

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

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Concept Planning Overview & Guidance

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This document is intended solely for guidance to Commission staff and the public when interpreting the statutory criteria for concept plans. The document may not be relied upon to create rights, substantive or procedural. The Commission reserves the right to act in a manner that may vary from this document, consistent with its statute and regulations. Nothing in this document shall be construed to supersede or replace the statute, rules and Comprehensive Land Use Plan administered by the Commission.

I. INTRODUCTION AND PURPOSE

Maine's Land Use Planning Commission (the LUPC or Commission) must consider its statutory charge of "sound planning, zoning and development." Encouraging patterns of development that are "sound" and benefit both the property owner and the public is an important part of the agency's mission.

Over the past thirty-five years, Maine's Land Use Planning Commission (the LUPC or Commission) has been confronted with numerous land use challenges spurred by the pattern of development within its service area. In the 1980s, the Commission recognized that continuing demand for recreational property had led to increased camp development on undeveloped lakes, subdivision development on larger lakes with significant natural, scenic and recreational values, as well as continued development on heavily developed lakes or lakes with potential water quality problems.

The Commission established concept plans in 1990 to encourage long-range land use planning as an alternative to traditional shoreland regulation—an alternative intended to fulfill both public and private objectives. As the effects of increased recreational demand became more evident in other areas with significant natural, scenic and recreational values, the Commission recognized that concept plans can be used to better address the effects of recreational demand not just along lake shores but also on the range of resources present in areas well beyond these shores. As a result, the Commission amended its rules in 2000 to extend the use of concept plans to backland areas.

What are Concept Plans?

Concept plans:

- are voluntary and initiated and prepared by the landowner;
- are a form of rezoning that must be reviewed according to the Commission's statute and rules and approved by the Commission to become effective;
- are long-range plans that cover a ten- to thirty-year period and differ in scale from several thousand to hundreds of thousands of acres;
- specify the types and amount of development that will be allowed and establish customized standards and review processes;
- encourage long-range planning as an alternative to scattered, incremental development;
- protect areas of significant natural and recreational resources;
- incentivize development that is appropriately located and is compatible with the area; and
- adjust certain requirements, such as the adjacency principle, when proposed development is matched by comparable conservation measures.

Public and Private Benefits of Concept Planning

Concept plans are intended to achieve both private and public objectives by providing significant benefits to landowners and to the public otherwise not available through the Commission's traditional regulatory processes.

Landowner Benefits

- Expanded flexibility in development standards (higher densities and/or faster pace; alternative design standards; alternative methods to meet other regulatory outcomes)
- Increased predictability in future Commission actions regarding the location and amount of development
- Expedited permitting process for subdivisions and building permits within approved plan areas

Public Benefits

- Improved approach to resource planning that is holistic in nature and difficult to achieve through case-by-case reviews of small-scale rezoning and development proposals
- Comprehensive evaluation of recreational and natural resources
- Provisions for the long-term protection of resources, including public access to recreation
- The ability to anticipate future development patterns
- Increased predictability of the development review process for neighbors and area residents, enabling them to make more informed investments and plans for their own futures

II. CONCEPT PLANNING BASICS

A. Governing Review Criteria

The criteria applicable to the Commission's review of concept plan proposals are set forth in statute (12 M.R.S. Chapter 206-A) and in the Commission's rules.

Statutory Criteria

Since concept plans are implemented through the rezoning of land to a P-RP Subdistrict, the statutory criteria for adoption or amendment of land use district boundaries ([12 M.R.S. § 685-A](#)) apply. These criteria include the requirement that concept plans, like any rezoning, must either (1) have no undue adverse impact on existing uses or resources or (2) be more appropriate for the protection and management of existing uses and resources within the affected area. In addition, concept plans must be consistent with other statutory criteria and the Commission's [Comprehensive Land Use Plan](#) (CLUP). If the Commission finds that these criteria are satisfied, it may exercise its discretion to approve the proposed rezoning.

If landowners petition the Commission for changes to its land use standards—which is often the case with concept plan proposals—the statutory criteria for amendment of land use standards (12 M.R.S. § 685-A(8-B)) also apply.

Regulatory Criteria

The regulatory criteria for rezoning are set out in Sections 10.08 and 10.25A within Chapter 10 of the Commission's Rules, [Land Use Districts and Standards](#). These criteria include consistency with the rules for review of concept plans as set forth in Section 10.23,H and include, among other things, a concept plan must strike “a reasonable and publicly beneficial balance between appropriate development and

long-term conservation of lake resources” and that development gained as a result of a waiver of the Commission’s adjacency principle must be matched by comparable conservation measures. *Section 10.23 (H)(6)(d) and (f)*.

Regulatory Limits to Concept Planning

It is important to note that concept planning respects the Maine State Legislature’s authority to enact statutory changes applicable to the area covered by a concept plan. Therefore, statutory changes that would apply to the area absent a Commission-approved concept plan would fully apply to the affected area, regardless of the plan’s terms. In short, concept planning does not constrain future legislative activity.

B. Conservation Requirements

In exchange for development at densities or rates not permitted through the Commission’s traditional regulatory framework, a concept plan must include binding commitments to conserve areas with important public values. The amount, location, and type of these conservation measures must satisfy all of the Commission’s applicable review criteria and also ensure that the protections offered by the proposed conservation measures are legal, readily enforceable, and capable of being effectively administered by the conservation easement holder or property owner.

C. The Plan Area

Size, Scope, and Configuration of the Plan Area

Concept plans are landowner-initiated petitions for rezoning. If a concept plan is proposed to affect lands across multiple ownerships, landowners must co-petition for adoption of the plan.

Concept plans should be prepared for an area large enough to allow for a balance of conservation and development. The area must also be of sufficient size and resource value that, when the public costs of evaluating and implementing the plan are weighed with the benefits likely to accrue from the plan, there is a clear public benefit that would not be achieved with more traditional zoning petition. The Commission has approved concept plans for areas ranging in size from approximately 1,500 acres to nearly 400,000 acres. “Resource-scale” concept plans typically include several thousand to 20,000 acres and tend to focus on the development and conservation of one large lake or a handful of small or mid-size ponds located in proximity to one another. “Landscape-scale” concept plans cover larger areas and tend to encompass multiple large lakes, small ponds, and river segments, as well as significant acres of backland that often surround and connect these waters.

Concept plans approved by the Commission to date have included lands that were both geographically contiguous and within a single ownership at the time of plan approval. The Commission’s rules, however, do not exclude consideration of concept plans that include non-adjointing lands.

Location of the Plan Area

While the Commission recognizes that unanticipated, dispersed, and incremental development has occurred in remote portions of the unorganized territories (UT), such development can significantly impact the UT’s principal conservation values, including natural resource values and remoteness. Concept planning was devised to provide landowners with an alternative mechanism for meeting the Commission’s conservation and development goals and policies, rather than a mechanism for circumventing these policies. Historically, the Commission has limited the use of concept planning to areas where growth has already occurred, as opposed to remote areas where development is either minimal or non-existent.

Concept Planning in High-Growth, High-Value Areas

The Commission has identified that some areas are especially well-positioned for specialized, forward-looking planning and zoning approaches such as concept planning. These “high-growth, high-value” areas:

- Have an established pattern of settlement;
- Have experienced or are likely to experience rapid growth;
- Are relatively accessible; and
- Contain high-value natural and cultural resources.

Some of the places that the Commission has identified as meeting these criteria are the Rangeley Lakes, Moosehead Lake, and Carrabassett Valley areas. However, other areas may also meet these criteria or otherwise benefit from concept planning. The Commission encourages concept planning in such high-growth, high-value areas because this planning tool, especially if applied at a large scale, can be an effective means to not only direct growth to appropriate locations but also to permanently protect the high conservation values of these areas.

III. ROLES AND RESPONSIBILITIES

A. The Petitioner’s Responsibilities

In general, the petitioner’s roles during the creation and processing of a concept plan proposal are to:

- Identify and clearly present short-term and long-term land use objectives;
- Actively and continuously solicit input from the LUPC staff, governmental review agencies, and stakeholders (including adjoining landowners);
- Collect, summarize, analyze, and make available data about the area affected by the proposed concept plan; and
- Demonstrate that the plan satisfies all necessary criteria for approval;
- Generally advocate for its interests and the proposed plan.

B. LUPC Staff Responsibilities

The members of the LUPC staff are the Commission’s professional analysts and advisors with respect to matters of administrative process and interpretation of governing criteria. Staff responsibilities include:

- Inform and respond to petitioners based on interpretations of applicable statutes and rules, and on the staff’s familiarity with Commission precedents, including advising on the appropriateness of the nature, type, and location of proposed development and conservation;
- Assist with the translation of plan elements into regulatory language;
- Evaluate evidence presented by the petitioner, members of the public, governmental review agencies, and other parties;
- Conduct analyses and solicit third-party independent analyses relevant to the governing criteria; and
- Develop recommendations at the Commission’s request for their consideration as to whether or not concept plan proposals satisfy governing criteria.

Extensive communication between the LUPC staff and petitioners is expected both prior to the submission of a concept plan proposal and during the review process. However, because the staff's central role is to provide the Commission with objective advice, analysis, and recommendations, the LUPC staff will not advocate on behalf of any petitioner.

C. Commission Responsibilities

The Commission:

- Sets the number, date(s), and location(s) of public information meetings and hearings and presides over these meetings;
- Reviews all information presented during the formal review process by the petitioner(s), the LUPC staff, and outside consultants (if applicable);
- Considers all testimony received regarding the petition; and
- Acts on the proposed concept plan by approving, approving with conditions, or denying the petition.

IV. KEY AREAS OF FOCUS AND CONSIDERATION

A. The Broad Goal of Concept Planning: A Better Approach

While concept planning encourages landowners to chart the future of their land in a manner that is “thoughtful and forward-looking,” the overarching goal of concept planning is to promote long-range land use planning as an alternative to haphazard, incremental growth. Therefore, one of the key aspects of the Commission’s evaluation of a proposed concept plan is whether the plan not only addresses the impacts of dispersed, incremental development, but also does so more effectively than the Commission’s existing regulatory framework. In the broadest terms, the Commission’s review of a proposed concept plan focuses on whether the plan:

1. Establishes sustainable patterns of land use that meet both present and future needs;
2. Facilitates orderly development by locating development near existing public services and infrastructure;
3. Promotes the UT’s principal values over the long-term;
4. Avoids development sprawl that fragments forestlands, degrades remote values, or harms high-value natural, and cultural resources;
5. Improves conditions that are a result of prior, unregulated growth;
6. Promotes mixed-use development, rather than exclusively residential development through its zoning scheme;
7. Considers and addresses new and evolving land uses, the character of residential development, road and infrastructure needs, and the adequacy and impacts of shoreland structures and facilities;
8. Includes up-front, permanent, and fully enforceable conservation measures that provide substantial public benefits not provided under the Commission’s existing regulations;
9. Includes land use standards and processes that ensure specific development nodes will be well-planned and will efficiently use land targeted for future development;
10. Responds to known deficiencies in the Commission’s regulations, especially with respect to impacts of development on existing uses and resources;

11. Identifies and responds to any issues that are specific to the region or local community; and
12. Presents the plan provisions in a clear manner that is consistent with the Commission's regulatory structure, such that the provisions can be effectively and immediately implemented.

B. Proposed Development

Location of Development

Since its inception, the Commission has recognized the importance of guiding new development to appropriate places as an effective way to retain and promote the UT's principal values. In general, concept plans can satisfy this objective by:

- Preventing scattered and sprawling development patterns;
- Locating development to avoid fragmenting intact working forestland, harm natural resources, or encroaching into remote parts of the UT or areas valued for their natural character; and
- Assuring at the site level that development is well-planned and uses land efficiently.

The Adjacency Principle

In considering whether a proposal satisfies its objectives regarding the location of development, the Commission begins by analyzing the amount of proposed residential and other development rezoning that is generally within one road mile of existing, compatibly developed areas. The term "adjacency principle" is discussed in the CLUP. (*See* CLUP pages 62, 128, 133, 289, and C-8 through C-10.)



During the formal review process the Commission will determine whether waivers of adjacency are required and, therefore, whether the comparable conservation is adequate. The LUPC staff can assist the petitioner early in the drafting process in identifying which development areas are not "adjacent" and therefore likely to require waivers. These preliminary determinations will enable the petitioner to consider whether additional conservation elements are necessary.

Evaluating the Location of Development at the Landscape, Resource, and Site Scales

While the Commission gives due consideration to adjacency in its evaluation of concept plan proposals, it also recognizes that concept planning was established as a flexible alternative to the adjacency principle and its simplistic focus on where development exists, as opposed to where it ought to be located. Consequently, the multi-layered evaluation prompts concept planning decisions about the location of development that are prospective rather than reactive, and holistic rather than incremental.

Development at the Landscape Scale – At the landscape scale, the Commission focuses on whether proposed development is located within or close to service centers and comparable service hubs, connected to those centers via public roads, and proximate to the electrical power grid. The Commission also evaluates whether proposed development is located away from remote townships, as well as townships valued for their natural character.

Haphazard or Dispersed Development: Residential and commercial development is an expected part of the life of local communities. The manner in which it occurs can shape the character and vibrancy of the area. Ideally, development will be located in such a way that the community benefits as well as the property owner, through compatibility with surrounding uses, efficient provision of public services, and proximity to other development which avoids the disruption of important natural resource-based economic activity on larger blocks of land. Incentives to locate development in this way can help reduce the amount of development that is located by chance and generally dispersed, bit by bit, over a large area. Such haphazard or dispersed development patterns can make it expensive to provide services and can disrupt economically beneficial activities that require large blocks of land.

Development at the Resource Scale – The Commission evaluates whether proposed development along water bodies or within selected upland areas of non-remote townships avoids and otherwise minimizes impacts to existing resources and uses. As part of its resource-scale evaluation, the Commission also evaluates whether lake-related development is consistent with the lake management intent and classifications set forth in its rules.

Development at the Site Scale – While concept plans may include site-specific subdivision or development proposals, most plans leave this level of detail for the implementation phase. As a result, at the site scale the Commission evaluates the feasibility of actually developing areas targeted for growth, and whether the proposed concept plan includes land use standards that ensure site-specific development is well-planned, designed to use land efficiently, and avoids and minimizes negative impacts to existing resources and uses. The review process also ensures that the areas proposed for development are reasonably sized for the uses.

Evaluating the Location of Places Inappropriate for Development

In applying this multi-layered evaluation, the Commission also assesses whether places that are inappropriate for development have been avoided and the extent to which these areas have been sufficiently protected from future development pressures. Places that are especially sensitive to development impacts include:

- Shores and viewsheds of remote and pristine water bodies;
- Shores and viewsheds of remote portions of accessible and developed lakes (including shores of remote portions of management class 3 lakes);
- Areas especially valued for recreation in remote settings; and
- Areas especially valued for recreation in largely undeveloped yet accessible settings.

Type of Development

The Commission's concept planning rules do not prescribe the type of development included in concept plans. Rather, the lists of permitted uses for the Commission's subdistricts, which are set out in Chapter 10 of the Commission's Rules, [*Land Use Districts and Standards*](#), and the goals and policies of the CLUP serve as guideposts for generally acceptable categories of development.

One of the LUPC's development objectives is to ensure that appropriate economic development is accommodated in the jurisdiction, particularly facilities related to forestry, agriculture, or recreation, which tend to support or reinforce the jurisdiction's principal values. Thus, the LUPC generally views favorably proposals for recreational facilities such as commercial sporting camps, remote camps, backcountry huts, campsites and campgrounds, and other similar facilities that are non-exclusive in their accommodations and non-intensive in their impacts. More intensive recreational facilities also may be accommodated in concept plans, as long as these facilities are compatible with the character of the jurisdiction, appropriately located near developed recreational centers and proximate to services and infrastructure, and avoid or minimize impacts to existing resources and uses.

Because concept plans tend to focus on second-home residential development, most concept plans also accommodate some amount of residential-scale commercial development—i.e., businesses that are compatible (in terms of type and scale) with residential uses and sell everyday goods and services primarily to residents or visitors of the immediate area, such as general stores, gas stations, day spas, canoe and kayak rentals, coffee shops, and restaurants. It is important that concept plans either provide needed services within the plan area, or integrate, in a meaningful way, the proposed residential and commercial development into the service network of a larger region.

What Makes Proposed Development Appropriate?

As discussed throughout this guidance document, the Commission evaluates the development components of a concept plan proposal from numerous regulatory vantage points to determine whether development is “appropriate”—meaning, whether it is of a location, amount, and type, and governed by the land use standards and processes such that all concept planning requirements are satisfied. For example, the Commission evaluates whether proposed development is consistent with the Commission’s objectives regarding location of development, whether it avoids both cumulative, and individual undue adverse impacts to the UT’s principal values and to the area’s natural, cultural and community resources and uses, and whether it is more appropriate for the protection and management of uses and resources than existing zoning.

If the development elements of a proposal cannot meet applicable regulatory requirements, the development is deemed inappropriate because the plan does not satisfy the governing criteria. In such situations, no amount or type of conservation can overcome this regulatory shortcoming.

Concept plans also may accommodate new waste disposal facilities, energy facilities such as biomass plants or wind power developments, or utility-related facilities. Landowners should discuss these types of proposals with the LUPC staff in the early stages of the review process, as regulatory requirements depend largely on the location and scale of such facilities.

Amount of Development

As part of its review of concept plan proposals, the Commission evaluates the amount of proposed development in relation to the service area-wide historic growth rate, as well as to the historic growth rate of the region within which the concept plan is proposed to be located. The Commission evaluates the plan based on the assumption that all proposed development will take place during the life of the plan (i.e., the concept plan will be “built out”). Whether the total amount of proposed development can be accommodated depends on the capacities of many systems, both natural and man-made, and the Commission evaluates the amount of proposed development based on its impacts to these systems.

In its past evaluations of concept plans, the Commission has found that, with the proper placement of development nodes, the inclusion of responsible land use standards and processes to protect existing resources and uses, and the use of conservation measures to contain future development pressures, plan areas can accommodate levels of growth that exceed a region’s historic growth rate.

The Impact of Exemptions

The CLUP recognizes that the “2 in 5” subdivision exemption and other similar exemptions to its subdivision law may hinder the Commission’s ability to effectively guide growth. The Commission has affirmed that development options based on statutory exemptions that exist outside of the Commission’s policies and regulatory framework, such as the 2-in-5 exemption, should not be used as a rationale for approving projects that do not otherwise fulfill the Commission’s policies and rules. With respect to concept plan proposals, eliminating the unintended effects of these statutory exemptions is a desirable, and often necessary, component of a concept plan proposal.

Appropriate Development Standards

In evaluating proposed land use standards against the statutory criteria, including consistency with the CLUP, the Commission also pays attention to whether and how the proposed standards further the broad objectives of concept planning, as discussed above. To ensure that a proposed plan addresses the impacts of unanticipated, dispersed, and incremental growth better than the Commission’s existing regulatory framework, proposed land use standards should, at minimum: (1) avoid the negative effects of scattered development that otherwise might occur through application of subdivision exemptions, (2) ensure that development nodes will be well-planned and will efficiently use land targeted for future

development, and (3) respond to known deficiencies in the Commission’s regulations, especially with respect to impacts of development on existing uses and resources.

For example, most concept plans focus on securing development rights for vacation-home residential development, particularly along the shores of lakes and ponds or on hillsides overlooking scenic vistas. Although the Commission’s regulatory framework is effective at minimizing the scenic impacts of shoreland development, the agency’s existing land use standards for hillside development lack the same level of specificity. The Commission has acknowledged the need to develop vegetation clearing and non-vegetative scenic impact standards for hillside development, but has not yet undertaken this initiative. As a result, concept plan proposals should include scenic impact standards for hillside development if such development is being proposed.

C. Proposed Conservation

Concept plans afford landowners certain unique regulatory benefits, such as development at densities, at rates, or in locations not allowed under the Commission’s traditional regulatory framework. In return, concept plans must include binding commitments to conserve areas with important public values, in accordance with the Commission’s statutory and regulatory criteria. These criteria include the rule-based “publicly beneficial balance” and the “comparable conservation” requirements), as well as the statutory requirement to mitigate a plan’s undue adverse impacts to existing uses and resources. Petitioners and the public have a keen interest in how the Commission views these requirements to better anticipate what an acceptable concept plan would contain. Concept plans are relatively infrequent and therefore the examples on which to draw are limited, and developers often have a better sense of what development they wish to pursue than they have of the conservation they wish to propose. For this reason, the guidance document contains a substantial description of conservation requirements that is lengthier than some other parts of the document, even though conservation is only one of the considerations in concept planning.

Most concept plan proposals trigger three regulatory requirements for conservation, each serving a distinct purpose:

1. **Publicly beneficial balance.** A concept plan must strike a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; as part of this balancing, the landowner is able to engage in development above and beyond that which would be allowed under the Commission’s traditional zoning framework and the public receives a benefit above and beyond that which it would receive under the Commission’s traditional zoning framework. *Section 10.23(H)(6)(f).*
2. **Comparable conservation.** When a waiver of the adjacency principle is requested, comparable conservation is required in order to ensure that the plan, taken as a whole, is at least as protective of the natural environment as the subdistricts it replaces. *Section 10.23(H)(6)(d).*
3. **Mitigation.** Adverse impacts of a concept plan must be offset with certain conservation measures, or other mitigation measures, to the extent that the plan’s impacts cannot otherwise be reasonably avoided or minimized. *12 M.R.S. § 685-A(8-A)(B).*

The Commission requires conservation measures with every concept plan proposal because of the regulatory benefits plan approval affords landowners. While concept plans typically conserve all land within the plan area other than the acreage set aside for proposed development, the location, amount, and type of conservation required—and consequently the size of the conservation area—depends on case-by-case evaluations of proposals against the three conservation criteria.

Conservation measures that satisfy these criteria typically come in the form of fee transfers of land and/or perpetual conservation easements encumbering property retained by the landowner. Conservation easements are a form of negative easement, meaning they limit the right to conduct an otherwise lawful activity on a landowner's property. The parcels are transferred to, and the conservation easements are held by, one or more governmental agencies or non-profit conservation organizations. Any given proposed conservation measure (e.g., a conservation easement) can satisfy one, two, or all three conservation requirements.

Publicly Beneficial Balance

Unlike other concept plan criteria whose goals are to prevent harm and protect the public's health, safety, and welfare, the criterion that a concept plan must strike "a reasonable and publicly beneficial balance between appropriate development and long-term conservation" is intended to ensure that both the landowner and the public receive benefits from the concept plan that neither would be entitled to in the plan's absence. Thus in addition to the development benefits gained by the landowner, substantial public entitlements must be provided with concept plan approval, and the required balance can be struck only if proposed development is appropriate and if proposed long-term conservation is publicly beneficial.

In very basic terms, the conservation requirement can be thought of as a set of scales. On one side of the scale is the benefit that the landowner gains in amount, flexibility, or predictability of development rights. On the other side of the scale is the benefit that the public gains in permanent rights of access, recreation opportunities, natural resource protection, or other benefits. The process must benefit both parties, but the balance must tip in favor of the public. (What makes proposed development appropriate is discussed on page 8.)

What Makes Conservation Measures Publicly Beneficial?

A proposal that satisfies the balance criterion includes conservation measures that offer benefits to which the public is not entitled under the LUPC's existing zoning framework—particularly if those benefits are otherwise at risk. Traditionally, these types of public benefits have been two-fold: (1) the permanent elimination of threats to natural and cultural (including scenic and recreational) resources from incremental, haphazard growth that would occur under the LUPC's traditional zoning framework, and (2) the legal guarantee of public access to use and enjoy those resources forever.

With respect to the amount and location of conservation, these two public benefits can be realized if the conservation measures permanently protect high-value, at-risk areas, including:

- The shores of remote and undeveloped ponds;
- Remote portions of developed lakes and ponds;
- Undeveloped segments of high-value river corridors; and
- High-value backland areas that are threatened by unanticipated, dispersed, and incremental development. These at-risk backland areas include places where new development would significantly impact high-value resources and where the market pressures to develop are high (i.e., hillsides with views of lakes, ponds, or river corridors, and other areas of high recreational or scenic value).

With respect to the type of conservation, these public benefits can be realized if the measures ensure the long-term protection of the high-value, at-risk areas from threats of land use change, permanently protect the important natural resources they contain (including intact forested landscapes and high-value scenic, recreational, wildlife, plant and ecological resources), and guarantee the public legal access to these areas.

Concept plan proposals, however, may include—and their approval may require—conservation measures that offer public benefits other than the two traditional requirements of eliminating threats from incremental, haphazard growth and guaranteeing public access to high-value areas. Because the Commission examines whether proposed conservation measures are of a location, amount, and type to realize public benefits, the Commission naturally pays close attention to the testimony and comments submitted by members of the public during the concept planning process. Public testimony and comments serve as a gauge of the resources and uses that the public values most and are most concerned about losing, and often are indicators as to whether proposed conservation measures are sufficient to satisfy the balance criterion. For this reason, concept plan proposals are less likely to be approved if they lack public support.

Comparable Conservation

To approve a concept plan and the associated change in zoning, the Commission also must find that “any development gained through any waiver of the adjacency principle is matched by comparable conservation measure[s].”

As a general matter, waivers of adjacency in concept plans are fitting because they come in tandem with, and are dependent upon, affirmative conclusions that must be reached by the Commission regarding a plan’s consistency with the CLUP—including findings that proposed development is consistent with the LUPC’s objectives regarding location of development, and that the proposed plan is a positive alternative to unanticipated, dispersed, and incremental growth (which the CLUP recognizes is propagated in part by the limitations of the adjacency principle). It follows that if proposed development does not advance the broad goal of concept planning or does not conform to LUPC’s location of development objectives, no amount of “comparable conservation” will cure this regulatory failing. Therefore, when waivers of adjacency are requested, the Commission first examines whether the proposed development satisfies its development objectives, and then evaluates whether proposed conservation measures are sufficient to prevent harm that might otherwise occur from the development—that is, development in locations, and of a scale and intensity, that otherwise would not be permitted.

Specifically, the Commission first evaluates the number and distribution of adjacent and non-adjacent development units to determine the number of units that require a waiver of adjacency due to their locations in relation to nearby development, their character in relation to nearby development, or both. This analysis is usually carried out by the LUPC staff. If the development satisfies the Commission’s objectives, the Commission next assesses the primary and secondary effects of proposed development requiring waiver of adjacency. The primary effects of development typically include direct habitat and other resource losses stemming from the land use conversion. The secondary effects of development include effects of development on adjoining habitat and nearby natural resources, as well as secondary development pressures that are likely to trigger future unanticipated, dispersed, and incremental development in adjoining areas. The Commission inquires as to what adverse impacts would be caused by these primary and secondary effects, absent the proposed conservation measures. Finally, the Commission evaluates whether the conservation measures—including the amount, location, and protective terms—are sufficient to offset harm from the effects of development requiring waivers of adjacency.

While the effects of proposed development will vary from plan to plan, some commonalities exist: Absent conservation limitations, secondary development pressures from substantial waivers of adjacency likely will trigger future unanticipated, dispersed, and incremental development—either on adjoining land or in nearby areas with similar market appeal. This secondary development may occur in the form of kingdom lot development, shorefront development, and certain backland development. The resources most likely to face such secondary development pressures are:

- Shores of remote and undeveloped ponds, remote portions of developed lakes and ponds, and undeveloped segments of high-value river corridors;
- Hillsides with views of lakes, ponds, or river corridors; and
- Other areas of high recreational or scenic value, including areas especially valued for primitive recreation in a remote setting and areas especially valued for primitive recreation in a largely undeveloped, yet accessible setting.

To satisfy the comparable conservation requirement, conservation measures should therefore prohibit residential development and significantly restrict the location, scale, and type of non-residential development in all areas likely to face substantial market pressures for development as a result of proposed development requiring waivers of adjacency. Any such conservation measures should be configured in a manner that surrounds the development areas requiring a waiver of adjacency, thereby protecting nearby areas from the long-term “leapfrogging” effects of the adjacency principle.

Mitigation

A key area of the Commission’s focus and consideration when evaluating concept plan proposals centers on whether the proposal—as a whole or with respect to any of its individual elements—will have an undue adverse impact on any of the natural and cultural resources that exist within and surrounding the plan area. The Commission expects that landowners will include concept plan measures and provisions that avoid and otherwise minimize resource impacts wherever possible.

If, however, certain adverse impacts cannot be reasonably avoided or further minimized in a concept plan, the Commission may consider mitigation proposals to ensure that such impacts are not unduly adverse. Concept plans are intended to promote the goal of long-range land use planning as an alternative to unanticipated, dispersed, and incremental growth. Thus, if a proposed concept plan addresses the effects of unplanned growth more effectively than the Commission’s existing regulations, the Commission may consider proposals to mitigate any potential harm to resources arising from inevitable impacts of proposing such an approach.

For example, concept plan proposals that are consistent with the Commission’s objectives regarding location of development may nonetheless cause some amount of inevitable wildlife habitat loss. This negative impact usually occurs as a result of direct habitat loss from proposed development footprints, indirect habitat loss from the effects of the location and amount of development, or both. To ensure that this type of impact is not unduly adverse, a landowner may propose to conserve substitute land within or nearby the concept plan area and propose funding and management mechanisms to provide enhanced, permanent protections to wildlife resources.

Similarly, increased recreational use caused by a change in population density or a change in scenic character attributed to concept plan development could displace certain existing recreational uses from a valued recreational area. If the capacity exists to accommodate these displaced uses in a nearby location, a landowner may propose to conserve that area and provide the necessary funding or other measures to ensure a sufficiently comparable recreational experience—in terms of the recreational setting as well as the available recreational infrastructure—such that the impact of displacement is not unduly adverse.

Landowners are strongly encouraged to discuss mitigation proposals early in the concept planning process with the LUPC staff and governmental review agencies whom the LUPC will ask to evaluate the merits of resource mitigation proposals (for instance, the Maine Department of Inland Fisheries and Wildlife, the Maine Natural Areas Program, and the U.S. Fish and Wildlife Service in the case of plant, wildlife and habitat mitigation plans, or the Bureau of Parks and Lands in the case of recreation mitigation plans).

Permanency and Value of Conservation Measures

In addition to the three conservation criteria, the Commission also must find that “conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.”¹ When evaluating plans in light of this requirement, the Commission considers, among other factors, the longevity of proposed conservation measures and when the measures will become effective.

With respect to long-term protection, the Commission has generally found that temporary conservation tools, such as limited-term conservation easements or restrictive zoning schemes, do not effectively satisfy the long-range objectives of concept planning. Therefore, perpetual conservation measures are generally required.² However, in limited cases, sub-areas may be appropriate for future development, and therefore may be appropriate to be excluded from permanent conservation. Similarly, conservation measures should apply as of the concept plan’s effective date. The Commission discourages phasing conservation measures in relation to future permit approvals or unit construction because such schemes do not guarantee that the conservation measures will materialize.

Part of the process of valuing the conservation component of the plan and assessing what actually could take place within conservation areas is related to allowed uses. If some of the permitted uses are inconsistent with the purposes of the Commission’s conservation requirements, they may significantly diminish the regulatory value of these conservation components to the plan package. If a petitioner wishes to allow certain uses, the petitioner must evaluate the impacts of those allowed uses on the plan area. If the use listings, easements, deed restrictions, or other regulatory mechanisms allow for development, a description of the possible outcomes from that development right, what impacts that would have on the surrounding area, and how it is consistent with the rest of the plan are important to include in the petition.

In sum, the Commission looks for assurances that proposed conservation measures will, in fact, permanently and fully protect the resources and uses the measures purport to protect.



Generally, conservation measures of the plan should consider, and may specifically describe:

- location (*i.e., areas within 500 feet of all waterbodies, separation of incompatible land uses, sensitive resources*)
- amount (*i.e., all areas within 500 feet of all waterbodies, balance adjacency waiver*)
- configuration (*i.e., large blocks, multiple smaller blocks, contiguous/noncontiguous*)
- type (*i.e., permanent or term easement, in-lieu fee, or transfer of fee interest in land*)
- scope (*i.e., serving site-specific, sub-regional, or landscape scale aspects*)
- resources (*i.e., lakes, rivers, habitat, recreation, forest products, water quality, cultural assets, and areas of high market pressure such as hillsides and waterfronts*)
- purposes (*i.e., public access, timber management, recreation, separation of incompatible land uses, avoidance of development in sensitive areas, compensation for waiver of adjacency*)
- allowed uses (*i.e., means of access (foot, vehicle, trails, roads, hand-carry launch, etc.), timber management, recreation*)
- future needs (*i.e., some areas may be appropriate for development, but not during the life of the plan*)

¹ Section 10.23,H,6,g within Chapter 10 of the Commission’s Rules, *Land Use Districts and Standards*.

² In limited circumstances, perpetual conservation easements may not be necessary—for example, where development proposed is not substantially greater than what might be permitted in the absence of the concept plan. For this reason, the governing criteria enable a waiver of the perpetuity requirement; however, conservation in perpetuity remains the standard. *Factual and Policy Basis for the Commission’s Amendments to the 1983 Comprehensive Land Use Plan and Chapter 10 of the Commission’s Rules, Land Use Districts and Standards (adopted June 7, 1990), 14.*

D. Rezoning Considerations

Balancing Regulatory Predictability with Regulatory Flexibility

A concept plan creates a level of predictability for landowners and developers in exchange for corresponding commitments to conservation by establishing:

- Locations where development will be allowed;
- Type of development that will be allowed in each development area;
- Maximum number of development units that will be permitted;
- Development standards and review processes that will remain unchanged for the life of the concept plan; and
- Development standards and processes that are allowed to change.

Making these specific commitments at the rezoning requires some level of regulatory flexibility because in order to approve a concept plan, the Commission must find that all proposed land use standards must serve the purpose, intent, and provisions of the land use law (Chapter 206-A), and must be consistent with the CLUP. A description of the role of the Department of Environmental Protection (the DEP) in subsequent permitting can be found in the shaded box on page 15.



Concept plans may allow/provide for additional measures of flexibility, such as for the reassignment of units from one development node to another. However, the plan must specify how such reassignment may occur.

Specific Considerations

Recognizing that concept planning promises a certain degree of regulatory predictability with respect to future permitting processes for landowners and developers, the Commission expects concept plans to include land use standards that provide a similar level of predictability for regulators and the public with respect to the development and conservation elements of a plan, but without compromising the agency's ability to fulfill its statutory mandates. Some standards and subdistrict boundaries may be frozen in time to achieve predictability, however, standards that are likely to evolve as more is learned about resource protection over time should remain flexible to accommodate changes in natural resources laws and regulations. In all cases, it should be acknowledged that statutory changes may affect plan provisions in the future, as the act of zoning does not override the legislature's authority to enact or amend environmental laws.

Although concept plans are customized to fit the goals of the landowner, provide the requisite public benefits, and meet the needs of the affected area, there are certain considerations related to the land use zones, standards and review processes contained within these plans that are germane to most concept plans.

1. *Modeled on the Familiar* – The provisions of a concept plan that will regulate the land uses and structures within the plan area should be modeled on Chapter 10 of the Commission's Rules, [Land Use Districts and Standards](#), both in terms of organizational structure and nomenclature. Concept plans that are organized much like the Commission's Chapter 10 provide landowners, developers, and regulators with a familiar road map: To figure out what can be done within the area covered by a concept plan, the user is first directed to the Commission's Official Land Use Guidance Maps, then to the pertinent list of permitted uses, and finally to the applicable land use standards and permitting processes.

2. *Permitting of Development* – Concept plans should carefully spell out the permitting processes and other requirements that must be met before development parcels are subdivided or dwelling units are sold. For example, developers typically must secure both subdivision permits and site-specific (building or development) permits before starting construction in a development area. Permit applications are reviewed and acted on by the Commission pursuant to its statutory and regulatory standards, as well as the provisions contained in the concept plan.

Because they will be administering the permitting procedures within the plan, the DEP and LUPC staff must have a clear and complete understanding of any proposed changes to the standards in order to ensure that the concept plan actually bestows the regulatory predictability it promises.

The petitioner should identify any land use standards and regulatory procedures that he or she wishes to make permanent and unchangeable for the life of the plan.



For larger subdivisions or other development activities that trigger permit review under the Site Location of Development Law (Site Law), a Site Law permit from the Department of Environmental Protection may be required. While the DEP must make the determination of whether Site Law permitting is required, generally, the DEP will review larger-scale development, such as development involving more than 3 acres of impervious area (e.g., roads, parking, buildings, etc.) and subdivisions involving 15 or more lots on a parcel of 30 acres or more. In these cases, the Commission must certify to the Department that the development triggering Site Law review is an allowed use (which would be the case following concept plan approval) and complies with those Commission land use standards not applied by the Department in its permit review.

Statutory Criteria for Rezoning

The Commission's statute sets two alternative bases upon which the Commission may adopt new or amended land use district (zoning) boundaries. A proposal must either (1) have no undue adverse impact on existing uses or resources, or (2) be more appropriate for the protection and management of existing uses and resources within the affected area. However, the Commission will likely evaluate concept plan proposals in light of both of these statutory prongs in order to fully understand the impacts of, and the basis for, such a rezoning decision.

Although these statutory criteria apply to all petitions for rezoning, the Commission's traditional zoning framework—where zoning petitions are decided on a largely reactive, case-by-case basis—is fundamentally different from concept planning, which is prospective (forward-looking) and more comprehensive in nature. As a result, the Commission predominantly draws upon the goals and policies set forth in the CLUP, as well as concept planning precedent, when considering these criteria, and places less weight on precedent set by its traditional zoning decisions.

No Undue Adverse Impact on Existing Uses and Resources

The CLUP sets forth specific natural resources goals and policies that address a wide variety of natural resources. Of particular relevance to the Commission's evaluation of most concept plan proposals against the statutory rezoning criterion of “no undue adverse impact” are policies relating to forest resources, plant and animal habitat resources, recreational resources, scenic resources, water resources, and wetland resources.

In assessing a concept plan in light of this criterion, the Commission evaluates the existing uses and resources located within the boundaries of the plan and, depending on the use or resource that might be impacted, the geographic range beyond the plan area. In evaluating the potential impacts attributable to a proposal, the Commission engages in the following steps: (1) preliminary issues-spotting and data-

gathering, (2) identification of sub-issues, and (3) evaluation how the proposal avoids, minimizes, and mitigates identified adverse impacts.

More Appropriate for the Protection and Management of Uses and Resources

In deciding whether a concept plan proposal is “more appropriate” than existing zoning, the Commission essentially asks whether and how the proposed plan offers significantly greater long-term protection for the region’s resources and values than the Commission’s existing subdistrict designations.

As part of its evaluation, the Commission examines the likely pattern and amount of development in the affected area over the lifespan of the proposal as if there were no proposed concept plan and the landowners instead applied existing law and regulations to achieve the development that they determined to be in their interest. Generally speaking, this examination involves two components. First, the Commission examines the potentially adverse impacts to existing uses and resources under the LUPC’s current zoning approach, based on evidence regarding the anticipated future amount and pattern of development, and resulting anticipated impacts to existing resources and uses absent the concept plan proposal. Second, the Commission evaluates whether the proposed plan will better protect and manage existing uses and resources than the Commission’s current zoning approach. By undertaking such an examination, the Commission can determine whether a proposed plan more appropriately addresses the possible detrimental effects of anticipated development in the affected area than does existing zoning.

V. THE CONCEPT PLANNING PROCESS

The development of a concept plan proposal and the Commission’s review of it generally involve three phases: initial project planning and drafting, LUPC staff review and plan refinement, and formal Commission review.

A. Initial Project Planning and Drafting

A concept plan application is technically a petition for rezoning. The petition consists of two distinct parts: the proposed concept plan itself, and the supporting documentation that presents the petitioner’s explanation of how the proposal satisfies governing criteria. The first phase of the concept planning process involves the development of a preliminary draft of both of these parts.

Hiring Professional Staff

Due to the long-term planning implications of concept plans, petitioners are strongly encouraged to hire the following professionals as appropriate:

- Planners experienced in drafting comprehensive plans and ordinances;
- Attorneys to draft the concept plan proposal and develop the conservation easements and other legal documents necessary to implement a concept plan; and
- Specialized environmental consultants to conduct soils surveys, wetlands assessments, and other resource inventories.

Soliciting Input from the LUPC Staff, the Public, Governmental Review Agencies, and Other Stakeholders

While petitioners are not bound to follow the suggestions presented here, the Commission expects extensive public involvement throughout the concept planning process. To ensure ample opportunity for early input, petitioners should, at minimum, engage in the following outreach prior to submitting a rezoning petition to the Commission:

1. *LUPC Staff Outreach* – Hold one or more informal meetings with the LUPC staff in order to identify any threshold issues and discuss them early in the process to determine if they can be resolved. Threshold issues are those that clearly present a potential basis for Commission denial of a concept plan. For example, the location of proposed development or the balance between conservation and development are often threshold issues for concept plan proposals. While it may not be possible to resolve all threshold issues before investing considerable resources in the preparation of a proposed concept plan, petitioners should be aware that LUPC staff concerns at this stage should be given serious consideration.
2. *Public Outreach* – Hold one or more informational meetings open to the public in the region of the proposal. The LUPC staff can provide petitioners with lists of potential interested parties, and is usually available to attend and answer questions at meetings organized and hosted by petitioners. Regardless of the staff's presence, it is important that petitioners inform attendees that petitioner-hosted meetings are not venues for formal public comment and do not satisfy any legal requirements, and that the Commission will only consider testimony submitted directly to the agency. To minimize confusion, petitioners should inform attendees of any scheduled Commission-sponsored public meetings, hearings, and official comment opportunities.
3. *Department of Environmental Protection Outreach* – Coordinate with the DEP staff to anticipate any portions of future development that may trigger Site Law and work with both the DEP and the Commission to ensure that any standards that are proposed as part of the concept plan will result in a smooth transition from rezoning to permitting. The LUPC has prepared guidance on which of its standards apply to projects subject to the DEP permitting under the Site Law.
4. *Governmental Review Agency Outreach* – Hold one or more meetings with governmental review agencies, including state and federal agencies with natural and cultural resources expertise (e.g., agencies with expertise in wildlife and plant resources, wetlands resources, and cultural resources), and local, county, and state governments with expertise in community services (e.g., governments responsible for police and fire protection, road maintenance, and solid waste disposal).

During these meetings, the petitioner not only should provide an overview of the proposal and answer any preliminary questions agency representatives may have, but also try to gain an understanding of the agencies' interests and areas of focus for the formal Commission review. The goal is to receive preliminary feedback from the agencies—including the agencies' information needs, as well as their preliminary thoughts as to whether elements of the proposal would result in any adverse impacts to natural resources or community services.

It is recommended that LUPC staff participate in these meetings; staff may help ensure these entities are informed of the Commission's standards and review process. While staff will be scheduling meetings with these agencies during the formal review process, a coordinated approach early on will ensure that all parties are aware of the project, process, standards, resources, and potential issues.

5. *Conservation Easement Holder Outreach* – Contact organizations and governmental agencies who may be willing to serve as holders or third-party (backup) holders of any conservation easements offered as part of the concept plan proposal.

When these meetings should be held within the initial planning phase is up to the petitioner to decide. The Commission recommends the petitioner should not submit a concept plan proposal to the Commission until public input on the plan's key features has been solicited, a preliminary draft has been reviewed by the LUPC staff, and the petitioner has considered and taken into account all of the major concerns identified by the LUPC staff, governmental review agencies, and the public.

Optional Pre-application Meeting with the Commission

Although not mandatory, the petitioner has the option to participate in a public meeting at which the petitioner presents a project overview to the Commissioners and answers questions the Commission may have. The nature of the Commissioners' questions and comments may help guide the petitioner in what additional information is needed in support of the petition. This pre-application meeting with the Commission is not part of the official review process; the Commission does not provide conclusions or judgments of the project. Because the petitioner should be conducting their own public outreach and the official review process will include opportunities for public comment, pre-application meetings with the Commission are not open for public comment.

Drafting Responsibility

The responsibility of producing documentation in support of a concept plan proposal rests entirely with the petitioner. This allows the petitioner to advocate for the proposal in whatever manner he or she sees fit. But the concept plan itself—which, once approved, replaces the Commission's traditional zoning and land use controls for the area in question and governs land uses within the area—must ultimately be a product of agency-petitioner coordination.

The first step is identifying elements important to the petitioner, who develops a bulleted list of all the procedural and substantive details that are important to him or her. At minimum, the list should identify:

- All areas targeted for development, the maximum number of units within each development area, and the type of development contemplated for each area.
- All areas targeted for conservation, the approximate acreages within each area, and the nature of protections contemplated.
- Any land use standards and regulatory procedures which the petitioner wishes to make unchangeable for the life of the plan.

After reviewing the petitioner's list identifying the important elements of the proposal, the LUPC staff holds one or more meetings with the petitioner to discuss the proposal. Once the list of important elements is refined and finalized by the petitioner, the list must be translated into regulatory language.

The Proposed Concept Plan: The Importance of Clarity

A Commission-approved concept plan is a planning document that sets forth a land use road map for an area and replaces the Commission's existing zoning and land use controls. An approved concept plan will be repeatedly referenced and relied upon by the Commission and its staff, landowners, stakeholders, and others for the life of the plan, particularly as questions arise about the permitted and prohibited land uses and other regulatory requirements of the area affected by the plan. As such, the bulk of the concept plan should read much like a zoning ordinance, spelling out the conditions under which certain land uses may occur. By necessity, qualitative language should be minimized because of

its inherent subjectivity. Where possible, language should be kept simple and to the point to minimize the risks of varied interpretations over time, and graphics should be limited to only those maps and illustrations that assist the reader in understanding the concept plan's provisions. Thus, a concept plan must be written with one central objective—regulatory clarity.

Documentation in Support of the Proposal (the zoning petition)

The Commission's zoning petition form identifies the minimum information that must be submitted with a concept plan proposal in order for the Commission to begin its review. While the concept plan is the operational document that contains the standards necessary to administer the plan, the zoning petition provides information demonstrating the plan's conformance with the rezoning criteria.

Mapping

Concept plans, and the supporting zoning petition, include a number of maps that are integral to the formulation, review, approval, and implementation of the plan. Generally, maps are suited to one of three related but different purposes within the context of a concept plan, though some maps may serve more than one role. Specifically, maps may be developed for:

- The zoning petition – maps that demonstrate or support how the plan meets the necessary review criteria;
- The concept plan – maps that illustrate the plan area going forward and that convey or relate to plan provisions; or
- Official zoning maps – maps that illustrate the official zoning designation, maps that are legally binding in all permitting matters.

When coordinating with the LUPC staff, it is important to discuss mapping, data, and the format of submission materials.

Once a concept plan is approved by the Commission, it replaces the Commission's regulatory framework—including its official zoning maps. For this reason, it is important for the boundaries of the concept plan area and the attendant P-RP Subdistrict to be accurately mapped.

B. Initial LUPC Staff Review and Plan Refinement

Once the petitioner has completed the initial project planning, conducted the necessary outreach, drafted a concept plan, and compiled all of the required supporting documentation, the petition for rezoning is ready to be formally submitted to the Commission. The LUPC staff then conducts an initial review, prepares benchmark analyses, requests additional documentation from the petitioner as information gaps are identified, conducts its own informal public outreach, and compiles any other information that may help the Commission with its review. The staff may provide written comments to the petitioner discussing any issues raised by the proposal that the staff identified during its initial review. If any major issues are identified, the staff will give the petitioner an opportunity to modify the proposal before the formal Commission review. Finally, when the LUPC staff has compiled the information the Commission will need to fully understand the proposal, it will deem the application complete for processing.

C. Formal Commission Review

Under the Commission's statute, rezoning petitions to implement concept plans are subject to the Commission's rulemaking procedures. These procedures are set forth in [12 M.R.S. § 685-A\(7-A\)](#), as well as in the Commission's Rules, including [Chapter 4 of the Commission's rules](#), *Rules of Practice*, and [Chapter 5 of the Commission's rules](#), *Rules for the Conduct of Public Hearings*.

Preliminary Procedural Steps

As a first step to the formal review of a concept plan proposal, the Commission is likely to consider whether or not to hold a public hearing on the proposal. To date, the Commission has held a public hearing on every concept plan proposal that it has considered. In coordination with the LUPC staff, the Commission sets the schedule, venue, and organization of the public hearing.

As an early step in its formal review, the Commission also may take up any intervenor petitions submitted by individuals or organizations that wish to formally participate in the Commission's proceedings. Petitioners requesting intervenor status in Commission proceedings are evaluated by the Commission pursuant to Section 5.13 of [Chapter 5 of the Commission's rules](#), *Rules for the Conduct of Public Hearings*. Intervenors are considered full parties to a proceeding and, as such, are expected to submit pre-filed testimony, attend pre-hearing conferences, and participate in the public hearing.

Gathering Pre-Filed Testimony, Governmental Review Agency Comments, Public Comments, and Other Preparatory Materials

When considering a complex or controversial concept plan proposal, the Commission will generally require the filing of testimony by all witnesses representing the petitioner and any intervening parties in advance of the public hearing. At this time, the LUPC staff may develop a summary of key policy and regulatory issues identified as part of the staff's preliminary review of the petition and its review of pre-filed testimony, agency comments, public comments, and its own analyses.

The Public Hearing, Commission Deliberations, and the Commission Decision

The purpose of a public hearing is two-fold: First, it gives members of the public a chance to speak directly to the Commission about the proposal. Second, it provides the Commission and parties with an opportunity to cross-examine expert witnesses and gain additional insights on issues that may not have been fully developed in the pre-filed testimony. In essence, a public hearing serves as a forum to develop a record upon which the Commission will deliberate and base its decision. Therefore, the Commission encourages full and active participation by the petitioner, members of the public, interested parties, and governmental review agencies.

After the public hearing and once the Commission is satisfied that no additional filings will be necessary for it to make a decision on the proposal, the record of the proceeding will be formally closed. The Commission may request a written recommendation from its staff as to whether or not the proposal satisfies the governing review criteria and deliberate on the proposal prior to and/or after the staff presents its recommendation. Thereafter, the Commission may proceed to a vote on the proposal.

D. Revisions to Pending Concept Plan Proposal

Concept plan proposals can be long and complex, and are subject to change in a variety of ways during the review process. However, the nature and timing of such revisions can have the effect of prolonging the review, in some case substantially.

During the project planning and preliminary LUPC staff review phase, petitioners are encouraged to revise their proposals in response to feedback from staff, other stakeholders, and the public. This is a valuable opportunity to improve the product through informal discussions.

Once a petition has been declared complete for processing, the matter generally will be scheduled for public hearing. Revisions to the proposal during this stage may be permitted at the Commission's discretion. However, significant revisions likely will delay the hearing, since interested parties may need to revise pre-filed testimony accordingly, and all participants in the process will require a fair opportunity to review the revisions.

It also is possible for a concept plan to be revised following the public hearing, either at the Commission's initiation or the petitioner's. Such revisions may be appropriate to respond to information presented at the hearing. Depending on the significance of the revisions, the Commission may choose to reconvene the public hearing, or allow for public comment, to ensure a meaningful opportunity for all participants in the process to be heard. Since concept plans are voluntary and must reflect an agreement between the landowner and the Commission, either party may decline to consider such revisions. For example, either the landowner or the Commission may conclude that proposed revisions are unacceptable on their merits, or may conclude that they do not wish to devote additional time and resources to the revision of the plan. If this occurs, the Commission will issue a decision on the concept plan as proposed.

E. Time Frame for the Concept Planning Process

While every effort is made to expedite the Commission's review of concept plan proposals, a typical concept plan takes about one year from the time an initial proposal is filed with the Commission to a final decision. Petitioners can help ensure efficient review through regular communication with the LUPC staff and by following the recommendations in concept plan guidance documents. Comprehensive public outreach (early and often) by the petitioner will reduce contentious debate and also contribute to an efficient and orderly process.

VI. CONCEPT PLAN IMPLEMENTATION

Once a concept plan proposal is approved by the Commission, the plan will be incorporated into the Commission's regulatory framework through changes to existing zoning. Thereafter, land uses are governed by the concept plan's provisions which take the place of or work in tandem with the Commission's land use standards. Unless detailed subdivision review was sought as part of the concept plan's petition for rezoning, the next steps typically include executing conservation easements and other agreements proposed as part of the plan with third parties, and filing subdivision and development permit applications with the Commission.

A. Official Zoning Maps

Approved concept plans are incorporated into the Commission's regulatory framework through revisions to the agency's official land use guidance maps, which then reflect the concept plan area as a Resource Plan Protection (P-RP) subdistrict. Because a concept plan becomes effective fifteen days after the Commission's vote to approve it, development of these maps begins early in the review process.

B. Post-Approval Communication

During the interim phase before subdivision and development permits are granted, landowners can usually continue to conduct certain limited activities in the plan area, such as timber harvesting and associated land management activities. These uses, however, are subject to the conditions of the concept plan—including terms of conservation easements and other agreements—as soon as the P-RP Subdistrict is in effect. It is, therefore, important for landowners to maintain a line of communication with the Commission and other parties responsible for implementing the plan, such as conservation easement holders, third party holders, and certain governmental agencies.

Moreover, an open line of communication established early in the implementation phase will assist parties in understanding the terms of the concept plan and any associated agreements. Despite best efforts to write concept plans with the objective of regulatory clarity, questions may arise as to the meaning of certain terms and obligations set forth in the concept plan, particularly with respect to permitted and prohibited land uses, and other regulatory requirements. In such instances, the LUPC staff will rely on the plain language of the concept plan, and will draw from the Commission's traditional interpretation of its regulatory provisions when necessary.

C. Concept Plan Amendment, Extension, and Termination

Concept plans may be amended while the authorized P-RP Subdistrict is in effect. In the past, concept plans have been amended to address unanticipated regulatory needs or to clarify unexpectedly ambiguous provisions. However, neither the Commission nor the petitioner may amend an authorized concept plan without the written consent of the other party, and only after providing public notice and opportunity to comment on any proposed amendments in accordance with applicable state law.

Concept plans also may be extended without amendment upon expiration. As with any proposal to amend a concept plan, a proposal for extension is subject to the Commission's applicable rezoning criteria, and other regulations, as may be in effect at that time. Updated information about the plan area and planned development may be required to process the extension. Likewise, concept plans may be terminated prior to their established expirations. Petitions to prematurely terminate a concept plan will not usually be granted until the Commission first designates replacement zoning for the affected area. Such replacement zoning is designated by the Commission in accordance with the statute and other applicable regulations, as may be in effect at that time.

If a concept plan is not amended, extended, or prematurely terminated, it terminates upon its expiration date. At that time, the Commission designates appropriate replacement zoning, consistent with zoning of equivalent areas and in conformity with its rezoning criteria. When a plan is terminated, all concept plan elements covered by legal contract or deeded covenants, such as the granting of conservation easements or creation of restrictive covenants on subdivided lands, will continue to apply. However, any development or relaxation of regulations authorized by a concept plan cannot be used to justify subsequent rezonings, satisfy adjacency requirements, or otherwise alter zoning at any time in the future. (From Chapter 10 rules, Section 10.23,H,8) To maximize predictability, concept plans should stipulate all conditions associated with their termination, such as the status of any development that was approved as part of the plan but was not initiated during the life of the plan.