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PATRICK McGOWAN
COMMISSIONER

MEMORANDUM

August 28, 2008

To: Commission Members
From: Sarah Giffen, Senior Planner
Fred Todd, Planning Division Manager
Re: Comprehensive Land Use Plan - Public Workshop Draft - Summary of Public Comments

With your authorization, Commission staff held public workshops on the draft Comprehensive Land Use Plan in eight locations throughout the State this past spring. These sessions were followed by a written comment period. After the deadline for submittal of written comments on June 6th, 2008, staff created a summary of all public comments on the draft plan.

You have received a copy of all written comments, contained in volumes 1 through 6, under separate cover. Attached to this memorandum is the staff prepared summary of public comments which includes both verbal comments made at the workshops sessions as well as the written comments included in volumes 1 through 6 described above. In addition to the summary of public comments, attached to this memorandum are a summary of the plan revision process and a document containing staff responses to misinformation distributed about the workshop draft.

At the September 10th Commission meeting staff will: refresh your memories on the comprehensive planning process to date, present the summary of public comments, discuss the major themes expressed during the public comment process, recommend changes based on these major themes, and discuss the process for moving forward. 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.

Note Enclosure: The process to date is outlined in more detail in the enclosure entitled, 'Procedural Record Summary and Checklist'.

Summary of Public Comments

Staff has created a summary of public comments on the workshop draft of the Comprehensive Land Use Plan. This summary includes both verbal comments made during workshop sessions as well as written comments received by June 6th, 2008. It is intended to provide you with an unbiased representation of the range of thoughts, ideas, comments, and questions voiced. This summary is organized by topic and then by theme. Each theme contains examples of individual comments or ideas. Wherever possible, these individual comments or ideas are expressed in the exact words of those who commented, and not our own.

Note Enclosures: The summary of public comments is enclosed. You received a copy of all written comments under separate cover in the documents entitled 'Written Comments, volume 1 through 6'.

Major Themes and Proposed Changes

Given that the summarization of public comment is fairly voluminous, staff wishes to provide you with the following discussion on the major themes expressed in the comments. We are also providing you with our responses to these comments, and where appropriate, suggesting proposed changes to the draft plan. The proposed changes outlined below are by no means exhaustive. They represent only the major thematic changes that we feel are appropriate to make to the draft language and do not include the many other more specific changes that may be appropriate.

At the September 10th meeting, staff will be looking to the Commission for feedback on whether we have accurately captured and described the major themes and for guidance on the proposed changes. Once staff has received Commission direction on the proposed changes to the draft plan, we can begin the process of revising the plan.

Chapter 1. Vision:

Major themes: There was considerable support for the vision in the draft plan. However, there were also a fair number of concerns expressed regarding the vision. In summary:

1. There was concern regarding the movement and consolidation of the vision from Chapter 4 (page 114-115) and Chapter 5 (pages 133- 134) in the 1997 plan to Chapter 1 in the draft plan. It was felt that the relocation of the vision changed its meaning and scope of influence.
2. There was concern regarding the use of the word 'values'.
3. There was concern that the 'values' expressed in the vision were too vague and subjective.
4. Many felt that the vision needed to include a greater emphasis on economic values and opportunities.
5. Many felt that the vision was too restrictive and limiting, particularly in the use of the word 'forever' in the vision statement itself ('The Commission's jurisdiction will **forever** retain its unique principal values') and in the phrase 'particularly for primitive pursuits' in the principal values.

Proposed changes:

1. Staff suggests retaining the vision in one location at the beginning of the draft plan. As stated above, the vision was located near the end of the 1997 document in Chapter 5, while the principal values were located in Chapter 4. A vision and its reference to the principal values are more appropriately located at the beginning of the document. Staff does not feel that the relocation of the vision changes its scope of influence or the sections of the document that it pertains to. We believe that the vision was always intended to apply to the whole plan.
2. In considering the use of the word ‘values’, staff recommends retaining this word as a descriptor. A vision for the jurisdiction is necessarily tasked with expressing the public ‘values’, or important characteristics, of the area. The term “values” was used in the 1997 plan as well.
3. The principal values expressed in the draft plan are essentially the same as those expressed in the 1997 plan. When describing the values of 10.5 million acres, it is necessary to speak in broad terms which may be considered vague or subjective. It has been the Commission’s past practice to leave the specificity or preciseness of its intent to the rules. These rules are based on the broad objectives or policies of the plan.
4. Staff recommends reflecting upon the vision in the 1997 plan and reconsidering some of the changes made to it in the draft plan. In particular, we suggest that reference to economic values and opportunities be reinstated in the draft vision.
5. In considering the comments that the vision is too restrictive and limiting, staff suggests reconsidering the use of the word ‘forever’ in the first sentence of the vision, ‘The Commission’s jurisdiction will **forever** retain its unique principal values and will exemplify a sustainable pattern of land uses’. We suggest retaining the language ‘particularly for primitive pursuits’ in the principal value on recreational opportunities; however, it should be made clear in the remainder of the plan that the reference to ‘particularly primitive pursuits’ does not mean that these are the only recreational pursuits of value in the jurisdiction. Rather these pursuits are mentioned specifically because of their uniqueness and increasing rarity in the Eastern United States as well as their particular sensitivity to conflicting uses.

Chapter 4. Development

4.3. Economy:

Major themes: One of the major themes in the public workshop comments was that the draft does not give enough consideration to or discussion of the topic of the economy of the jurisdiction. However, there were very different ideas as to what this discussion should entail. Some people expressed the sentiment that the economy of the jurisdiction depends on protecting the natural resources of the area and that there should be more recognition of this in the draft plan. Others expressed the idea that capitalizing on development opportunities was important to the economy of the jurisdiction and that the plan should support and encourage economic development. Many felt that the plan failed in this regard due to the fact that it eliminated the plan’s previous focus on economic development, and some felt that the plan actually eliminated all opportunities for economic development in the jurisdiction.

Proposed changes: It is important to remember that the Commission is not an economic development agency. However, it is equally important to remember that the policies and decisions of the Commission have a bearing on the economic activities and opportunities within the jurisdiction. It is the Commission’s responsibility to provide for economic opportunities but not to promote them. We suggest broadening the discussion of the economy in the draft plan to make the above facts clear.

That said, we believe that there is room for providing 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. Staff suggests expressing more fully the idea that part of 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.

Chapter 4.3. Landownership:

Major themes: There were two major themes expressed regarding landownership:

1. Many people expressed the idea that the draft plan should do more to recognize the values of private landownership and should recognize the accomplishments and stewardship activities of landowners in the jurisdiction.
2. The second theme revolved around the draft's characterization of landownership changes and the new types of landowners in the jurisdiction. There were opposing views on this topic. On the one hand, some felt that the draft vilified new landowners and unfairly implied that new landownership structures would lead to the loss of the principal values of the jurisdiction. On the other hand, some felt that it was important to recognize that landownership structures have changed significantly in the jurisdiction in the last ten years and that with these landownership changes likely come changing landowner objectives. These changing objectives could result in new land use pressures in the jurisdiction and the possible erosion of the principal values.

Proposed changes:

1. Staff thinks that it is important to recognize other, non LURC regulatory, efforts taking place in the jurisdiction. In particular, we suggest that the plan recognize the many landowner initiatives that further the objectives of the Commission, such as certification efforts, conservation easements, best management practices, etc.
2. With regard to the characterization of landowners, staff recommends clarifying language to convey that it is not the intent of the draft language to vilify landowners past, present or future in the plan. However, we think that we would be remiss in failing to describe 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.

Chapter 4. Development - Data and Trends:

Major themes: There was extensive criticism of the data, particularly the residential development data, cited in the draft. This criticism was directed at both the raw numbers as well as the way in which the data was characterized through statistics, maps, and discussion.

1. There was criticism that the number of new dwellings permitted in the jurisdiction was not accurate. Furthermore, many felt that, even if the numbers were accurate, a land use inventory would be more useful than data on the number of permitted dwellings.
2. Some felt that the use of statistics, percentages in particular, rather than absolute numbers was very misleading. For example, the draft plan cites a 70% increase in residential dwellings when in fact this only represents approximately 8,000 new dwellings.
3. There was extensive criticism of the characterization of the residential development pattern as dispersed. Many cited the fact that most of the new dwellings were located in the fringe of the jurisdiction and that this is not indicative of a dispersed development pattern. Furthermore, many felt that the maps showing the location of new dwellings was misleading. In particular, the size of the dots used on certain maps made it appear as though some townships had been consumed by development when in fact, they had not.

4. There was frequent criticism of the statement in the draft plan that 72% of the new residential development had not been guided by LURC policies. In this regard, many countered that all new dwellings require a permit from the Commission and are therefore reviewed. Consequently, they said it was not accurate to state that 72% of the development had not been reviewed.
5. There was extensive criticism of the parcel data, which showed the number of parcels per township in 1971, 1985 and 2005. It was felt that this data was not accurate and over-represented the number of new parcels in some townships quite significantly. There was also criticism regarding the discussion of parcelization in the draft. Some felt that since there are no established metrics to determine or imply the impacts of parcelization on other land uses such as forestry activities, this discussion was off base.

Proposed changes: Staff has spent a considerable amount of time considering and revisiting our data in light of these criticisms and offers the following recommendations.

1. Due to the fact that several landowners pointed out flaws in the data regarding the number of new dwellings permitted in certain townships, staff rechecked all of this data. Staff checked the number of new dwellings permitted in each township and made revisions where necessary. From this work, the overall number of new dwellings permitted between 1971 and 2005 changed from 8,720 to 8,128. With this new information, we feel that we have addressed this concern, that the data is now accurate, and suggest including the revised numbers in subsequent revisions of the plan. While we agree that a land use inventory would provide valuable information, the reality is that we do not currently have the resources to conduct such an inventory. Furthermore, we believe that permitting activity, as reflected in the above numbers of new dwellings permitted, is an accurate reflection of the demand for and location of residential development in the jurisdiction.
2. With regard to the use of statistics, it was not our intent to be misleading in our presentation of numbers. Consequently, staff recommends using both the absolute numbers and statistics, where appropriate, in the presentation of data in the draft plan. We agree that the number of new dwellings permitted in the jurisdiction over the last 30 years does not represent a large number and believe that this point should be clarified in the plan. However, our concern does not lie with the number of new dwellings permitted but rather with where they are located.
3. In response to the sentiment that the description of the pattern of permitted new dwellings was unfairly characterized as dispersed, staff recognizes that there are dissenting opinions regarding the degree to which development has dispersed over the last 30 years. We feel that the plan should recognize the fact that there is disagreement on how to characterize the present development pattern. However, we feel that it should be stated that the pattern of development is more dispersed today than it was in 1971. As far as the presentation of data, we agree with the criticism that presenting the data that 44% of the new dwellings were located in 21 MCDs while 56% of the new dwellings were located in an additional 307 MCDs, is not particularly useful. The presentation of the data in this way is somewhat arbitrary and not particularly meaningful with regard to describing the nature of the development pattern and the degree to which it is concentrated or dispersed. Some suggested looking at the data in relation to the fringe of the jurisdiction. Others suggested looking at the data in relation to paved public roads. We think that proximity to public roads is too simplistic a view of the appropriateness of location. It is an important factor but needs to be combined with proximity to other factors such as service centers. With regard to how the data are presented on maps, we feel that the so-called “measles” map is still an effective manner of showing how permitted new dwellings are distributed across the jurisdiction – it is NOT intended to display how development is dispersed within individual townships.
4. While it is true that all new dwellings do receive a permit from the Commission, it is not true that all new dwellings are reviewed regarding the appropriateness of their location at the jurisdiction or even regional level. This is an important distinction. Consequently, staff

believes that it is important to recognize and state in the plan that 72% (this number will be revised in the draft based on the new permitting numbers mentioned above) of the new dwellings permitted by the Commission were not reviewed as to the appropriateness of their locations through the rezoning and subdivision process. We suggest retaining this information but working to clarify its meaning.

5. Staff thinks that some of the criticism regarding the parcel data is well founded. It is true that this data was not gathered for the purpose of looking at parcel change over time in the jurisdiction. Consequently, there are definite limitations regarding its use for this purpose. However, despite the limitations, we maintain that this is valuable information and can be used to show general trends, and only general trends. We suggest retaining the parcel information in the draft plan but working with landowners to correct particular discrepancies where possible. We also suggest that the presentation and discussion of this data should be modified in such a way as to reflect its level of accuracy and reliability.

Chapter 4. Development - Issues:

Major themes: There was a real dichotomy in the major theme expressed regarding development trends and issues. There was a strong sentiment that development, particularly scattered unguided development, poses a threat to the North Maine Woods. This was usually linked to the sentiment that unguided development would, over time, erode the principal values of the jurisdiction, unnecessarily burden public services, and degrade natural resources and natural resource-based economies. There was an equally strong sentiment that development does not pose a threat to the North Maine Woods. This was usually linked to the sentiment that there is no data proving that there is a development crisis or that development is dispersing across the jurisdiction. Furthermore, many felt that development was an important part of the jurisdiction's economy and any regulations aimed at restricting development would have a great adverse impact on the well-being of the jurisdiction.

Proposed changes: First of all, staff recommends that the plan should recognize that the extent to which development has dispersed in the jurisdiction and whether this pattern currently poses a threat to the North Maine is open to debate. It is clear that people look at and interpret the data presented very differently from one another.

However, we think that it is important to state that whether you believe that development has dispersed to a detrimental extent thus far is separate from the issue regarding the real risk that development will continue to disperse in the jurisdiction in the future. Regardless of one's belief as to whether or not development currently poses a threat or the extent to which it has already degraded or adversely impacted the principal values of the jurisdiction, we believe that a continuation of development trends will, over time, incrementally chip away at the jurisdiction's principal values.

Staff recognizes that the development patterns and pressures vary greatly from one area of the jurisdiction to another and thinks that the plan should do a better job acknowledging this fact. However, the risk of the continuing dispersion of development exists throughout the jurisdiction. No matter how one chooses to interpret past development trends or what one believes to be likely future development pressures, the fact remains that development can occur in most areas of the jurisdiction without Commission review regarding the appropriateness of its location. No one knows precisely what the future holds, what pressures will or will not exist, or where demand for development will or not will occur; however, 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.

Staff suggests that the plan reaffirm, contrary to some assertions, that the Commission is not opposed to development in the jurisdiction. The Commission does not believe that preserving the principal values of the jurisdiction means closing it off to all future development. However, 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. 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.

Chapter 4. Development - Recommended Refinements:

Major themes: The themes expressed, regarding the recommended revisions in the draft plan aimed at guiding development in the jurisdiction to appropriate areas, spanned the gamut from ‘the Commission shouldn’t allow any development in the jurisdiction’ to ‘the Commission should not regulate development at all’ and included everything in between. Those that felt that ‘the Commission should not regulate development at all’ often expressed the sentiment that the recommended refinements outlined in the draft plan discouraged and even extinguished all development rights. They felt that the draft had overblown the threat posed by development and that no additional regulatory measures aimed at guiding development were necessary or desirable. In fact, many thought that the existing regulatory measures were already too onerous.

Located somewhere in the middle of the range of opinions described above, was the expressed desire for the Commission to explore a range of options aimed at better guiding development to appropriate locations, including: transfer of development rights, growth caps, removing residential development as an allowed use in the M-GN, etc.

Proposed changes: As noted earlier in this document, 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. Due to this, it could be argued that the Commission is not fulfilling its statutory mandate. If we do not address this situation in some way, we run the risk that development will continue to disperse in the jurisdiction. Over time, this development pattern will negatively impact the other important values of the jurisdiction. It is our assertion that this would not be in the best interest of the residents of the jurisdiction or the people of Maine.

Given the Commission’s current regulatory limitations, staff believes that it is prudent to consider 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 draft plan listed options to consider by way of example but did not identify one course of action that the Commission is committed to pursuing. Unfortunately, these ‘options’ have become the focus of much concern. They have been interpreted to represent initiatives that we are committed to undertaking rather than as examples to explore. Since they were merely listed as ideas and have become the focus of much confusion, we do not feel that much is gained by their inclusion. Consequently, we recommend retaining the goal, as stated, that the Commission is committed to exploring ways to direct development to appropriate areas in the jurisdiction, but removing language pertaining to the possible options for achieving this goal. The Commission would no doubt revisit these various options, along with others, during the implementation phase of this plan.

2-in-5 Exemption:

Major themes: There were two opposing sentiments with regard to the 2-in-5 exemption. Some felt that the 2-in-5 exemption was an issue of concern. They were concerned about the amount of development occurring outside of the Commission’s zoning and subdivision process. They were concerned about the potential for development to continue to disperse in the jurisdiction as a result of

the 2-in-5 exemption, and they felt that this exemption would, over time, lead to sprawling development.

On the other hand, some felt that the 2-in-5 exemption was not an issue of concern. They did not think that use of the 2-in-5 posed a risk to sprawling development patterns, particularly in the interior, or to the other uses and values of the jurisdiction. They did not feel that the data on the use of the 2-in-5 exemption was accurate. They felt that without better more definitive data illustrating a problem it was premature to have this conversation. Some felt that the discussion of the 2-in-5 exemption in the draft plan was a threat to landowners and would have devastating consequences to land values.

Proposed changes: First of all, it is important to remember the way in which the 2-in-5 exemption is discussed in the draft plan. The draft plan states that 72% 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. They 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 just 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. Due to the fact that exempt lots are not tracked, we will likely never have this information. We do know that most of the development that has occurred in the jurisdiction over the last 30 years has not been reviewed by the Commission as to the appropriateness of its location through the rezoning or subdivision processes.

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 2-in-5 poses to dispersing development in the Commission’s jurisdiction. We do not know what the answer to this situation is. However, we must recognize and discuss 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 5. Natural and Cultural Resource Values

5.2. Air Resources:

Major theme: There were a number of comments expressing the need to give greater discussion to the issue of climate change. Some even suggested that this topic should have its own section in the plan.

Proposed changes: We recommend keeping the discussion of climate change under the air resources section rather than creating a new section specific to this topic. However, we suggest expanding the discussion of climate change especially with regard to the Commission’s role in addressing this issue. In particular it is important to acknowledge that 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 concentrate development, limit sprawl, and maintain healthy functioning ecosystems.

5.5. Energy Resources:

Major themes: Some people commented on the need to incorporate the work of the Wind Energy Task Force into this section of the plan. Others expressed the need to maintain flexibility in the regulatory framework for permitting and locating new and emerging sources of energy production, particularly for renewable sources of energy.

Proposed changes. Staff is working to incorporate the work of the Wind Energy Task Force into our regulatory framework, to include the Comprehensive Land Use Plan. We will also attempt to draft language that provides some flexibility in considering new renewable sources of energy.

5.6. Forest Resources Section:

Major themes: There were two major themes expressed regarding forest resources:

1. The working forest is the single most important characteristic of the jurisdiction, and the plan needs to do a better job of communicating this fact.
2. The draft plan does not recognize or discuss the many initiatives taking place in the jurisdiction that are outside of LURC's regulatory framework and are aimed at the maintenance of healthy forest resources.

Proposed changes:

1. Staff thinks that the draft plan should broaden the discussion of just how important the working forest is to the jurisdiction. The working forest is in and of itself one the most important characteristics of the jurisdiction. Furthermore, it has contributed to the existence and maintenance of many of the other values of the jurisdiction.
2. We suggest adding a discussion of the other initiatives taking place in the jurisdiction that are aimed at supporting and maintaining a healthy working forest. These initiatives include: working forest conservation easements, wood supply agreements, certification programs, the tree growth tax program, etc.

5.8. Plant and Animal Habitat Section:

Major themes: The major theme expressed was that LURC needs to do more to protect various species and habitats. Examples were as general as the need to promote biodiversity values across the landscape and as specific as the need to expand protection of riparian areas in an effort to restore brook trout habitat. While some people felt that LURC should protect ecologically important areas through a more landscape level approach, others felt that LURC did not have the authority to manage through a more landscape level approach and should leave such efforts to landowners.

Recommended revisions: Staff thinks it is within the Commission's authority to protect various species either through efforts aimed at specific plant or animal species (such as brook trout) or through broader landscape scale approaches. The Commission has already recognized the need for protecting wildlife habitat through a landscape approach. For example, the Commission's current rules on identifying significant deer wintering habitat require a demonstration of other wildlife values within the deer wintering area. There may be other circumstances under which the Commission could or should consider a landscape scale approach to protecting various species. We have traditionally looked to Inland Fisheries and Wildlife for advice on fulfilling our legislative mandate regarding animal habitat and will investigate their current initiatives regarding species management.

5.9. Recreational Resources Section:

Major themes: The recreational resources section was the natural resource section which received the most comments. While there were many thoughts expressed regarding recreational resources, the major themes are as follows:

1. The data in the recreational resources section is inaccurate (did not pertain specifically to the jurisdiction) and out of date.
2. Many felt that the draft plan is biased against motorized recreation and toward primitive recreation.
3. Some felt that the plan essentially intended to ban motorized recreation.
4. Many felt that LURC should not have any role in managing recreation in the jurisdiction.

5. Many felt that LURC should recognize the value of primitive recreation activities and should afford protection to these activities in some areas of the jurisdiction. Some felt that LURC should create backcountry areas.
6. Many people commented on various issues surrounding trails. Some felt that LURC should not get involved in permitting trails since it would therefore become more difficult to build and maintain trails. Others felt that LURC should permit trails. There was concern over the feasibility of multi-use trails and the feeling that multi-use trails create conflicts.
7. Many felt that the draft plan should encourage, not inhibit, regional tourism efforts.

Proposed changes:

1. Staff agrees that some of the data cited in this section is dated. We suggest reviewing the data and revising it in an effort to bring it as up to date as possible. We also suggest using data that is specific to the jurisdiction wherever possible. However, this is not always possible and in cases where there is no data set that pertains specifically to the jurisdiction, we suggest that continuing to use statewide data is appropriate, while clearly distinguishing between jurisdiction and statewide data.
2. We feel that some of this sentiment is based in concerns regarding the fact that ‘primitive pursuits’ are specifically mentioned in the principal values. We have responded to that concern earlier in this memorandum. That said, we do think that there is room in the draft plan to correct the misconception that the Commission is more supportive of non-motorized recreation than it is of motorized recreation. The jurisdiction provides a wide range of recreational opportunities and this is, in and of itself, one of the values of the jurisdiction. We suggest that plan make it clear that the jurisdiction not only provides unique primitive recreational opportunities but that it also provides unique snowmobiling opportunities, ATVing opportunities, etc.
3. It is not the intent or desire of the Commission to ban motorized recreation in the jurisdiction. We hope that this concern has been addressed in the proposed changes outlined above.
4. LURC’s role in managing recreation is spelled out in statute and should be reflected in the plan. The statute speaks to 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.”
5. Staff believes the current draft 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 is not entirely clear to us what was intended by the comments regarding backcountry areas and whether the proposed policies on land conservation would address those concerns.
6. We think the Commission does need to reassess its current rules of allowing all trails, in almost all zones, without the need for a permit. We believe the discussion of this issue within the draft plan (page 5.9-10) is appropriate.
7. We do not agree that the current draft 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 Commission will provide for tourism-related development opportunities within appropriate areas.

5.10. Scenic Resources Section:

Major themes: There was great concern that the addition of a scenic resources section, a resource section that did not exist in the 1997 plan, threatens other uses in the jurisdiction. There was particular concern over the policy which reads ‘Regulate forestry activities in important recreational and scenic areas to protect aesthetic qualities’.

Proposed changes: In the 1997 plan, each natural resource had both a section dedicated to describing the resource as well as a section outlining the goal and policies for that resource. The treatment of scenic resources was the anomaly to this structure. In the 1997 plan there is a section pertaining to the goal and policies for scenic resources but there is no section dedicated to describing the resource itself. It is for this reason that a scenic resources section was added to the draft plan.

The addition of this section is not intended to threaten other uses of the jurisdiction. Staff suggests that the language in the scenic resources section be clarified to reflect this fact. Specifically, it should be clarified that the discussion of scenic resource impact methodologies pertains to the evaluation of structural development and not to forest management activities except in sensitive areas such as shoreland zones.

We suggest retaining the policy from the 1997 plan which reads ‘Regulate forestry activities in important recreational and scenic areas to protect aesthetic qualities’ in the draft 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.

Access:

Major themes: There were two major themes expressed regarding access. The first was that the plan needs to recognize that access is a privilege not a right and that the lands of the jurisdiction are privately owned. The second was that the draft plan and over-regulation could eventually lead to a loss of access in the jurisdiction.

Proposed changes: Staff suggests that the plan be revised to more clearly recognize 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 incredibly valuable gift to the public. In fact, many landowners incur expenses as a result of public access. We also suggest that the discussion of the North Maine Woods organization be expanded. We believe that this organizational structure provides a valuable service to both landowners and the public and should be highlighted as a successful model for managing recreation access. As for the second concern, outside of any regulatory limitations on types of access, public access is ultimately up to the landowners.

Terminology:

Major themes: There was both concern over and support for the terminology used in the draft plan.

1. There was both concern over and support for the use of the words ‘wildlands’, ‘primitive recreation’, ‘remoteness’, and ‘relative absence of development’. Those opposed to the use of these words referred to them as regressive, inflammatory, not accurate descriptors of the jurisdiction, and indicative of how restrictive and limiting the plan is as a whole. Those in support of the use of these words stated that if these words disappear from the plan that they are likely to disappear in the jurisdiction as well. They also stated that these words were consistent with those used in all previous comprehensive land use plans and in fact represent the bedrock on which the Commission was founded.
2. Some expressed the need to define more of the terms used in the plan.

Proposed changes:

1. We suggest 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 them are included in the principal values as defining and important characteristics of the jurisdiction.
2. Some of the terms for which definitions are sought are defined in one of the plan appendices. We will attempt to define other terms for which definitions are sought, understanding that

they will, of necessity, be broad definitions and may not address the degree of specificity desired.

Who Should Have a Voice in the Plan:

Major themes: Many felt that, in revising the plan, residents of and/or landowners in the jurisdiction should be given a more prominent voice in the process than other parties.

Response: There is nothing in the Commission’s purpose and scope that directs the Commission to give special consideration to residents and landowners of the jurisdiction in the creation of the Comprehensive Land Use Plan. In fact the only reference in the purpose and scope to a particular group is to ‘the residents of Maine and its visitors’.

Plan’s Consistency with LURC Law:

Major themes: Many felt that the draft plan was not consistent with LURC law. They felt that the draft language reached beyond the boundaries of LURC’s purpose and scope.

Response: We see no conflict between language in the draft plan and the Commission’s purpose and scope as contained in LURC’s enabling statute. Due to the frequency with which the above theme was expressed, we suggest including LURC’s purpose and scope in the plan. Until directed otherwise by the Legislature, the Commission is bound by the following.

“The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State: To preserve the public health, safety and general welfare; to prevent inappropriate residential, recreational, commercial, and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use of the water in these areas; and to preserve ecological and natural values.”

“In addition, 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, to encourage the well planned and well managed multiple use of land and resources 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. “

Revision Process and the Workshops Sessions:

Major themes: The major, frequently expressed, theme regarding the workshops themselves was that the public was not going to be ‘heard’ through this process. There was great concern that the Commissioners were not present at workshops and that staff would be biased in their presentation of public comments to the Commissioners. There was concern that staff would not make changes to the draft plan in response to public feedback.

Response: The Commission was advised by the Attorney General’s office that it was best not to attend public workshops as they might be exposed to comments regarding the pending Plum Creek project. Such exposure could be construed as receiving public comment outside the Plum Creek hearing process. We agree that this was an unfortunate circumstance but one which was out of our control. The reality is that the Commission has many different projects before it and sometimes the timelines for these projects conflict with one another. Due to the fact that Commission was not present at the workshops, staff has worked diligently to provide an exhaustive unbiased representation

of the public comment. Ultimately the Commission and the public will have to assess how well we have succeeded in this regard.

We fully intend to make changes to the draft plan in response to public feedback. We understand the concerns in this regard but wish to reiterate that we view the current document as a working draft, a draft that **will** change as appropriate. Our intention in creating this draft was to give the public a starting point for discussion and comment. We received a lot of valuable feedback as a result of the workshops; feedback that will be reflected in and improve subsequent drafts of the plan.

Property Rights:

Major themes: There were two dissenting views expressed on property rights as they relate to the plan. Some felt that the draft plan threatens property and landowner rights. Others felt that the plan in no way threatened property or landowner rights.

Response: It is indisputable that we regulate private land use. However, we seek legal counsel from the Attorney General’s office in all Commission decisions to insure we are not exceeding our regulatory authority in this regard. An opinion of the Supreme Judicial Court of Maine in 1908 speaks to the issue of regulation of private land use:

“We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the right of the community...All property is derived directly or indirectly from the government and held subject to those general regulations which are necessary for the common good and general welfare... Police regulations may forbid such a use and such modifications of private property as would prove injurious to the citizens generally. This is one of the benefits which men derive from associating in communities.”

1997 Plan:

Major themes: Many expressed general opposition to the draft plan and felt that the Commission should continue to operate under the 1997 plan. They felt that the 1997 plan was serving the Commission and the jurisdiction well and that it was therefore unnecessary to revise it.

Response: As good planning requires up-to-date information on trends and land uses, it is important to update the plan on a regular basis. Land uses in the unorganized areas have changed over time, especially in recent years. When the Commission was first created, the principal land uses were timber harvesting to supply paper mills and seasonal camps. Today, land uses include grid-scale wind power, large-scale recreational developments, commercial water extraction, large four-season camps, and more. In order to guide development effectively and make sound land use decisions, the Commission needs a plan that accurately reflects present conditions and challenges.

Conservation Efforts:

Major themes: Many felt that large scale conservation easements were an important trend taking place in the jurisdiction and that the plan had not adequately recognized 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.

Proposed changes: We agree that the role of conservation easements was not given adequate discussion in the plan particularly with regard to their role in limiting development in certain areas of the jurisdiction. We suggest broadening the discussion of the increasing role of easements and including this information in the discussion on development trends.

Misinformation:

In reviewing public comments there was a substantial amount of misinformation surrounding the draft plan. We have attempted to respond to this misinformation in the attached document entitled “Responses to Misinformation Regarding Workshop Draft of Comprehensive Plan”.

The Process Moving Forward

Staff has suggested thematic revisions to the draft plan in response to the major themes expressed in public comments. We have made these suggestions based on the assumption that we will be following the process as envisioned when we began revising the plan in 2005. This process, as originally outlined, includes the following steps leading up to formal public hearings to be held later this winter:

1. Revise draft based on public comments.
2. Bring revised draft back to the Commission for review and make further revisions as necessary.
3. Proceed to public hearing, once the Commission is comfortable that all necessary revisions have been made.

However, at this juncture, staff thinks that it is important to pause and consider whether the process as outlined is the best one to follow. At the public workshops, many people expressed concern that since we had already created a complete draft of the plan we were unlikely to change it in response to public feedback. More specifically, there was concern that since we did not hold workshops or listening sessions specifically on the vision prior to drafting the remaining sections of the plan that we would not be willing to consider or make changes to the vision. In this regard, there seems to be a lot of distrust regarding the Commission’s willingness to ‘hear’ the public and respond in a thoughtful way.

Due to this, we have considered whether it is necessary or advantageous to shift the process at this point in time in order to give the public another opportunity to provide us with their thoughts and comments on the jurisdiction, separate from reacting to draft language. Specifically, we have considered whether it would be worthwhile to hold additional public sessions on the vision contained in the plan in order to build consensus around this foundational building block.

Staff recommendation on process:

While there are many options to consider, the staff recommends that we be given the opportunity to make revisions to the plan, including the vision, aimed at addressing the public comments before considering modifications to the process as outlined. We expect that it would take several months to prepare such a redraft.

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 September 10th meeting.

SEG

Enclosures:

- Procedural Summary and Checklist*
- Summary of Public Workshop Comments*
- Response to Misinformation Regarding the Workshop Draft of Comprehensive Plan*