Chapter 6

Implementation

Statutory Matters

Unregulated Lots

The statutory exemptions to the LURC law, including the exemptions for large lot divisions and for creating two lots every five years (the 2-in-5 exemption), impair the Commission's ability to effectively guide growth within its jurisdiction.

Information on the nature and extent of large exempt lots indicates that those lots clearly interfere with the Commission's responsibility to guide development. The Commission will work collaboratively with the Legislature to eliminate such exemptions for lots used for development purposes. If exemptions are retained to allow forest-related transactions, the revised statute should include mechanisms restricting the subsequent use of these lots for development.

If the large lot exemption is not eliminated or revised to better reflect its original intent, the Commission will explore mechanisms to address the impacts of scattered development created by such land division. In reviewing permits for these lots, the Commission may consider the nature of road access to such sites, the proximity of such land divisions to other development, and may require that only remote camps be permitted on exempt lots in interior areas.

Since information on the nature and extent of lots created under the 2-in-5 exemption is lacking, the Commission will monitor the creation of these lots over the next several years. To do this, the Commission will develop a system for tracking the creation of these lots. After evaluating this information, the Commission will decide what action, if any, to take with regard to the creation and use of these lots. If creation and development of these lots is determined to be a problem, the Commission will consider options to restrict the type of development occurring on them, such as requiring dwellings in interior areas to meet the criteria for remote camps.[1]

[1]More discussion on pages 115-122 of this plan

Guiding the Location of Development

The strengths and weaknesses of the Commission's approach to guiding development within its jurisdiction are discussed in a previous section of this plan. As mentioned in that discussion, the Commission has used a largely reactive approach to identifying areas suitable for development within its jurisdiction. To provide more predictability to both landowners and the general public as to the most suitable locations for development and to address the legislative charge given the Commission to plan for development, the Commission proposes the following actions.

Areas Most Appropriate for Development

To provide greater predictability to landowners and to concentrate development in suitable areas, the Commission will identify areas within its jurisdiction which are most appropriate for development.

The Commission will identify those towns, plantations and townships or portions thereof which are the most appropriate for growth when considering: (1) proximity to organized towns and population centers; (2) compatibility of natural resources with development; (3) a demonstrated demand for development; (4) accessibility by major routes; and (5) availability of infrastructure which is, when compared to conditions in other towns, the best prepared to accommodate growth. These towns will be distributed around the periphery of the jurisdiction.

Outside these towns, plantations and townships, the Commission will identify smaller development centers throughout the jurisdiction which are also appropriate for development. Small development centers could include areas such as the Caucomgomoc gate area, Northeast Carry, Musquacook lakes, Clayton Lake and other. The Commission may consider new development centers on some landowners' properties to provide balance and equity.[2]

Areas Least Appropriate for Development

In implementing the policy of encouraging conservation of select large tracts of land for limited or no development, the Commission shall work cooperatively with landowners. The Commission shall promote and support landowner-initiated efforts to provide increased protection of lands through measures which include nonregulatory mechanisms such as conservation easements and management agreements.

To further promote this policy, the Commission shall identify areas in the jurisdiction that are least appropriate for development. It shall establish guidelines for applying the policy language that these tracts of land be particularly representative of the jurisdiction's principal values and especially valued for their remote and relatively undeveloped condition.

For lands found to be appropriate for increased protection, the Commission, working with landowners, shall promote appropriate conservation measures – regulatory and nonregulatory. Measures used to advance this policy shall be adopted only with the agreement of affected landowners.

Prospective Zoning

The Commission recognizes the need for and benefits of prospective zoning, particularly within areas where there is a need to balance growth pressures and high resource values. Examples of areas appropriate for such prospective zoning include the Rangeley, Moosehead Lake, Carrabassett Valley, and Millinocket areas. Other areas will be the subject of a similar effort as time and resources allow. The Commission will also prospectively identify growth areas when preparing zoning maps for newly deorganized townships.

Prospective zoning differs significantly from the previously described effort of identifying areas

[2]More discussion on pages 115-127 of this plan

most appropriate for development. The latter effort will be focused on the jurisdiction as a whole, and will not necessarily result in any zoning changes. One product of this effort could be a map of the jurisdiction that provides general policy guidance by highlighting areas most appropriate for development. Prospective zoning, on the other hand will be targeted to particular regions or communities where a more refined zoning approach is determined to be necessary. It will result in specific zoning changes and revised zoning maps.

Prospective zoning efforts will include information-gathering to facilitate the identification of areas that are most or least appropriate for future growth. Since the areas targeted for prospective zoning are high growth, high value areas, the emphasis will be on directing development to locations where it will not adversely affect high value resources. The Commission will actively seek public input in the process of identifying such areas.[3]

Responding to Major Development Proposals

While prospective development zoning and other growth management strategies will lessen the need for rezonings over time, there will always be a need to consider rezonings in a timely and predictable manner.

Rezoning Guidance System: The Commission has developed a draft rezoning guidance system which is being applied by the staff on a trial basis to provide more predictability to the outcome of the rezoning process. The Commission will refine this system after the trial period and make it available to applicants as guidance in the rezoning process. Adjacency, as refined by this plan, shall continue to be a central consideration in rezonings.

New Development Centers: The Commission will consider proposals that will create new development centers where: (1) there is a demonstrated public demand for and benefit from the proposed development in that area; (2) there is a demonstrated need for locating the development not proximate to established developed areas; (3) the productivity of existing forest and agricultural resources in the jurisdiction is not unduly harmed; (4) recreational resources and uses are not unduly harmed; (5) natural resources, including remote values, and plant or animal habitat values are not unreasonably degraded; and (6) needed services are available or can be provided without unreasonable financial, social or environmental costs to the public.

Planned Developments: In areas which are not appropriate as new development centers and where development is dependent upon a particular natural feature, the Commission will continue to encourage use of the Planned Development (D-PD) Subdistrict application process. Such development must be reasonably self-contained and self-sufficient and to the extent practicable provide for its own water and sewage services, road maintenance, fire protection, solid waste disposal and police security.

Concept Plans: Development in areas not appropriate as new development centers (where dependence on a particular natural feature is not an issue) may be considered by the Commission through the concept planning process. While initially conceived only for lake shore development, the Commission will encourage the use of concept plans for nonshoreland areas as well. Concept plans provide a voluntary means of achieving a publicly beneficial balance between development and protection of resources.

Management Subdistricts

While the Commission's standards contemplate three separate management subdistricts, only the General Management (M-GN) Subdistrict has, in fact, ever been applied. In practice, all areas not placed in protection or development zones have been placed in General Management Subdistricts. There is a need to review the usefulness of the other two management zones, the Natural Character (M-NC) and Highly Productive Management (M-HP) Subdistricts and the effectiveness of the General Management (M-GN) Subdistrict.

The M-GN zone, as presently structured, assumes that many activities can co-exist without adversely affecting each other or the forest resource. The effectiveness of the zone will be re-examined in light of the increasingly diverse and intensive uses of the forest. For this re-examination, the Commission will formulate a strategy for identifying what uses are compatible with the forest resource and its values, including its value for fiber production.

The Natural Character Management Subdistrict was designed to maintain the character of certain large, undeveloped areas of the jurisdiction and to promote their use primarily for forest

[3]More discussion on pages 115-126 of this plan

and agricultural management activities and primitive recreation. This zone may be appropriate in a number of areas in the jurisdiction, but will only be applied if proposed or agreed to by affected landowners.

The Highly Productive Management Subdistrict was designed to prevent highly productive agricultural and forestlands from being lost to other incompatible uses. However, largely because of the difficulty of defining highly productive lands, this zone has never been applied. The Commission reaffirms its commitment to maintaining prime and other important agricultural and forestlands, but will only use this zone after more study.

Forestry Issue Committee on site in Merrill Strip

Rule Changes

Land Use Districts and Standards

The Commission's *Land Use Districts and Standards* are the principal mechanism for implementing this *Comprehensive Land Use Plan*. The Commission will consider changes to these regulations as necessary to implement the goals and policies of this plan.

As it did in 1988, the Commission will also continue to investigate means to streamline its regulations by identifying those activities for which no permit review is necessary or where an abbreviated permit review is appropriate. The Commission will expedite the permitting process by (1) simplifying application forms, (2) identifying minor activities and alterations for which no permit is required,

(3) designating permits which could be issued at the field office level as staffing becomes available to perform such function, (4) delegating to staff the ability to act on small-scale rezoning proposals within designated growth areas which meet the Commission's rezoning guidelines, and (5) identifying types of uses that could receive accelerated review and approval. Examples of such uses include accessory structures and expansions that comply with certain size and location requirements, and new structures on lots which are either part of LURC-approved subdivisions or within districts prospectively zoned for development, particularly for sites located away from shoreland areas.

The following areas of the Commission's regulations have been identified as problematic and possibly in need of change:

Subdivision and Major Development Regulations

All new development must meet the requirement that "provision be made for fitting the project harmoniously into the existing natural environment in order to assure that there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area affected by the proposal." The Commission's Land Use Districts and Standards provide few specific standards on how this criterion can be met; this lack of guidance has been most problematic for subdivision and major development proposals.

In the past, the Commission has often utilized development standards adopted by the Department of Environmental Protection (DEP) as the basis for reviewing major subdivision and development applications. Due to the rural nature of the Commission's jurisdiction, the small scale of proposals coming before the Commission, and the more urban focus of the DEP regulations, it is evident that the DEP regulations may not be appropriate for most major subdivision and development activities in the Commission's jurisdiction.

The Commission will develop performance and design standards that recognize the substantially different nature of subdivision and development activities in the Commission's jurisdiction. The Commission will also investigate incentives for promoting more creative site designs that preserve open space and retain natural features. Such rules should provide a predictable regulatory process and clear guidance to potential developers.

The Commission will also consider refinements to the standards of its Planned Development (D-PD) Subdistrict to incorporate the experience gained in three recent applications of that subdistrict.

Road Standards

The Commission routinely uses DEP road standards in permitting new roads for development. Given the more urban nature of these standards, the Commission has often found them inappropriate for the jurisdiction. The Commission will develop road guidelines of its own that are more suited to the rural nature of its jurisdiction including variable setbacks from different types of roads.

Nonconforming Uses

Section 10.11 of the Commission's regulations stipulate how nonconforming uses and structures may be expanded or changed. While the LURC law states that the Commission may prohibit the expansion of nonconforming use or structures, Section 10.11 is not clear about the circumstances under which such a prohibition is appropriate. These regulations have also become increasingly problematic to apply because they do not clearly address all circumstances of nonconforming uses or structures. Revisions to these regulations will be prepared to provide clarity and guidance to staff and applicants.

In revising these regulations, the Commission will consider, among other issues: (1) whether nonconforming structures should be limited to their current size; (2) whether such structures could be enlarged by a certain percentage before being required to become conforming; and (3) whether other incentives could be applied to bring nonconforming structures into conformance. It may also consider the appropriateness of giving special treatment to certain nonconforming uses or structures, such as sporting camps, which are very limited in number and whose location is an important part of an established traditional use.

Water Quality Limiting Lakes

One thousand lakes in the jurisdiction have been designated by the Commission as water quality limiting lakes (WQLL). The WQLL designation was originally developed to address the cumulative impact of individual lot development on lake water quality. The Commission recognizes that the

formula for identifying water quality limiting lakes is rudimentary and understands the need to update its approach to review of impacts on water quality. To meet this need, Commission staff will continue to work with staff of the Department of Environmental Protection to develop a systematic approach to protecting water quality, one which more accurately reflects the current level of knowledge about the relationship between land use and lake water quality.

Sludge Spreading

Sludge, a residual of paper making, is spread on forestlands within the Commission's jurisdiction. Pursuant to a 1989 amendment to its rules, the Commission prohibits such spreading in certain environmentally sensitive areas and requires a permit for spreading in other sensitive areas. However, in the vast majority of its jurisdiction in Management Subdistricts, the Commission does not require a permit for such activities provided they comply with applicable regulations of the Maine Department of Environmental Protection (DEP). The Commission adopted these rule changes with the understanding that it would revisit the issue upon completion of an industry sponsored study of the effects of sludge spreading. The sludge research program has not produced usable results, and the Research Advisory Committee established to oversee the program dissolved due to dissatisfaction with the program's methods and progress. DEP has indicated an intent to see that this work continue in some form.

The Commission will monitor DEP's efforts in this regard and will consider limiting sludge spreading if it appears that potential risks cannot be controlled and risks associated with this practice clearly outweigh the benefits.

Types of Development Zones

The Commission's standards describe five kinds of development zones, all of which are designed around the principle of separation of incompatible land uses. Experience suggests that the Commission may want to consider some special Development zones including:

(1) a new commercial zone that would provide for an intermediate level of commercial activity between that provided for in the General Development Subdistrict and the Commercial Industrial Subdistrict.

(2) village areas where special standards could be applied to facilitate compact development;

(3) remote development, such as sporting camps, which would recognize the special needs of such facilities; and

(4) solid waste disposal facilities and their need to be separate from existing developed areas and other incompatible uses.

Coastal Islands

The Commission recognizes that land use planning on coastal islands may need to be refined to recognize their special nature. For example, cluster development, while appropriate on mainland areas, may be inappropriate on some coastal islands because such compact development may threaten fragile fresh water sources. Road setbacks may be unnecessary or greatly reduced on islands due to the nature of their roadways. Also, special zoning may be appropriate for coastal islands – for example, the Commission earlier determined that it was appropriate to encourage water dependent commercial activities by establishing a Maritime Development Subdistrict within its regulations.[4]

Natural Resources Protection Act (NRPA)

In 1992, the Legislature directed the Commission to consider the procedures and related issues of developing consistent standards for implementing the Natural Resources Protection Act (at that time implemented by the Maine Department of Environmental Protection statewide) within the jurisdiction and to begin mapping freshwater wetlands within these areas.

In response to that directive, the Commission has initiated a cooperative effort with the U.S. Fish and Wildlife Service to improve upon the National Wetland Inventory which has inventoried and mapped wetlands for the Commission's jurisdiction. In response to Commission recommendations, the Legislature has exempted deer wintering areas, fragile mountain areas, seabird nesting islands, and shorelands of great ponds, rivers, streams and brooks within the jurisdiction from duplicative NRPA regulation.

In 1995, the Legislature amended NRPA and streamlined the wetland permitting process. The Commission will initiate an effort to amend its wet-

[4]More discussion on pages 29-33 of this plan

land rules and zoning maps in a manner that is consistent with this legislation. Additional legislation could then be introduced which would exempt the application of NRPA to wetlands in the Commission's jurisdiction.

The Commission will also continue to examine options for revising its standards to protect sand dunes and significant wildlife resources in a fashion that is comparable to the protection offered these resources in the rest of the state.

Definitions

For the Commission's regulations to be unambiguous, it is important that terms used in the regulations be clearly defined, especially when a commonly accepted definition is lacking. The Commission has determined that certain terms (e.g. winter haul roads) need to be defined. In other instances, terms that are defined in the regulations (e.g. commercial sporting camps and campsites) need refinement to clarify the Commission's intent in the use of these terms. The Commission's definition of subdivision will also be reviewed for clarity and equity particularly as it pertains to retained lots. The Commission will strive to make its definitions consistent with the same terms used by other agencies.

Surface Use Conflicts on Lakes

As the areas receiving the most recreational use, lakes are the most likely location for use conflicts. In 1996, the state began an effort through the Great Ponds Task Force to address this issue amongst other lake issues. The Commission will work with the Task Force and other state agencies and interested parties in addressing surface use conflicts on lakes within its jurisdiction.

Inventory Needs

Land Use Inventory

Because of the size of the Commission's jurisdiction and the impracticality of staff visiting the site of each project application, lack of an up-to-date land use inventory is an impediment to improving the efficiency of the permitting process and the enforcement and compliance program.

Within the constraints of available funding and staff, the Commission will undertake an inventory of existing land uses, including roads, within its jurisdiction. Such information would facilitate the permitting and enforcement process and help monitor the significance of land use changes occurring in the jurisdiction for future revisions to this Comprehensive Land Use Plan. The Commission will attempt to utilize the field staffs of other agencies to assist in such an inventory.

The Commission will endeavor to integrate its inventory of land uses with the Bureau of Property Taxation records to facilitate the tracking of land use changes over time including the creation of lots through the 2-in-5 exemption.

To facilitate the maintenance of such an inventory, the Commission will utilize Geographic Information System (GIS) technology to the extent possible given LURC's staffing and financial constraints.

Education, Enforcement and Public Assistance

Education and Enforcement

Adherence to environmental regulations is critical if they are to be meaningful. Over the past several years, the Commission has developed a balanced program combining concerted education efforts with a vigorous enforcement posture in order to achieve a reasonable degree of compliance with the law.

Efforts to explain the requirements of the LURC law to the affected public can go far toward preventing violations and environmental degradation. For this reason, numerous training sessions for woods workers, foresters and others have been held and educational booklets have been prepared and distributed.

At the same time, violations of the law cannot be ignored. Each year 250-300 violations of the Commission's rules and regulations are reported, many of these under the Joint Enforcement Agreement between LURC and the Departments of Environmental Protection, Inland Fisheries and Wildlife, and Conservation. All such violations are reported in turn to the Commission, and significant violations are brought to the Commission for discussion and action.

The Commission normally authorizes the staff to negotiate settlement agreements concerning violations of less than severe consequence, with the terms of the settlement subject to the final approval of the Commission. This process is designed to be fair while resulting in expeditious and efficient disposition of enforcement matters. In instances where a staff settlement agreement cannot be readily reached, and in cases involving severe violations and/or environmental damage, the Commission refers the violation to the Attorney General for appropriate legal action.

While this program has increased awareness of the law among the affected public, and numerous violations have been penalized and remedied, efforts must continue to improve compliance. It should be recognized, however, that staffing constraints hinder efforts to carry out a sustained and comprehensive education and enforcement program.

Education and enforcement are central to all of the Commission's objectives and programs. The Commission will therefore continue to pursue, as a top priority, a vigorous education and enforcement program. Toward this end, the Commission will pursue the following actions.

- Efforts will be made to inform landowners, land managers, contractors, citizens, realtors, lawyers, bankers, and others concerning the laws and regulations the Commission administers.
- The Commission will continue to train field personnel of other agencies in order to supplement the work of its small inspection and enforcement staff.
- The Commission will continue to hold landowners/managers primarily responsible for assuring that the work of contractors and other operators on their lands is in compliance with the law. Because the independent contractor status of such contractors may impair direct landowner involvement in contractor operations, landowners/managers are strongly encouraged to carefully inform and contractually require adherence of operators in accordance with LURC standards. In addition, landowners/managers may wish to bring contractors involved in violations into discussions with the staff leading up to a settlement as well as seeking contractor payment of monetary penalties where fair.
- The Commission will make appropriate exceptions to holding landowners/managers primarily responsible for violations on their lands. Such exceptions will be made when the violation occurs entirely by reason of actions of a third party (as in the case of a trespass), where the landowner/manager has no involvement with the activities and receives no benefit from nor has any contractual or other relationship with the third party.
- In the course of resolving violation matters with landowners through settlement agree-

ments, the following factors will be considered in arriving at a just settlement of a violation, including the establishment of a monetary penalty in appropriate cases:

- the extent of environmental damage resulting from the violations;
- the extent and significance of the violations;
- the environmental record of the landowner, including any history of prior violations;
- the extent to which the landowner knew or should have known of the laws or standards violated;
- the responsiveness of the landowner in connection with the violation, including whether the landowner reported itself or took measures to respond to the violation without state agency request;
- the remedial efforts of the landowner; and
- the financial condition of the person charged with the violation.

- Although no two violations are identical, an effort will be made to deal similarly with violations involving similar circumstances.

Local Assistance and Public Participation

It is the Commission's policy to maximize assistance to and involvement of the communities, individuals and groups which it serves. The Commission has assisted a number of communities in preparing land use plans and zoning ordinances toward the goal of assuming local control of land use regulation. The Commission encourages local land use control for organized communities having the interest and willingness to undertake this work.

Public participation is encouraged in all of the Commission's work through public hearings, Commission meetings, permit application review, and other public forums. Public access to all information pertaining to the Commission's actions will be maintained and facilitated.

In the past, the Commission or landowners have occasionally initiated joint field trips or meetings to discuss matters of mutual concern. The Commission will make efforts to ensure there continue to be opportunities for a dialogue with landowners and other interests.

Applicant Assistance

The Commission will work toward assisting applicants in understanding and complying with its processes and requirements. To this end, the Commission will seek to simplify and clarify application procedures wherever possible, while assuring that it addresses the environmental issues of public concern. For example, in 1988, the Commission undertook a major effort to streamline its regulations and expanded the list of activities for which permitting would be expedited. In 1996, the Commission expanded to six regional offices, enhancing access for assistance to residents of the jurisdiction. The Commission will continue this effort as necessary and as resources (especially staff resources at the regional office level) become available.

Also, the Commission has began a process of redrafting each of its approximately 460 township zoning maps onto more accurate base maps. The Commission will continue this multi-year project as a means to provide more accurate zoning maps that will facilitate compliance with the Commission's regulations.

To help ensure compliance with the Commission's regulations and its Comprehensive Land Use Plan, applicants for subdivision or major development proposals are strongly encouraged by the Commission to meet with the permitting and planning staff prior to fully formulating their proposals. Such pre-application conferences have been extremely helpful in avoiding unnecessary time and expense formulating major development proposals which may not fully comply with the Commission's goals, policies, and regulations.

The draft guidelines for review of rezoning petitions shall continue to be refined to provide guidance to both the applicant and the Commission in reviewing rezoning petitions.

The Commission's award winning Land Use Handbook series will be updated and made available to the public as staff resources become available.

Other Actions

The Commission will undertake other actions from time-to-time to more fully implement the goals and poliicies of this comprehensive land use plan.

Upper St. John River

Implementation Schedule

The following implementation schedule is included as a guide in setting priorities and allocating staff time and resources. In light of changing priorities, legislative directives and other circumstances, the Commission reserves the right to depart from this schedule.

	Priority (1-4)	Duration	Staff Resources
STATUTORY MATTERS			
1. Large lots	1	Short-term	Moderate
2. "2-in-5 lots"	2	Medium-term	Moderate
GUIDING THE LOCATION OF DEVELOPMENT			
3. Areas most appropriate for development	2	Medium-term	Substantial.
4. Areas least appropriate for development	2	Medium-term	Substantial
5. Prospective Zoning			
Rangeley Lakes area*	1	Medium-term	Moderate
Moosehead Lake area	2	Long-term	Moderate. Consultant to updating assist inventory.
Millinocket/Baxter area	3	Long-term	Moderate. Consultant to assist on inventory work.
Carrabassett Valley area	4	Long-term	Moderate. Consultant to assist on inventory work.
RESPONDING TO MAJOR DEVELOPMENT PROPOSALS			
6. Rezoning Guidance System*	2	Medium-term	Light-Moderate
7. New Development Centers	Response to proposals	Ongoing	Light-Moderate
8. Concept Plans	Response to proposals	Ongoing	Moderate
9. Management Subdistricts	2	Medium-term	Moderate
RULE CHANGES			
10. Development Regulations*	1	Short-term	Moderate
11. Subdivision road standards*	1	Short-term	Moderate
12. Non-conforming uses*	1	Short-term	Moderate
13. WQLL	3	Short-term	Light to Moderate
14. Sludge spreading	3	Medium-term	Light to Moderate

	Priority (1-4)	Duration	Staff Resources
15. Types of development zones	3	Medium-term	Moderate
16. Coastal Islands	3	Short-term	Light to Moderate
17. NRPA*	1	Medium-term	Moderate
18. Definitions	2	Medium-term	Moderate
19. Surface use conflicts	2	Medium-term	Light to Moderate
INVENTORY NEEDS			
20. Land Use Inventory	4	Long-term	Substantial
EDUCATION, ENFORCEMENT AND PUBLIC ASSISTANCE			
21. Education and Enforcement*	1	Ongoing	Substantial
22. Local Assistance and Public Participation*	1	Ongoing	Substantial
23. Applicant Assistance*	1	Ongoing	Substantial
24. Other Actions		As determined	

* Already in progress

Duration
Short-term: Less than 6 months from initiation of project
Medium-term: 6 months - 1 year from initiation of project
Long-term: More than 1 year from initiation of project