

Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS

FOR AMENDMENTS TO

CHAPTER 10: LAND USE DISTRICTS AND STANDARDS REGARDING

A CITIZEN PETITION TO PROHIBIT CERTAIN MARIJUANA USES IN THE D-GN2 SUBDISTRICT

February 9, 2022 adopted

STATUTORY AUTHORITY:

5 M.R.S. §§ 8052(1); and 8055;
12 M.R.S. §§ 685-A(1), (3), and (7-A);
22 M.R.S. §§ 2421 et. seq.; and
28-B M.R.S. §§ 101 et seq.

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

On February 26, 2021, the Commission received a citizens' petition to prohibit certain marijuana related businesses from the D-GN2 subdistrict. Pursuant to 5 M.R.S. § 8055 and as certified by each applicable municipal registrar, the petition contains signatures of 191 registered voters of the State¹. Key proposed changes to the rules include the prohibition of most medical marijuana and adult use marijuana development involving cultivation, extraction, processing, manufacturing, testing, or sale, within D-GN2 subdistricts.

On May 4, 2021, Commission staff met with the petition representative to correct or otherwise confirm staff interpretation of the redlined revisions submitted as part of the petition. Consequently, the revisions posted to rulemaking include the original revisions proposed by the petition (option 1) and text offered by the Maine Land Use Planning Commission staff as a clearer alternative approach (option 2) that would have

¹ signatures from persons registered to vote in: Dallas Plantation (16), Rangeley Plantation (93), Sandy River Plantation (19), and the Town of Rangeley (63).

the same outcomes as proposed by the petition. The staff provided alternative was neither in support of, nor in opposition to the petition or its intended outcomes.

The revisions adopted as part of this rule amendment are not intended and will not be construed to grant local authorization pursuant to 28-B M.R.S. § 403 to operate adult use marijuana establishments in the D-GN2 subdistrict or in any of the related townships or plantations.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on April 14, 2021, pursuant to 5 M.R.S. § 8055, the Commission directed staff to post the rulemaking petition and the staff's alternatively worded option to initiate rulemaking on the proposal. Pursuant 5 M.R.S. § 8052(1), the Commission directed staff to include and schedule a public hearing.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on May 26, 2021. The Secretary of State's notice appeared in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal, and the Central Maine Morning Sentinel. E-mail notice was also provided to approximately 1,867 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region. Pursuant to the Maine Administrative Procedure Act (5 M.R.S. §§ 8001 *et. seq.*), the same notice was provided to the petition representative; officials of Dallas Plantation, Rangeley Plantation, and Sandy River Plantation; to the sole existing marijuana business in the Rangeley Plan area; and to each identifiable trade or industry group (*i.e.*, Maine Office of Marijuana Policy, Maine Cannabis Industry Association, Medical Marijuana Caregivers of Maine, and Maine Cannabis Consultants). The notice of the rulemaking and the proposed revisions were also posted on the Commission's web site.

On June 8, 2021, staff submitted information and questions for public consideration. The information provided context and posed questions, the answers to which would be particularly valuable to the Commission in considering the rulemaking petition and the intended outcomes. The information and questions were provided to the petition representative, were posted on the Commission's website with the draft rule revisions, and were posted in the chat at the start of the public hearing.

The public hearing was held on June 16, 2021. Due to the 2019 coronavirus (COVID-19) pandemic, Public Law 2019 Chapter 617, this hearing was conducted through virtual means (*i.e.*, via audio & video conferencing, including a phone-in option).

The record remained open until July 19, 2021 to allow interested persons to file written statements with the Commission, and for an additional 14 days until August 2, 2021 to allow interested persons to file written statements in rebuttal of statements filed during the comment period.

At a meeting held on October 13, 2021, staff offered the Commission a draft basis statement and draft rule revisions, both responding to comments and materials submitted during the hearing and comment process. At that meeting, the Commission directed staff to reopen the hearing record to post the staff recommended revisions (dated October 6, 2021) to a 30-day comment period, and that notice of the opportunity need only be provided through digital means. On October 19, 2021, notice of the comment opportunity was provided to the petition representative, and the 1,913 individuals subscribing to one or more of the Commission's GovDelivery lists regarding: rulemaking, public hearings, Franklin County, marijuana, and the prospective zoning plan for the Rangeley Lakes Region.

The record remained open until November 22, 2021 to allow interested persons to file written statements with the Commission.

Changes to Chapter 10 after Petition Submitted:

This rulemaking petition was submitted on February 26, 2021, and it, along with an alternative option provided by Commission staff, was submitted for public comment on May 26, 2021. On November 1, 2021, extensive revisions to Chapter 10 became effective. Among those revisions, most subdistricts listed in Section 10.21 through 10.23, including the D-GN2 subdistrict, were revised to relocate special exception criteria and lake management classification provisions to other sections of the rule. These changes affected introductory provisions in each subdistrict regarding uses allowed by permit and uses allowed by special exception, and the alpha-numeric designations of certain sub-sections. (A copy of the November 1, redlined revisions to the D-GN2 subdistrict is attached to this basis statement.) While the larger Chapter 10 rulemaking and this Citizens' Petition rulemaking were on separate yet parallel tracks, they were poised to become effective concurrently. After the Commission elected, at its October 13, 2021 meeting, to extend the process for the Citizens' Petition rulemaking to facilitate additional public review and comment, this Citizens' Petition rulemaking became out of sync with the separate Chapter 10 revisions. The petition, as initially proposed, now contains citations, formatting, and language that is outdated and inconsistent with the current structure of Chapter 10 following the November 1, 2021 revisions. Accordingly, the Commission finds that minor changes in language, citations, and formatting to the rule as initially proposed are necessary in order to maintain consistency and coherency within the Commission's rules and obtain the desired result of the rule change in light of the subsequent changes to Chapter 10 as a whole.

COMMENTS AND RESPONSES:

1. Topic: Impacts on Character and Tourism

Commenter(s): R. Singer; C. Singer, L. Singer; S. Singer; C. Kennett; E. Kennett; M. Kennett; A. Zook; C. Hendrickson; J. Johnson; C. Batchelder

The Commenters stated that “[c]learing, planting, extraction, cultivation, processing, manufacturing and retail sale [of marijuana] in our Pristine little town is not beneficial to this area...” and “[t]he beauty, pristine lakes, streams and woods are what people are flocking to our area to enjoy. Not to see and smell Marijuana farms!”

Response: The Commenters seem to imply in their comments that current rules would allow marijuana businesses throughout the Rangeley region. That is not the case. The matter at hand is whether marijuana businesses should be allowed in an area designated for mixed use development in the Rangeley Prospective Zoning Plan (Rangeley Plan). The Community Development Subdistrict, D-GN2, already allows clearing for and development of businesses such as retail shops, restaurants, and gasoline stations. The questions of whether marijuana businesses meet the policy goals established for the D-GN2 subdistrict and whether they are compatible with other uses allowed in the subdistrict are addressed below.

Action(s): No revisions to the proposed rule are warranted.

2. Topic: Attraction of Crime and Drugs

Commenters raised concern that families come to the Rangeley area to escape the cities, crime and drugs, and that “Pot farms will attract the Wrong type of people.”

Commenter(s): R. Singer; C. Singer; S. Singer; and C. Kennett

Commenter(s) on reopened record²: M. McClatchey; M. & N. LeBlanc; D. Gray; E. & C. Kennett; D. Batchelder; D. Stein; B. & B. Burns; R. & M. Goodwin; J. Kreidberg; D. Gray; L. & J. Hewey; S. Grzyb; C. Batchelder; H. P. Reynolds; Petition Representative; Senator Russell Black

Response: None of the commenters submitted information that supports a claim that small marijuana businesses, such as those that would be allowed in a D-GN2 Subdistrict, attract crime and drugs. In addition, the Commission is not aware of any information that would otherwise support that claim. Commenters submitted information and raised concerns about a currently pending criminal case in Franklin County, where a grand jury recently indicted 11 people in an alleged conspiracy to use a multi-million-dollar medical marijuana operation as a front for illegal marijuana sales and money laundering. Regardless of the outcome, it is not reasonable to assume, based on that one case, that all small marijuana businesses will result in criminal activity. In fact, the November 11, 2021 Portland Press Herald article submitted by the Petition Representative quotes Eric Gunderson, Director of the Maine Office of Marijuana Policy as saying, “[m]ost caregivers are following the rules...” Even if the claim were a reasonable possibility, it is unlikely that such crime would be limited to only marijuana related development in one subdistrict but not in others. Finally, Maine Law and other regulatory agencies establish standards regarding security and safety for marijuana businesses.

Action(s): No revisions to the proposed rule are warranted.

3. Topic: Policy Goals of the Rangeley Plan

(focal points for community life; fostering social interaction; access to local goods and services; compatibility with foot traffic and community centers; scale, size and character)

Commenter(s):

[Later in this basis statement these individuals are referred to as “letter signatories.”³]

L. Singer*	R. Bryant	S. Kaspe...[illegible]	B. Hanson
S. Singer*	G. Harperink	A. Eggert	C. Ichlor
C. Kennett*	J. [illegible]	S. [illegible]	T. [illegible]
E. Kennett	K. Johnson	H. Chapman	[illegible]
M. Kennett	R. P. Nelson	C. Chapman Jr.	D. Lagasse
A. Zook	R. A. Nelson	J. [illegible]	[illegible] & [illegible]
S. Oldham	B. Matheson	J. [illegible]	J. & M. Merney
W. Fraser	R. Matheson	M. Albert	C. [illegible]
J. Fraser	M. [illegible]	S. Marchacos ⁴	[illegible]
M. L. [illegible]	P. Smith	M. Y...[illegible]	D. Ma...[illegible]
A. Lowesbury	[illegible]	[illegible]	M. Mersener
K. McKenna	D. Rossi	[illegible]	[illegible] & [illegible]
T. McKenna	J. Burak	[illegible]	S. C...[illegible] & M. Hale
D. DiBenedetto ⁵	H.P. Reynolds	G. Shaw	A. [illegible]

² The hearing record was reopened from October 19, 2021 and November 22, 2021, to allow individuals to file comments with the Commission regarding the October 6, 2021 draft materials.

³ Names are listed in order of receipt. Where two people signed a letter of support, both names are listed together, but are considered as two individuals. Names listed are based on interpretation of signatures or printed names indicated on each letter. While some names are illegible, in-part or in-whole, all names are accounted for in the list if only with a placeholder. Each paper or digital submission is on file and part of the hearing record.

⁴ The June 15 submission of numerous letters included one signed by S. Marchacos; however, on July 1, 2021 the Commission received a letter from S. Marchacos, which among other statements, included a request to withdraw the prior letter of support.

⁵ On June 9, 2021, the Commission received several letters of support, including one signed by D. DiBenedetto and one by J. DiBenedetto, each dated 6/3/21. On June 15, 2021, the Commission received an electronic submission

J. DiBenedetto ⁴	C. Zehner	K. Wills	H. & B. Bassett
J. DiBenedetto, Jr.	R. Boyle[?]	[illegible]	R. Bauchiero
L. Hewey	P. Hod...[illegible]	W. [illegible]	[illegible]
[illegible]	[illegible]	G. Winters	C. French
J. P [illegible]	M. Higgins	L. Amatucii	R. Lerim
C. Hendrickson*	D. [illegible]	V. A...[illegible]	J. Fay
R. B [illegible]	A. Ayre	K. McNulty	[illegible]
R. McClatchey	M. Southwick-Thayer	J. & G. Stuart	L. [illegible] & B. Williams
S. Malley	M. Thayer	[illegible]	J. & D. DiBenedetto ⁴
J. Johnson*	[illegible]	J. Fine	J. Schum & G. Haley
C. Batchelder*	[illegible]	S. Burk...[illegible]	J. Boland
M. Richards	J. B...[illegible]	J. Frew	D. & M. Sirois
K. Haley	[illegible]	R. Davis	R. & M. [illegible]
K. Cyr	M. [illegible]	C. Graham	M. Elger
S. Wilson	P. Rorke	C. C...[illegible]	M. & L. Kamenski
J. Wilson	G. Croston II	W. Denley	W. [illegible]
P. Lairgille	B. Croston	J. Drake	J. [illegible] & C. [illegible]
D. Nagle	C. Millbury	J. Mondor	D. [illegible] & L. [illegible]
J. Atwood	L. Millbury	K. James	T. [illegible]
D. [illegible]	A. Kenzie	A. James	[illegible] & [illegible]
E. & J. Potz	A. [illegible]	[illegible]	[illegible]
B. Kennet	M. Rodanas	[illegible]	G. M...[illegible] & C. Mac...[illegible]
V. Gilmaid	S. Krugman	J. Poole	J. B...[illegible]
K. Holcombe	Edi. Juskicwicz	W. Mahaney	B. & P. M...[illegible]
M. Martins	Edw. Juskicwicz Jr.	G. Colasani	P. Kavpryak
M. Cramer	[illegible]	D. Jensen	J. Hall
S. Cramer	J. Cooney	J. McNulty	J. [illegible] & [illegible]
S. Manguso	[illegible]	B. Cokiek	[illegible]
K. Lindsey	G. Bolduc	O. & K. Laflin	K. Ayie & D. Hayes
S. Hamilton	R. Bolduc	[illegible]	C. & D. Copp
R. Jacobson	[illegible]	M. Patrs	D. & L Guy
J. Slack	D. Stein	R. Hamel	J. & J. Burke
M. Bryant	P. Ch...[illegible]	L. Hodson	R. & J. C...[illegible]
C. Batchelder	G. R...[illegible]	R. Widmer	J. & J. Newsky
Petitioner	[illegible]	R. Danaenko	R. & S. H...[illegible] III
Senator Russell	E. Swiney for Rangeley Plantation Board of		R. McClatchey
Black	Assessors		

Commenter(s) on reopened record: M. McClatchey; G. & P. Langille; M. & N. LeBlanc; J. McNulty; D. Gray; C. & R. Singer; E. & C. Kennett; D. Batchelder; D. Stein; B. & B. Burns; R. & M. Goodwin; J. Kreidberg; D. Gray; L. & J. Hewey; D. & T. Nagle; S. Grzyb; C. Batchelder; H. P. Reynolds; Petition Representative; Senator Russell Black

The Petitioners seek to prohibit certain marijuana businesses in the D-GN2, Community Center Subdistrict. The list of marijuana businesses proposed to be prohibited is comprehensive, including all but home-based cultivation, home-based medical marijuana manufacturing, and home-based medical

including approximately two hundred letters, including one letter signed by both J. and D. DiBenedetto dated 5/29/21.

marijuana caregiver operations. One of the arguments presented in the Petition and public comment, is that allowing marijuana businesses in the D-GN2 does not meet the policy goals of the Rangeley Plan for that subdistrict.

Response:

In comments submitted to the Commission, Richard A. Spencer, the Petition Representative, states:

The Community Center Subdistrict was established, ...for the purpose of accommodating land uses of a similar size, scale, and character that make up community centers. The Prospective Zoning Plan for the Rangeley Lakes Region (the "Rangeley Plan") describes the essential character of Community Center Subdistricts as "livable community centers." According to the Rangeley Plan:

These areas currently serve, or are planned to serve, as focal points for community life. They are characterized by a mix of compatible residential, commercial, and civic uses that foster social interaction, provide access to local goods and services, and are of a scale and type that reinforce the jurisdiction's rural character.

Spencer Memo, June 14, 2021, pg. 2.

The Petition Representative argues that marijuana cultivation, processing, manufacturing and testing, and retail stores are not focal points for community life, do not foster social interaction, do not provide for access to local goods and services, and do not provide a mix of compatible uses, and are not of a rural scale and type. Spencer Memo, June 14, 2021, pg. 5.

In the Petitioners' original comments and testimony, and most of the public comments received, all types of marijuana businesses are generally considered the same in terms of whether they meet the policy goals for the D-GN2 subdistrict. The Commission reopened the record and additional comments were submitted by the Petition Representative on November 19, 2021. Although the additional comments provide a greater focus on marijuana retail stores, the comments relate more directly to the issue of incompatibility with other uses, particularly residential uses. Comments on incompatibility with other uses are addressed in Topic 4 below.

Policy Goals of the D-GN2 Subdistrict. The Commission is convinced based on the comments and testimony received that marijuana businesses do not meet the policy goals for the D-GN2 subdistrict in the Rangeley Plan. Specifically, marijuana businesses will not be focal points for community life and will not foster social interaction in communities where D-GN2 Subdistricts exist. This is based primarily on the strong opposition to these types of businesses from people living in and around the D-GN2 subdistricts, as evidenced by the Petition and comments in the record.

This petition represents a somewhat unique situation in contrast to the normal operation of the Commission's land use planning rules. Generally, zoning rules adopted by the Commission apply state-wide across the Commission's jurisdiction. With regard to the D-GN2 subdistrict specifically, however, this subdistrict was adopted as part of the process of creating the Rangeley Plan and its operation is limited to small geographic area within the Rangeley Plan region. The D-GN2 subdistrict was created and adopted specifically to create zones that foster social interaction and establish focal points for community life within this specified geographic region. Throughout this rulemaking process, the community has expressed widespread disfavor of marijuana related businesses within this subdistrict.

Given the localized region within which the D-GN2 subdistrict operates, and given the evidence produced via this rulemaking process which reveals widespread antipathy to marijuana related businesses in the Rangeley Plan area, the Commission concludes that allowing commercial marijuana retail businesses to operate within the D-GN2 subdistrict would not promote the policy goals of the

subdistrict as these types of businesses are unlikely to foster social interaction or promote community life in light of the fact that a significant portion of the community for which this subdistrict is designed opposes commercial marijuana establishments.

Uses Specified in the Plan. The Petition Representative points out that the Rangeley Plan identifies the types of commercial uses to be permitted in community centers and provides a list of those specific uses. Spencer Memo, June 14, 2021, pg. 3.

In considering this comment, the Commission reviewed the language in the use listings for the D-GN2 subdistrict and in the Conceptual Description of Zones for the Rangeley Plan. The language in the D-GN2 Subdistrict for uses requiring a permit states: "...[c]ommercial facilities having not more than 4,000 square feet of gross floor area, ...that are compatible with residential uses including..." 01-672 c. 10(10.21)(D)(3)(c)((4)). The Commission has consistently interpreted the word "including" to mean "including but not limited to." In other words, the list following the word "including" is not exclusive. However, in answering the question, "How is the D-GN2 different from the existing D-GN?," the Rangeley Plan states that the D-GN2 "specifies uses that are compatible with community centers and foot traffic, i.e. retail shops, restaurants, bed and breakfasts..." Rangeley Plan pg. 24. The abbreviation "i.e." means "that is." The Commission now interprets this language to mean the list of activities in the Rangeley Plan was meant to be exclusive; that only those specifically listed activities were intended to be allowed in the D-GN2 Subdistrict. Therefore, the rule language meant to implement the Rangeley Plan is not consistent with the plan for the D-GN2 Subdistrict and changes should be made to Section 10.21,D for consistency with the Rangeley Plan and responsive to the concerns raised in the Petition and the public comments submitted during the rulemaking process.

Action(s):

- a. D-GN2: approve / adopt the petitioners' revisions (*i.e.*, option 2 [as otherwise adjusted to reflect now current rule text, to remove conflicting text in referring to privileges of Title 22, Chapter 558-C, and Title 28-B, and as otherwise revised as described in this basis statement]) prohibiting marijuana development in the D-GN2 subdistrict.

Insert Section 10.21(D)(3)(e),

"e. Certain Marijuana Facilities and Uses Prohibited

All medical marijuana and adult use marijuana development and activities involving cultivation, extraction, processing, manufacturing, testing, or sale, within or part of any land use regulated by Section 10.21,D, are prohibited within D-GN2 subdistricts, except:

- (1) licensed caregivers who sell or dispense marijuana pursuant to 22 M.R.S. § 2423-A solely out of the caregiver's primary residence on an incidental or by appointment basis only and does not involve regular business hours, provided such operation does not involve the processing or manufacturing of marijuana using chemicals or solvents, and does not involve signage;
- (2) the provision or dispensing of medical marijuana by a licensed or exempt caregiver as part of any hospice or long-term care facility, health care facility, or nursing home; and
- (3) all protections or privileges of 22 M.R.S. or 28-B M.R.S., including but not limited to home cultivation of marijuana for personal use; and medical marijuana home cultivation by a qualifying patient or exempt caregiver."

Consistent with the Petitioners' proposed revisions, the inclusion of this or any other provision in Section 10.21(D)(3)(e) necessitates appropriate reference thereto in Sections 10.21(D)(3)(b), (c), and (d).

Additionally, option two of the Citizens' petition phrased number 3 above "all uses, protections, or privileges of ..." However, that phrasing could easily, yet incorrectly, been interpreted as 'all uses specified or defined by those statutes are allowed'. In fact, the petition intended to confirm that only uses protected by those statutes are not impacted by this prohibition. The text in e,3 above has been corrected to reflect the intended outcome.

- b. D-GN2: improve consistency between the Rangeley Plan and the D-GN2 subdistrict by revising Section 10.21(D)(3)(c)(4) and (d)(1):

"(4) Commercial facilities having not more than 4,000 square feet of gross floor area, or as provided in Section 10.25,A,2,e that are compatible with residential uses, community centers, and foot traffic, specifically retail shops, restaurants, bed and breakfasts, professional services, trades such as cabinetry or shoe repair, artisan shops, and galleries. Generally, including:

- (a) Art studios or artisan shops;
- (b) Commercial uses associated with a residence, other than home-based businesses;
- (c) Facilities for commercial recreation, such as guide services;
- (d) ..."

"(1) Commercial facilities that are compatible with residential uses, community centers, and foot traffic, specifically retail shops, restaurants, bed and breakfasts, professional services, trades such as cabinetry or shoe repair, artisan shops, and galleries.;

- (a) Commercial uses between 4,000 and 8,000 square feet in size, except as provided in Section 10.25,A,2,e; and
- (b) Commercial uses with a total of no more than 10,000 square feet of outdoor display or storage area combined; and

..."

4. Topic: Compatibility with Mix of Residential, Commercial, and Civic Uses

Commenter(s):

Letter signatories, Petition Representative, E. Swiney on the behalf of the Rangeley Plantation Board of Assessors; Senator Black; R. McClatchey; and C. Batchelder

Commenter(s) on reopened record: M. McClatchey; G. & P. Langille; M. & N. LeBlanc; J. McNulty; D. Gray; C. & R. Singer; E. & C. Kennett; D. Batchelder; D. Stein; D. Gray; H. P. Reynolds; and Petition Representative

The commenters contend that marijuana businesses are not compatible with residential uses nor a mix of residential, commercial, and civic uses. The Petition Representative provided comments stating that:

The Staff Memo likewise compares marijuana uses to traditional commercial uses that are commonly viewed as compatible with residential uses. These comparisons do not recognize the true nature of the marijuana facilities and uses currently being constructed and operated in

Maine....legal marijuana operations — cultivation and manufacturing activities occurring indoors within a controlled environment — that are not being operated within a primary residence tend to be akin to industrial or light industrial uses. They also have very specific land use impacts. Those impacts include: ...Odor...Noise...Security...Fire hazards... Spencer Memo, June 14, 2021, pg. 3-4.

Even when municipalities do not classify these uses as manufacturing, industrial, or light industrial uses, many Maine municipalities have imposed setbacks from residential and other sensitive uses, such as parks and recreational facilities, dwelling units, places of worship, schools, and day care facilities. Such setback restrictions reflect an understanding that marijuana cultivation and manufacturing facilities are not compatible with residential neighborhoods, places where children gather, or downtown commercial or mixed-use districts. Spencer Memo, July 16, 2021, pg. 1.

The staff recommendation that medical marijuana retail stores be permitted in the D-GN2 subdistrict is based on a failure to recognize the important differences between a medical marijuana retail store and the other small scale commercial uses envisioned by the Rangeley Plan for inclusion in the D-GN2 subdistrict, such as small convenience stores, galleries, artisan shops, and the like...The fundamental difference between a medical marijuana retail store and a typical convenience store selling milk, sandwiches, chips and perhaps beer, is that marijuana is a controlled substance under federal law that is subject to a highly lucrative out-of-state illicit market. That is the reason that medical marijuana retail stores are required to have enhanced security measures that would never be considered necessary for a gallery, a convenience store or any other use appropriate in a community center district.

Spencer Memo, November 19, 2021.

Response:

The Commission concludes that all types of marijuana businesses are not the same in terms of their potential impacts and compatibility with other uses. The potential impacts of a marijuana retail store that is only selling finished goods are not the same as the potential impacts of a manufacturing facility that is processing marijuana using hazardous materials, and it is not appropriate to treat all types of marijuana businesses the same in a zoning context. Also, within each of the types of marijuana businesses there are varying scales of operations and mitigative measures that can be implemented that affect the businesses' compatibility with other uses, including setbacks.

The Commission has reviewed several small-scale marijuana businesses throughout its service area and has made multiple determinations, based on the facts of each case, that the marijuana businesses were compatible with residential and other surrounding uses. For example, in Amendment B to DP 4065, the Commission approved the conversion of an existing commercial building for the cultivation and processing of medical marijuana in a D-GN subdistrict. The Commission found that the proposed improvements would not cause an undue adverse impact to surrounding uses because the "proposed air filtration system and ventilation system would prevent the facility from emitting any odors associated with processing medical marijuana," and "the facility would be located in an existing commercial building, approximately 580 feet from the nearest residence, and is buffered from nearby residences by existing vegetation." DP 4065-B, p. 6.

Changing the Commission's rules now to prohibit most marijuana businesses in the D-GN2 subdistrict, on the basis that all but a few home-based businesses are incompatible with residential or mixed uses, doesn't consider the variations in scale and mitigative measures available to marijuana businesses and how those factors affect compatibility, and would not be consistent with the precedent set in recent Commission decisions. Also, it would have significant implications on future decisions made by the Commission for marijuana businesses proposed in other subdistricts, such as the D-GN subdistrict. If the Commission were to make a new general determination that most marijuana businesses are

incompatible with residential and mixed uses in the D-GN2 subdistrict, it would be reasonable to conclude that the same determination should be made for any other subdistrict including the D-GN subdistrict, a conclusion which the Commission finds is not supported by the evidence presented. Rather the Commission concludes that the Rangeley Plan envisioned a type of development in the D-GN2 subdistrict that was distinct in terms of scale and compatibility from the D-GN (as discussed in item #3 above), but that most marijuana businesses are not incompatible with residential and mixed uses providing the Commission's land use standards are met. That being said, the Commission understands that a clarification on what factors it considers in making a compatibility determination would be helpful to landowners and LUPC staff.

The Petition Representative commented that "the staff recommendation is out of step with the manner in which medical marijuana retail stores have been regulated by municipalities through zoning and local marijuana regulations throughout the State..." Spencer Memo, November 19, 2021. In support of this statement, the Petition Representative included a limited summary of the regulations which several Maine towns have adopted to regulate marijuana businesses. The Land Use Planning Commission is not a municipality. Given the size and scope of its service area and its broad mission as established by the Legislature, the Commission's zoning framework and regulations often differ from those established for municipalities.

The Petition Representative provided comments indicating that some Maine municipalities have imposed setbacks for marijuana facilities from certain uses,⁶ and suggested that this supports the proposition that marijuana uses are incompatible with residential neighborhoods. However, the primary function of land use districts is to pre-identify a range of uses and development that, if developed properly, tend to be reasonably compatible with one another and the purpose of the subdistrict. For example, setbacks may provide space for odors to dissipate, or to minimize the impacts of noise or lighting. In fact, it is rare that land use subdistricts do not include, or land uses are not subject to, setback requirements. Setbacks provide another degree of separation between uses, separation from uses within the same subdistrict or others; setbacks are not necessarily a signal that uses are incompatible with one another. Further, as the Petition Representative states in their November 19, 2021 memo, pg. 2, "Under State law most marijuana businesses must be a minimum of 1,000 [feet] from any existing public or private K-12 school. Likewise, State law prohibits marijuana businesses from having any signage or advertising within 1,000 [feet] of any public or private K-12 school." Thus these setbacks are already addressed and do not need to be addressed by the Commission.

Comments filed regarding compatibility with mix of residential, commercial, and civic uses are largely conclusory; none provided information that demonstrates how or to what extent marijuana retail stores are incompatible with the D-GN2 subdistrict, nor how they are substantially different than other retail shops, with the potential exception of enhanced security requirements. The Commission does not find the need for enhanced security to be a sufficient basis on which to determine incompatibility with other uses. Financial institutions such as banks may also require enhanced security measures, and may be subject to a heightened risk of unlawful activity, but this alone is insufficient to render such institutions incompatible with a community subdistrict. Ultimately, the Commission is not convinced that the retail sale of marijuana products is incompatible with residential, commercial, or civic uses.

Action(s): No action. However, in a separate future rulemaking initiative, the Commission will initiate rulemaking to:

⁶ Those uses included: parks and recreational facilities, dwelling units, places of worship, schools, and day care facilities.

- a. Revise the current definition of "compatible use" through the addition of the underlined text below, or a similar approach achieving the same outcome.

“Compatible use: A land use which is capable of existing in harmony with other uses or resources situated in its immediate vicinity because that use does not adversely affect such other uses or resources. In considering whether a use is compatible with residential uses, the Commission considers project scale; the presence, amount, type, timing, or characteristics of traffic generation, noise or sound, emissions (e.g., fumes, smoke, dust, odors), lighting, glare, other sources of nuisance; unsafe, or unhealthy conditions; and available avoidance or mitigation measures including buffers, separation, and treatment technology.”

- b. Develop and implement distinctions in rule between various scales of manufacturing and commercial uses and refine where and how such uses might be appropriate.

5. Topic: Interpretation of Uses Allowed in the D-GN2 Without Public Participation

Commenter(s): Petition Representative

LUPC has interpreted Chapter 10 to permit marijuana uses whenever other commercial uses are permitted. This interpretation has been applied to the Community Center subdistricts in Dallas, Sandy River, and Rangeley Plantations with no public hearing... Spencer Memo, June 14, 2021, pg. 6.

Response: As is inherent with any entity authorized or charged with the responsibility to adopt and administer rules or policies, the Commission and its staff must interpret its rules. Additionally, the Commission has the responsibility to administer Maine Law, including (to the extent required or allowed by law) interpretation of the interaction with and effect upon its own regulations. The enactment of the Maine Medical Use of Marijuana Act (22 M.R.S., Chapter 558-C) and the enactment of the Marijuana Legalization Act (28-B M.R.S.) are not exceptions to these facts. As is always the case, the Commission and staff made and continue to make those interpretations based on information available, in accordance with principles of land use planning, and informed by their experience and expertise with regulating land uses.

As illustrated by the staff materials (dated June 8, 2021), the Commission explored marijuana related matters numerous times over the past five years, several of which included formal rulemaking items. Notice of and agendas for each meeting or process were achieved through the Commission's GovDelivery subscription services, in addition to carrying out the process and notice requirements of the Maine Administrative Procedure Act (5 M.R.S. §§ 8001 *et. seq.*).

However, as illustrated in this basis statement, when presented with relevant and compelling information, the Commission and staff adjust (within allowed limits) in response to the information and the implications thereof.

Action(s): No revisions to the proposed rule are warranted.

6. Topic: All Marijuana Businesses Now Allowed in the D-GN2 Subdistrict

Commenter(s): Petition Representative

The Petition Representative provided comments stating that:

The LUPC staff's recent interpretation of Chapter 10 and the Commission's rulemaking in 2020, however, have altered this zoning framework by effectively declaring all marijuana uses to be

commercial uses that are generally compatible with residential development and, therefore, allowed in the Community Center Subdistrict. Spencer Memo, June 14, 2021, pg. 3.

Response:

This interpretation of Commission actions and rules is narrowly focused and does not consider all the requirements of the D-GN2 Subdistrict. The fact that the Commission considers marijuana businesses commercial uses does not necessarily mean that all marijuana businesses are currently allowed in the D-GN2 Subdistrict. The Commission's long standing definition of commercial use reads: "The use of lands, buildings or structures the intent or result of which is the production of income from the buying or selling of goods or services." There was no action needed by the Commission; marijuana businesses meet this definition. However, the D-GN2 subdistrict does not allow all commercial uses. Section 10.21,C of the Commission's Chapter 10 Rules establishes criteria which limit the commercial uses allowed in that subdistrict. Existing criteria include a compatible with residential uses test and a limit on the size of structures that can be permitted for commercial uses. Applying the existing criteria prevents many larger, more impactful marijuana businesses from locating in the D-GN2 Subdistrict.

However, the Commission recognizes that its rules could be clearer in terms of what types and scale of manufacturing uses are allowed in mixed use and commercial subdistricts, and what is considered in a compatibility determination. Until additional research can be completed on defining and categorizing manufacturing uses, most of the proposed rule language prohibiting certain types of marijuana businesses that do not meet the policy goals of the D-GN2 subdistrict will be beneficial to landowners and the Commission.

Notwithstanding the above response, the Commission is persuaded by the comments submitted. Specifically, the Commission concludes that marijuana development and uses are not compatible with the purpose of the D-GN2 subdistrict, which was created as part of a regional prospective zoning process. Further, the Commission recognizes the notable absence of equal opportunity for townships and plantations to exercise local control of medical marijuana and adult use marijuana development as has been extended to organized towns in Maine. In light of this difference, the Commission assigns particular weight to the community's views in this case.

Action(s):

- a. D-GN2: approve / adopt the petitioners' revisions (*i.e.*, option 2 [as otherwise adjusted to reflect now current rule text, to remove conflicting text in referring to privileges of Title 22, Chapter 558-C and Title 28-B, and as otherwise revised as described in this basis statement]) prohibiting marijuana development in the D-GN2 subdistrict.
- b. In a separate rulemaking initiative, the Commission will consider:
 - i. distinguishing between manufacturing and commercial uses of various scales and intensities to clarify and refine where and how such uses might be appropriate; and
 - ii. revising the definition of "compatible use" [See description in number 4 above].
- c. In a separate process, update / revisit the Prospective Zoning Plan for the Rangeley Lakes Region.
For numerous reasons, now including consideration of marijuana businesses, the Prospective Zoning Plan for the Rangeley Lakes Region needs to be assessed and updated. However, the extent and scope of such update will warrant its own process and likely will be affected by agency resources and staffing.

7. Topic: One commenter was concerned about tactics employed by individuals seeking letters of support.

Commenter: S. Marchacos

The commenter described his observations and experiences from several encounters with municipal officials and citizens at the local transfer station, asserting that information provided was false, misleading, or based on personal agendas. It was recommended that the petition be suspended, and either be presented to residents at a public forum / town meeting or the Commission at least provide a fact sheet outlining and explaining the issues.

Respondent: Petition Representative

The Petition Representative summarized steps taken to look into the matter and suggests that this is "the result of a personal dispute...; it has nothing to do with the substance of the rule making petition". Spencer Memo, July 2, 2021, pg.2. The Petition Representative also confirmed there is no objection to the withdrawal of the S. Marchacos letter.

Response: While the LUPC staff are aware of anecdotal accounts of similar experiences in the area; the Commission does not have enough information to understand to what extent either account is or is not true; nor can we presume that the actions of individual(s) are reflective of how this matter has been conveyed to residents, landowners, and the public at large. The Commission does not condone nor look favorably upon misinformation or intimidation within this or any mater within its purview or other similar civic and democratic processes. However, the Commission does not have sufficient evidence which would warrant suspension of the current rulemaking process.

Action(s): In accordance with the commenter's request, that one letter of support is considered to be withdrawn. No revisions to the proposed rule are warranted.

ATTENTION:

The following six pages illustrate changes to the D-GN2 subdistrict (part of #2021—178) which became effective during the Commission's processing of the Citizen's Petition. See page 3 of the basis statement for a full explanation.

D. COMMUNITY CENTER DEVELOPMENT SUBDISTRICT (D-GN2)

1. Purpose

The purpose of the D-GN2 subdistrict is to provide for a range of complementary uses that have a similar size, scale, and character that make up community centers. It is designed to concentrate development in order to limit the fiscal and visual impact of sprawling development and to provide a continuing sense of community in settled areas. Adaptive reuse and rehabilitation of legally existing structures is encouraged in this subdistrict.

2. Description

Community centers are areas where there is a mix of complementary residential, commercial, and civic uses that create a focal point for community life. This subdistrict is similar to the D-GN subdistrict but provides for a wider range of appropriate uses and increased size thresholds for general commercial uses. This wider range of uses is permitted because additional development standards for uses in this subdistrict ensure that adjacent uses are compatibly developed and undertaken.

This subdistrict will be applied only in communities in the fringe of the Commission's jurisdiction as defined in the Comprehensive Land Use Plan, and in areas appropriate as centers of growth after a prospective planning process has been undertaken by the Commission.

Using Section 10.08 of these rules, the Commission ~~shall~~must designate areas for this subdistrict that are consistent with its purpose and suitable for supporting development when measured against the standards of 12 M.R.S. § 685-B(4) and the Commission's rules and regulations.

3. Land Uses

The provisions of the D-GN2 subdistrict will not apply to any applications that have been received and deemed complete for processing by the Commission staff on or before January 1, 2001.

a. Uses Allowed Without a Permit

The following uses are allowed without a permit from the Commission within D-GN2 subdistricts:

- (1) Docking structures: Temporary docking structures for non-commercial use;
- (2) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (3) Forest management activities, except for timber harvesting;
- (4) Motorized vehicular traffic on roads and trails, and snowmobiling;
- (5) Primitive recreational uses, including fishing, hiking, wildlife study and photography, wild crop harvesting, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing, but not including hunting or trapping;
- (6) Surveying and other resource analysis;
- (7) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies; and
- (8) Wildlife and fishery management practices.

Referential text only; see page 3 of the attached basis statement.

b. Uses Allowed Without a Permit Subject to Standards

The following uses are allowed without a permit from the Commission within D-GN2 subdistricts subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Accessory structures: New or expanded structures accessory to, and located on the same lot as, any legally existing principal structures and uses, provided that:
 - (a) The accessory structure is located in a subdistrict that allows the principal use; and
 - (b) The total square footage of the footprint of all new or expanded accessory structures built on a lot within a ~~two-year~~**two (2) year** period is not more than 750 square feet and all other requirements and standards of Section 10.27,P are met;
- (2) Agricultural activities: Agricultural management activities;
- (3) Constructed ponds: Creation, alteration, or maintenance of constructed ponds of less than 4,300 square feet in size which are not fed or drained by flowing waters provided they are constructed and maintained in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (4) Driveways associated with residential uses;
- (5) Filling and grading;
- (6) Hand-carry launches: Commercial and public hand-carry launches;
- (7) Home-based businesses: Minor home-based businesses;
- (8) Mineral exploration activities: Level A mineral exploration activities, excluding associated access ways;
- (9) Road projects: Level A road projects;
- (10) Service drops;
- (11) Signs;
- (12) Trailered ramps: Public trailered ramps;
- (13) Utility services: Buildings or structures necessary for the furnishing of public utility services, provided they contain not more than 500 square feet of floor area, are less than 20 feet in height, and are not supplied with water; and
- (14) Water crossings of minor flowing waters.

c. Uses Requiring a Permit

The following uses, and related accessory structures, may be allowed within D-GN2 subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-B, subject to the applicable requirements set forth in Sub-Chapter III and, where within 500 feet of Management Class 2 lakes or within 250 feet of Management Class 4 and Management Class 5 lakes, subject to the applicable requirements of Section 10.25,A,2. Facilities allowed by permit may use legally existing structures that exceed dimensional requirements. However, structures exceeding the size limitations in Section 10.21,D,3,c may not be expanded.10.21,D,3,g, h and i below:

- (1) Agricultural activities: Agricultural management activities which are not in conformance with the standards of Section 10.27,A;
- (2) Campsites, Residential;
- (3) Cemeteries, and family burying grounds in accordance with 13 M.R.S. § 1142;
- (4) Commercial: Commercial facilities having not more than 4,000 square feet of gross floor area, or as provided in Section 10.25,A,2,e10.21,D,3,i that are compatible with residential uses including:
 - (a) Art studios or artisan shops;

Referential text only; see page 3 of the attached basis statement.

- (b) Commercial uses associated with a residence, other than home-based businesses;
 - (c) Facilities for commercial recreation, such as guide services;
 - (d) Facilities offering food and beverages prepared on the premises;
 - (e) Professional offices, financial institutions, health care facilities, nursing homes, children's day care facilities, home child day care providers serving more than 12 children, and home adult day service providers serving more than 12 adults;
 - (f) Recreational lodging facilities:
 - (i) Level A;
 - (ii) Level B; and
 - (iii) Level C;
 - (g) Retail stores and services, laundromats, convenience stores, or retail gasoline stations with no more than 2 gas pumps where each pump can serve no more than 2 vehicles simultaneously;
- (5) Community living facilities;
 - (6) Constructed ponds: Creation, alteration or maintenance of constructed ponds 4,300 square feet or greater in size which are not fed or drained by flowing waters, or of such ponds less than 4,300 square feet in size which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
 - (7) Draining, dredging, or alteration of the water table or water level for other than mineral extraction;
 - (8) Driveways associated with non-residential uses; driveways associated with residential uses which are not in conformance with the standards of Section 10.27,H;
 - (9) Filling and grading, which is not in conformance of standards in Section 10.27,F;
 - (10) Golf courses: Public or private golf courses;
 - (11) Hand-carry launches: Private hand-carry launches, and hand-carry launches addressed in Section 10.21,D,3,b which are not in conformance with the standards of Section 10.27,L;
 - (12) Home-based businesses: Major home-based businesses;
 - (13) Land management roads;
 - (14) Mineral exploration activities: Access ways for Level A mineral exploration activities, Level A mineral exploration activities which are not in conformance with the standards of Section 10.27,C, and Level B mineral exploration activities;
 - (15) Public and institutional: Places of worship and other religious institutions; public, private and parochial day schools; non-profit children's day care or adult day service facilities; libraries; fire stations; post offices; community centers; parks; and playgrounds;
 - (16) Residential: Single and two-family dwellings; and three to six multi-family dwellings;
 - (17) Road projects: Level B and C road projects, except for water crossings as provided for in Section 10.21,D,3,b;
 - (18) Shoreland alterations, including reconstruction of permanent docking structures, and permanent on-shore structures used to secure docks and moorings; but excluding marinas, new or expanded permanent docking structures, water-access ways, trailered ramps, hand-carry launches, and water crossings of minor flowing waters;
 - (19) Signs which are not in conformance with the standards of Section 10.27,J;
 - (20) Subdivisions:
 - (a) Commercial and industrial subdivisions for uses allowed in this subdistrict, provided that the subdivision is integrated with the community center and designed to promote pedestrian access; and
 - (b) Residential subdivisions: High- and moderate- density subdivisions;
 - (21) Timber harvesting;

Referential text only; see page 3 of the attached basis statement.

- (22) Trailered ramps: Trailered ramps addressed in Section 10.21,D,3,b which are not in conformance with the standards of Section 10.27,L;
- (23) Utility facilities compatible with residential uses, other than service drops, and wire and ~~pipe line~~pipeline extensions which do not meet the definition of service drops;
- (24) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D and water crossings of bodies of standing water and of major flowing waters;
- (25) Water impoundments;
- (26) Wind projects: Community-based offshore wind energy projects, as defined in 12 M.R.S. § 682(19); offshore wind power projects, as defined in 38 M.R.S. § 480-B(6A); and wind energy development in accordance with 35-A M.R.S., Chapter 34-A in areas identified in Appendix F herein;
- (27) Other structures, uses or services that are essential to the uses listed in Section 10.21,D,3,a through c; and
- (28) Other structures, uses, or services which the Commission determines are consistent with the purposes of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources and uses they protect, and are of similar type, scale and intensity as other allowed uses.

d. Special Exceptions

The following uses, and related accessory structures, may be allowed within D-GN2 subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-A(10), the criteria of Sections 10.24,B,1 through 3, the applicable requirements set forth in Sub-Chapter III, and, where within 500 feet of Management Class 2 lakes or within 250 feet of Management Class 4 and Management Class 5 lakes, subject to the applicable requirements of Section 10.25,A,2. Facilities allowed with a permit by special exception may use legally existing structures that exceed dimensional requirements. However, structures exceeding the size limitations in Section 10.21,D,3,d may not be expanded and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) the use can be buffered from those other uses within the subdistrict with which it is incompatible; and (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

- (1) Commercial:
 - (a) Commercial uses between 4,000 and 8,000 square feet in size, except as provided in Section ~~10.25,A,2,e~~10.21,D,3,i; and
 - (b) Commercial uses with a total of no more than 10,000 square feet of outdoor display or storage area combined; and
- (2) Recreational lodging facilities having more than 4,000 but not more than 8,000 square feet of gross floor area:
 - (a) Level B;
 - (b) Level C;
 - (c) Level C – Expanded Access;
 - (d) Level D; and
 - (e) Level D – Expanded Access;
- (3) Residential: Multi-family dwellings with more than 6 units.

The following uses, and related accessory structures, may be allowed within D-GN2 subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S. § 685-A(10), the criteria of Sections 10.24,B,1 through 3, and the applicable

Referential text only; see page 3 of the attached basis statement.

~~requirements set forth in Sub-Chapter III; provided the applicant also shows by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant:~~

- ~~(4) Docking structures: New or expanded permanent docking structures;~~
- ~~(5) Marinas;~~
- ~~(6) Trailered ramps:

 - ~~(a) Commercial trailered ramps; and~~
 - ~~(a)(b) Private trailered ramps, in accordance with Section 10.27,L,1; and~~~~
- ~~(6)(7) Water-access ways, in accordance with Section 10.27,L,1.~~

e. Prohibited Uses

All uses not expressly allowed, with or without a permit, notification, or by special exception are prohibited in a D-GN2 subdistrict.

f. ~~Water Quality Limiting Lakes~~

~~For information relative to water quality limiting lakes see Section 10.23,E,3,g.~~

g. ~~Management Class 2 Lakes (Accessible, Undeveloped, High Value Lakes) as shown on the Commission's Land Use Guidance Maps.~~

~~With respect to single family dwelling proposals within 500 feet of the normal high water mark of Management Class 2 Lakes, the Commission will require an average density per landownership of no more than one dwelling unit per shore mile.~~

h. ~~Management Class 4 Lakes (High Value, Developed Lakes) as shown on the Commission's Land Use Guidance Maps.~~

~~Within 250 feet of the normal high water mark of Management Class 4 lakes, the Commission will:~~

- ~~(1) Require applicants to indicate future plans for other undeveloped shorelands in their ownership when a subdivision or other non-residential use is proposed. The plans shall address, at a minimum, the next 10 years, and shall include, but not be limited to, the following information regarding the applicant's landownership on the lake:~~

- ~~(a) area and shoreline length;~~
- ~~(b) potential suitability for development based on an appropriate inventory of soils and significant natural and cultural resources; and~~
- ~~(c) development proposed or anticipated, if any.~~

~~These future plans shall be considered part of the proposal. Therefore, changes in such plans, for example a development proposal that was not originally included, will require approval of an application to amend the original proposal in which these future plans were indicated.~~

- ~~(2) Require cluster developments for all subdivisions that shall meet the requirements of Section 10.25,Q,4,b.~~

i. ~~Management Class 5 Lakes (Heavily Developed Lakes) as shown on the Commission's Land Use Guidance Maps.~~

Referential text only; see page 3 of the attached basis statement.

~~With respect to subdivision proposals within 250 feet of Management Class 5 lakes, the Commission will require cluster developments which meet the requirements of Section 10.25,Q,4,b.~~

~~**j. Adaptive Reuse of Legally Existing Structures**~~

~~Facilities allowed under Section 10.21,D,3,c and d may use legally existing structures that exceed dimensional requirements. However, structures exceeding the size limitations in Section 10.21,D,3,c and d may not be expanded.~~

Referential text only; see page 3 of the attached basis statement.