

**MAINE LAND USE PLANNING COMMISSION**  
Department of Agriculture, Conservation & Forestry  
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**MINUTES**

**REGULAR MONTHLY MEETING**

Jeff's Catering, 15 Littlefield Way, Brewer  
June 10, 2015

**COMMISSIONERS PRESENT**

Gwen Hilton, Chair	Betsy Fitzgerald	Bill Gilmore	Paul Underwood
Everett Worcester, Vice-Chair	Robert Dunphy	Charles Pray	Durward Humphrey

**STAFF PRESENT**

Nicholas Livesay, Executive Director	Stacie Beyer, Senior Planner
Jean Flannery, Permitting and Compliance Manager	Ben Godsoe, Senior Planner
Hugh Coxe, Chief Planner	Eric Larsson, Senior Planner
Billie MacLean, Ashland Regional Representative	Mary York, LUPC Augusta

**OTHERS PRESENT**

Lauren Parker, Assistant Attorney General See attached Sign in Sheets

*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 members of the Commission, its staff, and the audience.

**Minute Approvals**

May 13, 2015 Minutes

**Commissioner Dunphy motioned to approve the minutes; Commissioner Underwood seconded;  
Vote: 8-0-0-1 Unanimous (Commissioner Theriault was absent for the entire meeting.)**

**DIRECTOR'S REPORT**

Nick Livesay provided the director's report. He:

- Summarized the status of two key pieces of legislation, one related to metallic mineral mining (LD 750) and the other related to potential establishment of a process for removing areas from the expedited wind permitting area (LD 828);
- Noted there have been no new developments with regard to the proposed Fish River Lakes concept plan since meeting with Irving representatives several months ago;
- Summarized the process staff have developed and implemented for pre-construction site inspections to assist property owners proposing projects with foundations, as well as post-construction follow-up; and
- Discussed the anticipated calendar for the next scheduled meeting in August.

**RULEMAKING MATTERS**

**Chapter 10 Rulemaking**, regarding decision on NRPA consistency: consideration for adoption; Stacie Beyer

Stacie Beyer presented a request for the Commission to adopt proposed rule revisions for NRPA Consistency and Recreational Gold Prospecting. She provided an overview of the rule making process, a refresher on key changes, a summary of public comments, and staff's recommendation. The Commission posted the rule revisions to public comment on January 14, 2015. The public comment period closed on March 27, 2015 and the rebuttal comment period closed on April 3, 2015.

Stacie explained that the primary objective of the NRPA Consistency part of the rulemaking was to update the LUPC land use standards to provide a level of protection consistent with the goals of NRPA, the goals of LUPC statute, and the CLUP. Key changes that were covered in the presentation included: renaming and reorganizing Section 10.25,P, improving consistency of definitions with NRPA, incorporated the existing LUPC Wetland Compensation Guidelines into rule, revising the threshold for wetland compensation, and revising the standards for filling and grading relating to setbacks for wetlands and waterbodies.

Five written e-mails or letters were submitted on the NRPA Consistency rulemaking, but no rebuttal comments were filed. Stacie summarized each of the comments submitted, grouped under the major categories of NRPA Consistency, Definitions, Use of Terms, Freshwater Wetlands, Additional Comments, and Proposed Changes, and discussed the draft response to comments as provided in the proposed basis statement for the rulemaking. Commissioner Gilmore expressed surprise that there were only 5 commenters on the proposed rulemaking, and asked how we advertised this out across the UT such that people could respond. Stacie explained that the rulemaking followed the APA rulemaking requirements, so it was published in the Secretary of State's consolidated rulemaking notice. She also explained that the rulemaking was posted on the LUPC's website, and that notices were sent out to the NRPA stakeholder group through the GovDelivery system. Nick Livesay added that we have done a couple of things with this rulemaking. One, as for all rulemakings, we have an e-mail distribution list for anyone who has expressed interest in rulemaking; we send notices to them. With the NRPA rulemaking, he explained that we also made an effort to reach out to people that had expressed an interest in the topic knowing that it would come up. So, for instance, with the Maine Forest Products Council, we reached out to them so they could contact their members about this rulemaking. We reached out to some of the environmental organizations, too. They are probably on all the distribution lists, but we did try to get this out to people. Nick further explained that with the individual property owner, if they haven't requested to be on a list and they are not reading the consolidated notice, there isn't really a way to reach them. Commissioner Pray indicated that he had a couple of people stop and ask him what the rulemaking was about, on a couple of separate occasions, so somehow they had seen it.

Commissioner Underwood raised a question on how the debris line is used to define "normal" for the normal high water line of coastal wetlands in that an exceptionally high tide could leave a debris line that could last for a long time. Stacie explained that it was a concern of the commenters that the debris line can change. Where this could be a critical point on a project, she said we could use the surveying method. The benefit of having several criteria in the definition is that we can look at all the criteria. The most restrictive in the list is where we would likely define the boundary. Commissioner Underwood also asked how our definitions compare with DEP. Stacie replied that they are generally consistent. One exception is the DEP removed the debris line from their definition. She explained that we received comments on the preliminary draft that it was important for the UT to leave the debris line in the definition because there are so many rural properties and the landowners may not be able to afford to get a survey. Commissioner Fitzgerald explained that the DEP is pushing to have Towns adopt changes to their shoreland zoning ordinances to be consistent with Chapter 1000. She asked, if in referring to "DEP," do we mean both NRPA and Shoreland Zoning? Stacie answered that, generally speaking, in terms of natural resource definitions, the NRPA definitions and Shoreland Zoning definitions line up fairly well.

Commissioner Pray asked if it is our intent to leave the term "high mountain area" instead of using the term "fragile mountain area." Stacie replied that is correct. Commissioner Hilton asked if that is just a matter of semantics. The

way the resource is treated is still the way it was originally. Stacie said yes, all we did was change the term. The standards that we had in place for protection of that resource are the same. Commissioner Hilton then commented that someday someone is going to look at this and wonder why it happened. She recognized that the issue was that not all high mountain areas are necessarily fragile.

Commissioner Gilmore commented that it can be very expensive for a landowner to complete a wetland compensation project. He talked about a project where an acre of land cost the landowner \$68,000 to remove it from wetland compensation protection and build on the lot.

In terms of the DMR public hearing procedure for dredging projects, Commissioner Underwood asked if referencing the procedure is within our realm. Stacie explained that the specific procedures are in the NRPA statute, but language proposed in the rule allows DMR to have a public hearing on a dredging project and for the LUPC to consider DMR's recommendations based on the public hearing, without dictating the procedures in our rule. Commissioner Underwood commented on the importance of the input, but still questioned whether the procedures are in the realm of the LUPC's responsibilities. Nick clarified that the revisions, as they are proposed now, allow DMR to weigh in on dredging projects and to hold a proceeding as they see fit, but do not mandate the manner in which DMR has to operate. That is for DMR to determine. Commissioner Underwood indicated that he understood. He just wants to make sure that we don't try to incorporate too many things that aren't really our bailiwick. We need to stay focused on what we are supposed to do.

For recreational gold prospecting, Stacie explained the primary purpose was to update the LUPC rules to conform with recent legislative changes. The key changes discussed included: updating limits on equipment, adding a definition for motorized recreational gold prospecting, adding closed areas consistent with the legislation for certain Atlantic salmon habitats, certain Brook trout habitats, and class AA waters. She also mentioned that the rule revisions include an update on MCD names.

Six written e-mails or letters were submitted for the Recreational Gold Prospecting part of the rulemaking and no rebuttal comments were filed. Stacie explained that the comments generally expressed support for the proposed revisions or opposition for the regulation of gold prospecting. No specific recommendations for changes to the proposed rules were submitted.

Staff recommended that the Commission adopt the proposed rule revisions for NRPA Consistency and Recreational Gold Prospecting as presented.

Commissioner Hilton asked if Stacie had experience in permitting under NRPA with the DEP, and Stacie said yes. She followed with a question on whether Stacie is comfortable with what we are doing in the proposed rulemaking. Stacie replied that she is. Commissioner Fitzgerald asked for clarification on the comments received for recreational gold prospecting, particularly on the statement that the comments did not request any specific changes to the proposed rules. She asked, does that mean they commented either that they hated it or they liked it, end of story. Stacie agreed. Commissioner Worcester asked if DEP was going to look at these changes to see if we are in compliance. Stacie explained that the DEP has been involved in the process. They have had an opportunity to review both the preliminary draft and the proposed draft. We haven't received any comments from them. Commissioner Hilton asked about the involvement of the Army Corps of Engineers. Stacie replied that they also had an opportunity to comment. The only comment they submitted was an encouragement for the LUPC to look at the in lieu fee program for wetland compensation, which is something we would like to do. Commissioner Fitzgerald asked if Stacie was looking for a motion, and she said yes. The motion was made by Commissioner Fitzgerald to accept staff recommendation. Nick asked for clarification if the motion included adoption of both the proposed rule and accompanying basis statement, and Commissioner Fitzgerald said yes.

Commissioner Pray inquired what would happen if the Commission does not adopt the proposed rule. Stacie said that the current rules would remain in effect. Commissioner Hilton stated that the goal of making everything consistent makes it easier for the regulated community and people in general. She stated it was a good goal to have. The question does come up as to how there are differences between different parts of Maine. That is why we have some discomfort sometimes with these regulations. Commissioner Pray commented that this puts the DEP as the paramount agency; that we are adopting and following DEP standards. Nick replied that the directive that we have from statute is that the LUPC applies NRPA in the unorganized parts of the state and we have to do so consistent with the goals of NRPA; acknowledging that there could be differences between what DEP and LUPC does. To the extent that any of the proposed rule changes are following DEP rule as oppose to statute, then the answer is yes the DEP is playing a lead rule. He stated that he doesn't think the statute talks about being consistent with DEP rule. It is the statute. Stacie agreed. Commissioner Pray replied that it answers his question in part, but stated that the LUPC also has statutes that it is obligated to be consistent with and there are unique differences between the obligations of both. He would like to feel as though the Commission has the right to adopt rules that are pertinent to the statutes as they see best carries out the statutory obligations. Nick replied that he thinks they do have that right. For example, Nick said the Commission could look at the trigger number 20,000 versus 15,000 square feet and determine that 20,000 square feet is right for us, and 15,000 square feet might be right for the organized parts of the state. Lauren Parker stated that NRPA provides flexibility in that it states that LUPC standards have to be consistent with NRPA, and with LUPC statute and the CLUP. Commissioner Underwood explained that one of the complaints over time has been that there is a different set of rules for the DEP and a different set of rules for LURC. Consistency is good, but he is not sure it is always better in all instances. For the most part, he is in agreement, but he is not so sure with these rules. Commissioner Hilton asked, with this whole idea of having a different trigger, what are the implications of that. Stacie explained that it is a place where the Commission could make a distinction between the DEP jurisdiction and the LUPC. She further explained that for a project located wholly within the LUPC service area we would have the right to make the decision and only require compensation for impacts of 20,000 square feet or more, with the exception that the Army Corps of Engineers will also be involved. In a case where the Army Corps requires a permit and LUPC requires a permit, the Army Corps would also have the ability to require compensation and their trigger is 15,000 square feet. In that case, Stacie said the LUPC wouldn't have a role in the compensation. The Army Corps would be looking at what compensation would be required. Commissioner Hilton asked about what kinds of projects we are talking about where that might be the case. Stacie replied that it would be for any alteration of P-WL2 or P-WL3 wetlands whether it would be filling for a parking area or a housing development. The rules do allow for some driveway crossings, and other small alterations. We are talking about clearing, or filling and grading type projects. Commissioner Dunphy said that he believes that 15,000 square feet is consistent with what all the other towns use and didn't see any problem with that. It is going to cost you some money, but it just depends on what the value of that land is. Commissioner Underwood asked if the LUPC left the trigger of 20,000 square feet and someone comes in with a proposal for 15,000 square feet would the compensation be taken care of by the DEP? Stacie explained if the project was wholly located within the LUPC service area, the DEP wouldn't have a role. If our trigger is 20,000 square feet, we wouldn't be looking for a compensation project. However, the Army Corps does have jurisdiction over a good number of resources in the unorganized areas of the state. Compensation could be required in their process. Commissioner Underwood further asked, how many projects have we dealt with over the years with the 20,000 square foot trigger? Stacie replied not many. Anecdotally, staff could only remember a couple of projects, so it isn't something that we deal with on a regular basis in the UT. Commissioner Underwood asked if Stacie had checked with the Corps to see how many projects they reviewed over 15,000 square feet in the UT, and Stacie replied that she hadn't. Commissioner Hilton asked, for larger projects such as a Site Law subdivisions, the DEP wetland rules would apply, right? Stacie said yes. For smaller projects, Commissioner Hilton stated that most people would try to avoid the impacts to the extent that they can. Commissioner Dunphy indicated that you would think there would be enough land in the UT so that where someone owns they could build in another area and not have to build in a wetland. There is so much land up there. He asked, why do it if it is going to cost you money? If you have money, then you can do it. Commissioner Humphrey stated that it shouldn't be based on whether you have money or not.

After the vote, Nick informed the Commission, based on information from Mary York, that the e-mail distribution list for rule revisions has 670 e-mail addresses on it. The separate NRPA stakeholder distribution list has 102 e-mail addresses. He explained the GovDelivery system and how it works. Commissioner Hilton also asked one last question on the schedule for the next phase of the NRPA Consistency rulemaking. Stacie indicated that we are likely working into next year. Nick indicated that he doesn't see any planned phase two. The next step would be, if the Commission was interested and time allowed, is to look at how the Commission wants to address activity in other protected natural resources. There are lots of issues associated with it that may make it hard to do.

**Commissioner Fitzgerald motioned to approve staff recommendations; Commissioner Dunphy seconded; Vote: 6-2-0-1 Passed (Commissioners Humphrey and Underwood opposed.)**

**Chapter 10 Rulemaking**, regarding decision for storage on nonconforming lots and updated language in Ch. 10.11,E,3 and 4; Eric Larsson

Eric Larsson gave a presentation on the rulemaking process, summarizing the comments and introducing four suggested edits to the redline rule changes posted for public comment.

Commissioner Underwood asked if it was possible to use special exceptions rather than variances, since variances are almost never granted. Nick noted that the intent of the rule change to Section 10.11,E,3 removing the word waiver is to eliminate that term without altering the way the rule functions on the ground. Nick explained that special exceptions are a mechanism to allow for uses with a higher level of scrutiny where the applicant can meet a set of defined conditions and are generally not a tool used to allow deviations from dimensional standards such as setbacks. Nick also explained that waiver is a discretionary tool that is used for deviations from permitting standards such as those commonly found in site plan requirements, but again is not used for deviations from dimensional standards in a zoning ordinance.

Commissioner Underwood asked if it will be possible to maintain a self-contained camper or pop-up on a lot and construct a storage structure. Nick explained that there is a statutory definition of "campsite" and a separate definition of "residential campsite," and that it would be possible to construct a storage structure on a lot with a permitted "residential campsite." However, the rule change allows for the construction of a storage structure on lots that are too small to permit a residence or a "residential campsite."

**Commissioner Worcester motioned to approve staff recommendations; Commissioner Fitzgerald seconded; Vote: 8-0-0-1 Unanimous**

## **PLANNING MATTER**

**Subdivision Rule Review**, presentation by Stacie Beyer of the report regarding technical issues generated following workshops; discussion of possible rule amendments;

Stacie Beyer presented the Preliminary Technical Issues Report from the subdivision rule review process including an update on the technical issues, overview of possible rule revisions and proposed next steps. She also provided the Commission with background information on the development of the Masters Issues List, the separate discussions for the policy issues and technical issues, drafting the preliminary report and a follow-up conference call with stakeholders.

The subdivision technical issues have been divided into four topic areas: Soils investigation and mapping, maximum road grade, subdivision layout and design, and application process. The Technical Issues Report has

background information for each of these topic areas and proposed next steps. Stacie's presentation focused on the proposed next steps. She offered to answer any questions on the background information.

Commissioner Hilton asked that for subdivisions under DEP jurisdiction, those having greater than 14 lots where the LUPC provides a certification, are there some LUPC standards that DEP doesn't have that would apply still to those subdivisions? Stacie answered that it is similar to wind energy development. For a subdivision in the UT that needs a DEP Site law permit, we do need to issue a certification and, in accordance with our guidance document, we would review any LUPC standard that the DEP does not cover in their review. In follow-up, Commission Hilton asked if all the standards in the possible Technical Issues Rule revisions would be covered by the DEP for a Site law subdivision, such as road slope. Stacie replied that the DEP does have road standards, so for that example, the DEP standards would apply. Commissioner Dunphy asked how a phased development would be permitted if the first phase was designed to LUPC standards and the next phase triggered Site law. Stacie explained that once DEP jurisdiction is triggered, the DEP will review all the subdivision lots within their jurisdiction. She stated that she doesn't expect the standards to conflict enough to cause a significant issue. However, if there is a conflict, the applicant would have an opportunity to bring the subdivision into compliance with DEP standards or they may not be able to get a permit to expand the subdivision. Commissioner Worcester stated that when we are reviewing a phased development, we should make it clear to the applicant that they need to consider any possible design conflicts with DEP standards. Commissioner Dunphy responded by stating if a developer knows going in they will have a larger build out, they should plan for that in the first phase. Stacie agreed that they should.

Stacie presented possible rule revisions for soil investigation and mapping, and maximum road grade. Possible rule revisions were also presented for two subtopics under subdivision layout and design: steep slopes and phosphorus control.

In regard to steep slopes, Commissioner Gilmore asked whether we have taken stormwater management into consideration with road design for subdivisions going forward. He stated that subdivisions and houses have a tendency to push water and, if we do not have some type of a guideline, somewhere down the line it is going to come back and haunt the developer and/or the road association. Stacie explained that, in the proposed changes for maximum road grade, there is language that allows the Commission to consider stormwater drainage and erosion in determining whether it is appropriate to allow a steeper slope, but we are not proposing any specific changes relating to stormwater management at this time. Commissioner Dunphy responded that the standard is good unless the developer cuts in a forested area at the top. In that case, when they do a watershed study, it is incomplete. He wasn't sure how you would do that, but indicated that we will talk about it.

For the topic area Application Process, Stacie reported that stakeholders are not recommending any changes at this time relating to pre-application meetings or the subdivision submission requirements. Once the subdivision review process is complete, there is a recommendation to update the subdivision application form. Stacie also reported that stakeholders participating in the rule review process generally support moving forward on the possible rule revisions for the technical issues. Based on the follow-up conference call, participating stakeholders are interested in providing additional comment on the possible rule revisions, prefer a separate rulemaking process for the technical issues, and recommend a separate path for large lots.

Staff recommended that the Commission direct staff to move forward as outlined below:

- Request comments from stakeholders on the preliminary technical report and proposed rule revisions,
- Finalize proposed rule revisions,
- Request the Commission post the rulemaking to public comment as part of a separate, standalone rule revision package, and
- Update the subdivision application form as soon as subdivision rule revisions are adopted.

Staff anticipates coming back to the Commission in August with a proposed Subdivision Technical Issues rulemaking package to post to public comment.

Commissioner Hilton asked, relating to steep slopes, whether or not there are currently standards in the LUPC rules. Stacie replied with an explanation of where current LUPC rules contain standards for steep slopes, including in the subdivision layout and design section for building envelopes, and in the Cluster Development section for unbuildable area. In terms of roads, the standards for slope are in a separate section of the rules.

**Commissioner Humphrey motioned to approve staff recommendations; Commissioner Dunphy seconded; Vote: 7-0-0-2 Unanimous (Commissioner Fitzgerald was absent during this vote.)**

## APPEAL

**Ouellette (BP 15320);** appeal of partial denial of building permit; T17 R3 WELS, Aroostook County; Billie MacLean

Billie MacLean gave a presentation on the Appeal of Staff's Approval in Part and Denial in Part of Building Permit BP 15320. Staff is asking the Commission to uphold their decision to approve after-the-fact reconstruction of a pre-Commission attached 8 foot by 32 foot deck and deny after-the-fact construction of a 19 foot by 25 foot detached wooden platform with 6 foot by 7 foot attached stairs. Staff concluded that the detached wooden platform with stairs did not meet the Commission's standards for nonconforming structures.

The appellant, Denis Ouellette, and his lawyer, William Smith, were present and gave a brief presentation consisting of a timeline of events and a handout with photos and a summary of the reasons for the appeal. Exhibit 3 of the handout was a presumed 1960s photo showing what existed for development at that time. Mr. Smith cited sections of the standards related to normal maintenance and repair and renovation of existing structures. He told the Commission that the detached wooden platform was a renovation of a brick patio installed in 2007 or 2008 and that the brick replaced pieces of wood and tarp placed on the ground by the prior owner. He concluded that the standards allowed for replacement in this situation without a permit.

Executive Director, Nicholas Livesay, and Assistant AG Lauren Parker explained that normal maintenance and repair is a defined term in rule and asked Mr. Smith to clarify how the new wooden platform was normal maintenance and repair. Mr. Smith answered that it was a renovation.

Commissioner Hilton asked how renovation was defined and Director Livesay cited the definition in Chapter 10.

Commissioner Underwood noted that this issue was similar to issues at campgrounds in Aroostook County where permanent structures were not allowed but tarps or mill cloth could be laid on the ground.

Commissioner Pray asked if a patio was a structure. Staff explained that patios have been historically treated as a structure which requires a permit if more than 50% of the structure is replaced.

Mr. Smith contended that the 50% standard did not apply under Section 10.11,B,5, Lauren Parker explains that although that section speaks to "renovations," the Commission must look to the definitions in Section 10.02 for the meaning of terms.

Commissioner Gilmore indicates that the environmental impact of the platform is minimal but asked the applicant how he knew that he did not need a permit. Mr. Ouellette explained that it was his understanding from talking with staff in 2004 that he did not need a permit to replace a structure.

Commissioner Worcester stated that he did not think pieces of wood and tarp laid on the ground was considered a structure. Commissioner Dunphy stated that even if the tarps were considered a structure, a permit was required to replace it with the brick patio and another was needed to construct the wooden platform on the brick.

Commissioner Hilton asked staff if the new information in the packet changed their position on the matter. Billie MacLean explained that it appeared any legally existing structures have been gone for at least 10 years so the two year window to obtain a permit to reconstruct had past.

Commissioners Dunphy and Humphrey asked for clarification about just replacing the stairs to the lake without the platform, which staff explained may be allowed with a permit because the previous stairs were not removed until 2014.

Staff commented that the brick patio would also need to be removed to bring the property into compliance, however, this would be done through enforcement and did not need to be incorporated into this action.

**Commissioner Worcester motioned to approve staff recommendations; Commissioner Dunphy seconded; Vote: 6-2-0-1 Passed (Commissioners Humphrey and Underwood opposed.)**

After the vote, Director Livesay recommended that staff revise the draft decision document to incorporate information and arguments presented by the applicant and his attorney during this meeting. The revised decision document would then be presented to the Commission for final approval.

**Commissioner Fitzgerald motioned to approve this recommendation; Commissioner Pray seconded; Vote: 8-0-0-1 Unanimous**

## **ZONING MATTER**

**AMC Maine Woods II, LLC**, consideration of zoning D-RF subdistrict for recreational lodging facility; T1 R12 WELS and TA R12 WELS, Piscataquis County; Hugh Coxe

Hugh Coxe presented the zoning petition. AMC proposes to rezone 38.2 acres of their property to Recreational Facility Development (D-RF). D-RF allows Level D Recreational Lodging Facilities and was added to Chapter 10 in 2013 as part of the recreational lodging rule revisions. This Zoning petition is the first for D-RF since the rules went into effect.

The project is located In T1R12 WELS and Shawtown Township (TA R12 WELS) and is part of AMC's 28,300 acre Roaches Ponds Tract. It is on Second Roach Pond and accessed from Smithtown Road – an unimproved privately owned land management road that provides multi-use access to the lands owned by AMC. The Site includes 2,100 feet on Second Roach Pond Shoreline and includes the existing Medawisla Sporting Camps. Existing uses are forestry and recreation and existing zoning is D-GN, M-GN and P-GP.

The recreational lodging rule revisions were designed to allow for more intensive recreational lodging development in more distant, but appropriate, locations. The rules base the regulation of recreational lodging on impacts rather than individual use listings and accommodate a range of recreational lodging. The rules categorize facilities into 5 categories based on level of use, scale, and compatibility with existing uses and resources (which approximate impacts), and determine appropriate locations for each category.

The D-RF zone allows fairly intensive recreational lodging development such as a level D facility in fairly remote locations but provides some assurances about appropriateness. Level D facility characteristics may include activities with some noise or odor such as team sports, paintball, rafting base, rental of motorized equipment, and airplane rides for overnight guests; up to 20,000 square feet of floor area, up to 90,000 square feet of clearing within 250 feet of shore (more if no additional visual impact), moderate size retail, dining, fuel sales, recreation activities and services, and as many as 250 overnight guests.

The D-RF is appropriate in locations that provide access to recreational opportunities, are not overly sensitive to increased public use, may be distant from other development, would not interfere with existing uses, such as forestry or recreation opportunities, would not increase the demand for public services, and are not suitable for other types of commercial development.

AMC's proposal is in a good location because it fits the criteria for D-RF. It provides a relatively remote and natural setting to attract customers, is accessible to visitors, and provides access to numerous recreational opportunities such as hiking, fishing, paddling, hunting, camping, snowmobiling, biking and skiing. By changing from D-GN, it commits the facility to recreational lodging.

Commissioner Gilmore asked whether this would set a precedent for rezoning existing recreational facilities. Nick Livesay indicated there are other D-RF rezonings likely to come forward.

Commissioner Underwood asked whether AMC owns the land and asked about their non-profit status.

Commissioner Pray asked about other landowners around Second Roach Pond, about the access road, and about the easement. He expressed a concern with allowing rezonings within an easement area.

Bryan Wentzall, AMC, responded about the other landowners, the road, the easement and their plans.

**Commissioner Underwood motioned to approve staff recommendations; Commissioner Dunphy seconded; Vote: 8-0-0-1 Unanimous**

## **ENFORCEMENT MATTER**

**Krause, Richard W. and Janice Pacht**, consideration of settlement agreement; T1 R9 WELS, Piscataquis County; Debra Kaczowski. Debra Kaczowski gave a brief presentation on Enforcement Cases EC 13-18.

Commissioner Fitzgerald inquired as to whether the terms of the Settlement Agreement in regard to "should 50% or more of the structures be removed," is that any of the structures that are left. That is correct.

Commissioner Dunphy asked if they didn't remove the structures by that time, does the penalty go up or down? Director Livesay replied that we would then be in an enforcement situation where we would be back before the Commission to recommend referral to the Attorney General's office. The penalty would most likely not go down at that point.

Jonathon Pottle, attorney with Eaton Peabody, stated they were hired by Mr. Krause. In addition, Dick Day from Plisga & Day Land Surveyors was hired to survey the property to figure out the dimensions of the structures. As a comment/remark, the discussions with Debbie & Marc Russell from the East Millinocket office have been very transparent & constructive. From my clients' perspective, the settlement agreement is acceptable.

**Commissioner Fitzgerald motioned to approve staff recommendations; Commissioner Dunphy seconded;  
Vote: 8-0-0-1 Unanimous**

## **PLANNING AND ZONING MATTERS**

**Bancroft, deorganization update and presentation of draft zoning map; Aroostook County; Ben Godsoe**

Ben Godsoe presented a preliminary draft of the land use guidance map for Bancroft, and updated the Commission about the zoning effort. The preliminary, draft map has been prepared in accordance with the Comprehensive Land Use Plan and Chapter 10, and is based on the known natural resources, development densities, and land uses identified in a land use inventory during the winter and spring of 2015, and on discussions with residents and property owners over the course of the project.

The current version of the map reflects all of the work that has gone into gathering information about natural resources and existing development, as well as public input received at one open house and two public meetings. However, the map is not yet ready to be posted for an official public comment period because some additional information is needed and may result in a few further refinements. There is one area where more information is necessary in order to finalize the draft map. The area is marked on the draft map and includes four sites where existing structural development lies within mapped wetlands. One of these sites also lies within a proposed flood plain protection subdistrict. In these areas staff will work with property owners and gather more information to ensure that the proposed zoning accurately reflects conditions on the ground.

The Commission discussed next steps for adoption of the zoning map for the town and decided to direct staff to initiate the map adoption process and collect public comments before the Commission formally reviews and decides whether to adopt the draft land use guidance map for Bancroft.

Commissioner Dunphy asked if any changes to the proposed subdistricts would be done during the public comment period? Staff will certainly respond to any public comments that come forward and bring them to the attention of the Commission when it makes the final decision about adoption of the land use guidance map.

Commissioner Hilton asked: what kinds of comments have come forward so far? Residents and property owners have had a lot of clarifying questions so far, mostly about how the Commission functions and specifically about the mechanics of getting permits. During the public meetings people had more specific questions about allowed uses and standards.

Commissioner Gilmore asked: does it take a legislative act to deorganize a municipality? What happens to any reserve funds? The town has to put together a plan, as part of the deorganization process, to disperse assets and address liabilities.

Commissioner Underwood added that it generally takes 2-3 years to go through the process. There is a state committee that deals expressly with deorganization (LUPC has a spot on the Committee). Most of the action happens around the schools and public roads.

Commissioner Pray asked if landowners, both fulltime and seasonal, had been notified and active throughout the process? Staff engaged with landowners that could not attend public meetings and were able to share meeting materials and drafts with them by e-mail and through the website.

Commissioner Humphrey asked: what proportions of people in town were in favor of deorganization? Did the large landowners object in any way? Large landowners asked a few clarifying questions and attended both public

meetings, but did not object. Commissioner Pray added that the process does not get to the legislature if local people are not in favor of deorganization. Commissioner Underwood added that it was a 3:1 vote in favor of deorganization in Bancroft.

**Commissioner Humphrey motioned for staff to initiate the map adoption process and collect public comment in advance of future final action by the Commission; Commissioner Fitzgerald seconded; Vote: 8-0-0-1 Unanimous**

**Community Guided Planning and Zoning**, Hugh Coxe discussed the update on the work done in various regions;

Hugh Coxe presented an overview of the typical CGPZ process and then described the status of each of the three regions that are currently involved in a CGPZ process.

Aroostook has been at work on CGPZ for a while and in the early winter focused on small business. The Aroostook committee has proposed a new subdistrict – the small business development subdistrict (D-SB). They held four public meetings in April which were well promoted by NMDC meetings but only about a dozen people attended. The committee is now putting more detail to the draft and staff is beginning to draft rule language to incorporate the D-SB concept into chapter 10. The Commission will likely see a product from Aroostook in the fall.

Western Maine differs because it has two separate coordinating agencies. They worked together to develop their process document and settled on a common theme for the two regions – land uses associated with outdoor recreation. For the planning phase each county has held separate meetings and took different approaches. In Franklin they have looked at a broad range of issues and have developed a document that allows them to assess the relevance and priority of those issues. In Somerset they have focused on outdoor recreation and the need for some support businesses closer to the recreational resources. Both regions are generating ideas for further planning and will develop a phase 1 report that includes a work plan for the more detailed land use planning and information gathering and assessment they will conduct in phase 2. The report will likely be developed in the fall for the Commission's consideration.

Washington County held their first facilitated meeting for developing a process document. They had good participation and have developed a detailed draft document. They anticipate the planning process will take about a year and a half. The process document will be presented to the Commission in late summer.

Commissioner Underwood indicated an appreciation on the part of Aroostook County.

Commissioner Hilton asked about funding for facilitation and whether there would be future funding for a facilitated process. She mentioned that other counties may come forward as the makeup of the LUPC commission changes. She commented that she thought that the CGPZ process would result in prospective zoning rather than topical considerations.

Commissioner Dunphy stated that counties expect the LUPC do the zoning with regional input.

Commissioner Hilton commented on trying to balance the desire for consistency throughout the jurisdiction with regional variations.

## **OTHER MATTERS**

**Commissioner Comments** – Commissioner Worcester thanked Commissioner Hilton for her work as Chair and stated he enjoyed working together. Other Commissioners similarly expressed their appreciation for Commissioner Hilton’s work on the Commission.

**ADJOURN**

Meeting adjourned at approximately 2:30pm.