



PAUL RICHARD LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04330-0022

WALTER E. WHITCOMB
COMMISSIONER

COMMISSION DECISION
IN THE MATTER OF

Maine Department of Inland Fisheries and Wildlife

Findings of Fact and Decision

ZONING PETITION ZP 751

The Maine Land Use Planning Commission, at a meeting of the Commission held April 8, 2015, at Brewer, Maine, after reviewing the application and supporting documents submitted by the Maine Department of Inland Fisheries and Wildlife for Zoning Petition ZP 751, public comments, agency review and staff comments 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: Maine Department of Inland Fisheries and Wildlife
Attn: Richard Hoppe, Regional Wildlife Biologist
PO Box 447
Ashland, Maine 04732
2. Landowner: Pingree Associates Inc., c/o Seven Islands Land Company
3. Date of Completed Petition: March 10, 2015
4. Location of Proposal: T9 R 7 WELS, Aroostook County
5. Present Zoning: Interim (P-4) Protection Subdistrict
(P-WL) Wetland Protection Subdistrict
6. Proposed Zoning: (M-GN) General Management Subdistrict
(P-WL) Wetland Protection Subdistrict

Background

7. In October of 1972, the Commission adopted Chapter 2, Standards for Interim Land Use District Boundaries and Permitted Uses and established Management (M), Development (D) and a number of Protection (P) Subdistricts. The Interim (P-4) Protection Subdistrict applied to "areas significant in maintaining populations of wildlife and fish species. Such areas may include but are not limited to deer yards, waterfowl habitat, habitats of endangered species, and shorelands or significant aquatic habitat." Over the years, the majority of the P-4s were either rezoned to a Management Subdistrict or the (P-FW) Fish and Wildlife Protection Subdistrict established by the Commission in 1977.

Proposal

- 8 The petitioner, The Maine Department of Inland Fisheries and Wildlife (MDIFW), requests rezoning a (P-4) Interim Zoning, established in the 1970's for a deer wintering area (DWA), to (M-GN) General Management Subdistrict. The P-4 is approximately 174 acres and is on property owned by Pingree Associates Inc. and managed by Seven Islands Land Company. All other protection subdistricts within this area would be retained for protection of existing natural resources. The deer wintering area is located within Wildlife Management District 5 (WMD 5). WMD 5 currently has 23,354 acres designated as (P-FW) Fish and Wildlife Protection Subdistrict, representing 2.35% of its total land area.
9. The petitioner and Seven Islands Land Company have entered into a cooperative agreement for the management of white-tail deer within T 9 R 7 WELS and other land that Seven Islands Land Company manages. The petitioner states the following reasoning for removal of the P-4 Subdistrict:
 - a) The P-4 lacks suitable cover and deer use and MDIFW has been unable to obtain adequate documentation for conversion to a P-FW Subdistrict.
 - b) The P-4 is geographically embedded within a larger 907 acre cooperative deer winter area, which connects to other cooperative deer winter areas within this township.
 - c) The current cooperative agreement enables adequate deer wintering management outside of the LUPC zoning process.
10. The petitioner has submitted a written statement from the landowner concurring with their request for removal of this interim P-4 Protection Subdistrict.

Review Criteria

11. Under 12 M.R.S. Section 685-A(8-A) of the Commission's statutes no change in a district boundary shall be approved 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; 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 resource within the affected area.

Analysis and Discussion

12. Chapter 5, Section 8 of the Commission's Comprehensive Land Use Plan states that in 2007, the Legislature created a Northern and Eastern Deer Task Force to develop recommendations in response to issues pertaining to deer management in the northern and Downeast regions of the State. The task force concluded that cooperative efforts between MDIFW and landowners are the

preferred option for addressing deer management concerns in northern and eastern Maine. As a result, deer wintering area management guidelines were created and provided to all forest landowners along with information about current and historical deer use. Implementation was voluntary, but landowners were strongly encouraged to manage active deer wintering areas. LUPC zoning remains the baseline tool for conserving deer wintering areas on ownerships that do not participate in cooperative initiatives. The Commission understands the cultural and economic importance of the deer population to the state and will closely monitor the progress of this initiative.

13. Appendix E, Page 5 of the Commission's Comprehensive Land Use Plan states the standard for removal of deeryards should be strict because the deeryard program is designed to be a long-term habitat protection program, but recognized that removal of land from the P-FW designation is appropriate in some cases. The removal criteria specify that a deeryard must not have been used by deer for ten years to qualify for removal, however, a deeryard zone may be removed without extensive documentation of no use if both MDIFW and the landowner agree that removal of land from the P-FW designation is appropriate. The P-4 Interim Protection Subdistrict included in this proposal was originally established to protect a deeryard. In this case, at the behest of MDIFW and the landowner, it is appropriate to rezone the deeryard zone without extensive documentation of no use.
14. The Commission currently designates deer wintering areas as (P-FW) Fish and Wildlife Protection Subdistricts instead of P-4 subdistricts. In this instance involving a P-4 area it is appropriate to consider removal of this P-4 in a similar manner as for the rezoning of a P-FW Subdistrict. Specifically under Section 10.23,D,2,e of the Commission's Land Use Districts and Standards, the Commission may change a (P-FW) Fish and Wildlife Protection Subdistrict by reducing its size or by changing it to another subdistrict designation if it finds by substantial evidence that:
 - (1) The area designated as a P-FW Subdistrict is no longer substantially used as a wintering area by deer and has not been so used for a period of ten years; and
 - (2) The change is consistent with the Comprehensive Land Use Plan, and
 - (3) The change is more appropriate for the protection and management of the resource within the affected area.

Alternatively, the Commission may approve such a subdistrict change if the owner of the affected land designated as P-FW and the Commissioner of the Department of Inland Fisheries and Wildlife agree that such a change is appropriate or the area is not needed to meet the deer management objectives established by the Department. Here, both the Department of Inland Fisheries and Wildlife and the landowner agree the proposed rezoning is appropriate and the petitioner has presented evidence that the proposed rezoning will not adversely impact wintering deer or their habitat. (See Finding #9 above.)

15. The facts are otherwise as represented in Zoning Petition ZP 751 and supporting documents.

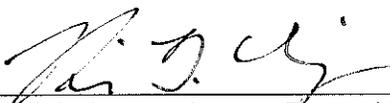
Based on the above Findings and the analysis and discussion, the Commission concludes:

1. The proposed changes in the district boundaries from (P-4) Interim Zoning for Deer Wintering Area to (M-GN) General Management Subdistrict are consistent with the standards for district boundaries in that the Maine Department of Inland Fisheries and Wildlife and the landowner agree that the change is appropriate, the area does not meet the standards for P-FW designation and is no longer needed to meet the deer management objectives established by the Department by virtue of the cooperative agreement.
2. The proposed changes in the district boundaries from Interim (P-4) Protection Subdistrict for Deer Wintering Area to (M-GN) General Management Subdistrict are consistent with the Commission's Comprehensive Land Use Plan.
3. The proposed changes in the district boundaries from (P-4) Interim Zoning for Deer Wintering Area to (M-GN) General Management Subdistrict has no undue adverse impact on existing uses or resources in that the white tailed deer and deer habitat is still protected under the cooperative agreement, and modification of the Commission's zoning to facilitate the execution of such agreements is appropriate.
4. The change is consistent with the purpose, intent, and provisions of Title 12, M.R.S.A., Chapter 206-A.

Therefore, the Commission approves the petition of the Maine Department of Inland Fisheries and Wildlife to rezone 174 acres currently designated as (P-4) Interim Zoning for Deer Wintering Area to (M-GN) General Management Subdistrict as per the attached maps.

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 8TH DAY OF APRIL, 2015

By: 

Nicholas D. Livesay, Executive Director

This change in subdistrict designation is effective on April 23, 2015.