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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 8  
BANGOR, MAINE 04416

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

# Memorandum

To: Commission Members

From: Jean A. Flannery, Permitting & Compliance Manager

Date: September 3, 2014

Re: Staff Recommendation; Zoning Petition ZP 748; Kingsbury Plt., Piscataquis County, Maine

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## Proposal

This is a Commission-initiated rezoning for 9 acres from Residential Development Subdistrict (D-RS) to General Management Subdistrict (M-GN); 2 acres are owned by Jean T. Nichols, and 7 acres are owned by Scott G. Peacock, Casey R. Peacock, Gregory R. Peacock and Margaret E. Peacock. The purpose of the rezoning petition is to zone the acreage to a subdistrict that is more consistent with the historic and current surrounding uses and resources of the subject parcels and to facilitate the operation of a recreational lodging facility on the property currently owned by Jean T. Nichols and operated by Stephen Wood.

## Commission Review Criteria

According to 12 M.R.S. § 685-A(8-A) of the Commission's statutes, and Section 10.08,A of the Commission's Land Use Districts and Standards (the Standards), a land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan (CLUP) and the purpose, intent and provisions of this chapter [Chapter 206-A]; and
- B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

## **Conclusions and Staff Recommendation**

Based on staff's findings in the attached draft decision regarding Zoning Petition ZP 748, the proposed rezoning is consistent with the CLUP and will have no undue adverse impact on existing uses or resources. Staff's review of the area and historic documents indicates that the proposed rezoning appears to be more consistent with the historic and current surrounding uses and resources of the subject parcels. Further the rezoning would allow for the operation of a recreational lodging facility.

Therefore, staff recommends that the Commission approve Zoning Petition ZP 748 to rezone 9 acres from Residential Development Subdistrict (D-RS) to General Management Subdistrict (M-GN), as per the attached map.

Attachments:  
ZP 748 Staff Recommendation  
Revised zoning map

xc: ZP 748 File



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WALTER E. WHITCOMB  
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NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

COMMISSION DECISION  
IN THE MATTER OF

Maine Land Use Planning Commission

Finding of Fact and Decision

**ZONING PETITION ZP 748**

The Maine Land Use Planning Commission (the LUPC or Commission), at a meeting of the Commission held September 10, 2014 at Rangeley, Maine, after reviewing the record materials associated with Zoning Petition ZP 748, including landowner comments, pursuant to 12 M.R.S. Sections 681 et seq. and the Commission's rules, finds the following facts:

1. Petitioner: Commission-initiated Petition (Attn: Jean Flannery )  
18 Elkins Lane  
22 State House Station  
Augusta, Maine 04330-0022
2. Landowners:  
Parcel 1: Scott G. Peacock, Casey R. Peacock, Gregory R. Peacock and Margaret E. Peacock  
327 West Road  
Gardiner, Maine 04345  
  
Parcel 2: Jean T. Nichols  
7 Wakely Court  
Portland, Maine 04345
3. Date of Completed Petition: Commission Initiated
4. Property Location: Kingsbury Plantation, Piscataquis County, Maine  
Parcel 1: Kingsbury Plantation Map 02, Lot 8  
Piscataquis County Registry of Deeds Book 1993, Page 306  
Parcel 2: Kingsbury Plantation Map 02, Lot 8-2 (Portion of Lot 8)  
Piscataquis County Registry of Deeds Book 1787, Page 219
5. Present Zoning:

- Parcel 1: Residential Development Subdistrict (D-RS)  
General Management Subdistrict (M-GN)  
Shoreline Protection Subdistrict (P-SL2)
- Parcel 2: Residential Development Subdistrict (D-RS)

6. Proposed Zoning:

- Parcel 1: Residential Development Subdistrict (D-RS)  
General Management Subdistrict (M-GN)  
Shoreline Protection Subdistrict (P-SL2)
- Parcel 2: General Management Subdistrict (M-GN)

7. Lot Size:

- Parcel 1: Total lot size: 98 acres  
Area proposed to be rezoned: 7 acres.
- Parcel 2: Total lot size: 2 acres  
Area proposed to be rezoned: 2 acres.

**Project Summary:**

- 8. The Petitioner proposes to rezone 9 acres of Residential Development Subdistrict (D-RS) to General Management Subdistrict (M-GN). The purpose of the rezoning petition is to zone the acreage to a subdistrict that is more consistent with the historic and current surrounding uses and resources of the subject parcels and to facilitate the operation of a recreational lodging facility.

**Commission Review Criteria:**

- 9. According to 12 M.R.S. § 685-A(8-A) of the Commission’s statutes, and Section 10.08,A of the Commission’s Land Use Districts and Standards (the Standards), a land use district boundary may not be adopted or amended unless there is substantial evidence that:
  - A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter [Chapter 206-A]; and
  - B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

**Administrative History:**

10. Lot 8 (Parcel 1).

- A. *April 28, 2005.* Advisory Ruling AR 05-011, issued to Gregory R. Peacock, provided guidance on whether the placement of a dwelling unit or sporting camp on lot 8, or the purchase and placement of a sporting camp on abutting lot 13 would create a subdivision. At the time, lot 8 consisted of 103 acres and was developed with a seasonal camp, garage and the old Kingsbury

school building. All existing structures were located in the D-RS subdistrict. The proposed residential dwelling outlined in the advisory ruling was to be located in the M-GN subdistrict. The advisory ruling outlined the regulations applicable to a potential sporting camp on the both properties and noted that commercial sporting camps were not an allowed use in the D-RS subdistrict but were allowed within an M-GN subdistrict.

11. Lot 8-2 (Parcel 2).

- A. *September 28, 2006.* Jean T. Nichols purchase a 2 acre portion of lot 8 (a.k.a lot 8-2) from Gregory R. Peacock, Scott G. Peacock and Casey R. Peacock. The entire lot is located within the D-RS subdistrict, contains the three structures previously associated with Lot 8, and has 250 feet of road frontage on Campbell Road.
- B. *May 2014.* In May of 2014, an anonymous complaint was filed with the Commission which alleged that a sporting camp (a.k.a. J&S Guide Service) was being operated on lot 8-2 without the appropriate permits from the Commission. Staff contacted the person running the guide service (Steve Wood) in late May to discuss the potential violations.

12. On August 13, 2014, staff presented on behalf of the Landowners the history of both lots and a brief outline describing the initial zoning process of Kingsbury Plantation to the Commission. The Landowners requested that the Commission initiate rezoning.

13. Notice of Filing. On August 20, 2014, notice of the proposed zoning petition was properly made to appropriate parties and the public as required under Chapter 4 of the Commission's rules. No comments or requests for a public hearing were received from the public regarding the petition.

**Project Information:**

14. The Petitioner seeks to rezone 7 acres of Parcel 1 and 2 acres of Parcel 2 from D-RS to M-GN subdistrict. Total rezoning area would be 9 acres. The staff's review of the area and historic documents indicates that the proposed rezoning appears to be more consistent with the historic and current surrounding uses and resources of the subject parcels. Further, the rezoning would allow for the operation of a recreational lodging facility.

15. Existing Resources in the Area.

- A. *Soils.* Soil map unit data obtained from the U.S. Department of Agriculture's Natural Resource Conservation Service's Soils Survey Geographical database for Piscataquis, County, Maine identified the soils as Telos-Chesuncook-Elliottsville (TLC) association, strongly sloping (3 to 15 percent slopes), very stony, and well drained, moderately well drained to somewhat poorly drained.
- B. *Streams and Wetlands.* There are no mapped streams or wetlands associated with the proposed rezone area.

C. *Fish and Wildlife, Unusual Natural Areas and Historic Resources.* A review of maps on file indicates that there would be no impact to Fish and Wildlife, Unusual Natural Area or Historic Resources. The existing guide service has been operating for over seven years at this location, and there are currently no proposed changes to that operation.

16. Existing Uses in the Area. There are approximately six (6) residential dwellings along Campbell Road, ranging from 350 feet to 1,500 feet from the proposed rezone area. Foss Hill Cemetery is located approximately 3,500 feet by road from the site. The center of Kingsbury Plantation is located approximately 1 mile from the site. Lands abutting the properties include undeveloped woodlands, farmlands and residential uses.

17. Anticipated Impacts on Existing Uses and Resources. The Petitioner does not anticipate significant impacts to natural resources and existing uses in the vicinity of the proposed rezoning petition area.

18. Consistency with the Comprehensive Land Use Plan (CLUP).

- A. The Petitioner notes a goal of the Commission with regard to the location of development is to: Guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.” (CLUP, Ch. 1.2,I,A at pg. 6.) The proposed rezoning is consistent with this goal. For example, it does not incentivize new development in inappropriate areas or promote incompatibility neighboring uses, given the size and location of the area proposed to be rezoned.
- B. The Petitioner notes the Commission has multiple goals with regard to natural and cultural resources. (CLUP, Ch. 1.2,II.) The rezoning is consistent with and will not interfere with achieving these goals.

19. The facts are otherwise as represented in Zoning Petition ZP 748 and supporting documents.

**Based upon the above Findings and the following analysis, the Commission Concludes:**

1. Consistency with the Standards for District Boundaries. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission’s statute, a proposed rezoning must be consistent with the Standards for district boundaries in effect at the time.
  - A. Section 10.21,J,2 of the Commission’s Standards describes a D-RS subdistrict as an area where four or more single family dwelling units exist with a 500 foot radius and including those areas surrounding the 500 foot radius which contain neighborhood or associated uses that primarily serve such residences.
  - B. Section 10.22,A,1 of the Commission’s Standards establishes that the purpose of the M-GN subdistrict is to permit forestry and agricultural management activities to occur with minimal interference from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required.

- C. Section 10.22,A,3,c,(13) of the Commission’s Standards establishes that a recreational lodging facilities, such as the one currently operating on Parcel 2, may be allowed within a M-GN subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, and subject to the applicable requirements set forth in Sub-Chapter III.
  - D. The area to be rezoned does not contain four or more single family dwelling units within a 500 foot radius. While sporadic residential dwellings are located along Campbell Road, the bulk of residential development is located northwest, along State Route 16 in the center of Kingsbury Plantation. M-GN zoning is a more appropriate subdistrict for the area in question. Specifically, the area to be rezoned in Parcel 1 is undeveloped woodlands and contains no resources which would warrant a protection subdistricts. The area in Parcel 2 to be rezoned, although it does contain a residential dwelling, does not contain any resources which would warrant protection subdistrict. Further, the proposed rezoning on Parcel 2 is of a size that would accommodate a recreational lodging facility and be in conformance with the Commission’s lot coverage standard and other dimensional requirements. Therefore, for the purposes of rezoning, the proposed M-GN subdistrict is consistent with the standard for district boundaries in effect at the time and is of a size that would accommodate the proposed recreational lodging facility.
2. Consistency the Comprehensive Land Use Plan and Chapter 206-A. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission’s statute, a proposed rezoning must be consistent with the comprehensive land use plan. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission’s statute, a land use district boundary may not be adopted or amended unless the proposed land use district is consistent with the purpose, intent and provisions of Chapter 206.
- A. Section 685-A(1) establishes the Commission zoning authority: “The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that shall fall into land use districts and designate each area in one of the following major district classifications: protection, management and development.” Section 685-C(1) required the Commission to develop the CLUP and establishes: “The commission must use the plan as a guide in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.” Upon considering the goals and policies of the CLUP, the Commission concludes the rezoning is consistent with the Comprehensive Land Use Plan.
  - B. Section 681 states the Legislature “finds that it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State” to, among other things, “encourage appropriate residential, recreational, commercial and industrial land uses.” The Commission evaluated the petition with respect to consistency with Chapter 206-A and principles of sound planning, zoning, and development. Having considered the locations of nearby residential dwellings and the associated uses that primarily serve those residences, such as schools, places of worship and cemeteries, other surrounding uses and resources, the goals and policies of the CLUP, the current uses of the proposed rezoning area, and the type and intensity of the existing recreational lodging facility, the Commission concludes that approval of the rezoning petition would be an act of sound land use planning. Therefore, the Commission concludes the proposed rezoning is consistent with the purpose, intent and provisions of Chapter 206-A, which cumulatively are designed to promote sound planning.

3. Impacts on Existing Uses and Resources. According to 12 M.R.S. § 685-A(8-A)(B) of the Commission's statute, the proposed land use district can have no undue adverse impact on existing uses or resources.
  - A. A review of the uses allowed within the M-GN subdistrict reveals that a recreational lodging facility is an allowed use within this subdistrict. Any potential impacts associated with a particular facility can be addressed through facility-specific permitting. Review of the other uses allowed in the M-GN subdistrict, uses that could occur if the property is rezoned, would have minimal impacts to both residential dwellings in the area and would have no impact to resource protection subdistricts. Therefore, the Commission concludes that the proposed rezoning would have no undue adverse impact on uses or resources.
  
4. Final Conclusions. In summary, and for reasons explained above, the Commission concludes that the proposed rezoning of 9 acres from D-RS to M-GN:
  - A. Is consistent with the standards for district boundaries in effect at the time;
  - B. Is consistent with the Commission's 2010 Comprehensive Land Use Plan and with the purpose, intent and provision of Title 12, Chapter 206-A; and
  - C. Would not have an undue adverse impact on existing uses or resources.

**Therefore, the Commission approves the petition of the staff of the Maine Land Use Planning Commission to rezone 9 acres from (D-RS) Residential Development Subdistrict to (M-GN) General Management Subdistrict, according to the attached zoning map, dated September 3, 2014.**

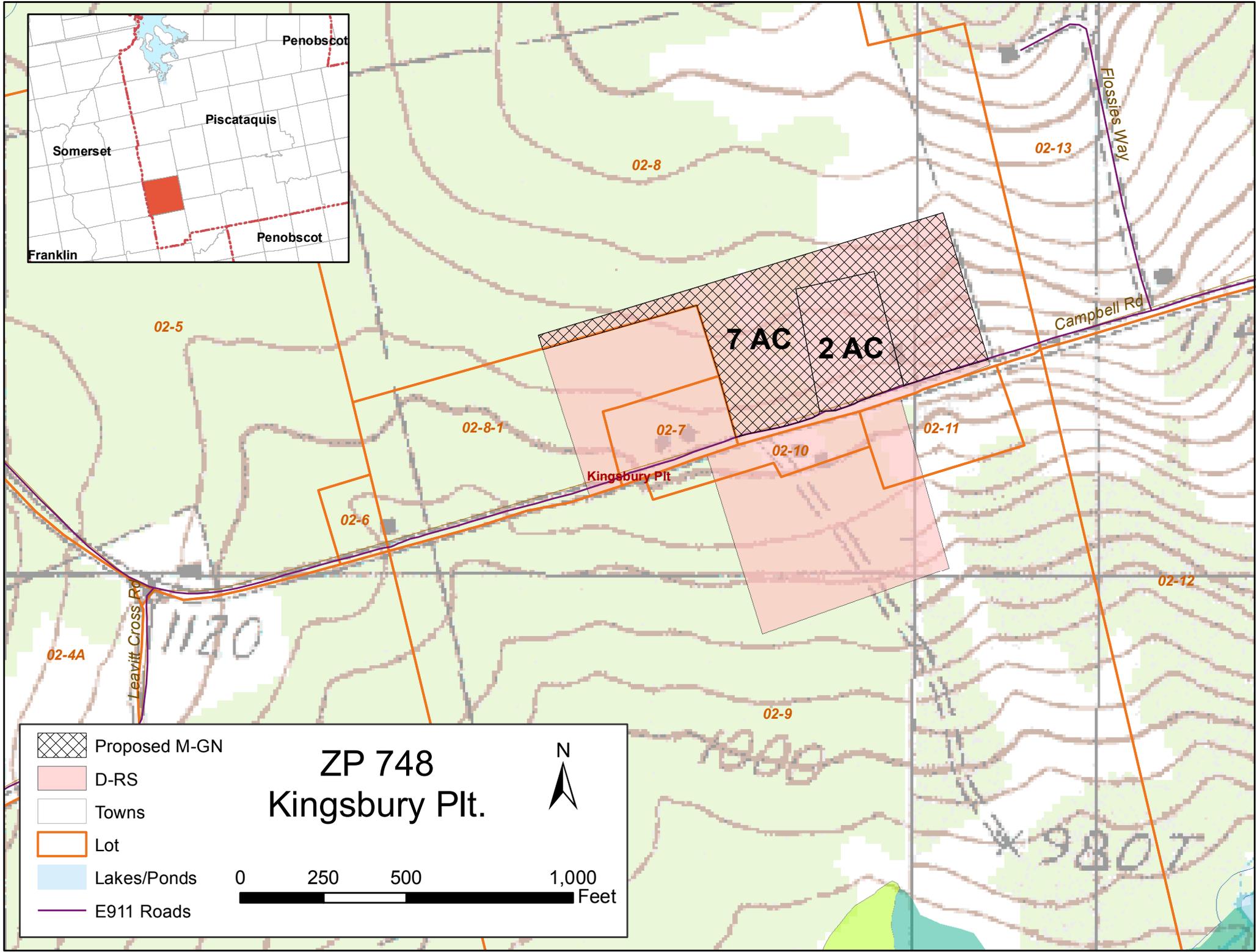
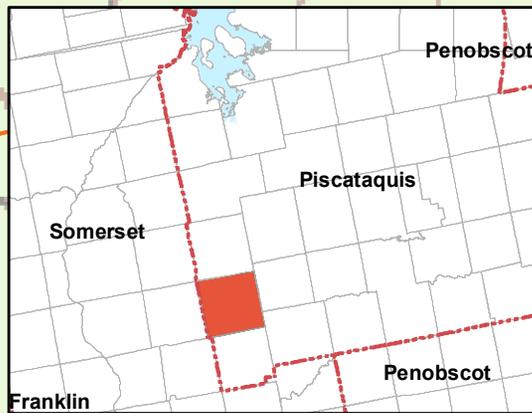
In accordance with 5 M.R.S. § 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT RANGELEY, MAINE, THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2014.

By: \_\_\_\_\_

Nicholas D. Livesay, Executive Director

This change in Subdistrict designation is effective on September 25, 2014.



**ZP 748**  
**Kingsbury Plt.**

- Proposed M-GN
- D-RS
- Towns
- Lot
- Lakes/Ponds
- E911 Roads

0 250 500 1,000 Feet

N