

STATE OF MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY

LAND USE PLANNING COMMISSION 22 STATE HOUSE STATION AUGUSTA, MAINE 04333-0022

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Memorandum

To: LUPC Commissioners

CC: Stacie R. Beyer, Executive Director

From: Stacy Benjamin, Acting Chief Planner

Date: March 2, 2023

Re: Amendment F to ZP 532: Staff-initiated petition to rezone lands included in A Concept

Plan for the Lands of Lowell & Co. Timber Associates in Attean Township and

Dennistown Plantation (P-RP 007); Request to post to a 30-day public comment period

A Concept Plan for the Lands of Lowell & Co. Timber Associates in Attean Township and Dennistown Plantation and its associated Resource Plan Protection subdistrict (P-RP) will expire on July 1, 2023. The current major landowner does not wish to renew the Plan. When a resource protection plan expires, Commission staff must initiate a rezoning process to identify replacement zoning for the former Plan area that provides comparable protection for existing resources. Commission staff have prepared a draft of proposed replacement zoning for the P-RP subdistrict. Draft maps showing the proposed subdistricts are attached for your review.

Background

A Concept Plan for the Lands of Lowell & Co. Timber Associates in Attean Township and Dennistown Plantation (Concept Plan) was approved by the Land Use Regulation Commission (now the Land Use Planning Commission, or Commission) in 1993. The Concept Plan area encompasses more than 17,000 acres, primarily in Attean Township. A small portion of Dennistown Plantation is also included in the plan area. The current major property owner, Carrier Timberlands, LLC, does not wish to renew the 30-year Concept Plan and so it will expire on July 1, 2023.

When a concept plan expires and is not renewed, the Commission must designate appropriate replacement zoning in accordance with the Commission's comprehensive land use plan, statutes, and rules. Staff have therefore begun an LUPC-initiated process to identify and designate appropriate replacement zoning, providing comparable protection for the resources existing within the area currently covered by the Plan. The expiration of the Plan will not affect permanent conservation measures or existing uses. The Commission's intent is to replace the P-



RP subdistrict with updated zoning that provides comparable protection for the resources present, and which recognizes existing, continuing land uses. The attached draft Land Use Guidance Maps (zoning maps) indicate the replacement zones proposed for the current Resource Plan Protection (P-RP) subdistrict in Attean Township and Dennistown Plantation. Proposed zoning changes are only within the area currently covered by the P-RP subdistrict.

The Plan area is adjacent to the Maine Bureau of Parks and Lands <u>Holeb Public Land</u> and includes:

- 34.9 miles of shoreline on a total of 11 ponds, including Attean, Big Wood, and Little Big Wood ponds
- Portions of the Moose River, which drains the northern end of the Kennebec River watershed within the Plan area and flows east to Moosehead Lake
- Attean Mountain, Sally Mountain, and portions of other mountains
- The Benjamin Valley, a complex and highly valuable remote ecosystem including multiple management class 6 ponds.
- Multiple areas under conservation easement

The majority of the property within the Concept Plan area was transferred from Lowell & Company Timber Associates to Up North Timberlands, LP in 1996, and subsequently transferred to Carrier Timberlands LLC in 2004.

The Concept Plan is available online at: https://www.maine.gov/dacf/lupc/plans maps data/resourceplans/prp007.pdf

Summary and Status of Plan Elements

The development and conservation components included in the Concept Plan are summarized below, along with the current status based on best available data. Zoning Petition ZP 532 has been amended five times since originally approved, resulting in changes in easement deadlines, easement holders, and other minor alterations to the provisions of the Concept Plan.

One subdivision permit was approved under the Plan, SP 3244, issued to Lowell & Co. Timber Associates in November of 1993. SP 3244 authorized the division of fifteen waterfront residential lots and two non-commercial campground properties, as provided for in the Concept Plan. SP 3244 has been amended three times. Two of the amendments related to timeframe extensions, and one allowed the division of one of the approved lots as envisioned within the Concept Plan.

Development Components	Status
Shorefront Cabins: 65 seasonal cabin lots occupying 12,450 feet of shore. All cabin sites will have boat or foot access only; most cabins will be clustered together on small lots with common docks and common shore frontage.	17-lot subdivision approved 11/93 (SP3244) – 15 camp lots and 2 campgrounds (see below); 7 cabins/dwellings subsequently permitted

Development Components	Status
One noncommercial campground of no more than 5 acres in size with 500 feet of frontage on Little Big Wood Pond for use by educational groups and the public and being comprised of tent platforms, a storage building and privies.	Lot LB – Now owned by the State of Maine (no development to date)
One private campground of no more than 2 acres, to be designed to accommodate groups of approximately 12 persons within the Mud Pond, Wood Stream, Wood Cove area, owned and operated for the exclusive use of the holder of the conservation easements in the Plan Area (the Chewonki Foundation) for its environmental education purposes and for monitoring the conservation easements.	Lot CH – Owned by Chewonki Foundation (two tent platforms and a pit privy used for programming and staff retreats – DP 4263)
Back-country Buildings: 15 seasonal, remote buildings on 1 acre lots with no motorized wheeled vehicle access and no utilities permitted. These lots are to be limited to certain back-country areas.	No permits identified
There are 7 existing cabins on the ownership, 5 of which are to be offered for sale to the present lessees (one of these will be moved back 100 feet); one cabin will be demolished, and another will be converted into a back-country cabin; further, there are two newly restored log cabin/shelters for public recreational use, at Holeb Falls which will be retained.	4 lots transferred to leaseholders prior to subdivision SP3244; Hog Island transferred in 2002.

Conservation Components	Status
 Transfer of Shore Frontage to the State. On or about July 1, 1993, following approval of this Plan by the Commission, Lowell and Company will transfer, in fee, to the State of Maine acting through the Bureau of Public Lands, title to: Lowell and Company's entire 11.9 miles of shorefront (excluding two 3-acre cabin sites) on Attean Pond which is subject to an earlier conservation easement. The width of this shoreland is 300 feet or more as defined by the existing conservation easement on Attean Pond. The shoreland and bed of the Moose River east of Holeb Falls (excluding two log cabin sites on the north side) totaling about 8,200 feet on the south side of the river and 7,000 feet on the north side. The width of this shoreland area to be conveyed is 250 feet on each side. 	Transferred 5/17/1994 (State subsequently acquired the two 3-acre cabin sites)
Transfer of Right-of-way to State. In addition, on or about July 1, 1993, Lowell and Company will convey a permanent right-of-way, across the Attean/Holeb portage trail, to the Bureau of Public Lands but will retain a right to cross and recross this trail. The current easement held by the Forest Society of Maine and the Recreation Protection Subdistrict (P-RR) restrictions will continue to apply to this trail.	Transferred 5/17/1994

Cor	nservation Components	Status
In I	Perpetuity Remote Pond Protection. On or about July 1, 1993: The Benjamin Valley Ecological Preserve, about 330 acres, more or less, between 4 remote ponds, will be permanently protected by conveyance of a conservation easement which prohibits development and timber harvesting. The intent is to create a scientific preserve. The Recreation Protection Subdistrict (P-RR) restrictions will continue to apply to this area. By conveyance of a conservation easement, place about 3,400 acres, more or less, of additional land in the Benjamin Valley under permanent restrictions. The restrictions and the area so designated shall coincide with the Recreation Protection Subdistrict (P-RR) shown on the Commission's land use guidance map for this area. Permanent protection by conveyance of a conservation easement to The Chewonki Foundation is proposed for other areas in the Plan Area. This easement will prohibit any development of 31,570 feet of shoreline on Mud, Little Big Wood and Wood Pond. Portions of this easement will be phased in according to a schedule tied to lot sales or leases on these Ponds as described in Part III.C.2.a of the Plan. This easement extends back from the normal high water mark 500 feet except within each development site it extends 100 feet back from the normal high water mark. Title to the portion of each development site located within 100 feet of the normal high water mark will be held (in common) by the lot owner(s) within that development site.	5/17/1994 – three easements to Chewonki Foundation later deeded to Forest Society of Maine
dev	ed Restrictions on development. Place deed restrictions on all elopment so that cabin size, setback and materials are controlled and er measures are taken to minimize environmental impact.	Varying levels of deed restrictions on properties transferred since the Concept Plan was approved. Most cabin lots restricted to seasonal use/water access only. No-build easement 100' deep along the shorefront for most lots.

Replacement Zoning Process

When a Resource Protection Plan and associated P-RP subdistrict expires, the Commission is tasked with rezoning the area previously covered by the P-RP subdistrict. The process is outlined in Chapter 10, Section 10.23,H,8:

"The provisions of an approved and recorded Resource Plan shall apply for the duration of the approved time period, except that any conservation measures taken to strike a reasonable and publicly beneficial balance in a lake concept plan shall continue to apply to the extent that they are covered by legal contract, deeded covenants, permit requirements, or other legal instruments. ...At the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning in accordance with Section 10.08,A.

In the event that a plan is terminated, all transactions initiated as a component of the plan, including without limitation, the granting of conservation easements or restrictive covenants on subdivided lands will continue to apply to the extent that they are covered by legal contract, deeded covenants, permit or other legal requirements."

Proposed Replacement Zoning

Under the provisions of Section 10.23,H, the following subdistricts are proposed as replacement zoning for the Concept Plan area according to the purpose and definition of each subdistrict. Except for the Residential Development Subdistrict, all are essentially the same as the zoning in place prior to adoption of the Concept Plan¹.

• Residential Development Subdistrict (D-RS) – Lots Granted Subdivision Approval. The purpose of the D-RS Subdistrict is "to set aside certain areas for residential and other appropriate uses so as to provide for residential activities apart from areas of commercial development. The intention is to encourage the concentration of residential type development in locations where public services may be provided efficiently or where residential development can be integrated with a recreational resource that is suitable for additional use associated with proximate residential development." See the Commission's Chapter 10 rules, section 10.21,M for the full description of the D-RS Subdistrict.

In accordance with the Commission's Chapter 10 rules, most of the lots approved in SP 3244 are proposed to be zoned D-RS Subdistrict. Some lots have alternate zoning proposed at the request of the property owner or due to unique circumstances.

The D-RS subdistrict would allow property owners whose deeds do not restrict further division of their property to request an amendment to SP 3244 to further subdivide. Any deed restrictions or covenants in place for a given property remain in place regardless of the zoning.

- General Management Subdistrict (M-GN). All areas not zoned for development or protection would be zoned M-GN Subdistrict. The purpose of the M-GN Subdistrict is to "permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required." See the Commission's Chapter 10 rules, section 10.22, A for the full description of the M-GN Subdistrict.
- **Great Pond Protection Subdistrict (P-GP)**. Except for the subdivision lots zoned D-RS, the shorelines of Wood Pond, Little Big Wood Pond, Attean Pond, Mud Pond, Long Pond, Horseshoe Pond, Benjamin Pond, and Clearwater Pond would be zoned P-GP Subdistrict: 250 feet, measuring in a straight line from the normal high-water mark of bodies of standing water 10 acres or greater in size. The purpose of the P-GP Subdistrict is "to regulate residential and recreational development on Great Ponds to protect water quality, recreation potential, fishery habitat, and scenic character." *See the Commission's Chapter 10 rules, section 10.23,E for the full description of the P-GP Subdistrict*.
- Accessible Lake Protection Subdistrict (P-AL). The shoreline of Attean Pond would also be zoned P-AL subdistrict: 500 feet from and around the water body measured from the normal high-water mark. The P-AL subdistrict applies to Management Class 2 lakes in the Commission's jurisdiction and its purpose is to "maintain and protect the existing natural"

¹ The current zoning maps are attached to this memo and also available on the LUPC website at: <u>LUPC digital and online data (maine.gov)</u>.

- values of the accessible, undeveloped, high value lakes." It is the intent of this subdistrict to restrict development. See the Commission's Chapter 10 rules, section 10.23, A for the full description of the P-AL Subdistrict.
- Recreation Protection Subdistrict (P-RR). The Benjamin Valley would be zoned P-RR as it was prior to the Concept Plan. The P-RR boundary also serves as the boundary for the Benjamin Valley Conservation Easement. The P-RR subdistrict applies to areas within 1/2 mile of Management Class 6 (MC-6) lakes. The ponds in the Benjamin Valley are all classified MC-6. It also applies to certain trails which the Commission identifies as providing or supporting unusually significant opportunities for primitive recreational experiences. There are two, 200-foot-wide P-RR zones within the Plan area: one along the Holeb-Attean Portage Trail; and one on the Sally Mountain trail. "The purpose of the P-RR subdistrict is to provide protection from development and intensive recreational uses to those areas that currently support, or have opportunities for, unusually significant primitive recreation activities." See the Commission's Chapter 10 rules, section 10.23,I for the full description of the P-AL Subdistrict.
- Soils and Geology Protection Subdistrict (P-SG). There are three areas proposed to be zoned P-SG Subdistrict. One is on Attean Mountain and is a strip of steep slopes along the south side just below the summit of the eastern peak. The other two are on Sally Mountain. The purpose of the P-SG Subdistrict is to "protect areas that have precipitous slopes or unstable characteristics from uses or development that can cause accelerated erosion, water sedimentation, mass movement, or structural damage, all of which could cause public danger or threaten public health." See the Commission's Chapter 10 rules, section 10.23,K,2 for the description of the P-SG Subdistrict.
- Shoreland Protection Subdistrict (P-SL2). A 75-foot P-SL2 Subdistrict would be placed along minor flowing waters, the upland edge of wetlands of special significance, and bodies of water less than 10 acres in size. Note that the P-SL2 Subdistrict areas are not always depicted on the draft map because they are too narrow at that scale, but nevertheless will be in effect in these areas. The purpose of the P-SL2 Subdistrict is to "regulate certain land use activities in certain shoreland areas in order to maintain water quality, plant, fish and wildlife habitat and in order to protect and enhance scenic and recreational opportunities." See the Commission's Chapter 10 rules, section 10.23,L for the full description of the P-SL2 Subdistrict.
- Wetland Protection Subdistrict (P-WL1, 2, and 3). Any wetland areas depicted on the National Wetland Inventory map would be zoned P-WL1, 2, or 3, as applicable. (Note that certain P-WL Subdistrict areas, such as stream channels and lake bottoms, or where a wetland abuts a stream, may not be depicted on the draft map but nevertheless will be in effect in these areas.) The purpose of the P-WL Subdistrict is to "conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform." See the Commission's Chapter 10 rules, section 10.23,N for the full description of the P-WL Subdistrict.

Landowner Review

In September of 2022, staff began the process of identifying current landowners within the Plan area and the status of development and conservation measures outlined in the Plan. Staff contacted the primary landowner, Carrier Timberlands, LLC, in early October and sent draft maps for their review in early January of 2023. Draft proposed zoning maps were sent via e-mail

or paper mail to all landowners within the Concept Plan area in February for informal review. Staff have received comments and responded to questions from several property owners. Landowners also were notified that they would receive additional notice once a formal public comment period was initiated and would have an additional opportunity to comment.

If approved for posting, Notice of Filing for the staff-initiated rezoning application will be sent to all owners and abutters within 1000 feet of the Plan area at the start of the public comment period. Related application materials and maps will be made available on the Commission's website and at the Augusta and Greenville offices.

Resource Agency Review

Draft zoning maps were sent to the Bureau of Parks and Lands (BPL), the Maine Forest Service (MFS), the Maine Historic Preservation Commission (MHPC), the Maine Department of Inland Fisheries & Wildlife (MDIFW), and the Maine Natural Areas Program (MNAP) for review in early February. Staff have coordinated with BPL regarding the proposed zoning as they manage State properties within the Plan area. MNAP submitted comments on 2/28/2023 regarding specific wetland subdistrict designations (P-WL1 vs. P-WL2 or 3). Staff were not able to respond to these comments in time for this memo, but they may be the basis for minor changes to the draft map prior to posting for a formal public comment period. The MFS and MHPC indicated they had no comments on the draft maps. MDIFW and BPL have not provided written comments as of the date of this memo. All agencies will have an opportunity to review any changes made based on comments received, as well as review of any future development proposals.

Staff Recommendation

The Commission's statute and Chapter 4 *Rules of Practice* require that public notice of proposed changes to zoning boundaries be given, and either a public comment period or public hearing be held prior to Commission adoption of changes in subdistrict boundaries.

Staff recommends that the Commission post Amendment F to Zoning Petition ZP 532, a staff-initiated petition to rezone the area within A Concept Plan for the Lands of Lowell & Co. Timber Associates in Attean Township and Dennistown Plantation in Somerset County, to a 30-day public comment period, pending any final minor adjustments to certain proposed wetland subdistrict designations based on comments received from MNAP.

Following the comment period, depending upon comments received from the landowners, remaining resource agencies, and interested persons, staff will make final changes and then present updated land use guidance maps to the Commission for a decision on adoption.

Attachment A: Draft Land Use Guidance Map for Attean Township

Attachment B: Draft Land Use Guidance Map for Dennistown Plantation

Attachment C: Current Land Use Guidance Map for Attean Township (for P-RP boundary)

Attachment D: Current Land Use Guidance Map for Dennistown Plantation (for P-RP boundary)







