



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS LIVESAY  
DIRECTOR

COMMISSION DECISION  
IN THE MATTER OF

Staff, Maine Land Use  
Planning Commission

Findings of Fact and Decision

AMENDMENT A TO ZONING PETITION ZP 578

The Maine Land Use Planning Commission, at a meeting of the Commission held May 14, 2014, at Brewer, Maine, after reviewing the draft land use guidance map and supporting documents submitted by the staff of the Maine Land Use Planning Commission for Amendment A to Zoning Petition ZP 578, and other related materials on file, pursuant to 12 M.R.S.A. Section 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. Petitioner: Staff (attn: Marcia Spencer-Famous)  
Maine Land Use Planning Commission  
22 State House Station  
Augusta, Maine 04333-0022
2. Date of Completed Petition: April 10, 2014
3. Location of Proposal: Southern Portion of Metinic Island, Knox County
4. Affected Waterbody: Atlantic Ocean
5. Present Zoning: (D-RS) Residential Development Subdistrict  
(P-RP) Resource Plan Protection Subdistrict
6. Proposed Zoning: (M-GN) General Management Subdistrict  
(D-RS) Residential Development Subdistrict  
(P-SL1 and P-SL2) Shoreland Protection Subdistrict  
(P-WL1 and P-WL2) Wetland Protection Subdistrict

## Proposal

7. The petitioner seeks to rezone the current Resource Plan Protection (P-RP) Subdistrict on southern Metinic Island: *Resource Plan for the Southern Portion of Metinic Island, Knox County, Maine*, dated April 1994). The landowners have decided not to renew the Resource Plan and the associated P-RP Subdistrict, which will expire on August 5, 2014.
8. The petitioner proposes to replace the current P-RP Subdistrict area on the southern portion of Metinic Island with the management and protection subdistricts that would apply to the southern portion of Metinic Island in the absence of the P-RP zoning, as follows: General Management (M-GN), Shoreland Protection (P-SL1 and P-SL2), and Wetland Protection (P-WL1 and P-WL2) Subdistricts. The existing Residential Development (D-RS) Subdistrict will remain in place unchanged. The land use guidance map accompanying this zoning petition shows the proposed subdistricts for the southern end of the island, except that the 75 foot wide Shoreland Protection (P-SL2) Subdistrict, which borders minor flowing waters and some P-WL1 wetlands is not shown on the map due to scale.

## Background

9. Metinic Island lies approximately seven miles offshore from the mainland town of St. George in Knox County. The island supports a large and varied population of nesting seabirds. Maine has over 4,600 coastal islands, and Metinic is one of 377 that are listed as nationally significant because of nesting seabirds or threatened or endangered species. Metinic Island is approximately 300 acres in size – large compared to most seabird nesting islands, which average 21.5 acres in size. Much of the island is cropped meadow due to grazing by the island sheep population. Approximately 75 acres, most on the central portion of the island, are densely forested with spruce and fir, with some areas of heavy undergrowth.
10. The current “*Resource Plan for the Southern Portion of Metinic Island*” and P-RP Subdistrict will expire on August 5, 2014. Metinic Island, Inc. owned southern Metinic Island at the time the Commission approved the original resource plan in 1994 and continues to own the island in 2014.
11. There are currently a number of seasonal residences, several accessory structures and a permanent wharf in the existing D-RS Subdistrict located on a cove at the southeastern side of the island. This area serves as the base for seasonal fishing and housing from spring to fall. A flock of sheep roam and graze the entire island part of the year but are restricted to the southern end of Metinic during the coastal seabird nesting season.
12. The northern portion of Metinic Island is subject to a separate P-RP Subdistrict and Resource Plan, which was originally put in place in 1992, was extended for one year in 2012, and renewed for 20 years in 2013. The Resource Plan for the northern portion of Metinic Island will expire in 2023. One of the parcels on the northern portion of Metinic

is owned by the U.S. Fish and Wildlife Service (USFWS), which conducts a seabird restoration program at that location, including protection of a significant tern colony.

### Public Notice and Comment

13. Notice of the zoning petition was provided by certified mail to the owners of the land to be rezoned and the landowners on the northern end of Metinic Island; and by email to the resource agencies and parties that have asked to be notified of Commission rulemaking proposals.
14. A public hearing on this proposal was not held. Public notice was made on April 10, 2014, and the comment period closed on April 30, 2014. The only comments received were from the Maine Department of Inland Fisheries and Wildlife (see Finding #15, below, and a letter from the landowners stating that they find the rezoning as proposed acceptable.

### Resource Assessment

15. *Maine Department of Inland Fisheries and Wildlife (MDIFW)*. The MDIFW biologists and others conducted a comprehensive census of seabird nesting on the southern portion of Metinic Island in 2013 in anticipation of the renewal or rezoning of the current P-RP zoning. Based on the results of the 2013 field survey, MDIFW did not find that a Fish and Wildlife Protection (P-FW) Subdistrict is warranted on the southern portion of Metinic Island.
  - A. *2013 survey and results*. The 2013 nesting survey methodologies for common eiders and gulls were nearly identical to those utilized in the 1991 survey of the entire island. However, improvements in GPS technology resulted in more accurate nest mapping.
    - (1) *Common eider, herring gull, and black-backed gull*. In 2013, a total of 56 common eider nests, 362 herring gull nests and 65 great black-backed gull nests were recorded and mapped. The locations of gull nests in the more open areas of the island were expected. A similar condition was noted in the 1991 survey when the majority of gulls were associated with the southern portion of Metinic Island. However, unlike the results of the 1991 census for eiders, most eider nesting was not in the spruce and fir forest areas, but was concentrated along the patches of shrubs and small trees scattered about the southern end of the island. Common eider numbers in 2013 were lower than those observed in earlier census activities.
    - (2) *Terns, black guillemot and Leach's storm-petrel*. Tern and black guillemot surveys were timed and conducted in accordance with standards and methods articulated by the Gulf of Maine Seabird Working Group. In 2013, 44 black guillemots were recorded, and Leach's storm-petrel was recorded as "present" but in low numbers; no accurate nest count was recorded. No common or Arctic terns were found nesting on the southern portion of Metinic Island in 2013. All tern nesting in 2013 was recorded on the northern portion of this island on property owned and managed by the US Fish and Wildlife Service (USFWS).

- (3) *Other species noted.* The field crew noted an active and successful (in 2013) nesting pair of bald eagles on the southern portion of Metinic Island. In addition, one mallard nest was located during the survey.
- B. *MDIFW assessment.* In its 2013 seabird survey report, MDIFW stated that based on the history of use of Metinic Island by nesting seabirds, the island is expected to continue to support healthy populations of nesting seabirds in the future as long as the habitat remains suitable.
- (1) Based upon the 2013 seabird survey results, MDIFW commented that most of the seabird species' numbers came in well below the threshold for special zoning protection through the Fish and Wildlife (P-FW) Subdistrict. While the number of herring gulls present exceeded the P-FW threshold, MDIFW said that these gulls seem to be doing very well, nesting in the large expanses of the southern end of Metinic in fairly high densities beyond the existing developed areas and lawns. MDIFW concluded that with the USFWS's ongoing and successful seabird restoration program on the northern end of the island and the generally large size of Metinic, the current status of the seabird resource is quite good.
16. *Flood Prone Area Protection (P-FP) Subdistricts.* The Commission is no longer transferring the Federal Emergency Management Agency/National Flood Insurance Program (FEMA/NFIP) flood zone base flood elevations (BFEs) to the LUPC zoning maps and labeling them as P-FP Subdistricts because if there is any question as to the boundaries of those flood zones, the FEMA/NFIP maps<sup>1</sup> prevail. This is required by the NFIP and is stated in the description of the P-FP Subdistrict (*see* § 10.23, C, 2 of the Commission's Chapter 10 rules). As the Commission adopts each FEMA/NFIP flood map, a note is placed on each corresponding LUPC zoning map, referencing the FEMA maps. Currently, the FEMA/NFIP maps for Knox County coastal areas, including Metinic Island are in the process of being updated and are scheduled to be finalized in 2015. As such, the petitioner has not included the Flood Prone Area Protection (P-FP) Subdistrict as a proposed zone on southern Metinic Island.

## Review Criteria

17. The Resource Plan Protection (P-RP) Subdistrict rules state, "At the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning of equivalent areas." [*Chapter 10, §10.23, H, 8*]
18. *Statute.*
- A. The Commission's statute, 12 M.R.S.A., § 685-A (8-A), provides that no change in a district boundary may be approved unless the change would be consistent with the standards for district boundaries in effect at the time, the *Comprehensive Land Use Plan*, and the purpose, intent and provisions of the chapter [statute]; and the new

---

<sup>1</sup> Primary Flood Insurance Rate Maps (aka, FEMA's National Flood Insurance Program (NFIP) maps)

district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

- B. The Commission's statute, 12 M.R.S.A. § 685-A (1), directs the Commission to establish protection subdistricts in "areas where development would jeopardize significant natural, recreational and historic resources..." and management subdistricts in "areas that are appropriate for commercial forest product or agricultural uses . . . ."

19. *Comprehensive Land Use Plan (CLUP)*. The Commission's CLUP includes goals and policies to:

- A. "Encourage forest, recreation and other resource-based industries and enterprises which further the jurisdiction's tradition of multiple use without diminishing its principal values." [*CLUP, Goals and Policies, I, Development Goals and Policies, B. Economic Development, (1), page 7*]
- B. "Protect and conserve the special natural and cultural resources of coastal islands and mainland townships and help sustain the traditional resource-based economies of these areas." [*CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, C. Coastal Resources, Goal, page 12*]
- C. "Coordinate with and support agencies in the identification and protection of a variety of high-value wildlife habitats, including but not limited to: habitat for rare, threatened or endangered species;...seabird nesting islands; waterfowl and wading bird habitats; shorebird nesting, feeding and staging areas..." [*CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, H. Plant and Animal Habitat Resources, (1), page 16*]
- D. "Protect wildlife habitat in a fashion that is balanced and reasonably considers the management needs and economic constraints of landowners." [*CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, H. Plant and Animal Habitat Resources, (5), page 16*]
- E. "Regulate land use activities to protect habitats, including deer wintering areas and coastal bird nesting sites, ecosystems, food sources and other life requisites for wildlife species to maintain biodiversity in the jurisdiction." [*CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, H. Plant and Animal Habitat Resources, (9), page 17*]
- F. "Regulate land uses generally in order to protect natural aesthetic values and prevent the incompatibility of land uses." [*CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, J. Scenic Resources, (2), page 18*]
- G. "Regulate uses of land and water in order to prevent degradation of the jurisdiction's excellent water quality and undue harm to aquatic habitat." [*CLUP, Goals and*

*Policies, II, Natural and Cultural Goals and Policies, K. Water Resources, (1), page 18]*

- H. "Protect the recreational and aesthetic values associated with water resources." [CLUP, Goals and Policies, II, Natural and Cultural Goals and Policies, K. Water Resources, (2), page 18]
- I. "Conserve and protect the ecological functions and social and economic values of wetland resources." [CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, L. Wetland Resources, Goal, page 18]

20. *Chapter 10 Land Use Districts and Standards.*

- A. The purpose of the M-GN, General Management Subdistrict, is to "permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required." [Chapter 10 Land Use Districts and Standards, §10.22, A, 1]
- B. The purpose of the P-SL1 and P-SL2 Shoreland Protection Subdistricts, is to "regulate certain land use activities in certain shoreland areas in order to maintain water quality, plant, fish and wildlife habitat and in order to protect and enhance scenic and recreational opportunities." [Chapter 10, §10.23, L, 1]
- C. The purpose of the P-WL1 and P-WL2 Wetland Protection Subdistricts, is to "conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform." [Chapter 10, §10.23, N, 1]

- 21. The facts are otherwise as represented in Amendment A to Zoning Petition ZP 578 and supporting documents.

**Based on the above information and supporting documents, the Commission makes the following findings and conclusions:**

- 1. The proposed zoning is consistent with the Commission's *Land Use Districts and Standards*, in that the zoning will revert to M-GN, P-SL1, P-SL2, P-WL1 and P-WL2 Subdistricts, which previously applied to the area and are appropriate for the protection and management of existing uses and resources in the absence of the Resource Plan Protection Subdistrict. The proposed subdistricts are consistent with the zoning of equivalent areas. The areas of the southern portion of Metinic Island to be zoned M-GN Subdistrict meet the purpose and definition of that zone (*see* Section 10.22,A,1 and 2 of the Commission's standards; and Finding #20,A, above), and do not meet the purpose or definition of protection or development zones. This approach is consistent with the zoning used on Matinicus Island and Criehaven Island. Furthermore, a P-FW Subdistrict is not proposed for the southern portion of Metinic Island, based on comments submitted

by MDIFW and the results of a seabird nesting survey conducted by MDIFW and others in 2013 (see Finding #15, above). Last, due to the current revisions to the FEMA base flood elevation maps, which include Metinic Island, and the requirement that the Commission adopt the revised FEMA maps once they become final, there is no reason to also include a P-FP Subdistrict on the southern portion of Metinic Island.

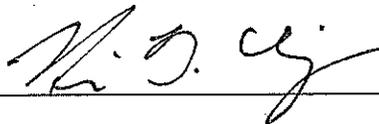
2. The rezoning, as proposed, carries out the policies of the Commission's *Comprehensive Land Use Plan*, in that the management subdistrict as applied has as its purpose appropriate utilization of land and water resources, and the protection subdistricts as applied have as their purposes the conservation of land and water resources warranting protection.
3. The proposed zoning is consistent with the purpose, intent, and provisions of 12 M.R.S.A., Chapter 206-A, §685-A (1) and (8-A).

**Therefore, the Commission approves the petition of the staff of the Maine Land Use Planning Commission to replace the Resource Plan Protection Subdistrict with other appropriate zoning on the southern portion of Metinic Island, per the accompanying map.**

In accordance with 5 M.R.S.A. section 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 BREWER, MAINE THIS 14<sup>th</sup> DAY OF MAY 2014.

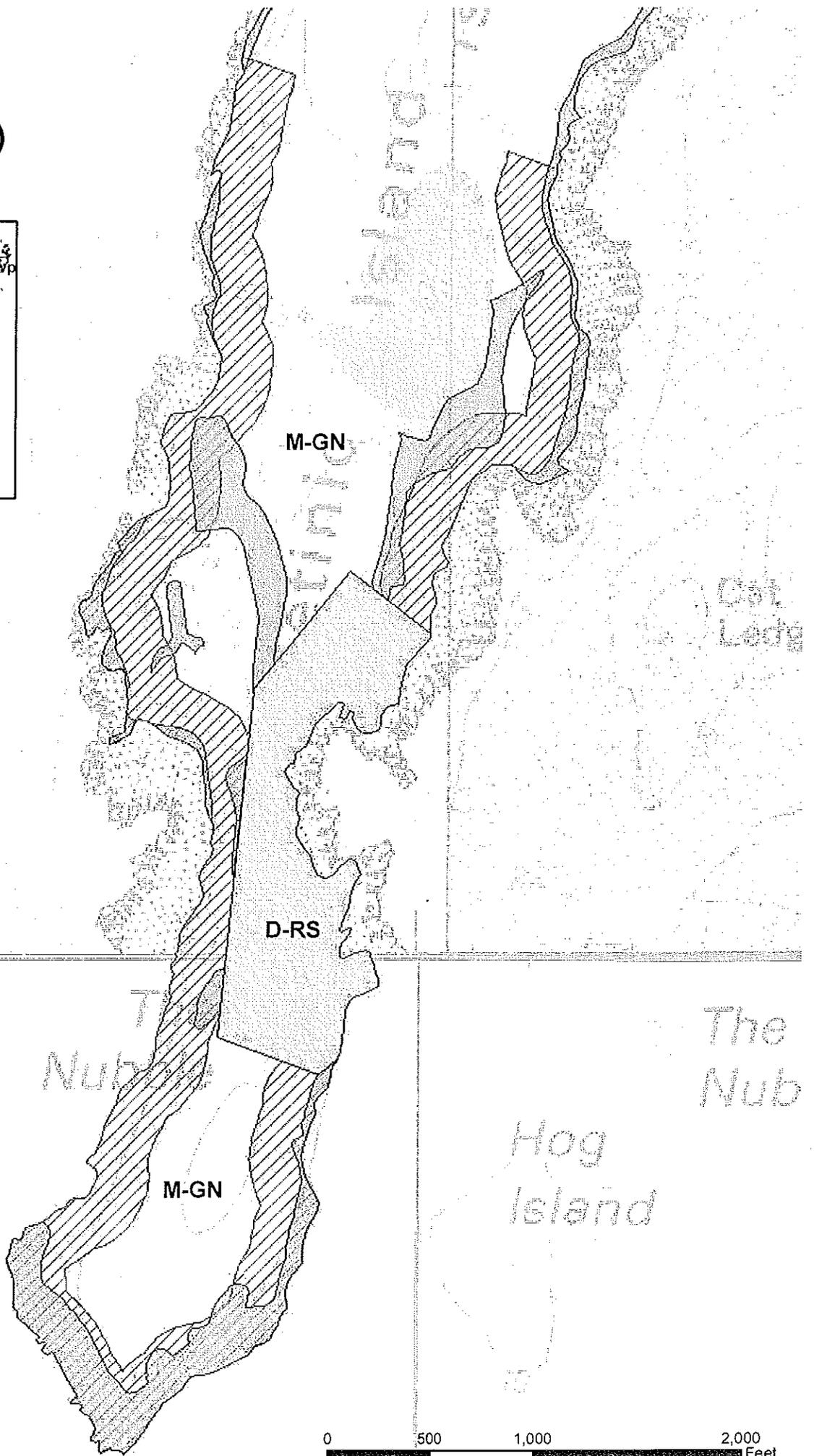
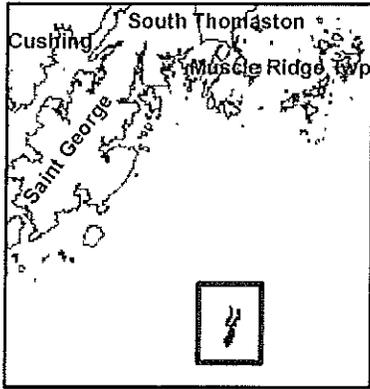
By: \_\_\_\_\_



Nicholas D. Livesay, Director

This Zoning Petition for the Southern Portion of Metinic Island is effective on August 5, 2014.

**ZP 578 A  
Metinic Island  
(southern end)  
Knox County**



**Subdistricts:**

**Existing**

-  D-RS

**Proposed**

-  M-GN
-  P-SL1
-  P-WL1
-  P-WL2

0 500 1,000 2,000 Feet