areas, springs, and scenic turn-offs along state and state aid highways; the Inland Fisheries and Game Department licensed hunting and fishing camps. The licensing process required information about natural resources associated with the camps. Baxter State Park--200,000 acres located in the wildlands--was under the control and management of the Baxter State Park Authority.

C. OTHER LAND USE ACTIVITIES

Any construction which related to public utilities came under the jurisdiction of the Public Utilities Commission. The State Highway Commission had to approve plans for engineering and pipeline construction,

to protect the safety of the public.

Outdoor advertisement came under the jurisdiction of the Highway Commission. Advertisers had to secure a license from the Commission. The department granted permits for advertisements based on its regulations. Additionally, there were penalties for advertising on private property, rocks, fences, or other natural objects, without consent of owner.

Control over building activity was almost totally absent. The Bureau of Public Improvements could enforce regulations regarding public buildings and improvements (including any construction of schools in the unorganized territory). The Highway Commission prohibited any construction within full width of right of way of state or state aid highways. That was the extent of any construction approval or set-back requirements.

Statutes relating to activities that can be called "development" today included a requirement if lots were to be sold with reference to a plot plan, that subdividing plans had to be placed on file with the Registry of Deeds. The Maine Building Authority could enter into agreements with prospective mortgagees for the proposed planning, design, construction, alteration, or financing of industrial projects. The purpose was to promote industrial projects. Environmental effects on surrounding resources were not considered relevant then. There was no approval or permit system for any development activity.

4. INDIRECT LAND USE CONTROLS

The state's powers of taxation, acquisition, and law enforcement had more effect on land use then all of the fragmented approaches combined.

A. TAXATION

The policy of taxation had an influence on the use of the land. The explicated tax policy was to encourage operation of all forest land on a

sustained yield basis.

The State Treasurer assessed and collected property taxes in the unorganized territory. Plantations had their selectmen do assessment, inventory and collection. The State also assessed taxes on the grass and timber rights on the public lots.

The most important power of the Forestry Commissioners, and a significant prerequisite of land use planning, was their duty to deliver to the State Tax Assessor full and accurate lists of all lots or parcels in the unorganized territory, and to furnish all information touching on the values of the land. This was the one means of gathering valuable resource information.

B. LAND ACQUISITION

The various departments of the state had several means of direct acquisition of land for the state.

The Governor and Council could acquire 10 acres or less of land, with compensation for the owner, for U.S. Government purposes.

Several state agencies--the Forestry Department, Soil Conservation Commission, Parks and Recreation Commission, Salmon Commission, Inland Fisheries and Game, Highway Commission, Aeronautics Commission, had powers to receive gifts or to purchase land for the state. Additionally, the Parks and Recreation Commission, Inland Fisheries and Game, and the Highway Commission had powers of eminent domain. The Highway Commission and the Aeronautics Commission had to get approval in all eminent domain proceedings from the Land Damage Board. In all other cases, the approval by the Governor and Council was required. The Public Utilities Commission gave permission for the taking of land by utility corporations.

C. PUBLIC SAFETY AND NUISANCE LAWS

There were public safety statutes generally applicable all over the state. Nuisance laws prescribed punishment in the court for miscellaneous offenses harmful to health and safety. These include odors, leaving wells or tin mines uncovered, obstructing navigable water, and unsightly junk yards "detracting from natural scenery." The court could fine guilty offenders and order the nuisance abated or removed at the cost of the defendent. Anti-littering laws enabled law enforcement officials and wardens of Fish and Game, Sea and Shore Fisheries, Forestry Department, and the Liquor Commissioners, to fine anyone $100 for dumping bottles, glass, and cans, or for discarding old cars, in any public place, inland or tidal waters. The Highway Commission had regulations for junkyards, which the county commissioners could enforce.

The Board of Pesticide Control (since 1965) could promulgate regulations and issue licenses and permits regarding the use of pesticides anywhere in the state, both for public safety and for the protection of natural resources.

5. EXISTING LAND USE PLANNING

Prior to 1967, there was no real planning, or projection of alternative types and locations of activities, in the unorganized territories.

The first component of planning is usually the gathering of information on the geography, resources and populations in the region. The Public Utilities Commission entered into agreements with the U.S. Geological Survey for topographic mapping of the area. The P.U.C. also collected information for reservoir water supply. The county commissioners were responsible for filing population information for the U.S. Census. The Department of Economic Development gathered information useful to the development of all industry and issued reports on this information.

There were agencies authorized to do planning statewide with their particular function in mind. The Soil Conservation Committee could develop plans for conservation of soil resources. The Department of Economic Development had the authority to prepare a master plan for physical development of the state.

6. SUMMARY

A survey of the statutes regarding land use reveals that there were 20 agencies, commissions, or boards which had authority to administer some statute directly or indirectly dealing with land use. It should be emphasized, however, that this listing does not imply the actual administration or enforcement of these laws.

The Forestry Department could be called the "lead" agency with jurisdiction in the wildlands. Inland Fish and Game and the courts, with all the trespass, nuisance, and anti-dumping prohibitions are close behind. The one agency that could, by default, be called the coordinator, was the Tax Assessor, who had an inventory of what existed.

Notable by their absence were any statutes or regulations regarding the management or use of the wildlands in the best interest of the people of Maine. There were absolutely no measures to prevent inappropriate residential, recreational or commercial development in this area.

There was no planning for the compatible use of resources to benefit the long range interest of the people of Maine. There were no standards or permit systems for the location or quality of structures. There were no setback requirements, subdivision regulations, or requirements for fitting any of these structures into the environment to prevent undue adverse effects on existing uses, scenic character or the natural and

historic resources of the area. There was no equivalent to one coordinating agency for the regulation of the best use of the land in the wildlands. In short, there was no Land Use Regulation law.

EXPLANATION OF ENCLOSED CHART

The enclosed large chart illustrates the major provisions of each bill considered, and the evolution of the key elements of the law.* It is hoped that the reader will find it useful to refer to it while reading both the Legislative History (II), and the Analysis by Provision (III).

A vertical reading will provice the summary of the major provisions of each bill considered by legislative session. The horizontal columns will be interesting to follow while reading about the debate over key provisions in the next section. The evolution of each section coincides with the attempt to deal with key issues faced in the new endeavor to regulate the wildlands of Maine.

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*Although an attempt was made to reflect the legal language, this is not intended to be a substitute for the legal documents found in the Public Laws of Maine and the Revised Statutes Annotated.

II. A LEGISLATIVE HISTORY OF THE LAND USE REGULATION LAW

A. INTRODUCTION

The concept of introducing some state level land use controls over development activity in the unorganized territory (areas in Maine which are not organized into conventional units of local government such as cities or towns) or "wildlands" was first proposed in a bill submitted to the 103rd Maine Legislature in 1967. The Land Use Regulation Law of today, MRSA 12, Chapter 206-A, is the product of all the bills and amendments debated in and out of the halls at every session of the Legislature since then. In each session, the proponents introduced a bill; and the opponents proposed either an alternate bill or amendments to the original bill. The final bill was a result of compromises made in the legislative process.*

B. 103rd REGULAR SESSION OF THE LEGISLATURE (1967)

The first legislation to be considered by the Maine Legislature was LD 1260, An Act to Create the Wildlands Use Regulation Commission, introduced by then Senator Horace Hildreth, Jr. The bill proposed the creation of a Wildland Use Regulation Commission which would have powers to adopt zoning and subdivision controls. It was designed to regulate development in areas within 500 feet of either side of seasonal or year round roads, and within 500 feet of normal shoreline of lakes no further than 2,000 feet from major roads or 100 feet from access roads in "plantations" and "unorganized territories." "Plantations" are local government units without the power to enact planning, zoning and land use controls. "Unorganized

*For further reference, a record and copies of all legislation are available at the LURC offices.

territories" are unincorporated areas with no local government. LD 1260 also created Zoning Boards of Appeal in each county of the law's applicability.

The bill was referred to the Natural Resources Committee, which held a public hearing on April 11, 1967. The hearing was covered by the press, whose headlines, such as "Paper Companies Oppose Wildlands Regulation," Press Herald, 4/12/67, were a preview of many upcoming hearings and headlines.

The Committee consequently drafted an amendment (S-251) which cut down the proposed jurisdiction to 300 feet of either side of any public roads and 300 feet of normal shorelines of lakes and ponds which lie within 300 feet of any access road. The amendment also added to the exemptions a provision that "nothing in this chapter or in any ordinance adopted shall in anyway limit the right, method or manner of cutting or removing timber, or the erection of buildings or other structures used primarily for forest products industry purposes in the zoned area."

The Natural Resources Committee reported the amended bill as "ought to pass" by a 7 - 3 majority vote. After considerable debate, both the Senate and the House voted to "indefinitely postpone." The vote in the Senate was 18 - 13; and in the House, 93 - 34.

The measure was kept alive by Representative Harrison Richardson who introduced an order (H.P. 1239) to refer a study of the subject matter of LD 1260 to the Legislative Research Committee which was requested to report its findings to the 104th Legislature.

C. 104th REGULAR SESSION OF THE LEGISLATURE (1969)

The Legislative Research Committee, under the chairmanship of Representative Harrison Richardson, held three public hearings in Bangor, Portland and Augusta and met five times in the period between

August, 1967 and September, 1968. The report of the Legislative Research Committee (Publication #104-1) was issued in January, 1969. It includes the recommendation

> "that LD 1260, as amended and with several other suggested amendments...represents a reasonable and practical first step which must be part of a comprehensive effort by the State of Maine, private industry and the people of this State to intelligently develop with balance and good judgement the tremendous potential of these lands."

A photographic essay (LRC Publication #104-1A) by John McKee of Bowdoin College accompanied the report dramatically illustrating the pressures to which these lands had already been subjected. The LRC report also included a draft of a proposed bill incorporating all of the suggestions of the Legislative Research Committee.

These recommendations were drafted into LD 210, An Act to Create the Wildlands Use Regulation Commission sponsored by Representative Richardson. The jurisdiction was defined (as in LD 1260), as within 500 feet of seasonal or year round access roads - either side of a body of water and 500 feet of normal shoreline of a body of water. The concept of establishing Zoning Boards of Appeal in each county was eliminated with appeals going to Superior Court instead.

Another bill (LD 1372), An Act to Create a Use Regulation Commission, was submitted by Representative Harold Bragdon. This bill incorporated some of the industry and land owner recommendations. The jurisdiction was again cut back to within 300 feet of travelled edge any major road and within 300 feet of normal shoreline of any great pond, which lies within

600 feet of any major road. Note that the "road" has become "major road" which, according to the definitions in the bill, are any state or county public way. Two other major proposals in this bill were the specific requirements for preparation and adoption of a comprehensive plan, and regulations for areas used primarily for agricultural or forest products industry purposes. This bill received an unfavorable "ought not to pass" report from the Natural Resources Committee and failed to be enacted.

However, the Committee redraft of Mr. Richardson's LD 210, now renumbered and renamed LD 1566, An Act to Create the Maine Land Use Regulation Commission and to Regulate Realty Subdivisions, turned out, inadvertently, to incorporate the key provision of the Bragdon Bill which defined the Commission's jurisdiction. In any case, the zoned area now included 500 feet of the travelled edge of any public road and within 500 feet of normal shoreline of any lake or pond which lies within one mile of a public road. "Public roads" are not defined in this statute, but the meaning is the same as the "major roads" of LD 1372, the Bragdon Bill. It should be noted that there are very few public roads in the wildlands. The bill enabled the Commission to adopt zoning regulations and regulate land use and subdivision within this limited jurisdiction.

LD 1566 went through both Houses of the Legislature without any further debate. With the passage of LD 1566, the 104th Legislature gave birth to the Land Use Regulation Commission. LD 1566 became Chapter 494 of the Public Laws of 1969, adding to Title 12, of Maine Statutes Chapter, 206-A. The birth date of the Land Use Regulation Commission is October 1, 1969, the day the law became effective.

D. 105th REGULAR SESSION OF THE LEGISLATURE (1971)

It was not until the 105th passed a bill, "An Act Revising the

Maine Land Use Regulation Commission Law," LD 1788, proposed by the newly created Land Use Regulation Commission, and sponsored by Senator Elmer Violette, that the present jurisdiction and powers of the Land Use Regulation Commission took its present form. The change was from a municipal-type zoning ordinance within a narrowly defined jurisdiction to one of a modern, comprehensive land use guidance system for all the unorganized and de-organiced territory of Maine. Its passage, however, was not easy.

When the new Commission, under the Chairmanship of Senator Violette, with the guidance of Executive Director James S. Haskell, Jr., organized in October, 1970, and attempted to begin carrying out its functions, it was immediately struck by the inadequacy of the original enabling act passed by the 104th. The key inadequacies were the limited jurisdiction, the lack of clear delineation of the Commission's powers, and the lack of provisions for a comprehensive plan.

The recommendations of and revisions to Title 12, M.R.S.A., Chapter 206-A, prepared by the new Commission were drafted into LD 1503, An Act Revising the Maine Land Use Regulation Commission Law, introduced by Senator Violette, the Chairman of the new Commission. The purpose of the recommendations contained in LD 1503 was to set up a comprehensive Land Use Guidance System for the unorganized territory and plantations (wildlands) of Maine. It sought to:

1. Strengthen and specify the relationship of land use regulation to land use planning;
2. Curtail inefficient and inappropriate piecemeal zoning, by allowing the Commission to effectively and responsibly plan for, guide, and direct the broad scope of development, within

all of the unorganized and deorganized portions of the State; and

3. To provide the Commission with an effective framework of powers and duties for planning and regulating land development, based upon a flexible and dynamic concept of land use guidance, which uses standards and regulations as criteria for decision-making.

LD 1503 set up four major Land Use Guidance Districts (protection, management, holding, development) for which the Commission is to set standards of land use. It also provided limited powers during the period between the effective date of the law and the adoption of a comprehensive plan to assure the intent of the Legislature could be carried out without a rush to develop before the plan was adopted.

The 105th session was a one of environmental debate, to put it mildly. Public involvement was rather sparse in the first four years ('67 - '71), and was limited to support from environmental organizations such as the Natural Resources Council, and to opposition from the pulp and paper industry. By 1971, public participation and environmental awareness was at its peak. LD 1503 was recognized by the press and the Legislature as the most important issue facing the 105th Legislature. The arguments of both sides presented at the legislative hearings were well amplified in the press and climazed by lengthy debates in both houses of the Legislature.

The Natural Resources Committee re-drafted LD 1503 (and re-numbered its re-draft as LD 1788). The addition was an inclusion of the relationship between the LURC Law and the Site Location Law (38 M.R.S.A. § 481-88), a statewide statute controlling large scale development. Approval by the

Commission of a development for a particular location shall be prima facie evidence to support a finding that the development also meets the requirements of the Site Law (eliminating double hearings). LD. 1788 was reported out as "ought to pass."

Two amendments were added, on the floor, one by each branch of the Legislature. The Senate amendment S-227, filed by Senator Richard Berry, introduced the exemption of public utilities which was in the original bill, but ommitted in LD 1788. The House amended H-441 filed by Representative Roosevelt Susi reintroduced exemptions which were deleted in LD 1788 relating to existing permanent residential and farm properties, and accessory forest product and agricultural uses. A vote to indefinitely postpose was 15 in favor, 84 against. The 105th passed LD 1788 with these two floor amendments. The revisions became Chapters 457 and 544 of the Public Laws of 1971; and 12 M.R.S.A., Chapter 206-A was substantially revised. The effective date of this innovative comprehensive land use guidance approach was September 23, 1971.

Occuring simultaneously with the revision of the LURC law was a consideration of a number of bills aimed at implementing the massive governmental reorganization effort of Governor Kenneth M. Curtis. LD 1459, redrafted by the State Government Committee as LD 1831, and introduced by State Senator Joseph Sewall, set up a Joint Select Special Committee of Legislature on Governmental Reorganization and charged it with the preparation of a plan of organization of State Government into 13 new departments. One of the new departments was the Department of Environmental Protection, (DEP), which was to include the Land Use Regulation Commission, up to this time an independent

agency. LD 1851 was enacted into Public Laws of 1971, Chapter 489.

E. 105th SPECIAL SESSION OF THE LEGISLATURE (1972)

A new problem in the functioning of the Land Use Regulation Commission became evident in its early functioning. The requirement that all Commissioners be present at public hearings all over the remote regions of the state was especially arduous for the ex-officio members who as heads of their respective commissions and offices (State Planning Office, Parks and Recreation and Forestry) found it impossible to do justice to their various duties. The Commission was also having trouble assembling a quorum for its regular meetings. A number of scheduled meetings had to be cancelled or rescheduled due to a lack of a quorum. Senator Violette introduced LD 1890 in an attempt to remedy some of these problems. LD 1890 provided that hearings could be conducted by a single commissioner, or a qualified employee, with the full commission making applicable decisions based on records of the hearing.

In the 105th Special Session, Senator Violette also offered an amendment to LD 1890 (S-384) which would have expanded the public membership of the commission from 4 to 6 members. The six members were to represent the following interests: three members representing the public; one member representing conservation interests; one member representing forest products industry interests; and one member representing general land owner interests. This amendment failed by a close margin of 14 - 13 in the Senate.

Another floor amendment that did pass, (S-388), introduced by Senator Violette, allowed the naming of permanent alternates for the ex-officio members to help alleviate the quorum problem. The amendment also permitted the Commission to set up its own rules and regulations for hearing procedures allowing one Commissioner or Staff Member to serve as hearing officer. LD 1890, with amendment S-388, became Chapter 617, Public Laws of 1971 and

became effective on June 9, 1972.

F. 106th REGULAR SESSION OF THE LEGISLATURE (1973)

The debate continued in the 106th Legislature. LD 851, An Act to Amend the Land Use Regulation Commission Law, sponsored by Representative John L. Martin, the attempt was again made to change the composition of the Commission to 7 Governor appointees, without prescribed constituencies, to eliminate possible conflicts of interest and to seek wider public input. Other provisions were sought to make the legislation more efficient.

An alternate bill, LD 1881, An Act Relating to the LURC Law, the so-called "industry bill" sponsored by Representative Charlotte White, attempted to weaken LURC. Added to the purpose and scope section was the phrase "to promote sound development;" three public members were to be elected from the unorganized territory, also eliminating the three ex-officio members, but leaving the four other appointees "representing" forest product, general land owner, conservation, and public (from the rest of the state) interests. Protection districts were defined to be much more permissive, eliminating flood plains; designation of development districts would also have to be mandatory when development was anticipated. Amendment procedures were also considerably weakened, facilitating ease of their passage. Added to the criteria for permits was the requirement that the Commission take into consideration the economic effects to the landowner and to the public. (This provision was also a proposed addition for the Site Location Law at this session). There were also a few refinements on exemptions. This bill received an "ought not to pass" report from the Natural Resources Committee.

The Committee reported out LD 851 with an amendment H-471 "ought to pass." The amendment indicated a rejection of the Martin Bill's commission make-up provision, spelling out three ex-officio members or their permanent alternates and four public members, two of whom shall represent the public; one, conservation and one industry interests. The Senate amendment filed by Senator Berry was an important assurance of effective land use control. It insures that future cities and towns which may be organized shall meet the planning and zoning standards established by LURC. LD 851 with amendments H-471 and S-239 became Public Law (1973) Chapter 569 effective October 3, 1973.

LD 824, An Act Relating to the Compensation for Members of the Land Use Regulation Commission was presented by Representative John L. Martin providing the members of the Commission with a $25.00 per diem for their services. This became Chapter 379 of Public Laws 1973, effective October 3, 1973.

LD 1438, An Act Defining Subdivision Under Land Use Regulation Law was presented by Representative Roswell Dyar to redefine the subdivision section of the LURC law with the effect of exempting more subdivisions from regulations. It failed passage.

The two other bills had to do with the wrap up of the reorganization efforts started by the 105th Legislature. There had been a great amount of private and press-amplified public discussion among the agency heads and the Special Government Reorganization Committee.

There were proposals to place the planning, zoning, and enforcement functions into three agencies of state government; State Planning, LURC and DEP respectively. There was a proposal (LD 1441) sponsored by Representative Roswell Dyar to place the entire Commission under the

Department of Environmental Protection.

The outcome was the third proposal, the inclusion of the entact agency under the newly created Department of Conservation (LD 1521, sponsored by Senator Sewall). The Commissioner of the Department of Conservation was to be the Chairman of the Land Use Regulation Commission. LD 1521 with a minor technical amendment S-163 became Chapter 460, P.L. 1973, effective date October 3, 1973.

G. 106th SPECIAL SESSION OF THE LEGISLATURE (1974)

There were two provisions up for legislative mending by the 106th. The major item was once again the make-up of the Commission. Minor changes were made in the language for making amendments to the boundaries and standards of districts and the special exeptions sections was expanded.

LD.2207, presented by Mr. Martin, An Act to Revise the Membership of the Commission, provided for the elimination of the 3 permanent members and their replacement by 6 public members, appointed by the Governor. The fields of expertise of these members were extensively spelled out. The committee draft of the bill, LD 2471, still provided for 6 appointees by the Governor from the public with fields of expertise more broadly defined. The Legislature passed LD 2471. It became Public Law, Chapter 698; and it enabled the appointment of new commission members by the Governor, effective June 29, 1974. Amendment S-429, to LD 2606 of the Act to Correct Errors and Inconsistencies in the Public Laws, added in the last days of the session, afforted some modifications to the powers and duties. The power to grant variances was expanded and the criteria for variances and for special exceptions were spelled out in somewhat different language. It became part of Public Laws, Chapter 788, effective April 1, 1974.

III. ANALYSIS: THE PHILOSOPHIC DEBATE SURROUNDING THE EMERGENCE OF THE LAND USE REGULATION COMMISSION LAW AND THE DEBATE SURROUNDING ITS MAJOR PROVISIONS

A. INTRODUCTION

Controversy was a constant companion of this law on its path through the successive Legislatures. For ease of analysis, areas of controversy can be broken down into philosophical arguments, such as the concern over future demands on the wildlands, the question of who should do the controlling and regulating, private enterprise or state agencies; the perceived conflict between private vs. public interests; and arguments regarding the proposed legislations compatibility with the state's existing legal framework.

Also debated were some of the major provisions of the Act, such as the composition of the Commission, jurisdiction, powers, exemptions to powers and jurisdiction, need for a Comprehensive Plan, rights of public hearing and appeal, and LURC's relation to the State Government. These will be discussed briefly. It should be noted that this discussion does not attempt to give a legal derivation for every section of this bill; rather, it covers only those aspects which were publicly debated at hearings, reported by the press, or debated on the floor of the Legislature.

B. PHILOSOPHICAL DEBATE

1. CONCERN FOR THE FUTURE OF THE WILDLANDS

There was considerable discussion in both 1967 and 1971 on the

need for regulation of the future growth of the area. Proponents pleaded that the problems of high demand and the threat of unbirdled development be recognized and dealt with before it was too late. Senator Hildreth, at a committee hearing on LD 1260 on April 12, 1967 said:

> "This land is within four hours of nearly forty million people with time, leisure and money, looking for someplace to go. We must look ahead to our problems and do something about them... How long before wilderness roads will look like Coastal Route One? Legislation is needed to prevent the gradual, impercetible erosion of the State's beauty."
>
> Portland Press Herald, 4/12/67

and Clinton B. Townsend, President of the Natural Resources Council stated at the same hearing:

> "There is tremendous need for this legislation or else we will end up with 50 foot cottage lots right on shores of lakes."
>
> Portland Press Herald, 4/12/67

The debate on the House Floor on June 15, 1967 also emphasized the need for action in light of impending pressures.

Representative Sumner Pike, speaking for the bill as a House Member of the Natural Resources Committee, said:

> "The signals are pretty clear, that in the next several years we will have moving in here development groups, sometimes greedy groups, who will want to take our shorelines and camping places in some cases without the highest motives. I think we can figure that with this development from what we call megalopolis runs pretty

well from Richmond, VA. to Portland, ME. that instead of a trickle we'll soon get a stream and then maybe a flood.

It would be a pretty good idea to get in with some preventative medicine to make sure that this doesn't happen."

Legislative Record, 6/15/67

Representative Harrison Richardson also spoke for the bill, as a House Majority Leader:

"The population explosion is going to explode North and the question is whether or not we are going to be prepared for it or we're going to let this situation assume crisis proportions before we do something.

The day is coming when delay is going to produce disaster... The handwriting is on the wall; we are delaying a decision I believe we should make now."

Legislative Record, 6/15/67

In a picture essay submitted, the Legislative Research Committee reports, John McKee photographically illustrates lakes ringed by cottages, camps and trailers too close to plowed roads, outhouses too close to water, inadequate foundations and structures, leading to instant dilapidation (LRC publication 104-1A, November 1968.) The recommendation of the Legislative Research Committee summarizes the concern as follows:

"The experience in other states and other parts of Maine leads the Committee to the conclusion that unless action is taken now, these lands will fall victim to shortsighted, unplanned and destructive use resulting in water pollution and sub-standard development.

Legislative Research Committee Report, 104-1A, 1969

Again in 1971 when the whole question, the purpose and intent of the Legislation, was re-opened for debate, Senator Violette supported LD 1503 at the hearing in front of the Natural Resources Committee on April 29, 1971:

> "Several projects are already underway in the unorganized territory including: extensive mineral exploration, several proposed multi-million dollar four season recreation complexes, and numerous smaller second-home subdivisions and leasing programs.
>
> With the increasing and often conflicting demands on our resource base it has become increasingly important that the unorganized areas of the state be included in the comprehensive state planning effort.
>
> The orderly protection and use of the resources of these areas and their potential should be a matter of urgent and deeply felt concern of the citizens of this state."
>
> Maine Times, 5/7/71

Positions advocating compromise in the search for new problem-solving mechanisms were also heard in these debates. There were spokesmen, including representatives of "industry," who recognized the need to seek a balance of priorities. Planning for the use of these resources was seen by many as the only wat to prevent the irretrievable loss of them:

> "More and more as Northeaster, U.S. develops, the Maine woods are becoming an almost unparallelled resource both for tree production and for recreational opportunity. Who is to say this resource must be squandered.... This is a first step

which must be a part of a comprehensive cooperative effort by the State of Maine, private industry and people to intelligently develop, with balance and good judgement, the tremendous potential of these lands.

Legislative Research Committee Report
104-1A, 1969

James Haskell, the Executive Director of the Land Use Regulation Commission, principal draftsman and prime mover of the proposed amendments in 1971, stated at the April 29th hearing, that planning is for the benefit of both the public and private interests:

"We propose to do two things: We want to see how proposed development will affect the environment. But we also want to find out how the enviornment limits proposed developments... By providing soil information and geological data as part of a comprehensive plan, the landowner will be able to judge better where to invest and where not to invest."

Maine Sunday Telegram, 5/2/71

Not all industry spokesmen or representatives opposed this legislation. Some recognized the legislation potentially beneficial to private land-users. Christopher Hutchins, Division Manager of Recreational Development for Dead River Company, as well as the Industry Representative on the Land Use Regulation Commission, said:

"It would bring order out of a chaotic situation. We in the timberland business need a chance to reorder our priorities; the Commission could help us decide whether pressures to cut timber or develop our land are greater or less; and it would give us an opportunity to discuss our

ideas and plans for the future with a reviewing body."

Portland Press Herald, 4/30/71

David Huber, until 1971, Manager of J. M. Huber's Development and minerals division in Maine, said:

> "The present unspoiled nature of much of Maine is the state's number one asset. If we screw up this asset, Maine is in a bad way."

Maine Sunday Telegram, 4/11/71

2. PUBLIC vs. PRIVATE CONTROL

Assuming the acceptance of the need for some regulation, the next question is who should control land use activities in the wildlands. It is not too surprising that the question of state vs. private control, generated most of the overt and probably much of the covert opposition. In a state where town after town has rejected local zoning ordinances, where legendary "New England individualism" reigns supreme, and where these vast unorganized areas have been under private ownership and management for at least 100 years, one would expect that the imperative for state guidance in land use would have to be very strong indeed to overcome the counteracting forces of attitude and tradition.

The argument has been emotional--at times hot and repeated. In fact, it probably isn't over yet. This debate represents an effort to balance the conflict between the individual's rights to his lands and the state's responsibility to the combined interests of all its citizens, present and future.

The debate centered around whether the present owners of the land would control development of their land or whether the state would have to exert some control or guidance.

The opponents of the bill felt that the private owners were doing fine. Representative Harold Bragdon said,

> "This bill goes too far in regulating private industry."
>
> Legislative Record, 6/9/71

Representative James Dudley, in House debate, stated that:

> "I am opposed to this bill...I am for less government and this is another one of those places where government infringes on the rights of others...The people that now own the land do a much better job managing it than someone in state government. Our paper companies are very familiar and they have talents that have been working for a long time and I think this is one area of the state that is very well managed and if we've got one area that's well managed, let's not disturb it."
>
> Legislative Record, 6/15/67

Industry representatives expressed their view. John T. Maines, Vice President of Great Northern Paper Company, which owns some two million acres of forest land in the state, said at the Legislative Research Committee hearing in Bangor in December, 1967:

> "I appreciate what the measure is trying to do, but it is sadly lacking in planning. More goals and priorities should be set. The landowners are now caught between commercial developers and preservations. Great Northern has had formal wildlands management plans for the past 15 years and is planning for the next 20 years also for recreation."
>
> Maine Sunday Telegram, 12/10/67

George Carlyle of Seven Islands Land Company, a company that manages the land for private owners, asked that:

"Landowners be given a chance to develop their own land without setting up another costly bureau in Augusta. I don't think we have a problem in the wildlands."

Maine Sunday Telegram, 12/10/67

Talking a stronger line, Arthur Stedman, Assistant Woods Manager of Scott Paper Company, threatened that:

"Passage of the bill might lead Scott and other large land owners in the area to close their woods roads to the public in order to avoid being zoned.. Scott has 500 miles of roads open to the public. By closing roads could prevent zoning."

Portland Press Herald, 4/12/67

Industry obviously had its supporters in the Legislature. Representative M. Jerome Dickinson stated on the floor of the House that:

"I must agree that the theory is good, however, the hearing was attended by representatives of industry who, in my opinion are now doing a better job than would be required. It seemed to me they resented the implications contained in this bill."

Legislative Record, 6/15/67

And Representative Gerald Robertson followed by stating that:

"I am 100% in favor of zoning ordinances in municipalities. However, I cannot be in favor of them as far as wildlands are concerned. I think this bill in its effects will be discriminatory as far as the major paper companies and major landowners are concerned.

I think most of the paper companies in the State of Maine do regulate to certain extent this sort of thing.

Standard Packaging has certain sectors that they allow people to lease land to build camps. Great Northern Paper Company has roads built that people can use at a slight cost, which is for the people of the State of Maine and for those outside the State. I think that these opinions and decisions of this wildlands should be left to the owners. The major land owners are, of course, the paper companies which are our major industries in the State of Maine."

Legislative Record, 6/15/67

Representative Louise Lincoln clearly opposed to government control over privately owned land, made her feelings know that:

"As long as most of our wildlands are owned by persons in the forest products industries, as long as our lumber is needed for lumber, as long as paper is made principally from wood fibers, there is no present or even anticipated need for such legislation. The need for such legislation is even less apparent in light of the multiple use policy followed by all major landowners.

I am opposed to the enactment of broad general legislation subjecting considerable areas of privately owned land in unorganized territory to government control where such controls are generally unnecessary."

Legislative Record, 6/15/67

In rhetorical exaggeration, Representative John Donaghy saw it this way:

"I don't think we want any Hitlers and Mussolinis here, whether they are Mainers or not. We had some boys around here with white hats on! If you look under them they have got a

swastika on the arm, or whatever the Blackshirts wore.

Right now, today, on this bill we are seeing one giant stride toward the state taking over the property owner's right in the State of Maine."

Legislative Record, 6/15/67

The debate on the House floor had its lighter moments which for all its humor and rhetoric reveal fear of regulation. Representative Harry R. Williams, representing some of the unorganized territory saw the regulations extending to the nests of animals:

"In these wilderness area townships, there are almost countless numbers of woodchucks, coons, foxes, beavers, muskrats and skunks...Now the thing that intrigues me is how some Deputy Commissioner of some state agency under this act is supposed to come into my wilderness and supervise the erection of the habitation of every newly married skunk?"

Legislative Record, 6/9/71

Proponents generally felt that the control of development was indeed the responsibility of the state, and that those private owners who were already planning and managing in the public interests had nothing to fear.

Orlando Delogu, Professor of Law at the University of Maine Law School, said at the Legislative Research Committee hearing on December 9, 1967:

"Maine's unorganized territory is the largest such block of land east of the Great Plains without local government, and as such, it is the direct responsibility of the Legislature to administer it."

Maine Sunday Telegram, 12/10/67

Representative Harrison Richardson, during the 1967 House debate, answered the opposition by saying:

> "In excess of 10 million acres of this state, a vast chunk of this state, is owned by a tiny handful of people upon whom we rely to see to it that it isn't turned into a wasteland of garbage. Most of the landowners conscientiously and in enlightened fashioned plan, control and harvest their timber crops consistent with the interest of all the people of the State of Maine. Another handful of this number, without conscience, without regard for the future, do not abide by any sort of reasonable land usage. It is to this group that this bill is addressed and it is to this problem that we must address ourselves."
>
> Legislative Record, 6/15/69

Representative Marion Fuller added:

> "If they are so convinced that they are doing a wonderful job, why do they fear letting somebody else have some judgement on this.... We are looking at the areas that we can't control, where there cannot be a good job."
>
> Legislative Record, 6/15/67

3. PRIVATE vs. PUBLIC INTERESTS

Related to the issue of state vs. private control is the question of defining the public interests which constitute the crux of the problem. The issues are where the public interest lies and whether the private interest is identical or indeed antithetical to public interest. The debate over this question highlighted the growing awareness that the best interests of the corporation may not necessarily be synonomous with the public interests.

Representative Sumner Pike began the proponents debate in the House by saying, in part:

> "This is what this zoning law, in the long run, is trying to get after - the people who do not regard the public interest highly and who think mostly and most clearly and definitely of their own short term financial interests;
>
> I don't think the big companies are going to give in to this sort of blandishment...but there are some three million acres not owned by the pulp and paper companies, people who are going to give in to the law of quick money and going to end up by defacing and defiling a good deal of the state..."
>
> Legislative Record, 6/15/67

Certainly no one claimed to be against the "public interest." As the debate over public vs. private control illustrates, however, corporate officials and their spokesmen sincerely believed that the corporate interest was the public interest. Senator Harold Beckett, in Senate debate in 1967, reflected the point of view by stating that:

> "My personal knowledge is very limited but I have many contacts with paper companies...they are doing a fine job. If they own 2/3 of these lands and they will all object to this bill, their wishes ought to be adhered to."
>
> Legislative Record, 6/13/67

There were many Legislators who spoke up on this issue of public interest, especially in 1971. Representative Harrison Richardson, the sponsor of the 1969 bill, supported it again, at the Legislative hearing in April 1971:

"The paper companies and the big owners, with their usual head in the sand attitude, fought the original bill every inch of the way and they will fight the amendment with their usual total disregard for the public's interest. They have consistently taken a position against any attempt by the people of this state to protect these lakes and these lands and they have done so even when it was squarely contrary to their own best interest.

No one has any rights under any possible view of private enterprise to turn our lakes into Little Lake Eries."

Maine Sunday Telegram, 4/11/71

The debate in the House in 1971 on the Bill to Revise the LURC law was even hotter than in 1967. The opposition had a chance to mobilize and the proponents had developed their thinking further.

Representative Elmont Tyndale, in support of the bill, stated that

"You become part of the public interest as soon as you acquire any plot of land."

Legislative Record, 6/9/71

Representative John Lund reflected that:

"When you have uncontrolled economic self interest, a Western Avenue (strip commercial development) in Augusta results. Days are numbered when we can count on the good will of paper companies."

Legislative Record, 6/9/71

Representative Roosevelt Susi expressed his feelings during the debate by stating:

"I think of it (the bill) as an opportunity to double the size of Maine...half of the land area marked out on the maps as part of the state have, in fact, not been in the

control of the people of the State of Maine."

Legislative Record, 6/9/71

Representative John Martin responded to the opposition's arguments by stating that:

"Paper companies are not for the best interests of the State of Maine. They have outside owners even as far as Canada. People in my district, who live in the unorganized territories, are for it (the bill)."

Legislative Record, 6/9/71

Representative Smith of Waterville stated:

"There is a limit to our air, land and water, but no foreseeable limit to demand...The bill is not designed to take away private rights, rather to protect public rights."

Legislative Record, 6/9/71

Representative Martin summed up the proponents' arguments for the need for a public overview in his statement:

"We need public guidance on how we will absorb growth and provide for highest potentiality, (or) the most beneficial use of public resource(s)."

Legislative Record, 6/9/71

A citizen making a statement at hearings in the 106th Legislature summed up the view of LURC as working in the public interest. Mrs. Sherwood Libby from Limington, Maine reflected that:

"LURC is the only agency we have that is protecting the interests of the people of Maine that can't afford second homes or condominiums."

Press Herald, 4/6/73

4. OTHER ARGUMENTS

Some of the opponents simply objected to the bill. Others raised legal arguments.

Representative Harold Bragdon stated during the floor debate in the House:

> "I don't see that there are any arguments short of deleting everything after the title, which would improve it."
>
> Legislative Record, 6/9/71

Senator Frank Anderson, in the first Senate debate, stated that:

> "There is no demonstrated need for a bill so drastic, it is like using an atom bomb to kill a rabbit. Rights of the public to enjoy beauties of vast lumberland is not denied now."
>
> Legislative Record, 6/13/67

Bradford Wellman, President of Seven Islands Land Company, which manages 1½ million acres of privately owned timberlands linked up the proposed legislation with taxation. He said on December 6, 1967 he opposes the bill because:

> "...it terrifies us...we have two costs--taxation and management. Management costs we can control but taxes are in the hands of the Legislature...Just to impose zoning regulations on the wildlands is only plaster over the cracks."
>
> Maine Sunday Telegram, 12/10/67

The matter of constitutionality was debated among lawyers. Mr. Edward Atwood, from Portland law firm Pierce, Atwood, Scribner, Allen, and McKusick, and representing Brown Company and International Paper Company, said at the Legislative hearing in 1967 that:

"...The bill is unconstitutional because it is an illegal delegation of legislative authority. The legislature would have to approve a specific plan for zoning. Not simply give a commission the power to do the actual zoning in the future."

Portland Press Herald, 4/12/67

Representative Harrison Richardson, also a lawyer, answered this argument on the floor of the House by responding that:

"...This old bugaboo that the bill is unconstitutional was raised at a public hearing. It was at my request that the Attorney General gave this matter careful consideration and reported in clear and unequivocal terms that it is a constitutional measure and there is no question about that, so don't let that favorite old red herring of our industrial friends fool you."

Legislative Record, 6/15/67

In defining the legislation to iron out possible grounds for questioning of constitutionality, James Haskell, Executive Director, supported the proposed revision in LD 1503 by observing that:

"The present land use regulation is not adequate, and needs changes to remove what might be challenged as unconstitutional restrictions on some owners and not others. The regulated owner may be deprived of his property through burdensome development beyond the strip regulated and he might successfully complain that there is no comprehensive regulation and no equal protection of the laws."

Maine Sunday Telegram, 4/11/71

But this didn't satisfy the lawyers of the paper companies. Donald Perkins, also from Pierce, Atwood, Scribner, Allen, and McKusick, representing International Paper Company and Georgia-Pacific replied:

> "We favor regulating the .2% of unorganized land where the problem is; we object to the attempt to go at it in the bill proposed. The measure would not just control development, it would regulate all uses. This is broader than all municipal zoning I have ever seen in Maine."
>
> Portland Press Herald, 4/30/71

Finally, a view from outside the ring, evaluating the law from the legal point of view, J. Jackson Walter, member of the Massachusetts Bar wrote in the Maine Law Review(cited in the statute):

> "However tangled politics may become, the amended wildlands law is the best legislation of this kind in Northern New England. It avoids the limitations of the Site Location Law by providing for workable, long range planning and established an excellent framework within which one-half of Maine may be able to develop sensibly and prosperously."
>
> Maine Law Review, Volume 23, 1971

C. ANALYSIS OF MAJOR STATUTORY PROVISIONS

1. PURPOSE AND SCOPE

The purpose and scope section of the legislation (§ 681) deals with the important general issues discussed under philosophical debate. This section expresses the intent of the legislature when it considered the various legislation. It is, in fact, the closest means we have to date of ascertaining the policy of the people of Maine, as expressed by their legislators, based on the assumed goals.

The basic intent has not changed much; just the language got more refined and sophisticated. In fact, it is interesting to note by looking horizontally on the chart across column one, that the purpose, scope, and thus the assignment of the Commission have not substantially changed since the enabling legislation, in spite of extensive modifications of the jurisdiction and powers provision in 1971.

The policy of the state regarding the wildlands expresses the commonly heard "theme song" of Maine at this time: "Development through Conservation." It is at the same time positive and preventive of the negative. The purpose is and was from the beginning, to encourage appropriate use and to prevent pollution; to encourage preservation of natural conditions (rephrased later to"ecological balance") and prevent despoilation of lakes, rivers and streams. At first, the language expressed a policy of protecting forest resources for industrial use. This was later broadened to encourage effective management of the land for many uses, including recreation. Since 1969 the Act's purpose was to preserve public peace, health, and safety, while preventing the spread of unplanned detrimental development.

In summary, the purpose of the LURC law is to extend the principles of planning and zoning to the wildlands; preserve public health, safety and ecological balance; prevent the spread of inappropriate shoddy development unwisely related to other uses and leading to injury of the natural resources; and encourage well planned appropriate multiple use of the resources in the wildlands.

It doesn't seem possible to interpret this purpose and scope as a no-growth, hands-off, keep-out piece of legislation. Nowhere did the people or their representatives ever say NO - to growth or to the furthering

of some use of the land. All that it seems to say is--GUARD--use land properly, because the people of Maine value the state's unique resources, and recognize that, if squandered, the wildlands would be gone forever and would benefit no one.

2. MAKE-UP OF COMMISSION

In the first bill, the Commission from 1969 to 1973 consisted of 3 permanent members from state government (ex officio): the Director of Parks and Recreation, Forest Commissioner, State Planner; and four governor-appointed members, representing the Public, Conservation, Forest Industry, and General Landowner interests. The Commission elected its own chairman. A change, passed by the 106th Legislature, effective October, 1973, added the Chairman of the Department of Conservation, who would automatically serve as Commission Chairman. The governor-appointed members were to consist of two representing the public, and one each representing Conservation and Industry. The 106th Special Session again changed the make-up of the Commission. It retained the Chairman of the Department of Conservation as automatic Chairman, but provided for 6 governor-appointed members, four of whom should be "knowledgeable" in the fields of Conservation, Forestry, Fisheries and Wildlife, and Commerce and Industry. This became effective June 28, 1974.

There has been much discussion on the make-up of the Commission. The legal or rational justifications were not formally mentioned.** The original make-up was probably modelled on similar Commissions. The choice of membership on the Commission reflected a desire to have input from other state agencies dealing with the wildlands, possibly to avoid conflict and overlap among state agencies. The definition of the appointed

**The records at legislative hearings are not kept. Most of the information in this section comes from press coverage and the Legislative Record of debates on the House floor. The never recorded hearings and certainly the discussions in the lobby are undocumentable resources sorely missed.

membership, very likely, reflected an effort to have the interests of the major owners of land in the wildlands as well as the rest of the state represented on the Commission.

The problems came from these vary assumptions. First of all, the actual time State Commissioners have to attend meetings was getting very limited. There are at least 22 other commissions and boards which operate on the principles of avoiding duplication, providing input; and which therefore require the ex-officio presence of the agency heads.

Second, there is a difficult distinction to be made between representation of "interests" and conflict of interest. Can an objective decision be formulated when the potential individual gain of the decision-maker is at stake? This conflict can also include agency heads, since political interests may be involved. The question comes down to who is best equipped to look out for the public interest?

This problem of the Commission's membership was first discussed on the floor of the State Senate on March 2, 1972 (Legislative Record). Then Senator Elmer Violette introduced an amendment (Senate filing #384) which would have changed the number of appointed membership from four to six, and increased the public representation from one to three. He supported his proposal by saying, "the public ought to have more participation; and more people outside the framework of State Government should be involved." He also noted the sporadic attendance record of the permanent members, leading to frequent lacks of quorum at Commission meetings. That amendment failed.

Passed at the special session of the 105th were amendments which allowed the designation of permanent alternates for the state agency

heads, and provisions which allowed a hearing officer, Commissioner, or Staff, to hold hearings, in lieu of the whole Commission. Both of these improvements dealth with the time problem of busy state administrators.

The debate over the Commission continued in the 106th Legislature. The amendments suggested by LURC and sponsored by Representative John Martin (L.D. 851) proposed that the Commission be composed of seven members, appointed by the Governor and Council, who are "knowledgeable" in the fields of Forestry, Real Estate, Land Use Law, Planning, Economics, Government and Engineering.

The reason for the proposed changes from "representing" to "knowledgeable" was that Commissioners were too busy and that conflicts of interest might arise. Philip Savage, current Planning Office Director, supported the change by pointing out that current Washington directives suggest that people who sit on boards to protect environmental quality be influenced only by public interest. As a state agency head, he testified to a possible "conflict of interest" or more accurately "conflict of policy:" "I feel uneasy about the policy conflicts that occur when the State Planning Office proposes policies which I then approve or disapprove. I do not believe I should act as judge of actions of my own agency."

In an opinion dated March 26, 1973, at the request of former Attorney General James Erwin, Assistant Attorney General E. Stephen Murray said, "Conflict of Interest should include situations in which a person or a corporation might benefit and also where they stand to be harmed."* The potential for conflict does not exist in all the

*This was an informal opinion, as opposed to a formal ruling of the Attorney General. Informal rulings are advisory only.

decision-making powers of the Commission:

> "The rule as to conflict of interest does not apply in adopting standards used within all zones of the jurisdiction... but the owner or the employee, officer or stockholder of a corporation which is the owner of the land...to be zoned, should not participate in the discussion, hearing, or vote on the actual zoning of the land."..."the permanent members, Commissioners of State agencies, should not be considered to have conflict of interest with regard to matters relating to their duties provided for in their other official position. However, good sense might dictate that they refrain from participating in discussions, hearings and votes on such matters."

The need for input from departments of the state government was raised in a Senate debate (June 27) by Senator Jerrold Speers: "Would departments still have efficient means of input if they were not represented on the Board?" Senator Richard Berry (Cumberland County) suggested that each department could be circularized for relevant comments and reports could come back to the Commission.

The support for the change, as proposed by L.D. 851, is best summed up by Representative Martin: "The bill would make the Commission a decision-making body with knowledge in many fields, rather than one with special interests." Another bill (L.D. 1881), the so-called "Industry Bill," sponsored by Representative Charlotte White of Guilford, attempted to deal with at least half the problem by proposing that the three previously appointed members be elected from the wildlands. The "Industry" proposal was supported at the legislative hearings by Donald Perkins,

lobbyist for International Paper. Representative James Cahill also spoke to the need for representation of people whose interests are at stake: "I own property in the wildlands, why shouldn't people like me and the lumber companies have representation on the LURC Board?"

Objections were raised to the idea of electing the three public members. Representative Martin pointed out that only 10,000 people live in all of the wildlands; the voting districts would be so huge that elections are impractical and that many people would have conflicts of interest as they either work directly for or receive substantial income from the major landowners.

Clinton B. Townsend, member of the LURC Commission, worried that elections would "politicize" LURC.

A slight flurry over membership arose from the incorporation of LURC into the newly created Department of Conservation. This did not really get an airing in the halls of the Legislature. In the haste for adjournment, two bills were passed: L.D. 851 (as amended) to revise LURC law, and L.D. 1521 to create the Department of Conservation, Public Law c. 460 S. 14. L.D. 851 asked for a Commission of 7; 3 state agency heads and 4 appointed. L.D. 1521 required that the Commissioner of the Department of Conservation be automatically the Chairman of the Land Use Regulation Commission, raising the membership of the Commission to 8, 4 state officials and 4 representing various "public interests." The inconsistency was resolved by the Court on October 3, 1973. The Court held that the intention of the Legislature was clear on the matter of appointed membership as reflected in L.D. 851, and that consistency with the reorganization concept required the Commission of the Department of

Conservation to be the Chairman of the Commission. This concept was not extensively debated in public.

The struggle to define the make-up of the Commission was taken up again in the 106th Special Session. The first bill, sponsored by Mr. Martin provided for 6 gubernatorial appointees as "public members," leaving the permanent Chairmanship with the Commissioner of the Department of Conservation. This bill, L.D. 2207, went to great length specifying that the Governor "give consideration to individuals who are knowledgeable in the following fields: forest management, real estate development, land use planning and law, science of ecology, soil and water conservation, agriculture or resource economics, government or public affairs, and engineering and architecture." Then in alloting the staggered terms the appointees got grouped into six fields of expertise.

The final bill is more simplified. It states that the Governor shall appoint six public members, in addition to the one permanent chairman (the Commissioner of the Department of Conservation). Four of the public members "shall be knowledgeable in at least one of each of the following areas: commerce and industry, fisheries and wildlife, forestry and conservation." Certainly the word "shall represent the interests of" has been removed, and the problem of the 3 permanent ex-officio members has been eliminated.

3. JURISDICTION

Most of the controversy over the extent of land LURC would control took place between 1967 and 1971, the 103rd and 105th Legislatures.

The original bill with its amendment, if it had passed, would have meant a narrow jurisdiction of 300 feet of land along a public road, and

300 feet of normal shoreline of lakes or ponds. The Legislative Research Committee thought a more reasonable jurisdiction would be 500 feet of seasonal or year-round road generally open to or used by the public, and 500 feet normal shoreline of lakes, streams, and rivers.

Between the filing of the bill (L.D. 210) and the final draft reported out of committee, there was the Bradgon Bill (L.D. 1372). This bill, not reported out of committee, provided for an even more severely restricted jurisdiction of within 300 feet of lakes, rivers, and roads. The "roads" were public roads only. Although the Bragdon Bill failed, the re-draft of L.D. 210 (now renumbered L.D. 1566) kept the 500 feet of the original proposal, but ended up redefining roads to mean only public roads. This draft became the final bill and the first enabling act of the Land Use Regulation Commission.

It turned out to be a great shock and a great disappointment when it was discovered that the word "road" was thus redefined and limited to only public roads. The newly formed Commission discovered it had jurisdiction over only 2% of the area in the wildlands. The argument for keeping a narrowly defined jurisdiction was that regulation should be kept where needed, not "down every back road."

In testimony supporting the revision of the law recommended by LURC, James Haskell, the new Executive Director of the agency, stated at the legislative hearing in 1971 that the 500 feet limit of public roads makes control ineffective. He cited a situation where one owner may be deprived of enjoyment of his property through burdensom development beyond his strip of land. He added that the limited jurisdiction lacked

comprehensive scope and unduly limited one man's use of his land for another's advantage.

The Act to Revise the LURC law in 1971 redefined and broadened the jurisdiction of LURC to include organized and deorganized townships, mainland and island plantations.* This extended the coverage of LURC to very nearly 50% of the land in Maine. The area now includes 10,561,700 acres--an area one fourth of the total area of the six New England states, and actually larger than the area of Massachusetts, Connecticut and Rhode Island combined.

The controversy either subsided or shifted toward seeking exemptions from jurisdiction.

4. POWERS AND DUTIES

a. MAJOR PROVISIONS

The powers and duties of the commission, as first proposed and enabled in 1969, were modelled on municipal zoning ordinances. The commission had the power to zone-via zoning ordinances and maps-areas within 500 feet of public roads and accessible shorelines of lakes, rivers, and streams. The ordinance would spell out regulations for the use of outboard motors on lakes less than 640 acres. The bill also provided for adoption of subdivision ordinances consistent with the zoning ordinance, considering factors of structural design, building location, utilities, drainage, pollution control and boat and automobile parking provisions. Permits were required to assure compliance with the regulations of the zoning and subdivision ordinances. The original Hildreth Bill granted authority to the Executive Director to issue permits with the concurrence of the Commission. The 1969 enabling act gave the Commission full

*The Commissioners were in doubt about jurisdiction over plantations. There were two Attorney General's opinions: November 23, 1971 and July 10, 1972; both of which reaffirmed jurisdiction over plantations.

authority to grant permits.

LD 1788 was the act which transformed the LURC Commission from an municipal-type planning and zoning agency to a comprehensive modern land use guidance system was the Act to Revise the Maine Land Use Regulation Commission, passed by the 105th. The powers and duties section was totally revised. This revision is reflected on the chart by the length of the list of the new powers. The numbering on the chart from Roman Numerals to Arabic Numbers also reflect this change.

Section 685 of Chapter 206-A, Title 12, is now divided into 3 major sections. Although there have been internal changes, the 3 sections remain today.

§ 685-A authorizes the commission to set standards for four major types of land use guidance districts: protection--those areas whose significant ecological, natural, recreational or historic resources need extra protection; management--districts which enhance the furthering of current utilization for forest or agricultural purpose; holding--areas which lay between management and development, not currently developed but for which plans exist (this category was later eliminated); and development-- now showing development pattern.

The standards the commission develops for each of these districts were to be consistent with the policies explicated in the "purpose and scope" section. The Commission also had the power to assist the State Highway Commission and all other agencies in planning and developing transportation facilities consistent with the standards and purposes of the Act.

Since districting, based on a Comprehensive Plan of the area would take time, there were interim provisions to enable the Commission to

carry out the intent of the law between the time it became effective (October 1969) and the adoption of permanent districts. Interim districts and standards were to be duly adopted to reflect existing conditions, and were to be effective for no more than 3 years.

In addition to standards the Commission may promulgate for each district, § 685-B lists the activities requiring a permit, the procedure to follow, and the criteria to be used for decisions by the Commission. These criteria were especially important to consider during the period that LURC was required to grant permits but did not yet have the time to place all of its jurisdiction in land use guidance districts. The criteria for decision-making include:

A. Adequate provisions have been made to meet the state's air, water pollution control standards for solid disposal and for solid disposal and for securing healthful water supplies.

B. Adequate provisions made for circulation, loading and parking

C. Assure that the proposal will fit harmoneously into existing natural, scenic, and historical resources of adjoining areas

D. Provisions made to use soils consistent with soil suitability guide to prevent soil erosion and run-off.

Additional attempts were made to discourage substantial expansion or undue continuation of uses not conforming to the standards in the districts.

Section 685-C provided for the adoption of a comprehensive plan by July 1, 1972, to guide the Commission in delineating districts and standards. The plan required approval by the regional planning

commissions, other appropriate state agencies, State Planning Office and the Governor.

Acquisition powers of the Commission were allowed to the extent of acquiring conservation easements in the name of the State by gift, purchase, grant, and then conveying administration of land so acquired to any appropriate agency. The Commission did not have powers of eminent domain.

These major powers have not changed substantially since 1971. "Land Use Guidance Districts" are now called Land Use Districts. The deadline for the Comprehensive Plan was extended by the 106th to January, 1975.

The changes proposed by the "industry" sponsored bill (LD 1881) are interesting to consider, although they had absolutely no effect on the powers and duties of the Commission as they emerged from the 106th. The bill would have weakened the protection district definition; eliminated "flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or state;" forced management district designation, unless owners request otherwise; forced "development" designation where development was anticipated; would have made amendment procedures easier; and would have added to the additional criteria for decisions permit consideration of economic effects (an amendment also advocated by not yet accepted, for the Site Location Law).

The provisions for amendments to district boundaries and standards underwent slight verbal modifications in the 106th Special Session. Any owner, lessee, federal or state agency may petition the Commission for a change in the boundary of a district or for a change in

the regulations for a district, if new conditions have made the present classification unreasonable. The amendment must be consistent with the standards for that district, the purposes of the statute, and the comprehensive plan.

The 106th Special Session also added the power of granting special exceptions. Variances from the rules and regulations may be granted if the Commission finds that the applicant would have extraordinary difficulties or hardship due to the unique physical features of a site.

The physical circumstances still have to be such that the intent of the standards is met. For example, the standards might require a 75' setback for visual purposes. The lot may contain a hill which effectively screens a house within 50 feet from view. In this case a variance could be granted without violating the intent of the standards.

b. DEBATE OVER POWERS AND DUTIES

The proposal to create a new agency, which would have powers to regulate and control in areas where previously there were no controls, engendered in some minds the fears of giving too much power to the new Commission. This concern was probably the underlying factor behind most of the general opposition discussed above. Arguments regarding power were often raised by industry attorneys.

In 1971, Donald Perkins, lobbyist for wood products industries, said at the hearing on the proposed amendments, that the powers given to the authority were broader than those delegated to municipalities for zoning and subdivision controls (PH 4/30/71). Then in 1973, when

the powers of the Commission were very specifically spelled out, Mr. Perkins felt the Standards were too specific. (PH 4/17/73)

The objections of legislators and of some landowners were repeatedly expressed. An organization called the Land Owners Association was formed in the summer of 1972, principally in reaction to these bills. (Their opposition came at interim zoning hearings rather than at legislative hearings.) Representative Crosby said in a House debate (6/9/71) that this bill was giving too much power to one group. He felt that the state's reach of control to single companies and variety stores was too long.

J. Jackson Walter (Maine Law Review Vol. 23, p. 339, 1971), commented on the changes in the LURC law between 1969 and 1971:

> "It was irreleyant and inappropriate to prescribe a set of conventional suburban regulations, controlling building set backs, heights, etc., for these unorganized territories where there were no local governments and where the major land users are forestry, strip mining and recreation."
>
> Maine Law Review, Volume 23, 1971

The new districts will bear a close and logical connection to matters within the jurisdiction and control of the Commission. The new legislation, furthermore, overcomes shortcomings of the Site Selection Bill (MRSA 38, § 481-88) by offering criteria for measuring proposals. Setting criteria, he feels, is important to prevent legal arguments on "taking property."

There were some questions raised about the legality of the "interim zoning" provisions. The problem really arose in the deliberations of the Commission, (Portland Press Herald, 4/13/72) which considered interpreting the provision to mean allowing a moratorium on any development.

In an opinion on the constitutionality of interim regulations, Assistant Attorney General E. Stephen Murray stated that:

> "Section 685-A § 6 (Interim Provision) is legislative recognition of the need to slow down the development of the wildlands in order that LURC may have the time necessary to develop a solid and permanent set of land use guidance districts and standards. This philosophy is consistent with that of many other legislative bodies and has been approved by the courts."

He cited six court cases which have upheld the so-called "interim or stop-gap" ordinances. Regarding the interpretation of this provision as a moratorium, Murray states:

> "In enacting 12 MRSA § 685-A 6, the Maine Legislature did not go so far as to prohibit all development of the wildlands pending adoption by LURC of permanent land use guidance districts and standards but rather chose to allow very limited development on the interim period."

Mr. Haskell urged the adoption of interim zones and standards because rapid changes in the wildlands were currently in process and would be violations of the intent of the legislation.

There was not much argument with the provisions of requiring a comprehensive plan. It was included generally in the first enabling act (L.D. 1566, 1969). "The Commission, based on principles of sound and comprehensive planning, may adopt a zoning regulation." Specific requirements were first spelled out in the"Industry" bill (L.D. 1372, 1969), which did not pass. This provision was however, in the major revised bill of 1971.

The review procedure for the comprehensive plan and the actual required date for completion underwent some legislative mending. The 1971 Act required the approval of the Governor, State Planning Office and Regional Planning Commissions. The "Industry" bill (L.D. 1811) did request the Legislature's approval of the plan, probably (although not mentioned in public debate) to offer a check on the powers of the Commission.

Representative Ezra James Briggs, a stong spokesman for "environmentalists," did not want to give veto powers to the Legislature because "the pulp and paper industry has too much influence over the Legislature." The review procedure is unchanged, since 1971.

5. EXEMPTIONS, "GRANDFATHER CLAUSES," LIMITATIONS

These are very important aspects of the bill. However, formal debate or press coverage on these specific items was very limited. Although the phrases in this section may not mean much to the public not directly affected and unaccustomed to legal details, they certainly are gist for the lawyers' profession. A little word like "primarily" or "exclusively," or a phrase such as "shall consider," could make a great difference between an effective legislation to accomplish the intention of its framers, and that has only its appearance.

Some clauses are probably constitutionally required; many others were political necessities.

The two amendments tacked onto the 1967 bill (not passed then) stayed sine qua non throughout. That is, the Commission has to consider the present use, and cannot zone in a way which would exclude that use.

"Land use standards for management districts shall in no way limit the right, method or manner of cutting or removing timber

or crops, the construction and maintenance of hauling roads, the operation of machinery or the creation of buildings and other structures used primarily for agricultural or commercial forest product purposes, including the farms." (12 MRSA, § 685-A)

The "bill to revise" in 1971 did change the word "primarily" to "exclusively" but it was changed back by amendment to "primarily" before passage.

A requirement that the commission must "consider" any plans that a private or public owner may have for land being "zoned" has been in the law since its inception. This phrase will be quoted in full because it is the pivot on which turns the largest controversy in the existence of the Commission; the Flagstaff Corporation's proposal to develop a section of Bigelow Mountain.

First of all under the consideration, application, exemptions section:

"In adopting district boundaries and land use standards, the Commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan to its owner as to its future use." (§ 685-A, 5)

This need for considering plans is further explicated in the definition of Management Districts. Management Districts are defined as areas which are appropriate for commercial forest product or agricultural use and for which plans for additional developments are not presently formulated nor additional development anticipated.

Additionally, there is the requirement that interim districts and standards shall "insofar as practicable and reasonable, reflect existing uses and conditions." (§ 685-A, 6) The interpretation of the term "practicable and reasonable" should be interesting to watch.

A "grandfather clause," which would exempt from regulation existing year-round farms or homes, was removed in the proposed 1971 statute revision, but was quickly restored via an amendment before passage. The exemption now covers both year-round and seasonal farms and residences which were in existence before the law came into effect on September 23, 1971; this includes the structure itself and any additions which serve to continue its existing function.

The potential effect of non-conforming uses on achieving desirable land use goals was discussed in 1971 both at hearings and on the floor. Mr. Haskell said to the Legislative Committee hearing that there wasn't adequate provision for dealing with non-conforming uses. "Such uses which predate the ordinance can upset the whole scheme of development... (These) can be slowly eliminated without harming the owner or operator."

The 1971 major revision (L.D. 1788) did establish procedures to follow on non-conforming uses existing on lands before regulations. For instance, a non-conforming use could not be lawfully resumed after 12 months of abandonment. L.D. 1788 also stated that the standards for land use districts could include a reasonable schedule to terminate non-conforming use in order to allow for amortization of investment.

Representative Crosby raised objections to the inclusion of the non-conforming provisions. "Doesn't this permit the ultimate elimination of any land use which the commission does not favor?" (House Record, June 9, 1971)

The "silent" battle of the non-conforming provision went on (see item #9, 10 under Powers and Duties in Chart). The present situation is that "reasonable" provisions for the elimination of non-conforming commercial or industrial uses may be provided. Abandoned non-conforming uses are no longer "grandfathered" after two years.

6. CITIZEN PARTICIPATION

These provisions have had some revisions and refinements, but have not touched off much debate.

The original provision for 6 months notice to owners of affected lands regarding the intent to zone has now come down to 30 days. This 30-day period of public notice also applies to all actions of the Land Use Regulation Commission which require public hearing. Originally, hearings had to be held in the affected county. Now hearings can be held where convenient to all interested parties.

Requirements for public notice are quite specific. Notice to be in 3 statewide publications, first one at least 30 days before the hearing and the last at least 3 days prior. Records of proceedings at hearings and semi-monthly Commission meetings are kept and records open to the public inspection. In 1973 L.D. 851 specifies that all Commission meetings shall be public.

7. ENFORCEMENT

Enforcement and penalty provisions were strengthened considerably in 1971 without audible opposition.

In the original bill, the penalties were legally classed as "nuisance," not too heavily fined. Since 1971, the penalty for violation is $500/day per violation.

Members of the Commission or staff could always inspect areas zoned or (later) regulated. The important enforcing tool of issuing a certificate of compliance was not added until 1971. It is now unlawful to occupy any structure which requires a permit until a Certificate of Compliance is issued, verifying that the requirements and conditions for that approval have been met. As in granting permits, the Commission has the discretion to delegate this authority to the staff.

The Commission's approval was always required before plats for subdivision could be registered. The penalty for failure to comply had an interesting history of "see-saw." An amendment proposed to the 1967 bill sought to remove a stipulation that a recording "shall be void" without the approval. The Richardson bill included "shall be void," the Bragdon bill removed it again. The current situation is that plans must be recorded with Commission approval; the penalty is the same as that for violation of any other provision of the law.

In addition to the $500/day fine for each violation, the Commission has had, since 1971, the authority to institute court action, or injunction, in the name of the State of Maine, to correct violations.

8. RIGHTS OF APPEAL

The original bill and the Bragdon bill set up a separate zoning Board of Appeals for each county in the Commission's jurisdiction. The Board was to consist of 5 members: a member of the Commission or its staff, a resident of the county appointed by the Commission, and the three County Commissioners.

The Enabling Act (1969) eliminated the Zoning Board of Appeals upon the recommendation of the Legislative Research Committee. It was agreed that the Board of Appeals process would lead to endless litigation.

The Court could take into account the same consideration in an appeal. This is also how the decisions of the Board of Environmental Protection are appealed.

Since 1971 the applicant, or any person aggrieved by an order or decision of the Commission, could appeal to the Court for a hearing based on the records. The 1973 Martin Bill specifies that such appeals should go to the Kennebec County Superior Court (the county of the State Capitol).

Additionally, since 1973, the Commission can be appealed to for any decision made by the staff without a hearing. LURC currently has it its statutes a section which allows it to consider extenuating circumstances within limits of the scope of the law, a zoning Board of Appeals-type function. The Commission may conduct, with its regular procedures, a hearing on a petition it receives for special exception.

D. RELATIONSHIP TO OTHER AGENCIES OF STATE GOVERNMENT

This is an area of so much conflict and controversy that it will be examined in greater detail in a later chapter. A few highlights follow:

The overlapping of jurisdiction and responsibilities within State Government has been a recurring argument of the faithful opposition, as well as landowners. Morris Wing, Executive of the International Paper Company, said on 4/11/71, that there is much confusion, because LURC, DEP (the Department of Environmental Protection), and the State Planning Office all would have overlapping functions.

The "bureaucracy in Augusta" has also been a steady theme. Representative Bragdon (House June 9/71): "Little people have to file six

copies of a plan with the bureaucracy in Augusta."

In the 106th Legislature (1973) the "eye" of the controversy was the location of LURC in the State Government organization. Unfortunately, the issue of State Government reorganization, and specifically the position of land use functions within the system, was not discussed in an analytical framework. Recommendations and justifications were heavily guided by politics and personalities. The Republican leadership wanted to quiet "the outspoken Executive Director" by splitting the functions of LURC into three separate agencies (Portland Press Herald, 1/11/73), to place it in the Department of Environmental Protection (DEP) where, in turn, its functions would be subdivided among the various divisions of that agency. (The classic divide and conquer philosophy). James Haskell, the Executive Director, proposed a Department of Land Use pulling together administration of all the legislation of land use: LURC, Shoreline Zoning, Site Selection, Great Ponds, Mining and Wetland Act. This agency, according to Mr. Haskell, could then be a "one stop service for developers," which would eliminate some of the bureaucratic "hassle."

The arguments for the reorganization or reallocation of various functions were used for various reasons by various interests. For instance, developers proposed putting the Site Location Bill under LURC, when it appeared that agency might be more lenient. Then, when the tide appeared to turn toward greater stringency on the part of LURC, these same interests supported the splintering of LURC (Maine Times, 1/21/73).

LURC, operating as an independent agency since its inception, has now been incorporated into the Department of Conservation (L.D. 1521, P.L., 1973 C. 460). The new Department brings together under one agency

umbrella: the Forestry Department, the Parks and Recreation Department, the Maine Mining Bureau, the Keep Maine Scenic Committee, and the Allagash Wilderness Waterway. It creates four Bureaus: Forestry, Parks and Recreation, Public Lands, and Geology. The Land Use Regulation Commission was transferred intact into the Department of Conservation, with the Commissioner of the Department of Conservation serving as Chairman. The Executive Director of the Land Use Regulation Commission now serves at the pleasure of the Commissioner of the Department of Conservation and the LURC Commission.

The organization was a part of a State Government Reorganization effort package of current Governor Kenneth M. Curtis. Mr. Philip Savage, whose State Planning Office was primarily responsible for drawing up the Governor's reorganization legislative package, said, "LURC was included in the Department of Conservation because its decisions are most closely related to the activities of the other agencies in the new Department." (Portland Press Herald, 1/11/73)

Further discussion on Government organization follows in a later chapter.

E. SUMMARY

Whatever else may be said about the new Land Use Regulation Commission, one thing can be firmly stated: The citizens, through their elected representatives in the Legislature, and the Fourth Estate (the press) were not left out of the creation.

The philosophical basis of a land use guidance system over the wildlands of Maine and its specific implementing provisions were thoroughly examined by the People of Maine. Most of the debate took

place in and around the halls of the Legislature in a time span of seven years. The participants were the legislative parents, chiefly Horace Hildreth, Jr., Harrison Richardson, Elmer Violette, and John Martin. The guardian mentors of the envolving statute included James Haskell, the Executive Director, and E. Stephen Murray, Assistant Attorney General assigned to the new agency. The supporting cast included environmentally aware citizens, such as Clinton Townsend and John McKee, forward looking industry spokesmen, like Christopher Hutchins and David Huber, and excellent journalists like Phyllis Austin (Associated Press), Lucy Martin (Maine Times, Bob Cummings (Press Herald) and John Day (Bangor Daily News). Visible opponents who perceived LURC as a threat were lobbyists for some paper companies, large landowners, and some Legislators who reflected their views.

The resolution of the philosophical debate established the need for control over development in the wildlands, wrangled over the problem of state or private control, exposed the fear of government control, and struggled with defining the public interest in lands which comprise 50% of the area of the State of Maine.

The major provision of the bill is the administrative tool to effectively carry out the intent of the Legislature while still remaining within the limitations of acceptability and enforceability. The Statute evolved from a system which copied existing local land use controls to one consisting of controls over vast undeveloped regions of the state, which were privately owned and had no local government.

This legislation is the concrete embodiment of the hopes and desires of its founders and of the citizens of Maine.* It is hoped that this legislative history has provided a measure of respect and understanding for implementation.

*The legislation is a framework. Only implementation can make sound land use guidance in Maine a reality.

This document includes a chart that is too large to be digitized. To view the chart, please visit the Reference Desk at the Maine Law and Legislative Reference Library.