

MAINE LAND USE REGULATION COMMISSION
Department of Conservation
22 State House Station - Augusta, Maine 04333-0022
TEL (207) 287-2631 FAX (207) 287-7439

DRAFT MINUTES

REGULAR MONTHLY MEETING
Spectacular Events Center, Bangor, Maine
Wednesday, August 5, 2009 - 9:30 a.m.

COMMISSIONERS PRESENT

Bart E. Harvey, Chair	James Nadeau
Steve Wight	Edward Laverty
Gwen Hilton	Steve Schaefer

STAFF PRESENT

Catherine M. Carroll, Director	Samantha Horn-Olson, Division Manager
Scott Rollins, Division Manager	Sarah Giffen, Planning Division
Rebecca Renaud, Office Associate III	Marcia Spencer-Famous, Planning Division

OTHERS PRESENT – See Attached Sign in Sheet

*Note: Commission votes are recorded in the following order:
number voting in favor of a motion – number voting against a motion – number abstaining – number absent*

ADMINISTRATIVE MATTERS

Introductions

Introductions were made by the Commission and members of the public.

Minutes of Previous Commission Meeting

The Commission voted 6-0-0-1 to accept the minutes of the July 1, 2009 meeting as presented. The motion was made by Commissioner Wight and seconded by Commissioner Nadeau. Commissioner Kurtz was absent.

Director's Report

Catherine Carroll asked Amy Mills to give the results of a law court decision that upheld a Commission zoning and to give the legal meaning if any, to LD 413. The Commission expressed their comfort that they are operating under the statute, but that the passage of LD 413 has the Commission keeping the interests and concerns of property owners, which include those beyond the State of Maine. Audience member, Doug Denico, asked the Commission to understand why LD 413 passed. Audience members, Jim Cote and Don White said the passage of LD 413 allows the Commission to recognize landowners when redrafting the CLUP and to incorporate their comments into the document. Additionally, Catherine noted that Scott Rollins is hosting open houses at the Commission's regional offices. The first open house took place in Ashland last month. Scott will host open houses in Greenville and Rangeley later this month. Mr. Denico encouraged staff to offer feedback to the Commission on what people are saying at these outreach sessions. Scott indicated that he would brief the Commission on these meetings.

Catherine gave a preview of upcoming business and hearing events for the month of September. Mr. Denico asked that the Commission not decide today for a late September hearing on the CLUP until it is determined if the document is truly ready for public hearing.

PERMITTING AND COMPLIANCE MATTERS

BP 10098-A Smith

Scott Rollins presented an appeal of a staff denial and reviewed the staff recommendation to uphold the denial. Mr. Smith told the Commission that a reconstruction at 75 feet from the waterbody would cause the parking area and a propane tank to be in front of the reconstructed camp. The Commission thought the land is suitable for relocating the parking area and expressed the need to achieve conformity to the extent possible as reflected in their standards. Moving structures and limiting clearing of vegetation along lakeshores have positive effects in the long term from a water quality standpoint said the Commission

The Commission voted 6-0-0-1 to accept the staff recommendation. The motion was made by Commissioner Hilton and seconded by Commissioner Laverty. Commissioner Kurtz was absent.

EC09-025 Soucy

Scott Rollins presented a recommendation to confirm violations of reconstruction and to authorize staff and the Attorney General's office to continue working on a resolution. The staff explained that Mr. Soucy was notified that he could do "normal maintenance and repair" activities without a permit. However, when it turned out that the structure could not be made livable without reconstruction (which requires a permit) Mr. Soucy did such work without a permit. The Commission explored with staff and Mr. Soucy whether this was a flagrant and egregious violation or if he had a full-faith intent to do what staff said he could do. The Commission conceded that there are violations on the property that need to be addressed within 30 days and to have the staff and the Attorney General's Office work with Mr. Soucy to resolve matters. The Commission suggested that staff generate a guidance document on what is considered "normal maintenance and repair" activities.

The Commission voted 6-0-0-1 to accept staff recommendation. The motion was made by Commissioner Laverty and seconded by Commissioner Wight. Commissioner Kurtz was absent.

DP4830 - TransCanada Maine Wind Development, Inc. request for public hearing – Marcia Spencer-Famous provided a recommendation on request for public hearing on the proposed installation of an anemometer tower on Sisk Mountain in the Chain of Ponds area. The Commission asked about the need for a wide access way to the mountaintop to install a tower, why geotechnical boring work was proposed in advance of a windpower development, and if this is now the standard for anemometer installations. The Commission also had staff clarify informational issues, including review agency comments and recommendations can be addressed in the application review process, and that a public hearing would not shed new light on the proposal. The applicant's representative, attorney Juliet Browne indicated that the applicant is specifically requesting a permit for the installation of the tower and an access way to haul equipment for purposes of collecting data at the Sisk Mountain location to determine the exact siting of turbine installation. There was discussion on what constitutes a road, a trail, a clearing and that the proposed access way does not meet the definition of road in the Commission's standards.

Attorney Rufus Brown for Friends of the Boundary Mountains asked that there be no decision on the tower application until after a public process on the expansion of the expedited area, stating that this is the first application since the windpower act. He said it is not business as usual and this application should not be processed under the old regime. He stated that a soils survey in the application has not been reviewed by the Maine State Soil Scientist and therefore the application is deficient. The Commission responded that the matter before the Commission is whether there is a

need for a public hearing to generate information that cannot be created in a regular review process. Ms. Browne stated that the Friends of the Boundary Mountains are asking the Commission to apply a different standard if a project is outside the unexpedited zone. She noted the windpower law does not deal with anemometer tower installation. Additionally, the soils information submitted in the application is beyond application submittal requirements for tower installations.

The Commission voted 6-0-0-1 to accept staff recommendation on the request for public hearing on an anemometer installation. The motion was made by Commissioner Wight and seconded by Commissioner Schaefer. Commissioner Kurtz was absent.

DP 4830 - TransCanada Maine Wind Development, Inc., anemometer installation

Marcia Spencer-Famous provided a description of the proposed anemometer installation at the time she provided a recommendation for the public hearing request.

Attorney Amy Mills said there is no legal or regulatory provision that changes the statutory framework for anemometer tower installation in both the expedited and unexpedited areas. She noted that the Commission's standards still allow this as a use.

The Commission voted 5-1-0-1 to table staff recommendation, pending resolution of larger policy questions regarding expedited and unexpedited areas and to resolve it with speed. The motion was made by Commissioner Laverty and seconded by Commissioner Nadeau. Commissioner Hilton voted against the motion. Commissioner Kurtz was absent.

The Commission after deliberating and voting on the petition for expanding the expedited area voted 6-0-0-1 to remove from the table the decision for the installation of the anemometer tower. The motion was made by Commissioner Wight and seconded by Commissioner Schaefer. Commissioner Kurtz was absent.

The Commission then voted 6-0-0-1 to accept staff recommendation on DP 4830 TransCanada Wind Development, Inc., request for installation of an anemometer tower. The motion was made by Commissioner Wight and seconded by Commissioner Hilton. Commissioner Kurtz was absent.

Staff, Maine Land Use Regulation Commission, changes to Chapter 10

Marcia Spencer-Famous provided a recommendation on request to initiate rulemaking changes to Chapter 10 by posting for public comment. There was no discussion.

The Commission voted 6-0-0-1 to accept the staff recommendation to post to public comment. The motion was made by Commissioner Wight and seconded by Commissioner Laverty. Commissioner Kurtz was absent.

TransCanada Maine Wind Development, Inc., expand expedited area

Marcia Spencer-Famous provided a staff recommendation on a request to initiate rulemaking to expand an "expedited area." The Commission asked about the subtleties of the rulemaking and LURC's rezoning process. The Commission also discussed the notion of an alternative approach for receiving input from the public on the intent of the windpower law and how to interpret the criteria for expanding an expedited area. The Commission expressed a desire to not have projects such as this come to them incrementally, but rather review expanding expedited areas in a comprehensive fashion. The Commission expressed a desire to have, during public hearing, a thorough examination of these issues and perhaps make recommendations to the legislature for additional

rule changes in order to set up a well-organized process that sets good precedence for future projects.

Audience member Jen Gray of Maine Audubon spoke to the timing of public hearing and asked the Commission not to schedule a hearing until October at the very earliest to be sure adequate information has been evaluated to produce comments at a hearing. Audience member Pete Didisheim of the Natural Resources Council of Maine talked about the task force process in drawing wind resource lines with an understanding from the task force that these lines would be adjusted over time as wind resource information develops. He said that he supported a public hearing as a process to interpret the criteria for expanding an expedited area and to make judgment on the petition based on interpretation.

The Commission voted 6-0-0-1 to accept staff recommendation to initiate rule making on expanding the expedited area. The motion was made by Commissioner Laverty and seconded by Commissioner Schaefer. The Commission asked staff to bring back a hearing schedule.

PLANNING MATTERS

Flood Insurance Rate Map for Milton Twp. Oxford County

Samantha Horn-Olsen presented a staff recommendation to adopt an updated FEMA map of a flood prone area referenced in Appendix E of the Commissions Chapter 10. There was minor discussion.

The Commission voted 6-0-0-1 to accept the staff recommendation. The motion was made by Commissioner Wight and seconded by Commissioner Nadeau. Commissioner Kurtz was absent

Comprehensive Land Use Plan (CLUP)

Revisit Chapter 1 – Sarah Giffen highlighted that the recent legislative change to the Commission’s statutory “*purpose and scope*” was inserted. She revisited the paragraph entitled “*Meeting this Vision*” after the Commission’s review of Chapter 4 to assure language in this paragraph and Chapter 4 were relevant and appropriately worded. She noted that the only change was switching the focus to the Commission’s ability to guide locations of lot development, which is more in concert with the theme in Chapter 4. Sarah covered the development goals and policies at great length as she made substantial revisions to this specific section after the public workshops. This section uses a lot of language from the 1997 plan that was found to be appropriate and relevant. The Commission asked Sarah to review paragraphs 3-A, 3-B & 3-C and clarify the language in these paragraphs to express the concept of recognizing that not all areas of the jurisdiction are the same and that some areas are inappropriate for development and some areas are appropriate for development. Commissioner Hilton suggested adding language in the site review section that expresses such standards for determining inappropriate and appropriate development, how the standards affect existing communities and neighborhoods, and the natural environment. She also recommended that staff research whether adding this additional language conflicts with the existing statutory reference that speaks to harmonious fit within existing natural environments before making modifications. The Commission suggested that language be added in the section on conservation goal and to add a policy that the Commission shall work cooperatively with conservation organizations as well as landowners. Sarah completed her discussion on Chapter 1 saying she would have the forestry goals and policies section completed for next month’s meeting. She also handed out changes to the energy goals and policies, which did not make last week’s mailing.

Changes to Chapter 4 - Sarah made the minor changes as directed by Commission. There was no discussion.

Changes to Chapter 7 - Sarah began the discussion on proposed implementation measures for development and natural resource protection. The commission restated their satisfaction that the draft language clearly addresses visual impact of hillside development to be related to structural

development and not to forestry activities. Additionally, the Commission asked if the guidance documents promoting landscape scale habitat management, included wildlife corridors and mitigation for road mortality. The language in this particular section to Chapter 7 includes a discussion on the Commission's desire to refine its regulatory framework for better guiding development and identifying areas most appropriate and least appropriate for development. The section offers new thinking for the Commission on where development should be located and suggests strategies from concepts lifted from Chapter 4.

Sarah moved on to the section on land use inventory expressing the Commission's desire to improve on collecting and keeping land use data in the future. The Commission noted the section as capturing "lessons learned" from the past application of land use practices and that the draft does not preclude or limit the incorporation of new approaches in land use planning. The Commission sees the section as identifying the major priorities in implementing the concepts in the new CLUP, but this time to be mindful of taking on the administrative process of periodically reviewing and updating implementation priorities.

Next Steps - Sarah described furthering the adoption process by bringing back a document ready for public hearing proposed for late September. The Commission specifically requested that the document be available to the public at least a month before public hearings and to allow a reasonable post hearing comment period. Audience members, Mr. Cote and Sarah Medina, both expressed the people's need for more time than one month for a full review of the document prior to hearings.

Comments from audience members - Mr. Denico asked how the Commission wanted to proceed with the information submitted by the Maine Forest Products Council (MFPC) on the positive aspects of land use resulting in fragmentation and ownership changes. The Commission asked the staff to comment on the information submitted, in which the staff found the information useful and that there is a pattern of land use that should be flagged for possible implications for continued forest management and land use development patterns. Staff said a parcelization pattern, whether innocuous or not and for which the Commission has little control, has been substantiated from literature distributed by former panelist presentations on the topic and from Maine Forest Services publications. Mr. Denico pointed out that smaller parcels are managed by landowners that have been managing land for years and that wood harvesting trends in the unorganized areas are alive and well. He said the Commission's policies have greatly influenced landowner decisions on parcelization. Mr. Denico went on to ask that the CLUP document refer to economic development resulting from forestry, farming and other activities, and that it make an attempt to codify what's going on with "2in5" activity. He requested that the Commission add a policy to have staff collaborate with state economic development commissions to see what the Commission and these economic entities can mutually do, and to add a policy in the forest resources section that makes it known that roads are dependent on forest management and vice versa.

The Commission expressed their concern about the public use of private roads. Mr. Denico said that the Commission should be able to address where the concerns are in a permit for development and forestry activities in a PMA zone. In the plant and animal resource habitat resources section add the word "voluntary" process for landscape habitat planning. Insert a policy that the Commission supports a "right to practice forestry" act.

Mr. Denico made a couple suggestions for improving the policies in the recreational resources section in reference to uses on private and public resources. He suggested adding a policy that creates a feedback mechanism to evaluate how things are going in the jurisdiction with enforcement activities. He requested to insert the language on page 146 of the current plan regarding landowner consent, adding in the inventory needs a section capturing data with global positioning units, and to provide information in the future that is accurate and available. Finally, he noted that the timing on implementing the new CLUP should be put back and that the Commission should document what they have accomplished.

Ms. Medina expressed her appreciation for the Commission's changes to the draft but still has some concerns especially over the perception of the misuse of information, information inconsistencies, and the source of parcel data. There is an ongoing premise that lot parcelization is a problem. She disagrees and asked the Commission to ask themselves if parcelization activities are a problem. She does not see this activity as a problem yet some portray it as extensive. She requested that the document specifically allow opportunity for unique land divisions to take place that make absolute sense without triggering subdivision. She provided an example of a previous situation that made common sense to do, but that the regulations prohibited it from happening due to subdivision rules. She then provided written documents on forest transportation and public use of private lands to the Commission hoping that the information would be used to embellish the forestry section of the CLUP. The Commission thanked Sarah M. for her involvement to make the plan better. Sarah M. said the process has been productive and sees the collaborative effort with user groups as an opportunity for further dialogue with landowners and regulators. Mr. White thanked the staff for making various modifications to the draft and asked the Commission to insert throughout the draft the notion of the Commission's statutory purpose and scope that addresses balancing the benefits to Maine's residents, property owners and visitors. The Commission expressed their thanks to Mr. White on his involvement in making this an improved document. Audience member, Sally Stockwell of Maine Audubon Society, thought the Commission might find parcel data from a period between 1970 and 1996 useful in exploring land use parcel trends and that the results may be different from the results depicted in the MFPC's recent submittal

OTHER MATTERS

Third Party Inspector and Irrigation

Marcia Spencer-Famous offered information that the Commission had previously requested. The Commission expressed their appreciation for Marcia's work on researching these topics, and specifically remarked on the fact that the agency has very little ordering power and perhaps the State should consider giving the Commission the ability to issue ceases and desist orders as most Federal agencies have that authority.

Commissioner Comments

Staff and Commission discussed a tentative September schedule for a Plum Creek decision meeting and CLUP hearings. Staff would firm up a schedule for the Commission's review on the 2nd.

The meeting was adjourned at 4:55pm

*Respectfully submitted by
Rebecca Renaud, Data and Document*

Date:

8/5/09

Maine Land Use Regulation Commission
SIGN-IN SHEET

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NAME	AFFILIATION
Tobey Williamson	TransCanada / Barton + Gregor
Dana Valleau	TransCanada / TRC
Wayne Smith	
Jim Soucy	
Scott Koller	LVRC
Sarah Giffen	LVRC
Don White	Prentiss + Carlisle
Mike Lane	Pret:
Helen Edmonds	Pierce Atwood
Margie Davis	Preti Glalerty
Juliet Browne	Verrill Dana
Jess Gray	Maine Audubon
Dain Trafton	Friends of the Boundary Mts
Tete Dicksheim	Natural Resources Council of ME
Jeff Kuffner	Pen
Kelly Boden	Verrill Dana
Tom Patterson	TE
Christine Cinnamon	TransCanada
John Rust	Maine Professional Guides Assoc.
Sally Stockwell	Maine Audubon
CYNTHIA WELLS	Washington Co. property owner

