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DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
MAINE LAND USE PLANNING COMMISSION

**Proposed Chapter 10 Rule Amendments to the Planned Development (D-PD)
Subdistrict, Section 10.21,G as a result of LD 1798, “An Act to Reform
Planning in the Unorganized Territories”; and LD 1853, “An Act To Improve
Environmental Oversight and Streamline Permitting for Mining in Maine”.**

—Public Comment DRAFT —

August 20, 2012

The following amendment proposes changes to Chapter 10, Land Use Districts and Standards for areas within the jurisdiction of the Maine Land Use Planning Commission. The changes proposed in the attached pages are indicated by underline for additions and ~~striketrough~~ for deletions.

CHAPTER 10
LAND USE DISTRICTS AND STANDARDS
Section 10.21,G PLANNED DEVELOPMENT SUBDISTRICTS

Section 3

3. ~~Permitted~~ Allowed Uses

All uses approved in the ~~Final Development Plan~~ Rezoning / Preliminary Plan shall be ~~permitted~~ allowed. For metallic mineral mining activities and Level C mineral exploration activities, all uses within the D-PD subdistrict require a permit in accordance with this chapter and Chapter 13 of Commission's rules. No other use shall be ~~allowed~~ permitted except where the Commission determines that such additional use is consistent with ~~such~~ the Preliminary Plan and with the purposes hereof.

Section 6

6. Procedure

The procedures set forth below and those set forth in Section 10.21,G,7 ~~through 10 and 8~~ apply to all developments, except:

- a. ~~T~~hose related to metallic mineral mining and Level C mineral exploration activities– ~~Those activities which~~ are governed by the procedures set forth in Chapters 12 and 13 of the Commission's rules.
- b. Those D-PD subdistricts approved or accepted for processing by the Commission prior to September 1, 2012; and D-PD subdistricts accepted for processing after September 1, 2012 not requiring review under Site Law, which in addition to those sections set forth above shall also be governed by the procedures set forth in 10.21,G,109.

The Planned Development review procedure shall consist of three stages:

- (1) Preapplication Conference;
- (2) Submission of Preliminary Development Plan / Zoning Petition; and
- (3) Submission of a Final Development Plan or amendment to a Final Development Plan for those projects described in section 6(b).

The Preapplication Conference serves to inform the prospective applicant, prior to formal application, of the proposed plan's filing requirements. Formal application is made by submitting a Preliminary Development Plan / Zoning Petition that meets the requirements specified herein. No decision thereon can be made until a Public Hearing is held. Thereafter, the Commission may approve or deny the petition. An approval will amend the subdistrict(s) to a D-PD subdistrict and will include a preliminary development approval that specifies under what conditions, if any, the Commission will accept the Preliminary Development Plan / Zoning Petition proposal as the standard against which future certification requests, amendments to existing Final Development Plans, or new ~~the~~ Final Development Plans are is judged. No development will be allowed except for activities necessary to gather site data for the permit and/or certification applications ~~Final Development Plan~~ until such an application ~~a Final Development Plan~~ is submitted and approved. Necessary site data gathering activities must be consistent with the proposed description as submitted in the Preliminary Development Plan / Zoning Petition and are allowed without a permit.

Section 7

7. Preapplication Conference

A preapplication conference shall be held with the staff of the Commission and representatives from other relevant agencies. The Maine Department of Environmental Protection shall be notified of the Preapplication conference and shall be provided the opportunity to attend the conference. At this conference the procedures, regulations, and policies that will govern the D-PD application shall be discussed. The conference shall provide a forum for an informal discussion on the acceptability of all aspects of the project proposal, prior to its filing with the Commission. The conference proceedings shall be

summarized in writing and made available to the applicant. The conference shall be held pursuant to the rules established in Chapter 5 of the Commission's Rules and Regulations.

Section 8

8. Preliminary Development Plan / Zoning Petition

a. Application

The Preliminary Development Plan / Zoning Petition shall include: Evidence that the proposal conforms with the Commission's Comprehensive Land Use Plan and the purpose and description of a Planned Development as contained herein; evidence showing that the permit criteria set forth in 12 M.R.S.A. §685-B(4) will be satisfied; and the submission of various written and illustrative documents, as described hereinafter. Prior to any decision relative to such application, the staff shall make known its findings and recommendations, in writing, to the Commission and a public hearing shall be held in accordance with Chapter 5 of the Commission's Rules and Regulations.

The following items are required to be submitted with any Preliminary Development Plan application / Zoning Petition:

Written Statements

- (1) A legal description of the property boundaries proposed for redistricting, including a statement of present and proposed ownership.
- (2) A statement of the objectives to be achieved by locating the development in its proposed location distant from existing patterns of development. As it is a general policy of the Commission to encourage new development to locate with or adjacent to existing development, the rationale for promoting development away from such locations must be well documented. The statement should describe why the site is considered the best reasonably available for the proposed use(s). The fact that the applicant owns or leases the property shall not, of itself, be sufficient evidence to satisfy this last requirement.
- (3) ~~The expected~~ ~~A reasonably complete~~ ~~development schedule and construction program~~ that indicates the periods of time required to complete the project, and an approximate start date for construction. when the project and stages thereof will begin and be completed. ~~The schedule is to specify what percentage of the total project is represented by each stage and what buildings, floor areas and land areas are included in each such stage.~~
- (4) A statement of the applicant's intentions with regard to future selling, leasing or subdividing of all or portions of the project. The statement should describe the type of covenants, restrictions or conditions that are proposed to be imposed upon buyers, lessees or tenants of the property.
- (5) Statements to satisfy the Commission that the project is realistic, and can be financed and completed. Such statements shall demonstrate that the applicant has the financial resources and support to achieve the proposed development.
- (6) A statement of the compatibility affects on existing uses and resources of the proposed development with existing uses and resources, ~~which sets forth the~~

- reasonably foreseeable adverse effects on those existing uses and resources, and measures to be taken by the applicant to minimize such effects.
- (7) A general statement that indicates how the natural resources of the area will be managed and protected so as to reasonably assure that those resources currently designated within protection subdistricts will receive protection that is substantially equivalent to that under the original subdistrict designation.

Maps

- (8) A location map showing all existing subdistricts and the proposed D-PD subdistrict boundaries, drawn on a ~~USGS topographic map base or Commission Land Use Guidance Map~~ that indicates the area for which a D-PD subdistrict designation is sought. ~~This map should show all existing subdistricts.~~
- (9) Maps showing the existing and proposed lot lines, noting the names of adjoining lot owners, and any lots in the project area proposed to be placed in common or private ownership (see 10.21,G,8,a(1) and (4));
- (10) Maps showing the soils and slope at the development site, at a mapping intensity sufficient to show that the site has suitable soils to support the development. (Note: For projects in high mountain areas, if geotechnical borings to gather data will be necessary to prepare the final site plans for the development permit, the routes of any proposed access ways should be shown on this map, accompanied by a written description.)
- (11) A site plan showing existing features within the development site, including the locations of:
- (a) Buildings, roads, parking areas, and bridges;
 - (b) Above- and below-ground utility lines, and sewage disposal facilities;
 - (c) Drinking water wells serving the site, and any major water withdrawal sources, if applicable;
 - (d) Recreational areas and open spaces, and conservation areas;
 - (e) Streams, lakes and ponds, wetlands, and other protected natural resources;
 - (f) Stormwater drainage areas; and
 - (g) The vegetated edge of cleared areas.
- (12) A site plan showing proposed features, with the approximate locations of:
- (a) Buildings, roads, parking areas, and bridges;
 - (b) Utility lines, if known, and areas to be used for sewage disposal facilities (Note: If a public sewage disposal system will be used, evidence that the system can support the proposed development must be supplied);
 - (c) New drinking water wells, and other major water withdrawal sources, if applicable;
 - (d) Recreational areas, open spaces, and conservation areas;
 - (e) Streams, lakes and ponds, wetlands, and other protected natural resources;
 - (f) Stormwater drainage areas and an approximation of the expected phosphorus contribution to the watershed; and
 - (g) The vegetated edge of the cleared areas.
- ~~A map showing existing site conditions including contours at 10 foot intervals, water courses, unique natural conditions, forest cover, swamps, lakes, ponds, existing~~

- buildings, road boundaries, property lines and names of adjoining property owners, scenic locations and other prominent topographical or environmental features.
- (10) A soils map of at least medium intensity that covers those portions of the site where any development is proposed. The description should use the soil group designations utilized in the State of Maine Subsurface Wastewater Disposal Rules or the USDA Soil Series names.
- (11) A site plan and written description of proposed access ways for geotechnical or other site data gathering operations.
- (12) A site plan that shows the approximate location and size of all existing and proposed buildings, structures and other improvements, including roads, bridges, beaches, dumps, wells, sewage disposal facilities, storm drainage, cut and fill operations and general landscape planting. The plan should show the approximate proposed lot lines, the location of open spaces, parks, recreational areas, parking areas, service and loading areas and notations of what is proposed to be in common or private ownership.
- (13) A map or description of the approximate type, size and location of proposed utility systems including waste disposal, water supply, and electric and telephone lines. Where a public water supply, and/or a central sewage collection and/or treatment system is proposed, evidence shall be required to show that these facilities will meet applicable governmental requirements and that the soils are suitable for such sewage disposal system.

Where the applicant is proposing a phased development in the Preliminary Development Plan /Rezoning, and maps showing the level of detail required in 10.21,G,8,a(12) are not feasible for all future phases of the development, the applicant shall submit such maps for the first phase of development. For all future phases of development, the applicant shall submit information and sketch maps sufficient for the Commission to determine if the area proposed to be rezoned can support the entire development with regard to: the subdivisions rules, if applicable; soil suitability and slope; subsurface waste water disposal; access and traffic circulation; drinking water supply; and any other proposed major water withdrawal source along with a narrative describing its intended use; and the 400 foot setback from the proposed D-PD subdistrict boundaries. A narrative describing the anticipated timeline for the full development must accompany the sketch maps (see 10.21,G,8,a(3)).

~~Where the Preliminary Development Plan involves a staged development and the applicant cannot reasonably make available the maps required pursuant to Section 10.21,G,8,a,(12) covering all future stages of development, the applicant shall submit such maps covering only the initial development stage, together with sketch plans covering all other development stages. Such plans shall describe all proposed land uses, densities, circulation patterns and building locations and are to be in sufficient detail to permit the Commission to determine if the site can support the entire development program, especially in terms of soil suitability, traffic circulation, and water supply and sewage waste disposal.~~

b. Hearings and Criteria for the Approval of a Preliminary Development Plan

The Commission shall schedule a public hearing within 45 (forty-five) days after a complete Preliminary Development Plan application / Zoning Petition is filed, unless the applicant requests, in writing that this time be extended.

The public hearing notification and proceedings shall meet the requirements of Chapter 5 of the Commission's Rules and Regulations and the applicable provisions of the Administrative Procedures Act. Within 90 days after the close of the record of the public hearing, the Commission may approve, approve with conditions, or deny the application in writing. In making this decision, the Commission shall ensure that the proposal:

- (1) Conforms with the objectives and policies of the Comprehensive Land Use Plan and 12 M.R.S.A. Chapter 206-A;
- (2) Incorporates, where the land proposed for inclusion in the D-PD subdistrict is in a protection subdistrict, a substantially equivalent level of environmental and resource protection as was afforded under such protection subdistrict;
- (3) Utilizes the best reasonably available site for the proposed use;
- (4) Conserves productive forest and/or farm land;
- (5) Incorporates high quality site planning and design in accordance with accepted contemporary planning principles;
- (6) Envisions a project that is reasonably self-sufficient in terms of necessary public services; and
- (7) Provides for safe and efficient traffic circulation; ~~and~~
- (8) ~~Utilizes the best practical technology to reduce pollution, waste and energy consumption.~~

c. Approval or Denial of Preliminary Development Plan / Zoning Petition

- (1) If, after weighing all the evidence, the Commission approves the Preliminary Development Plan application, the D-PD subdistrict shall be designated on the official district map and recorded in accordance with the provisions of Section 10.04. Simultaneously with such approval, a preliminary development plan approval permit will be issued. The preliminary development plan approval permit may contain such reasonable conditions as the Commission deems appropriate and will specify the conditions for approval of subsequent Commission permits or certifications ~~the Final Development Plan~~. The terms of the preliminary development plan approval permit will be in writing and shall be deemed to be incorporated in the D-PD subdistrict.
- (2) If, after weighing all the evidence, the Commission finds the submission does not meet the criteria established above for its approval, the application shall be denied and the reasons for the denial shall be stated in writing.
- (3) Within a maximum of 18 months following a Commission decision to designate an area as a D-PD subdistrict, the applicant shall file with the Department of Environmental Protection a Site Law application for development, or to the Commission a Final Development Plan containing ~~in detailed form~~ the information required in Section 10.21, G, ~~109~~ below. At its discretion, and for good cause shown, the Commission may extend the deadline for filing of the Site Law development application to the Maine Department of Environmental Protection, or of the Final Development Plan to the Commission.

- (4) If the applicant fails for any reason to apply for final approval by submitting to the Department of Environmental Protection an application for development or to the Commission a Final Development Plan within the prescribed time, the D-PD subdistrict designation shall be deemed to be revoked and the original subdistrict(s) shall again apply.

Section 9

~~9. Application Fee~~

~~The application fee to be submitted with the Preliminary and Final Development Plan shall be the fee specified in Chapter 1, Section 1.04 of the Commission's rules.~~

Section 10, Introductory paragraph and sub-sections c and d

~~10.9. Final Development Plan~~

The procedures set forth in Section 10.21,G,9 apply to all D-PD subdistricts accepted for processing prior to September 1, 2012, and development within D-PD subdistricts that does not require review under Site Law.

c. Amendments to the Final Development Plan

Minor changes in the location, siting, height, or character of buildings and structures may be authorized by the Director of the Commission if required by engineering or other circumstances not foreseen at the time of Final Development Plan approval. No change shall be so authorized which may cause any of the following:

The addition of a land use not previously approved in the Preliminary Development Plan;

A material change in the site, scope or nature of the project;

A material increase in traffic volume;

A material reduction in open space, landscaping, or parking; or

A material change giving rise to adverse environmental impact.

All other amendments to the Final Development Plan proposed by the applicant shall require submission to and the approval of the Commission after consultation with the staff and due consideration of the standards set forth in Section 10.21,G,8,b.

d. Time for Construction

If no substantial development has occurred pursuant to the Final Development Plan by the later of: (a) 24 months after the date of approval by the Commission or (b) expiration of any extension of time for starting development granted by the Commission, the approved plan shall become null and void and the D-PD subdistrict designation shall be deemed to be revoked and the original subdistrict(s) shall again apply.