

MAINE STATE LEGISLATURE

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REPORT TO THE
LEGISLATIVE ENERGY AND NATURAL RESOURCES COMMITTEE
ON
LARGE LOT DIVISION ACTIVITY
IN THE MAINE WILDLANDS

BY THE MAINE LAND USE REGULATION COMMISSION
DEPARTMENT OF CONSERVATION

March 7, 1989

INTRODUCTION

Prior to 1987, the Land Use Regulation Law required review by the Maine Land Use Regulation Commission of subdivisions consisting of divisions of land into three or more lots each less than 40 acres within a five-year period. Lots larger than 40 acres were not to be counted unless "the intent...is to avoid the objectives of this statute."

During the late 1970's and early 1980's, the Commission observed a diffuse but increasing interest in the creation of land divisions involving multiple lots just over the 40 acre threshold. None of those land divisions were required to go through LURC subdivision review. Between 1985 and early 1988 at least 395 40-plus acre lots were created encompassing an estimated 20,000 acres in the Maine Wildlands (Appendix 1).

In 1987 the Legislature changed the LURC law to require review of large lot subdivisions in shoreland areas with "spaghetti lots" five times deeper than wide. However, no applications were submitted to LURC for such large lot subdivisions.

In 1988 new legislation was enacted that: (1) requires permit review of all waterfront subdivisions with lots under 500 acres and (2) that plans be filed upon the creation of upland large lot land divisions. The 1988 legislation also called for the Land Use Regulation Commission to report certain activities to the legislative Committee on Energy and Natural Resources. (See Appendix 2 for excerpts). This document has been prepared to comply with that legislative reporting requirement.

LEGAL REQUIREMENTS

Current statute provides that:

- 3 or more lots each under 40 acres created within 5 years must go through LURC subdivision review;
- 3 or more lots each 40 to 500 acres created within 5 years from a parcel with shore frontage must go through LURC subdivision review;
- 3 or more lots each 40 to 500 acres created within 5 years from a parcel with no shore frontage do not have to go through subdivision review, but must be shown on a plan filed with LURC, the State Tax Assessor and the Registry of Deeds; any subsequent division of a lot created from the original parcel within 10 years shall be considered a subdivision;
- land divisions creating lots of 40 to 500 acres filed before April 19, 1988, are exempt from permit review or plan filing;
- lots over 500 acres are exempt from permit review or plan filing.

ACTIVITY REPORT

An investigation by LURC staff of files in the Registries of Deeds and Division of Property Tax indicates that between April 20 and December 31, 1988, at least 331 lots representing an estimated 17,000 acres were created within LURC jurisdiction (Appendix 3). There may have been other land divisions as well that have not yet shown up in the records.

The Commission has not received any applications for subdivisions from these new lots.

The investigation also uncovered several plans at the Registries of Deeds that were determined to be minor revisions of plans filed before the April 19, 1988, deadline and were therefore not subject to the requirement of the new law. These have not been included in the above figures.

There have been no applications for large lot shoreland subdivisions filed with the Commission under this new law. Nor were any plans filed for large lot upland divisions until LURC staff began its investigation for this report.

ISSUES

The Commission has uncovered eight major issues associated with the current legislation:

1. The statutory filing requirements are not widely known. This is evidenced by the fact that no plans or permit applications were filed with LURC until the LURC investigation into the compliance with this requirement raised the issue.
2. The law requires a plan be filed with "...the State Tax Assessor within 60 days..." If the lots are in any of the 43 plantations or towns within LURC jurisdiction, the State Tax Assessor will not accept the filing because plantations and towns are not within the Assessor's jurisdiction. In some cases, such plans have been filed with the plantation or town officials.
3. The statute references municipal shoreland zoning criteria which are inconsistent with those that apply in LURC jurisdiction.
4. The definition of "parent" or "original" parcel is subject to interpretation. The definition of what constitutes the parent parcel for the purposes of beginning the lot split/subdivision count and time period requirement needs to be clarified.
5. Current subdivision rules require an individual wishing to subdivide a large lot created under the large lot exclusion rule to, if subdividing in the first ten years, submit a plan that includes the parent parcel from which the current lot to be subdivided was created as well as all the other large lots created from that parent parcel. This requirement holds true for each owner of any of the large lots

subsequently wishing to subdivide. This is a massive undertaking for the owner of a single lot and a major duplication for each subsequent subdivision.

6. The statute is silent on how traditional family splits shall be handled and is also silent on how court partitioning of common interests shall be handled. Current regulations require that such splits or partitions must be treated as subdivisions and the normal subdivision application process must be followed.
7. The statute presents several enforcement difficulties. For instance, failure to file a plan for a lot from an upland parent parcel created years earlier would be a violation. However, the Commission would have no direct way to find out about such an omission. Furthermore, if such a failure should come to light years later, it may be impossible to determine who to prosecute or even to locate former-landowners. Subsequent owners would also be faced with the formidable task of demonstrating right, title or interest under such circumstances. In some cases, titles may have substantial clouds due to this type of violation.
8. The exemption of large lot divisions from review removes from LURC review one of the factors impacting the growth patterns and the resource base of the unorganized territory of the State. Because there can be no review or planning with respect to these large lot divisions, the ability of the Commission to fulfill its legislative mandate as described in Title 12 MSRA, Section 681, "Purpose and Scope" - "to preserve public health, safety and general welfare; to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; ... and to preserve ecological and natural values" is reduced. The result is potential disjointed development of resource management areas and in effect, a form of "spot" zoning.

SUGGESTED ACTION:

Elimination of the large lot division exemption will address most of the planning, review, and enforcement concerns facing the Commission. It will enable the fulfillment of the legislative mandate as stated in the "purpose and scope" of Title 12, MSRA Section 681.

The Commission hereby states that as a requisite to fulfill its legislative mandate, the existing review exemption for large lot (40 to 500 acres) subdivisions must be eliminated. The Commission therefore requests the Maine Legislature eliminate this review exemption.

The Commission further recommends that subdivision of large lots (40 to 500 acres) which have been and will continue to be used exclusively for forest, agriculture and/or resource protection purposes be exempt from subdivision review provided they meet specific verification criteria. These criteria will be established during rule making procedures and will include verifications

such as, but not limited to, conservation easements, transferred development rights and classification under the tree growth property tax program.

APPENDIX 1
 PARTIAL LIST OF LARGE LOT (40-60 ACRE) LAND DIVISIONS
 WITHIN AND NEAR THE JURISDICTION OF THE
 MAINE LAND USE REGULATION COMMISSION
 1985-1988
 (Pre-April 19, 1988)

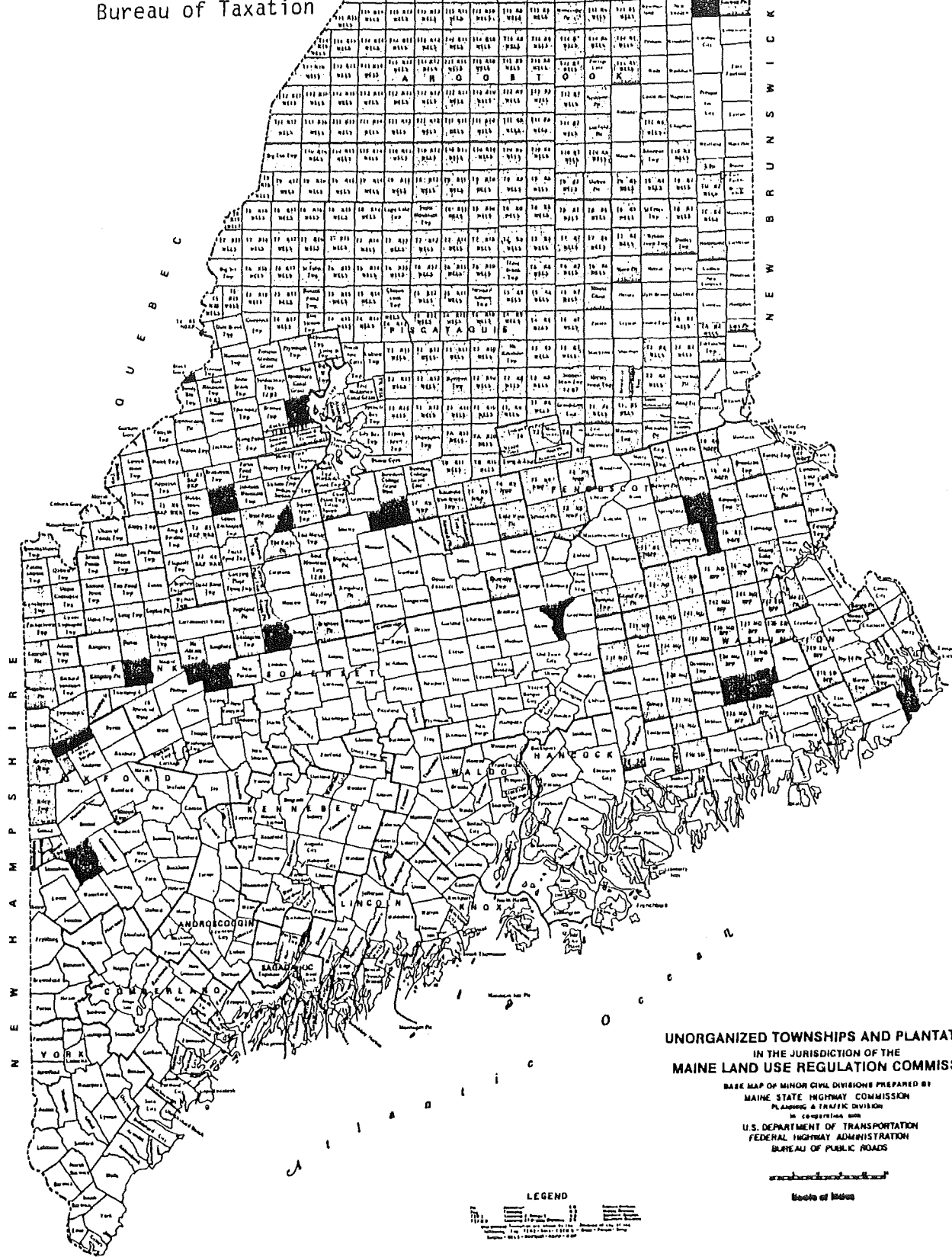
<u>YEAR</u>	<u>LOCATION</u>	<u>APPROX. # LOTS</u>	<u>OWNER</u>
1. 1985-86	Freeman Twp.	10	SST, Inc.
2. 1987	Freeman Twp.	6	Patten Corp. of Maine
3. 1986	Salem Twp.	4	SSI, Inc.
4. 1986	Concord Twp.	45	First Atlantic
5. 1987	Elliottsville Twp.	5	Patten Auction and Land Corp
6. 1987	Andover No. Surplus	5	P & P Corneliusen
7. 1986?, 87?	Sandy River Plt.	30	Patten
8. 1986-87	Tomhegan	58	T-M Corp.
9. 1987	Moxie Gore	17	T-M Corp.
10. 1987	Upper Enchanted	35	Grace Pond Realty Trust
11. 1985	Albany Twp.	12	Ellis Realty Trust
12. 1986	Albany Twp.	7	Ellis Realty Trust
13. 1987	Albany Twp.	10	JAE Realty Trust
14. 1986	Argyle Twp.	10	Herb Haynes, Inc.
15. 1985-87	Connor Twp.	29	Mary Gregor
16. 1987	Carrol Plt./T5 R1 NBPP	14	Mt. Holly, Inc.
17. 1985	T24 MD	38	Patten
18. 1986	T24 MD	20	Patten
19. 1987	T25 MD	7+	M & R Realty Trust
20. 1985	Cherryfield	23	D. Schmidt & Land Investment, Inc.
21. 1987	Deblois?	11	? (Agent: Spencer Estate 782-5152)

22.	1986	Trescott Twp.	11	Thomas Wolfe
23.	1987	Trescott Twp.	4	Quintelle Enterprises
24.	1987	Blake Gore	?	Dwane Shaw & Sedric and Marie Thomas
25.	1988	Lakeville Town	38	Sysladobsis Realty Trust
26.	1897?	Cherryfield	(4500 acres)	Patten
27.	1988	Carrying Place Twp. "Flagstaff Lake Overlook"	43	Patten Corp. Downeast
28.		Seboeis Plt.		
	1987?	Sylvan Prop. Co.-Phase I	25	Sylvan Properties Co.
	1988	" " " -Phase II	24	" " "
29.	3/88	Rangeley Plt. Bemis Road Timber Tracts	11	S.C. Noyes Co.?
30.	4/88	Lakeville Town	61	Sysladobsis Realty Trust

SOURCE: Maine Bureau of Taxation and Maine Land Use Regulation Commission files.

LURC large lot (40-60 acres)
Land Divisions 1985-1988
Partial List

Source: LURC and
Bureau of Taxation



UNORGANIZED TOWNSHIPS AND PLANTATIONS
IN THE JURISDICTION OF THE
MAINE LAND USE REGULATION COMMISSION

BASE MAP OF MINOR CIVIL DIVISIONS PREPARED BY
MAINE STATE HIGHWAY COMMISSION
PLANNING & TRAFFIC DIVISION
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS

LEGEND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Scale of Miles

APPENDIX 2

EXCERPTS

TITLE 12

CHAPTER 206-A
LAND USE REGULATION

SECTION 682. DEFINITIONS

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

1. Unorganized And Deorganized Areas.

Unorganized and deorganized areas shall include all areas located within the jurisdiction of the State of Maine, except areas located within organized Cities and Towns, and Indian Reservations.

2. Subdivision.

"Subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, or by sale of the land by metes and bounds or by leasing.

The term "subdivision" shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial

use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph.

The creation of a lot or parcel more than 500 acres in size shall not be counted as a lot for the purpose of this subsection.

The creation of a lot or parcel of at least 40 but not more than 500 acres in size shall not be counted as a lot for the purpose of this subsection except when the lot or the parcel from which it was divided is located wholly or partly within the shoreland area as defined in Title 38, section 435 and except as provided in paragraph A.

A. When 3 or more lots containing at least 40 but not more than 500 acres are created within a 5-year period from a parcel which is located wholly outside the shoreland area as defined in Title 38, section 435, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the registry of deeds, the commission and the State Tax Assessor within 60 days of the creation of that lot. Any subsequent division of a lot created from the original parcel within 10 years of the filing of the plan in the registry of deeds shall be considered a subdivision. Failure to file the plan required by this paragraph is a violation of this chapter subject to the penalties provided in section 685-C, subsection 8.*

B. The commission shall submit a report by March 15th, annually, to the joint standing committee of the Legislature having jurisdiction over energy and natural resources. The report shall indicate the number and location of lots for which a plan was filed under paragraph A and the number and location of subsequent divisions requiring review by the commission.

3. Building.

Building shall mean any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

*NOTE: Public Law 1987, Chapter 864, specified that this provision "applies to any division of land occurring after April 19, 1988, except as otherwise provided in this section. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this Act applies to any application for subdivision approval submitted after April 19, 1988.

"For the purposes of Title 12, chapter 206-A, this Act does not apply to sale or lease of lots containing 40 or more acres if a plan of those lots was filed with the registry of deeds and the State Tax Assessor on or before April 19, 1988."

APPENDIX 3
LARGE LOT DIVISIONS

CREATED WITHIN LURC JURISDICTION BETWEEN APRIL 20 AND DECEMBER 31, 1988 *

DIVISION	LOCATION	COUNTY	WATER BODY	NUMBER OF LOTS	REGISTRY FILE #	DATE FILED
Grace Pond Realty Trust	T3 R6 WELS	Somerset	Grace Pond	42	B88 242	12/30/88
				34	B88 243	12/30/88
				28	B88 244	12/30/88
				15	B88 245	12/30/88
				19	B88 246	12/30/88
Sylvan Properties	Seboeis Plantation	Penobscot	-	20	D261 88	12/30/88
Herbert Haynes	Mt. Chase Town	Penobscot	Upper Shin Pond	10	D87 88	6/2/88
Patten Corp. Downeast	Prentiss Plantation	Penobscot	-	16	D214 88	11/04/88
				30	D242 88	12/15/88
				8	D254 88	12/30/88
				13	D255 88	12/30/88
				26	D256 88	12/30/88
				31	D257 88	12/30/88
Lakeville Shores	Lakeville Town	Penobscot	Duck Lake	6	D58 88	4/28/88
				Total		331

1. H. Haynes filed plans with LURC on February 20, 1989 along with a protest that plans were not required. This matter is under investigation.
2. Patten Corporation Downeast filed plans with LURC on February 17, 1989 on these lots. D214 88 and D242 88 were filed after the 60 day deadline. D254 88 through D258 88 were filed within deadline limits.

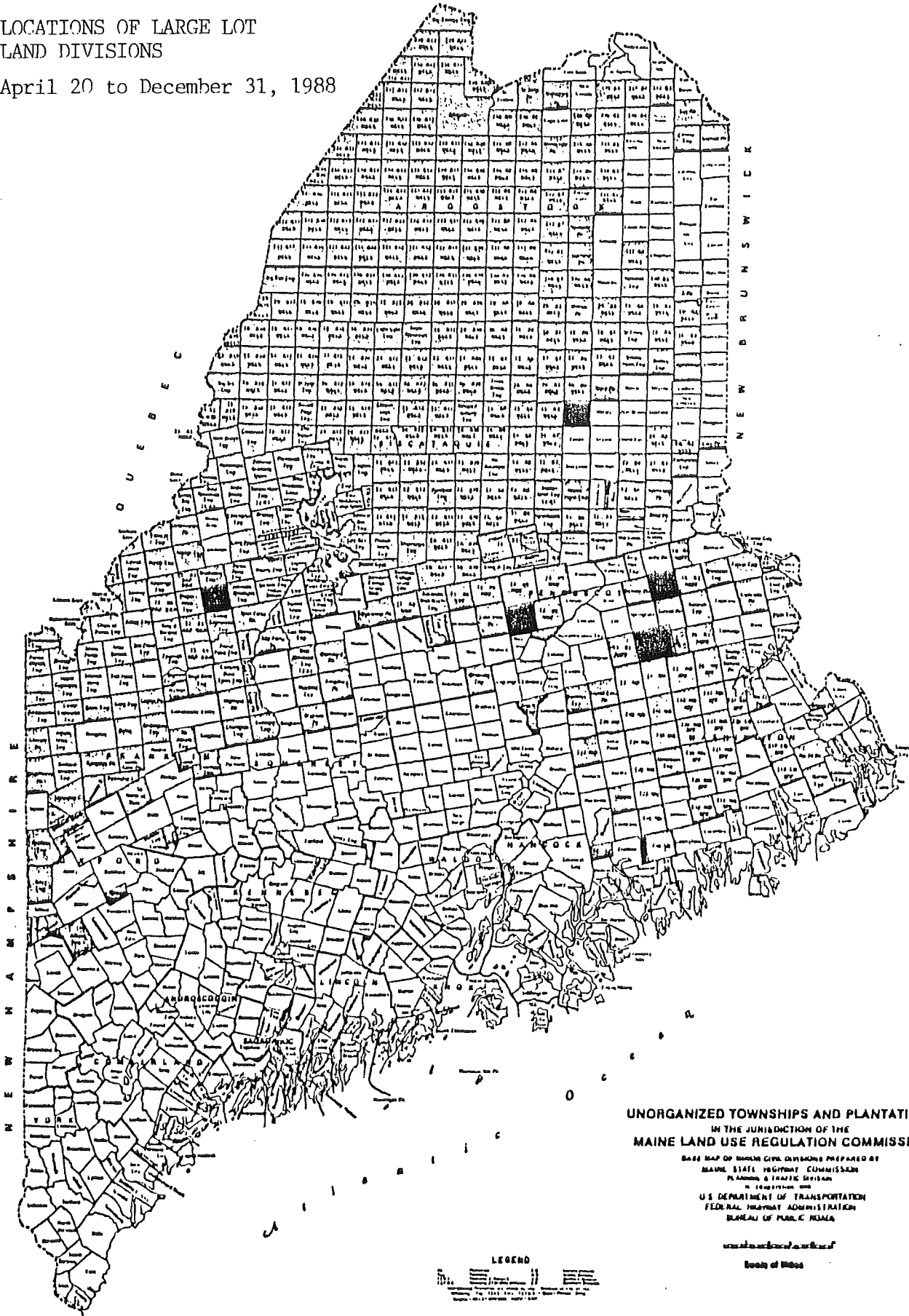
* Note: An 8 lot subdivision on Donnell Pond in T9 SD by Patten Corporation Downeast is not included here since it was exempt from subdivision review by PL 1987 Chapters 810 and 864.

A 73 lot subdivision in Lakeville by Sysladobsis Realty Trust is not included here since preliminary plans were filed with the Registry of Deeds before April 19, 1988 and final plans filed after that date.

Sources: County Registry of Deeds, Maine Bureau of Taxation, LURC

LOCATIONS OF LARGE LOT
LAND DIVISIONS

April 20 to December 31, 1988



**UNORGANIZED TOWNSHIPS AND PLANTATIONS
IN THE JURISDICTION OF THE
MAINE LAND USE REGULATION COMMISSION**

BASE MAP OF MAINE CIVIL DIVISIONS PREPARED BY
MAINE STATE HIGHWAY COMMISSION
PLANNING & TRAFFIC DIVISION
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS

unorganized townships and plantations
Scale of 1:5000

LEGEND

[Symbol]	Unorganized Townships and Plantations
[Symbol]	Organized Townships
[Symbol]	Plantations
[Symbol]	Water
[Symbol]	Highways
[Symbol]	Railroads
[Symbol]	Other