



STATE OF MAINE

JOHN E. BALDACCI
GOVERNOR

DEPARTMENT OF CONSERVATION
LAND USE REGULATION COMMISSION
18 ELKINS LANE - HARLOW BUILDING
22 STATE HOUSE STATION
AUGUSTA, ME 04333-0022



PATRICK McGOWAN
COMMISSIONER

MEMORANDUM

November 21, 2009

To: Commission Members

From: Sarah Giffen, Senior Planner
Susan Burns, Senior Planner
Diana McKenzie, Senior Planner
Marcia Spencer-Famous, Senior Planner
Tim Beaucage, Senior Planner
Samantha Horn-Olsen, Planning Division Manager

Re: Comprehensive Land Use Plan - Summary of Public Hearing Comments

The Commission held public hearings on the Comprehensive Land Use Plan revision this fall. The Commission hosted three hearing sessions in Augusta, Bangor and Presque Isle on September 28th, 29th, and 30th respectively in order to receive verbal testimony. The record for submitting written testimony opened on September 9, 2009, remained open until October 21, 2009, and was open for an additional seven days until October 28, 2009 for receiving testimony in rebuttal to previously filed testimony. You have received an audio file of all verbal testimony as well as a copy of all written testimony, under separate cover. Attached to this memorandum is the staff prepared summary of public comments which includes both verbal comments made at the public hearing sessions as well as the written comments.

At the December 2nd Commission meeting staff will: refresh your memories on the comprehensive planning process to date, present the summary of public comments, discuss the major themes staff discovered in reviewing public comments, recommend changes based on these major themes, and discuss next steps. The remainder of this memorandum outlines each of the above items in more detail, focusing primarily on the major themes and proposed changes to the plan.

Refresher on Process to Date

2005 – 2007: Preliminary Research and Drafting

The Commission began research related to the revision of the Comprehensive Land Use Plan in 2005. As part of this effort the Commission hosted numerous panel discussions on specific topics, and staff began the process of collecting and analyzing information about the jurisdiction. From this work, staff wrote sections of a preliminary draft of the plan. Each of these sections was brought to the Commission in order for the Commission to discuss specific issues, raise questions for further research, and give feedback to the staff. The staff revised these sections in response to Commission comments. In November of 2007, the Commission authorized release of the complete workshop draft of the plan for public comment.

Winter/Spring 2008: Public Workshops

Commission staff hosted a series of informal public workshop sessions on the draft of the plan in the spring of 2008. Between April 27th and May 8th, 2008, workshops were held in Fort Kent, Presque

Isle, Millinocket, Greenville, Rangeley, Augusta, Portland and Machias. Approximately 725 people attended these workshops. In addition hundreds of written comments were submitted by the June 6th deadline.

Winter/Spring 2009: CLUP Working Group

The Commission held a facilitated working group process to discuss specific issues in the Plan before undertaking any further redrafts and proceeding to formal public hearings. The working group discussed what appears to be the central issue in the draft of the Plan: development data, trends, issues, and possible tools for directing development. The Commission participated in these meetings. The Commission staff attended these meetings and served as a resource for information but were not active participants. The meetings were open to public observation.

Spring/Summer 2009: Revisions

The Commission revised the plan based on information gathered both during public workshops as well as from the working group process. Once all sections of the plan were revised, the Commission proceeded to the formal public hearing phase.

Fall 2009: Public Hearings

The Commission hosted three hearing sessions in Augusta, Bangor and Presque Isle on September 28th, 29th, and 30th respectively in order to gather verbal public testimony. The record for submitting written testimony opened on September 9, 2009. The record remained open until October 21, 2009 and for an additional seven days until October 28, 2009 for receiving rebuttal testimony to previously filed testimony. Forty-eight people testified at these hearing sessions and 452 written comments were submitted.

Summary of Public Hearing Testimony

Staff has prepared a summary (enclosed) of the range of oral and written comments submitted by members of the public on the draft Comprehensive Land Use Plan by the Commission's established October 28, 2009 filing deadline. The document is neither a comprehensive summary of written and verbal statements gathered as part of this public hearing, nor a substitute for the Commission's review of the complete public comment record. Rather, the document presents the key themes that the staff identified in reviewing the public comments, and serves as a basis for feedback that the staff wishes to gather from the Commission prior to preparing a final draft of the Plan for the Commission's consideration.

Copies of all public comments and the audio files of all public hearing sessions have been provided to the Commission under separate cover.

Major Themes and Staff Responses

In addition to the attached summary of public testimony, staff wish to provide you with the following discussion on the major themes expressed in the comments. Below, we also provide you with our responses to these comments, and where appropriate, recommend proposed changes to the Plan.

Please note that the staff responses and recommendations set forth below are not intended to be exhaustive. Rather, they represent the staff's view of how to address the major themes we discovered in the public testimony. Consequently, the staff responses in some cases do not include specific recommended language changes to the Plan but rather indicate the general direction staff suggest the Commission take to respond to the major themes. Furthermore, staff acknowledge that many other specific language changes to the Plan may be appropriate to fully respond to the public testimony received.

At the December 2nd meeting, staff will be looking to the Commission for feedback on whether we have accurately captured and described the major themes contained in the public testimony and for guidance on our recommended changes. After receiving direction from you on these recommendations, as well as any other revisions that you would like to see made to the Plan, we will revise the Plan, with the goal of presenting all such revisions to you in January for your full consideration.

COMMENTS ON TOPICS OF RELEVANCE TO MULTIPLE SECTIONS OF THE PLAN

Balancing Public and Private Interests

Major themes: There were two opposing views expressed regarding the concept of ‘balance’ in the Plan. One view was that the concept of ‘balance’ needs to be strengthened in the Plan. (E.g., The present version of the Plan does not live up to the themes identified by the working group of finding balance between maintaining landowner value and protecting public interests and the Plan too frequently focuses on protection of only those values that relate to natural resources or undeveloped characteristics. The Plan should be revised to reflect the need to achieve balance between the principle values and should not imply that all natural resources must be protected against all impacts.) The other view was that the Plan as currently drafted is balanced. (E.g., The draft Plan addresses the challenges of fair planning and regulation of private lands that have had so many public expectations put upon them, while trying to retain the values that make the region unique.)

Staff response: While staff feel that the Plan is balanced with regard to public and private interests, we recommend that the impression that ‘all natural resources must be protected against all impacts’ be rectified by adding a sentence at the beginning of Chapter 1 - goals and policies - to the effect that the Commission must constantly weigh and balance the various development and natural resource goals and policies against one another when making decisions.

Residents and Landowners

Major themes: The Plan must do more to recognize the interests of residents and landowners. The change to LURC’s statutory purpose and scope that the jurisdiction should be managed to “benefit property owners and residents of the unorganized and deorganized townships of the State” does not appear to be codified in the Plan. By way of example, in Chapter 1 there are several places where ‘residents and property owners’ in the jurisdiction should be mentioned rather than just ‘the people of Maine’.

Staff response: The Commission has acknowledged and included at the beginning of the Plan the language of its statutory purpose and scope: “*The Legislature declares it to be in the public interest, for the public benefit, for the good order to the people of this State and for the benefit of property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and well-managed multiple use of land and resources*”. While staff feel that there are places in the Plan where referring broadly to the Commission’s constituency is appropriate, there are other places where staff recommend that the Plan be revised to mirror the language in the purpose and scope and specifically mention landowners and residents. For example, we recommend that on page 1-3, broad goal #1 be revised to read: “Support and promote the management of all the resources, based on the principles of sound planning and multiple use, to enhance the living and working conditions of the people of Maine, including property owners and residents of the unorganized and deorganized townships, to ensure the separation of incompatible uses, and to ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resources values of the jurisdiction”.

Property Rights and Land Value

Major themes: There were two dissenting views expressed on property rights as they relate to the Plan. One view was that the Plan bypasses certain property rights as evidenced by the deletion of language from the Implementation Chapter of the 1997 Plan: “For lands found to be appropriate for increased protection, the Commission, working with landowners, shall promote appropriate conservation measures – regulatory and nonregulatory. Measures used to advance this policy shall be adopted only with the agreement of affected landowners.” The other view was that perceived land values or perceived effects to land values should not drive the Commission’s planning process.

Staff response: It is indisputable that the Commission regulates private land use and that regulations sometimes impact land value and property rights. However, as outlined in the Commission’s enabling legislation, “*The Legislature declares it to be in the public interest, for the public benefit, and for the good order of the people of this State and for the benefit of property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and well-managed multiple use of land and resources.*” The Commission seeks legal counsel from the Attorney General’s office on all decisions to insure we are fulfilling this directive and not exceeding our regulatory authority in this regard. The staff does not feel that the Plan bypasses property rights, but rather encourages cooperation with landowners whenever possible and recognizes the special role that landowners play.

Question: Does the Commission wish to reinstate the language from the 1997 Plan outlined above?

Terminology and Tone of the Plan

Major themes: There were two opposing themes expressed regarding the terminology and tone of the Plan. One view was the Plan is overburdened with language that seeks to protect and preserve the jurisdiction as an undeveloped, natural or remote place best suited to traditional or primitive pursuits. (E.g., The overall tone of the Plan is preservationist and falls short as a guiding document of privately owned land.) The opposing view expressed was that words like ‘wildlands’, ‘primitive’, and ‘remote’ have been used to describe the North Woods since 1967 when the first legislation was crafted to create what would become the Land Use Regulation Commission and that these words accurately described the jurisdiction 40 years ago and they accurately describe the jurisdiction still.

Staff response: Staff does not feel that the current Plan has a preservationist tone but rather seeks to strike a balance between land uses and between private and public interests. We recommend retaining terms such as ‘primitive pursuits’, ‘remoteness’, and ‘relative absence of development’ in the Plan. These terms have in fact been used in all previous comprehensive land use plans. Many of these terms are included in the principal values as defining and important characteristics of the jurisdiction. While the Plan recognizes the value of these characteristics it has also been revised to more fully highlight many of the other values of the jurisdiction.

Economic Development

Major themes: There were several themes expressed regarding economic development and the Commission’s role with regard to economic growth. One view was that the Plan is an obstacle to economic development and that it treats economic development as a threat rather than an opportunity. Another view was that the Plan should do more to broaden the Commission’s charge with regard to economic development. Yet another view was the Plan must strike a balance between economic activity, recreational pursuits, public access, and environmental concerns. And finally, the view that the Commission is a regulatory agency empowered to provide sound planning, zoning and subdivision control and is not, nor was intended to be, an economic development agency was also presented.

Staff response: While staff acknowledge that the Commission is not an economic development agency, we recognize that the policies and decisions of the Commission have a bearing on the economic activities and opportunities within the jurisdiction. While it is not necessarily the Commission's role to promote economic development, it is the Commission's responsibility to provide for economic opportunities. Previous drafts of the Plan have been revised in an attempt to make the above points clear. Revisions included, by way of example, providing for a more comprehensive characterization of the present economy of the jurisdiction (the natural resource-based economy, the tourism and recreation-based economies, the economy surrounding second home development, etc.). As a land use planning entity, the Commission's role in supporting a vibrant and healthy economy in the jurisdiction involves considering the appropriate location of various land uses (e.g., the locations where they will have the greatest benefit to the economy with the least impact to other sectors of the economy and resources). Staff believe that the Plan's language and objectives accurately convey the Commission's role in this regard.

Conservation Efforts

Major themes: There were two major points expressed in testimony regarding conservation efforts. The first was that large scale conservation easements were an important trend taking place in the jurisdiction and that the Plan still does not adequately acknowledge the significant contributions and impacts of these efforts, particularly with regard to their implications for continued forest management and recreational opportunities as well as their role in preventing or limiting development in certain areas. The second point expressed in testimony was that while privately negotiated easements can be an important tool in planning, they are not a substitute for sound comprehensive planning.

Staff response: Staff agree that the scale of conservation efforts that have taken place in the jurisdiction over the last decade is an unprecedented and very significant trend. We recommend clarifying or expanding on language in the Plan to make it clear that the Commission acknowledges this important trend. We also recommend updating the data and figures on acres of fee and easement conservation lands in the jurisdiction in order to make this information as current as possible. However, staff does not agree that recognition of these important land conservation trends precludes the need to identify and discuss issues surrounding forest management, recreational opportunities, or the location of development. Staff feel that the Plan appropriately articulates both the Commission's continued support of conservation efforts and the Commission's commitment to undertaking its own sound comprehensive planning. To further emphasize this sentiment, we recommend adding language to the effect that the Commission will consider information that is available about conserved lands when initiating planning and zoning activities.

Stylistic and Procedural Comments

Major themes: There were several themes expressed that fell under the umbrella of stylistic and procedural comments.

1. The Plan needs to be edited so that it is presented in a more uniform voice. There are numerous sections within the Plan that are contradictory.
2. The Plan revision process should be more timely and less resource dependent.
3. The Plan should be more clear and specific with regard to the description of desired scale of activities

Staff response:

1. Staff recommend that after all major revisions have been made to the Plan that staff will review the entire Plan to ensure that it is presented in a uniform voice and that any contradictory language is eliminated.
2. Staff agree that the revision process is time-consuming and resource dependent. However, we feel that good planning – i.e., planning that is inclusive and considerate of all who wish to

- participate -- demands a significant expenditure of both time and resources. Both with this project and other planning initiatives, we strive to balance our desire to be efficient with the equally important objectives of conducting legally sound, fair and transparent proceedings.
3. Staff suggest that the Plan be revised wherever possible while recognizing that the Plan serves as a broad policy document and that in many cases the specificity of various initiatives are more appropriately codified in subsequent rulemaking.

COMMENTS ON TOPICS OF RELEVANCE TO SPECIFIC SECTIONS OF THE PLAN

Chapter 1. Vision, Goals and Policies

Major themes: There were several themes, including opposing views on the same theme, on Chapter 1- Vision, Goals and Policies.

1. The vision and principal values are:
 - a. Supported.
 - b. Not supported on the basis that these values will damage the economic opportunity of landowners and residents of the region.
2. The Plan should be revised to remove the weight on ‘remoteness’ as a principal value to be preserved at all costs. Remoteness is not a value – it is simply a characteristic.
3. Broad Goal #2 should be restated to include reference to ‘multiple use’ outdoor recreation rather than ‘nonintensive’ outdoor recreation.
4. There should be a fourth broad goal that speaks to maintaining the value of private property and economic vitality.

Staff response:

1. The principal values outlined in the Plan are essentially the same as those expressed in the 1997 Plan and previous plans. However, in response to comments on previous drafts, the vision and principal values have been revised to specifically reference the economy of the jurisdiction and the state in several places. The Commission is supportive of appropriately located economic development. Staff recommend retaining the vision and principal values as drafted.
2. Staff recommend retaining the fourth principal value and its reference to remoteness as follows: “Natural Character, which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers. Remoteness and the relative absence of development in large areas of the jurisdiction are perhaps the most distinctive of the jurisdiction’s principal values, due mainly to their increasing rarity in the Eastern United States. These values may be difficult to quantify but they are integral to the jurisdiction’s identity and to its overall character.”
3. Staff recommend rewriting the broad goal #2 on page 1-3 to read: “Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, ~~nonintensive~~ outdoor recreation and plant and animal habitat.”
4. While staff recognize that the policies and decisions of the Commission have a bearing on the economic activities and opportunities within the jurisdiction for the reasons outlined above (*see* “Economic Development” discussion), we feel it is inappropriate and inconsistent with the Commission’s statutory purpose and scope to include a fourth broad goal that speaks to maintaining the value of private property and economic vitality. The broad goals in prior comprehensive land use plans have mirrored the Commission’s statutory purpose and scope, and staff feel that this should continue to be the case.

Chapter 4. Development – Data, Trends, and Issues

Major themes: There were several themes, with opposing views expressed on some of these themes, regarding the data, trends, and issues outlined in the development chapter.

1. LURC should collect better land use data.
2. Development is:
 - a. A threat to the North Woods and the Plan should address this issue. A dispersing residential development pattern will harm the unique values of the unorganized territories and could result in a loss of Maine’s quality of place, erosion of the unique economic and cultural role of the jurisdiction, and degradation of many high value natural resources.
 - b. Not uncontrolled, is not a threat, and the Plan should calm such rhetoric. The Plan continues to paint a negative and untrue picture of uncontrolled development. The Plan should acknowledge that development as measured by building permits for new dwellings has been declining for years, and that most of it occurs along the rim within a mile of paved roads and organized towns. The average rate of development in the interior is one dwelling per township per decade.
3. Changes in landownership:
 - a. Increase pressure for development and this is an issue that the Plan should acknowledge.
 - b. Are inaccurately discussed in the Plan, particularly with regard to implications for land use patterns. Statements that imply or outright claim that TIMOs and REITs inherently have a short term outlook with respect to land management and are more profit-motivated than industrial owners are not accurate. The implication is the landownership changes are negative.

Staff response:

1. Staff feel that this concern has been addressed in the Plan. The Plan states that while a land use inventory would provide valuable information, the reality is that we do not currently have such an inventory. The Plan states that collecting better land use data, perhaps in the form of a land use inventory, is one of the Commission’s top priorities in the coming years and is listed in Chapter 7 - Implementation. Until then, the Plan’s reliance on permitting data to represent the demand for and location of development is sound.
2. Staff believe that the Plan has accurately identified and described ‘location of development’ as the central issue in the Development Chapter. The Plan acknowledges that the number of new dwellings permitted in the jurisdiction over the last 30 years does not represent a large number. As articulated in the Plan, the Commission’s concern lies not with the amount of new development permitted in the jurisdiction but rather with the location of this development.

With regard to location, the Plan acknowledges that 88% and 79% of the new dwellings have been located within townships that are within 1 mile of a public road and in the fringe of the jurisdiction respectively. However, the Plan also acknowledges that only 50% of the new dwellings were located in townships within 12 miles of a service center and while the amount of development occurring in the interior might not be of concern today, the incremental impacts of this trend if continued into the future may become a concern.

The Plan recognizes that there are dissenting opinions regarding the degree to which the location of development is perceived as a problem. However, the Plan has identified the location of development as the central issue for a number of reasons. Because no one knows precisely what the future holds, what pressures will or will not exist, or where demand for development will or will not occur, we would be remiss in our responsibilities not to

highlight the limitations of the Commission’s ability to address whatever pressures arise in the future, particularly with regard to its ability to guide development and thus ensure the continued multiple uses of the jurisdiction.

Exact language from the Plan reads:

“The Commission has concluded that the principal development issue is not the amount of development taking place in the jurisdiction, but where it is located. This conclusion is based on analysis of the pattern and impacts of development that has occurred within the jurisdiction since 1970 and evaluation of the effectiveness of the Commission’s policies and regulations in protecting the principal values of the jurisdiction. The most important finding from evaluation of these development trends is not indisputable evidence of lost values, but identification of a development pattern that is not conducive to the long-term protection of these values. Further, the Commission believes considerable opportunities exist for refinements to its approach that would promote a more sustainable growth pattern.”

“Thirty-five years of Commission permitting data illustrate a development pattern that is more dispersed today than it was in 1970. The impact of over 20,000 dwellings distributed across 10.4 million acres in the jurisdiction and the degree to which the location of this development has eroded the jurisdiction’s values – in interior or other areas – is open to debate. There will always be honest disagreement about the extent of the problem. The most important finding from 35 years of data is not indisputable evidence of lost values, but identification of a development pattern that if continued into the future is not conducive to the long-term protection of the jurisdiction’s values. Two things are clear: (1) the Commission’s existing rules are inadequate to effectively direct development to appropriate areas; and (2) the factors driving development pressures will continue in coming years. Consequently, changes to the Commission’s regulatory framework as well as actions by other parties to better direct development will determine whether the jurisdiction’s principal values will be maintained.”

Staff recommend that the Plan continue to state that: (1) the Commission is not opposed to development in the jurisdiction; (2) the Commission does not believe that preserving the principal values of the jurisdiction means closing it off to all future development; (3) the Commission does believe that part of maintaining the principal values and the cultural, environmental, and economic vitality of the jurisdiction requires planning for appropriately sited development; and (4) the Commission is committed to locating development in areas where it can provide the greatest benefit to local communities and economies with the least impacts to other uses and resources of the jurisdiction.

3. Staff feels that the discussion on ‘changing number and types of landowners’ in the jurisdiction and questions raised regarding implications for land use is sound, and makes no further recommendations on this discussion.

Page 4-10 of the Plan reads:

“The change in type of owner has brought some subtle, yet significant changes to landowner management objectives in some areas of the jurisdiction. Industrial owners historically held timberland to maintain a steady flow of wood to their paper mills, which were their primary asset. New financial investors such as REITs and TIMOs generally view the timberland itself as the primary asset, which they manage to produce income. Income can be produced through timber sales, sale or lease of recreational or

conservation lands, natural resource extraction and other methods. Parcelization is one strategy for taking advantage of land price differentials between large and smaller timberland properties and producing income. Larger properties sell at lower prices than smaller properties, so acquiring large properties, so acquiring larger properties, dividing them into smaller properties, and selling them for a higher per acre price can generate profits. This practice is a concern if it drives up prices for timberland to levels that cannot be supported by forestland revenues.”

Chapter 4. Development – Guiding Development

Major themes: There were a wide range of views expressed, regarding the discussion of efforts to better guide development in the jurisdiction. The two main and opposing views expressed are as follows:

1. Efforts to identify areas most appropriate for development, near existing communities, and identify areas least appropriate for development should remain in the Plan.
2. Additional regulation of development will negatively impact land value and economic opportunity.

Staff response: As noted earlier, most of the development that has occurred within the jurisdiction over the past 30 years has not been reviewed by the Commission as to the appropriateness of its location at the jurisdiction or even regional level through the rezoning and subdivision process. Under the current regulatory framework, there are significant limitations to the Commission’s ability to guide development at the regional or jurisdiction level. In order to accomplish the Commission’s stated goal in the Plan of: “directing most development to areas near service centers and comparable areas, and maintaining other areas of the jurisdiction for traditional uses, including forest management,” staff feel that the Commission must comprehensively evaluate its own regulatory framework and examine all possible strategies to address this issue. The Plan considers measures that would help the Commission guide development in the jurisdiction to places where it is most appropriate. However, at this time we do not know what measures would ultimately prove most effective, possible, and appropriate. Consequently, the Plan discusses possibilities to explore, but does not offer one ready solution or course of action. The Plan discusses the expansion and continued application of existing tools as well as the exploration of new tools. Staff feel that this language is appropriate considering the Commission’s stated goal and therefore make no recommendations for changes.

Other Comments:

1. The Plan could become an obstacle to new green technology and ‘in woods’ processing.
2. The Plan should continue to comprehensively address “Areas with Special Planning Needs.” In reviewing the Plan, staff noted that a substantial portion of text contained in the 1997 Plan pertaining to “Areas with Special Planning Needs” was omitted. A memorandum identifying these omissions was submitted to the record by the staff. No rebuttal comments were submitted in response to the staff memo.

Proposed changes and responses:

1. Staff do not feel that the Plan is necessarily an obstacle to new green technology and ‘in woods’ processing. If and when a project of this nature is proposed, the Commission would be tasked with reviewing the appropriateness of the activity for the proposed location at such time.
2. The 1997 Plan contained significant language directing the Commission to more proactively plan for the future growth of certain areas and MCDs in the jurisdiction. Staff wish to bring to the Commission’s attention that the Plan as drafted unintentionally leaves the Commission’s objectives for “Areas with Special Planning Needs” ambiguous. Therefore,

the staff recommend that the Plan contain language that (1) identifies the characteristics that qualify MCDs as “high growth, high value” areas, (2) distinguishes these areas from low growth, high value areas, and (3) clarifies that specialized, forward-looking planning and zoning approaches are necessary for both high growth and low growth areas in order to ensure their unique characteristics are not degraded. Specifically, staff recommend the following language changes:

“4.6.E Areas with Special Planning Needs

The Commission has identified several areas of the jurisdiction that are especially well-positioned for more specialized, forward-looking planning and zoning approaches than the Commission’s regulatory approach typically affords. These areas are generally referred to as “high growth, high value” areas and “low growth, high value” areas.

High Growth, High Value Areas

The first Comprehensive Land Use Plan, adopted in 1976, identified several areas of rapid growth, including the Rangeley Lakes, Moosehead Lake, and Carrabassett Valley areas. Examination of growth trends indicates that many MCDs in these areas have continued to attract development. In fact, several of the 17 fastest growing MCDs discussed in the previous section are located in each of these areas. ~~These areas—MCDs also possess concentrations of high value natural resources that are potentially threatened by continued high rates of growth. In its planning and zoning efforts, the Commission will pay particular attention to these areas to ensure that development is accommodated without compromising their special qualities.~~

In addition to these high growth areas, several other areas or communities experienced moderate growth ~~or and~~ possess characteristics that make significant future growth likely. Some of these areas have high concentrations of recreational and natural values that may attract development; other communities owe their growth to their accessibility or location near a population or employment center. The Millinocket area is particularly worthy of note because of its abundance of high value resources, its accessibility, role as a gateway to Baxter State Park and surrounding recreational amenities, and proximity to a major job center. ~~The area is also an excellent candidate for regional planning to ensure future growth does not erode its principal values.~~

The Commission regards MCDs that have an established pattern of settlement, have experienced or are likely to experience rapid growth, are relatively accessible, and harbor high-value natural and cultural resources as “high growth, high value” MCDs. Development is likely to continue in most of the areas identified above these MCDs due to the attractiveness of their resources and their relative accessibility. Because of some of the weaknesses of the Commission’s regulatory approach (discussed further below), no assurance exists that such likely development will be orderly.

The challenge for the Commission is to accommodate growth in these areas without compromising the resources that make them so special. Degradation of their high value resources can adversely affect not only the natural resources themselves but also their economic importance. Directing growth to appropriate locations and balancing development and conservation in these areas are therefore key to maintaining their high values. In ~~planning for future development—its~~ planning and zoning efforts, the Commission will strongly focus on these ~~areas—MCDs~~, particularly high value areas with the greatest growth potential, to ensure that development is accommodated without compromising their special qualities.

Low Growth, High Value Areas

~~Additionally, c~~ Certain areas, though they may not be high or moderate growth areas, have unique characteristics that are particularly worthy of protection. For example, interior areas support traditional uses that are very important to the economy and culture of Maine in a setting that is quite unique in the Northeast. The principal values of these more remote areas of the jurisdiction are especially sensitive to development and special efforts must be made to make sure that these values are maintained. Even though the interior is not a high growth area, it has experienced steady dispersed development over the past 35 years and is particularly vulnerable to the cumulative impact of incremental development. Consequently, the interior may warrant its own special regional planning effort.

Another area of relatively low growth combined with unique resources is the jurisdiction's coastal islands. These islands warrant special consideration due to the fragility and high value of their natural resources and their consequent attractiveness for future seasonal residential development. Even a relatively low rate of development can have significant impact on island landscapes and resources.

~~The challenge for the Commission is to accommodate growth in all of these areas without compromising the resources that make them so special. Degradation of their high value resources can adversely affect not only the natural resources themselves but also their economic importance. Directing growth to appropriate locations and balancing development and conservation in these areas are key to maintaining their high values. A more specialized and focused planning and zoning approach is appropriate in these instances for these low growth, high value areas to ensure that their unique characteristics are not degraded."~~

Chapter 4 – Development – Unregulated development and the 2-in-5 subdivision exemption

Major themes: There were two opposing views with regard to unregulated development and the 2-in-5 exemption. One view was that the Plan overstates the issue of unregulated development and the Plan should explicitly state that LURC has no intention of supporting elimination or modification of the 2-in-5 exemption. The opposing view was that unregulated development is an issue and the Plan should do more to address this issue to include stating that the Commission's top priority is to eliminate unregulated development.

Staff response: Staff believe that the discussion of unregulated development in the Plan as drafted is appropriate. The Plan states that two thirds of the new residential development permitted by the Commission since 1971 has occurred on lots that were not reviewed through the Commission's rezoning and subdivision review process. The development occurred on lots that either existed prior to the creation of the Commission or were created through exemptions to the subdivision review process. The 2-in-5 exemption is listed as one of the many exemptions that exist to subdivision and we do not know the breakdown of development occurring through each of these various exemptions or pre-existing lots.

The extent to which pre-existing lots or exemptions, to include the 2-in-5 exemption, will be used for development purposes in the future is impossible to predict. The fact remains that we have a regulatory framework, whereby development can occur in much of the jurisdiction and receive no review from the Commission as to whether it is located appropriately within the jurisdiction.

It is not within the Commission's control to modify the 2-in-5 exemption since this is defined in statewide subdivision law. However, we would be remiss in not discussing the risks that subdivision exemptions pose. This inherently involves recognizing and discussing the limitations to the

Commission’s ability to guide development and therefore fulfill one of its obligations of guiding development and preserving the multiple uses of the jurisdiction.

Chapter 4- Development – Roads and Infrastructure

Major theme: The major theme expressed was that the Plan should do more to acknowledge the important role of roads for forest management, recreation, etc. Roads are a critical component of forest management and they also influence recreational and other use. The Plan states that LURC ‘recognizes the importance of roads to forest management – a use which is generally compatible with habitat’, but it does not explain why roads are important. In contrast, there are several instances where potential negative impacts of roads are noted, from impacts on wildlife to conversion to development.

Staff response: Staff recommend adding a more comprehensive discussion on roads that clearly acknowledges the important role of roads for forest management and recreation. We recognize that roads are a critical component to forest management and suggest that the draft be revised to make this clear. We recommend that acknowledgement of some of the issues surrounding roads should remain in the Plan as well, particularly impacts on habitat and the desire to site roads in such a way that minimizes these impacts wherever possible and the conversion of land management roads to subdivision roads.

Chapter 5. Natural and Cultural Resource Values

5.2. Air Resources:

Major theme: There were three major and conflicting themes regarding the climate change discussion in the Air Resources section.

1. The climate change discussion is a needed and valuable introduction to this section.
2. The Plan still fails to fully recognize the issue of climate change. A whole chapter should be dedicated to this issue and the Commission needs to address land use policies as they related to climate change.
3. The Plan’s language on climate change raises concerns about possible new restrictions.

Staff response: Staff recommend keeping the discussion of climate change under the air resources section rather than creating a new section specific to this topic. We believe that the discussion of climate change is comprehensive and accurately describes the Commission’s role in addressing this issue. In particular, the section acknowledges that while the Commission will not solve the issue of climate change alone, any land use planning agency has an impact on contributing to or alleviating the impacts of climate change, dependent on how successfully it manages to guide development and maintain healthy functioning ecosystems.

5.5. Energy Resources

Major themes: There were several themes in the testimony pertaining to the energy resources section.

1. The Plan should not create barriers for the potential for energy production and utility corridors.
2. The Plan should state the need to balance energy production with natural resource protection.
3. The Plan should be consistent with other State energy strategies and plans.

Proposed changes.

1. Staff does not feel that it is the intent of the Plan to create barriers for potential energy production and utility corridors. Staff suggest that language be revised where appropriate to make this clear while recognizing that the Commission must consider other factors, resources, and land uses with regard to ensuring that energy production and utility corridors are appropriately sited. By way of example staff suggest that language on:

- a. Hydropower that was removed from the draft Plan be reinserted to read:
“Hydropower has long been a staple of Maine’s energy mix. In 2003, hydropower accounted for approximately 17% of the state’s utility, industrial and self-generated electricity. The State Planning Office estimates that untapped hydropower sources statewide could provide up to 297 megawatts of additional installed hydropower capacity, including improvements and upgrades of existing facilities, and new projects at sites where hydro development is not prohibited under the Maine Rivers Act.”
 - b. The reasons for denying the wind power project on Black Nubble Mountain are not necessary and be removed from the Plan.
 - c. Policy #12 should be rewritten to read: “Assure that ~~Prohibit use of~~ energy generation facilities and associated utilities, including interconnection and transmission lines, ~~are not used as the sole as a basis to for justifying other types of~~ new development for which the proposed locations are not otherwise appropriate that cannot otherwise demonstrate appropriateness in terms of location.”
2. Staff feel that the Plan as drafted conveys the need to balance energy production with other natural resource protection. One of the Commission’s primary tasks when undertaking the goal of supporting multiple land uses, is to consider and balance the different resources, demands, and needs when making decisions. Staff feel that this is clearly articulated in the Plan and therefore suggest no changes for this aspect of the Plan.
 3. The staff believe that the Plan is consistent with other State energy strategies and plans.

5.6. Forest Resources

Major themes: There were several major themes, to include opposing views on the same theme, on the forest resource section.

1. Sustainable forest management:
 - a. Can not pay for the purchase price of timberlands.
 - b. Is not out of synch with the purchase price of timberlands.
2. The concerns about changes in ownership, fragmentation, forestland conversion are:
 - a. Well founded.
 - b. Not accurate and are unfounded. The greatest threat to the forest resources is not these issues but rather the risk of making the resource unattractive to continued investment.
3. The Plan could place further restrictions on forest management and this is very concerning.
4. The Plan must acknowledge that preservation of land value is a critical ingredient to successful forest management.
5. The Plan should establish goals, policies, standards, etc. for better protecting natural resources in a managed forest setting.

Staff response:

1. Staff recommend that the Plan continue to rely on information from the Maine Forest Service with regard to the discussion on timberland prices and sustainable forest management.

Page 4-10 of the Plan reads: “A Maine Forest Service (MFS) analysis of the relationship between the annual return from sustainable harvest and the appraised value of a northern Maine timberland parcel concluded that, even with favorable financial terms, the returns from sustainable harvests were not nearly sufficient to justify a loan for the appraised value of the land and could not support the purchase of the land. Additionally, a 2005 report on the state of the forest, MFS cited inadequate returns from long tem forest management as a key issue that could affect the future of Maine’s forests. MFS notes that the financial returns on long term forest management may not justify retaining forest land if other higher value uses, such as development, are an option.”

2. Staff believe that the issues identified in the forest resource section are well founded and recommend retaining the language on ‘changing patterns of ownership’ and ‘fragmentation of ownership’. Staff believe that the Plan accurately describes the type and scale of landownership changes taking place in the jurisdiction and their possible, though not entirely predictable, implications with regard to land use changes. Since the Commission’s responsibilities include planning for future land uses and development in the jurisdiction, it would be imprudent not to consider the various factors that will exert influence on these uses. There is considerable documentation throughout the country that changing landownership structures are resulting in changing lands use patterns. There is no way of predicting whether this will also occur in the future in Maine; however, we believe that it is important to describe the new types of landowners, the differences between these new landowners and previous landowners, and possible implications for land use.

Page 5.6-6 under ‘changing patterns of ownership reads: “ New landowners have different objectives than the traditional Maine industrial owners. For example, financial investors tend to have a time horizon of 10-15 years. While many of these new landowners have signed long term timber supply agreements, their responsibility is to maximize the asset value of timberland rather than meeting the needs of a mill. So long as the value of product that comes off an acre of land exceeds the value of selling the land for development or undertaking the cost of developing it directly, it will likely stay productive. If the value of selling the land for development (or developing it directly) exceeds the value of managing it for manufacturing, the land will likely be sold or developed. It is not yet clear how great the implication of this will be on the forest industry in Maine...”

Page 5.6-6 under ‘fragmentation of ownership reads: “Many of the jurisdiction’s values are closely linked to forest resources, including large-scale commercial forestry, ecological diversity, and recreation in a remote setting. Stability of ownership and dominance of large, landscape-scale parcels are most compatible with these values. Fragmentation of ownership and associated changes in use and management threaten to undermine the integrity of the forest resources in a way that compromises these values... There is continuing debate regarding the extent of fragmentation that has taken place and the degree to which it poses a threat. The Commission believes that in selected areas, fragmentation of ownership has negatively affected forest productivity and resulted in some undesirable development. But the Commission’s primary concern is the longer-term threat posed by a continuation of this trend, and the Commission believes that now is the time to address this issue with clear policies and actions.”

3. Staff do not feel that it is the Commission’s intent nor that the Plan conveys the desire to place further restrictions on forest management. Staff recommend retaining policy #3 as it appears in both the Plan and the 1997 Plan: “Protect areas identified as environmentally sensitive by regulating forestry activities, timber harvesting, and construction of land management roads”.
4. Staff appreciate landowners’ perspectives regarding the importance of preserving land value particularly with regard to maintaining a viable commercial forest. However, focusing on the preservation of land values, by ignoring or minimizing the discussion on the significant shortcomings in the Commission’s ability to guide development is not responsive to the Commission’s legislative charge. Staff are not opposed to adding language to the Plan that acknowledges certain landowners’ perspectives with regarding the importance of land values, as long as such new language does not undermine the Plan’s statements about the planning needs of the jurisdiction and the Commission’s responsibilities to address those needs.
5. Staff feel that the goals and policies outlined in the Plan are protective of the natural resources in a managed forest.

5.8. Plant and Animal Habitat

Major themes: There were four major themes regarding this section.

1. The Plan does not sufficiently recognize the successes in protecting plant and animal resources.
2. The Plan should do more to recognize not just invasive plant species, but also invasive fish species.
3. The Plan language and policies will negatively impact forest management. It appears that wildlife habitat is pre-empting forest management. For example, the wording of policy #9 opens the way for regulatory control over habitats not statutorily regulated and provided through normal forest management practices.
4. LURC should do more to protect unique natural areas, habitats, riparian areas, etc.

Staff response:

1. Staff feel that the Plan appropriately balances discussions of past and current threats to species of the jurisdiction as well as discussing successes in preserving species such as the bald eagle and the furbish lousewort. Staff also believe that the discussion of past extinctions in the draft is important because it serves as a basis against which successes are measured and also gives a rationale for continuing the protections as described later in the Plant and Animal Habitat section.
2. Staff agree that invasive fish species should be recognized in this section. We recommend adding language to that effect in this section as well as in the Water Resources section.
3. Staff do not agree that the Plan suggests that habitat protection is pre-empting forest management. Policy #9 largely retains the language from the 1997 Plan and reflects the Commission's desire to protect important habitats in the jurisdiction. Staff do not agree that the wording changes any regulatory control; the degree to which the Commission regulates for wildlife habitat is clearly outlined in Policy #1 and the Regulatory Approach section of the draft Plan. Staff recommend retaining the current language for policy #9.
4. Staff agree that protection of such natural resources is of high importance for the jurisdiction. We believe that the current draft clearly outlines the Commission's goals and approach for protection of such resources by describing the specific protection mechanisms available to the Commission, such as zoning and land use standards, as well as describing the state and federal regulatory framework within which LURC functions to put those protections in place.

5.9. Recreational Resources

Major themes: The recreational resources section was the natural resource section which received the most testimony. While there were many thoughts expressed regarding recreational resources, the major themes, to include opposing views on the same theme, are as follows:

1. The Plan should update certain numbers, data and use trends.
2. The discussion of 'recreational use conflicts' should be deleted from the Plan.
3. The Plan:
 - a. Has been responsive to concerns about motorized recreation and may have gone too far in this regard.
 - b. Should do more to protect remote, primitive, recreation opportunities.
 - c. Continues to have a bias towards non-intensive or primitive recreation.
4. The Plan appears to put the Commission in the role of 'managing' recreation and this is not appropriate.
5. Changes in the Plan could result in a loss of public access. More specifically, if regulatory restrictions reduce potential income from sources such as limited development, or harvesting within scenic viewshed areas, then financial pressure on recreational access will increase.
6. The Plan should consider ways to be supportive of the continued viability of sporting camps.
7. The Plan should not contemplate rezoning of pre-1971 D-GN sporting camps.

8. The Plan should reinstate the 1997 Recreation Goal.
9. The Plan will be overly restrictive to future tourism development. References to remoteness and a focus on primitive pursuits could inhibit future tourism and recreation activities.

Staff response:

1. Staff agree that some of the data cited in this section are now dated and there are errors in some of the figures. We suggest reviewing the data and revising them in an effort to bring this information as up to date as possible and correct any errors.
2. Staff feel that discussing ‘recreational use conflicts’ is appropriate in the Plan. LURC’s role with regard to recreation as outlined in statute includes preventing “the intermixing of incompatible ...recreational activities” and to “provide for appropriate ... recreational... uses” and to “encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.” Discussing recreational use conflicts is important because it provides context for the Commission’s planning and zoning responsibilities. However, the Commission’s role is only one piece of the puzzle. Landowners retain the right to decide whether to allow recreation on their land and how to manage it, and local, state, federal and regional recreation groups and agencies provide support, coordination and funding. While this is acknowledged elsewhere in the document, staff recommend adding language that more clearly acknowledges these roles in the “Recreational Use conflicts” subsection.
3. Staff believe that the many redrafts to this section of the Plan, as well as to Chapter 1 – Vision, have been responsive to the concerns raised regarding any unintended biases towards primitive or motorized recreation and have made it clear that the jurisdiction provides a wide range of recreational opportunities and this is, in and of itself, one of the values of the jurisdiction. Staff believe the Plan does recognize the value of primitive recreation in the jurisdiction and does afford a level of protection to those activities in certain areas such as on certain rivers, lakes and trails. It indicates a commitment to “protect certain remote areas for their natural character values, which enhance primitive recreational activities”. However, the Plan also indicates a commitment to “insure that motorized and high-impact recreational uses have a place in the jurisdiction that reflects the increasing popularity of those uses.” Staff feel that the Plan represents a balanced approach in this respect.
4. Staff agree that it is not the Commission’s role or desire to ‘manage’ recreation and suggest editing all language that implies that this is the case.
5. Public access is ultimately up to the landowner, a fact that staff believes the Plan acknowledges. The Plan recognizes that much of the jurisdiction is privately owned and that the free or inexpensive access that exists throughout most of the jurisdiction is a unique and valuable gift to the public. The Commission hopes that this tradition continues in the future but recognizes that the decision is ultimately up to landowners. With regard to the relationship between public access and the Commission’s regulations, staff suggest that while the Commission utilizes various regulations to fulfill its statutory mandate, it will continue to consider the impacts of regulation on landowners when making decisions or undertaking new initiatives. It is the Commission’s intent to find tools that achieve the goals of the Plan, are in the best interest of the people of the State, including residents and landowners of the jurisdiction, and are supportive of the continuation of the State’s unique public access tradition. For this reason, we make no further recommendations on this issue.
6. Staff recommend that the Plan be revised to make it clear that the Commission will consider ways to be supportive of the continued viability of sporting camps, such as considering an increase in the total allowed floor area of such facilities.
7. Staff recommend that the Plan continue to articulate that the appropriateness of General Development (D-GN) zoning for sporting camp facilities, particularly in more remote settings, be reexamined. This is especially important in light of the fact that sporting camp

- facilities are allowed in most management subdistricts, as well as by special exception in many protection subdistricts, and there may be increasing pressure for conversion of these facilities to exclusive, residential uses in the future, which is unintentionally facilitated by D-GN zoning.
8. The goal in the draft Plan reads: “Conserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities”. The goal in the 1997 Plan reads: “Conserve and protect the natural beauty and unspoiled qualities of the waters, shorelands, mountains, plant and animal habitats, forest, scenic vistas, trails and other natural and recreational features in order to protect and enhance their values for a range of public recreational uses”. Staff recommends retaining the goal in the draft Plan.
 9. Staff do not agree that the Plan suggests the Commission wants to inhibit regional tourism efforts. Tourism is and will continue to be an important segment of the economy within the jurisdiction and the state as a whole. The Plan clearly states that the Commission will provide for tourism-related development opportunities within appropriate areas.

5.10. Scenic Resources

Major themes: There was concern that this section goes beyond LURC’s mandate in statute to regulate the ‘significant’ scenic features of the jurisdiction and will adversely impact forest management activities. There was particular concern over the policy which reads ‘Regulate forestry activities in important recreational and scenic areas to protect aesthetic qualities’. Conversely, there was testimony expressing the importance of regulating and protecting the scenic resources of the jurisdiction, especially when considering the impact of development on scenic resources.

Staff response:

The staff feel that the Commission has already specifically clarified that the discussion of considering scenic resource impacts pertains to the evaluation of structural development and not to forest management activities except in sensitive areas such as shoreland zones. Consequently, the staff believe that previous revisions to the Plan have already addressed this concern.

Staff recommend retaining the policy from the 1997 Plan, which reads ‘Regulate forestry activities in important recreational and scenic areas to protect aesthetic qualities’ in the Plan. This policy was never intended to apply to forest management activities everywhere in the jurisdiction. It only applies to those areas that the Commission has specifically protected through zoning, such as the shoreland zones, due to their important recreational or scenic attributes. The Commission will continue to interpret and apply the policy in this way. Staff recommend clarifying the discussion in the text of the scenic resources section to reflect this.

7. Implementation Chapter

Major themes: There was concern that the Plan is lacking a clear prioritization of policy initiatives with a specific schedule indicating the order and approximate time frame in which the initiatives will be undertaken.

Staff response: This section is intended to convey that the Commission’s top priority is improving the process for directing development and that the Commission’s other high priorities include those selected initiatives listed under the relevant natural resource headers. Staff recommend that this section be revised in order to make this clear. However, staff do not recommend that the Commission include a precise order and approximate time frame in which the initiatives will be undertaken. Many factors, such as available resources, extent of public participation and involvement, agency coordination, etc., will influence the timing and time needed to complete these tasks, making the development of a precise schedule a difficult and potentially meaningless endeavor. In addition, creating effective outcomes in an era of limited resources will require LURC to address multiple

priorities within one project, especially with stakeholder participation. Therefore, staff recommend that the Commission’s task schedule remain somewhat fluid to take advantage of those opportunities as they arise.

Appendix C Lake Management Program

Major themes: There were two opposing views expressed regarding the language in Appendix C that addresses the subject of periodic review and update of the lake management program. While one view is that the Plan should not include the contemplation of a periodic review of the Wildlands Lake Assessment as there was no contemplation of period review in the original Lakes Action Plan and the work reflects thorough public input and balancing of interests that would be hard to replicate, the opposing view is that the Lakes Assessment needs to be reviewed and updated in light of new data and information.

Staff response: Although staff agree with some of the concerns expressed regarding revisiting some of the policy decisions made in the 1990s, it is clear that the 1990 Lakes Action Program envisioned periodic updates of all components of the program. Text from the 1990 LAP reads: “The Action Program consists of five elements: (1) Policy Guidance, (2) Review Criteria for Shorelands Permits, (3) Lake Concept Plans, (4) Management Classifications, and (5) Other Public and Private Initiatives. To ensure that the Lakes Action Program can continue to respond to changing needs, it will be updated on a periodic basis. A formal review will be conducted at least every five years.” In addition, both the 1990 Amendment of the Comprehensive Land Use Plan and Appendix C of the 1997 Comprehensive Land Use Plan concluded with the following language: “It is the Commission’s intention that its lake management program be updated periodically to ensure that it responds to changing needs in a comprehensive manner. To maintain consistency of policy, this review and update should occur concurrent with the periodic revision of the Comprehensive Plan and as needed to address changing circumstances and new trends.”

To address the public comments, staff recommend revising the language in Appendix C, page C-1 and page C-8 to read:

“Major features of the Commission's 1990 lake management program are reflected in the Water Resources section of this Plan, but some of the background information and other important details were too lengthy to include in the body of this plan. Because of the importance of this planning effort, the entire text of the original Amendment is reproduced here with appropriate changes to update the text. The Commission reaffirms its commitment to its lake management program as summarized in the Water Resources section and detailed below, and it will continue to follow the guidance provided below in managing the lake resources in its jurisdiction. At the same time, the Commission recognizes that periodic reviews were anticipated when the program was first adopted, and that having been in place for nearly 20 years, a complete review and update an evaluation of the program is warranted to ensure that it continues to respond to changing needs in a comprehensive manner.”

“It is the Commission's intention that its lake management program be ~~updated~~ periodically evaluated to ensure that it responds to changing needs in a comprehensive manner. As part of its periodic evaluation, the Commission will consider whether a program update is necessary and, if so, whether such an update warrants a comprehensive program update or whether a more circumscribed effort focused on specific elements of the program is sufficient to ensure that the program continues to respond to changing needs. To maintain consistency of policy, this evaluation should occur concurrent with the periodic revision of the Comprehensive Plan and as needed to address changing circumstances and new trends.”

This language would give the Commission discretion to decide at a later date whether, and to what degree, it wishes to update the program.

The Process Moving Forward

Staff have presented certain recommended revisions to the Plan in response to the major themes expressed in public testimony. After receiving direction from you on these recommendations, as well as any other revisions that you would like to see made to the Plan, staff will begin revising the Plan. We hope to bring a revised Plan back to you at your January meeting for your consideration.

We look forward to presenting the summary of public comment to you, discussing the items outlined in this memorandum, and receiving guidance and feedback from you on how to proceed in our efforts to revise the Comprehensive Land Use Plan at the December 2nd meeting.

SEG

Enclosure: *Summary of Public Hearing Comments*