STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

JUDY C. EAST
EXECUTIVE DIRECTOR

MEMORANDUM

To: Commission Members

From: Marcia Spencer Famous, Acting Senior Planner
Ben Godsoe, Chief Planner

Date: March 5, 2020

Re: Amendment B to Zoning Petition ZP 693 –Staff-initiated petition to rezone lands encompassed by the Whetstone Pond, Foss Pond, and Hilton Ponds Lake Concept Plan in Kingsbury Plantation, Piscataquis County, due to pending expiration of the Concept Plan and Resource Plan Protection (P-RP) Subdistrict.

Introduction

Linkletter & Sons, Inc. (Linkletter), the owner of the parcels in Kingsbury Plantation subject to the Whetstone Pond, Foss Pond, and Hilton Ponds Lake Concept Plan (Concept Plan), has decided not to renew the existing Concept Plan and Resource Plan Protection Subdistrict (P-RP), which will expire on May 19, 2020.

Staff prepared a recommendation to designate zoning to take the place of the expiring concept plan. At its meeting January 8, 2020, the Commission decided to post the proposed rezoning for a 30-day written comment period. Staff received two written comments during the comment period. This memo summarizes the recommendation and comments received, both of which are described in more detail in the attached draft zoning decision document. Locations for the proposed new subdistricts are depicted on the attached draft zoning map.

At the Commission meeting on March 11, 2020, Staff will recommend that the Commission approve Zoning Petition ZP 693-B.

Background

- In 2005, the Commission approved a 15-year Lake Concept Plan for a parcel of land owned by Linkletter, in Kingsbury Plantation, Piscataquis County.

- The parcel includes four lakes: a portion of Whetstone Pond (most of Whetstone Pond is located in Blanchard Twp.), Foss Pond, Hilton Pond #1, and Hilton Pond #2. There are numerous streams throughout the parcel including Thorn Brook, which was identified for lease lot development in the Concept Plan.

- Four subdivision permits were approved between 2006 and 2009: SP 4065, SP 4066, SP 4067, and SP 4077, totaling 32 residential lots.

- Other lease lot areas were proposed in the Concept Plan, but subdivision approval was not sought for those lots. Also, a total of five existing, pre-Commission lease lots in two groups are present along the shoreline of Foss Pond within the Concept Plan area.

- A conservation easement in perpetuity was granted for two areas within the Concept Plan area: one surrounding a portion of Whetstone Pond, and the other surrounding Foss Pond and the Hilton Ponds. The primary holder of the easement is the Maine Woodland Owners (previously SWOAM), with the Maine Bureau of Parks and Lands as the third-party holder.

- In 2010, a meteorological tower (*see* Development Permit DP 4856), and then in 2013 several wind turbines associated with the Bingham Wind Project by Blue Sky West, LLC and Blue Sky West II, LLC (now Helix Wind) (*see* Site Law Certification SLC3) were approved by the Commission for the western portion of the Concept Plan area.

- Kingsbury Plantation is currently undertaking the process required to leave the Commission's jurisdiction and assume local control over land use, but that effort is not expected to be completed until after the expiration date of the Concept Plan.

Proposed Zoning

When a Concept Plan and P-RP Subdistrict expires, the Commission is required to rezone the area previously covered by the P-RP Subdistrict to replace it with appropriate zoning which is reasonably consistent with zoning for equivalent areas. The Commission's Chapter 10 rules, section 10.23,H,8, Duration of the Plan, paragraphs 2 and 3, provide that:

> "At the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning of equivalent areas."

Based on their descriptions in Chapter 10 (see Chapter 10, Subchapter II), the subdistricts described below would provide appropriate zoning reasonably consistent with zoning for equivalent areas. The proposed new zoning would take effect after the concept plan expires May 19, 2020. The location of each proposed subdistrict is shown on the draft map attached to this memo.

1. **Proposed Development Subdistricts:** Residential Development (D-RS).

   The areas proposed to be zoned D-RS Subdistrict within the Concept Plan area include the residential lots that were platted, granted subdivision approval, and recorded in the Piscataquis County Registry of Deeds. This would be consistent with the description of the D-RS subdistrict in the Commission's rules: "[t]he D-RS subdistrict shall include"…"[r]ecorded

and legally existing single family residential subdivisions, including mobile home parks, having 4 or more lots." Chapter 10, Section 10.21,M,2,a,(2).

2. **Other Proposed Subdistricts:** General Management (M-GN), Great Pond Protection (P-GP), Shoreland Protection (P-SL2), Wetland Protection (P-WL1, 2 & 3), Soils and Geology Protection (P-SG), and Fish and Wildlife Protection (P-FW)

   Areas other than those proposed for inclusion in the D-RS subdistrict would be zoned as M-GN or one of the protection subdistricts listed above based on the presence of a natural resource such as a wetland, steep slopes, or significant habitat, and consistent with the protection subdistricts that existed in these areas prior to original adoption of the Concept Plan in 2005. The attached decision document includes more information about the basis for each protection subdistrict, and the attached zoning map shows where each subdistrict would be designated.

The conservation easement areas granted to Maine Woodland Owners will remain in effect.

Landowner Review

Commission staff consulted with the land owner during development of the draft zoning map, starting in 2018. After receipt and review of the draft map, the landowner asked Commission staff for clarification regarding the five existing, pre-Commission lease lots and the location of the proposed D-RS Subdistrict at Foss Pond. Creation of those lease lots occurred prior to the Concept Plan and they were not included in subsequent subdivision permits after the Plan became effective. For that reason, and because there are not four or more dwellings within a 500-foot radius, these leases do not qualify for rezoning to the D-RS Subdistrict and will instead be within a P-GP, P-SL2, or M-GN Subdistrict, all of which allow single family residential development.

Other Review Comments

On January 8, 2020, the Commission approved the staff recommendation to post Amendment B to ZP 693 for a 30-day public comment period from January 15, 2020 to February 14, 2020. During that period, written comments were received from the Maine Department of Inland Fisheries and Wildlife (IF&W, or the Department) and the Natural Resources Council of Maine (NRCM). Each written comment is attached to this memo.

Staff considered all the comments received by the Commission and are not recommending any changes to the proposed rezoning in response. A summary of comments and a response to each is included in the draft decision document on pages 6-8.

Recommendation

Staff recommends that the Commission approve Amendment B to Zoning Petition ZP 693, a staff-initiated petition to rezone the area within the Whetstone Pond, Foss Pond, and Hilton Ponds Concept Plan area in Kingsbury Plantation, Piscataquis County, from P-RP Subdistrict to D-RS Subdistrict, M-GN Subdistrict, P-GP Subdistrict, P-SL2 Subdistrict, P-WL Subdistrict, P-SG Subdistrict, and P-FW subdistrict.

Attachments:

- Draft zoning decision recommending adoption of the staff proposal (ZP 693-b); and
- Draft zoning map for the area covered by the expiring concept plan
- Comments received from IF&W, and from NRCM

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COMMISSION DECISION
IN THE MATTER OF

Staff, Maine Land Use Planning Commission

Findings of Fact and Decision

AMENDMENT B TO ZONING PETITION ZP 693

The Maine Land Use Planning Commission (LUPC or Commission), at a meeting of the Commission held March 11, 2020, at Orono, Maine, after reviewing the draft land use guidance map, the petition, and supporting documents submitted by the staff of the Maine Land Use Planning Commission for Amendment B to Zoning Petition ZP 693, review agency and staff comments, and other related materials on file, and pursuant to 12 M.R.S. Sections 681 et seq. and the Commission's standards and rules, finds the following facts:

1. Petitioner: Staff (attn.: Benjamin Godsoe)
   Maine Land Use Planning Commission
   22 State House Station
   Augusta, Maine 04333-0022

2. Date of Completed Petition: December 27, 2019

3. Location of Proposal: Northern portion of Kingsbury Plantation, Piscataquis County

4. Affected Waterbodies: Whetstone Pond, Foss Pond, Hilton Ponds, and Thorn Brook

5. Present Zoning: (P-RP) Resource Plan Protection Subdistrict

6. Proposed Zoning: Residential Development Subdistrict (D-RS)
   General Management Subdistrict (M-GN)
   Great Pond Protection Subdistrict (P-GP)
   Shoreland Protection Subdistrict (P-SL2)
   Wetland Protection Subdistrict (P-WL1, 2, and 3)
   Soils and Geology Protection Subdistrict (P-SG)
   Fish and Wildlife Protection Subdistrict (P-FW)

Background

7. *Zoning Petition ZP 693*. On May 4, 2005, the Commission granted approval to landowner Linkletter & Sons, Inc. for the 15-year "Whetstone Pond, Foss Pond, and Hilton Ponds Lake Concept Plan" (Concept Plan) and Resource Protection Subdistrict (P-RP) for a parcel of land consisting of Lot #1 on Plan 01 and Lot #5 on Plan 04 in Kingsbury Plantation, Piscataquis County. The Concept Plan area is 11,920 acres located in the northern portion of Kingsbury Plantation. The Concept Plan and P-RP Subdistrict went into effect on May 19, 2005.

8. *Location.* The Concept Plan area is bordered by Blanchard Twp. to the north, Mayfield Twp. to the west, State Route 16 along a portion of the southern border, and privately-owned parcels along the eastern and southwestern boundaries. The Town of Abbot is located on the east side of Kingsbury Plantation, beyond the privately-owned lots.

9. *Lakes and streams.* Four lakes are present within the Concept Plan area: a portion of Whetstone Pond (most of Whetstone Pond is located in Blanchard Twp.), Foss Pond, Hilton Pond #1, and Hilton Pond #2. Whetstone Pond, Foss Pond, and Hilton Pond #1 are larger than 10 acres, and as such are Great Ponds. There are numerous streams throughout the parcel, with one in particular, Thorn Brook, identified for lease lot development.

10. *Concept Plan*. The approved Concept Plan included:

    A. *Residential development.* Four subdivision permits were approved by the Commission for residential lots within the Concept Plan area between 2006 and 2009:
        (1) *Whetstone Pond.* Subdivision Permits SP 4065 and SP 4066 granted permit approval for two groups of fee lots around Whetstone Pond, including nine shorefront lots, three backlots, and one common lot (a total of approximately 32 acres).
        (2) *Foss Pond.* Subdivision Permit SP 4067 granted permit approval for two groups of lease lots on Foss Pond; four lots on the east side of the pond and three on the west side (a total of approximately 11 acres). There are five existing lots located on Foss Pond that are within the Concept Plan area but were established prior to the Concept Plan and P-RP Subdistrict.
        (3) *Thorn Brook West and Happy Corner.* Subdivision Permit SP 4077 granted permit approval for six lease lots along Thorn Brook; and six lease lots along Happy Corner Road and Route 16 referred to as "Happy Corner West", "Happy Corner North", and "Happy Corner South" (totals of approximately 9 acres and 20 acres, respectively).

    B. Several other lease lot areas were included in the Concept Plan, but subdivision approval was not sought for those lots. Five lots in two separate groups were to be located along Thorn Brook to the south of Whetstone Pond, in an area referred to as "Thorn Brook East". Two other individual camp lots were to be located in the western portion of the Concept Plan area.

    C. *Conservation easement.* In addition to the residential lots, a conservation easement in perpetuity was granted for two parcels within the Concept Plan area totaling 1,055 acres

in size. These two areas include: a 740-acre parcel around Foss Pond and the Hilton Ponds, and a 315-acre parcel surrounding the lots at the southern end of Whetstone Pond. The primary holder of the easement is the Maine Woodland Owners (previously SWOAM), with the Maine Bureau of Parks and Lands as the third-party holder.

11. *Amendment A to Zoning Petition ZP 693*. On December 7, 2005, the Commission granted approval for Amendment A to Zoning Petition ZP 693, which extended the time limit for accomplishing the conveyance of the conservation easement for a time period not to exceed three months, until February 19, 2006. The conservation easement was conveyed on February 16, 2006 and recorded in the Piscataquis County Registry of Deeds.

12. *Expiration of the Concept Plan.* The landowner has now decided not to renew the Concept Plan and Resource Plan Protection Subdistrict (P-RP), which will expire on May 19, 2020.

13. *Development associated with the Bingham Wind Project.* In 2010, a meteorological tower (see Development Permit DP 4856), and then in 2013 several wind turbines associated with the Bingham Wind Project by Blue Sky West, LLC and Blue Sky West II, LLC (now Helix Wind) (see Site Law Certification SLC3) were approved by the Commission for the western portion of the Concept Plan area.

14. *Landowner review.* In 2018 and 2019, conversations about the rezoning were held with the landowner. A letter and draft proposed zoning map were sent to the landowner by email and regular mail in December 2019. After receipt and review of the draft map, the landowner asked Commission staff for clarification regarding the five existing, pre-Commission lease lots and the location of the proposed D-RS Subdistrict at Foss Pond. Staff responded that creation of these lease lots occurred prior to the Concept Plan and they were not included in subsequent subdivision permits after the Plan became effective. For that reason, and because there are not four or more dwellings within a 500-foot radius, these leases do not qualify for rezoning to the D-RS Subdistrict and will instead be within a P-GP, P-SL2, or M-GN Subdistrict, all of which allow single family residential development[1]. The owner was informed that they can also comment on the proposed zoning during the public comment period.

Proposal

15. The Land Use Planning Commission staff seek to rezone the current Resource Plan Protection (P-RP) Subdistrict currently applied to the Concept Plan area in Kingsbury Plantation. In order to put alternative zoning in place by the Concept Plan's expiration date, staff have prepared a draft of the proposed zoning to replace the P-RP Subdistrict, which accompanies this zoning petition.

16. *Proposed subdistricts.* The P-RP Subdistrict will be replaced by the following subdistricts: Residential Development (D-RS), General Management (M-GN), Great Pond Protection (P-

[1] However, in the case of the P-SL2 Subdistrict, which is 75 feet wide, a 75-foot setback from the minor flowing water is required (Commission's Ch. 10, section 10.26,D,1,a).

GP), Shoreland Protection (P-SL2), Wetland Protection (P-WL1, 2, and 3), Soils and Geology Protection (P-SG), and Fish and Wildlife Protection (P-FW).

A. *Residential Development Subdistrict*

(1) In accordance with the Commission's rules, Chapter 10, section 10.21,M,1, the purpose of the D-RS Subdistrict is "to set aside certain areas for residential and other appropriate uses so as to provide for residential activities apart from areas of commercial development. The intention is to encourage the concentration of residential type development in locations where public services may be provided efficiently or where residential development can be integrated with a recreational resource that is suitable for additional use associated with proximate residential development."

(2) In accordance with the Commission's rules, Chapter 10, section 10.21,M,2,a(2), "[t]he D-RS subdistrict shall include"…"[r]ecorded and legally existing single family residential subdivisions, including mobile home parks, having 4 or more lots."

(3) Four areas of Residential Development Subdistrict (D-RS) will be placed where the lots on Whetstone Pond, Foss Ponds, Thorn Brook, and Happy Corner Road were granted subdivision approval. The areas to be zoned D-RS Subdistrict within the Concept Plan area are the residential lots that were platted, granted subdivision approval, and recorded in the Piscataquis County Registry of Deeds.

(4) The five existing, pre-Concept Plan lease lots in two groups along the shoreline of Foss Pond within the Concept Plan area will not be zoned D-RS Subdistrict, but instead will be zoned M-GN Subdistrict, P-GP Subdistrict, or P-SL2 Subdistrict, as appropriate.

B. *General Management Subdistrict (M-GN)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.22,A,1, the purpose of the M-GN Subdistrict is to "permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource protection afforded by protection subdistricts is not required."

(2) The M-GN Subdistrict will be applied to all Concept Plan areas not otherwise zoned for protection or development, covering areas that do not need special protection and that are appropriate for agriculture or forestry.

C. *Great Pond Protection (P-GP)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.23,E,1, the purpose of the P-GP Subdistrict is "to regulate residential and recreational development on Great Ponds to protect water quality, recreation potential, fishery habitat, and scenic character."

(2) In accordance with the Commission's rules, Chapter 10, section 10.23,L,2, the P-GP Subdistrict includes "[a]reas within 250 feet of the normal high water mark, measured as a horizontal distance landward of such high water mark, of those bodies of standing water 10 acres or greater in size."

(3) Except for areas zoned D-RS Subdistrict, the shorelines of Whetstone Pond, Foss Pond, and Hilton Pond #1[2] will be zoned P-GP Subdistrict.

D. *Shoreland Protection (P-SL2)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.23,L,1, the purpose of the P-SL2 Subdistrict is to "regulate certain land use activities in certain shoreland areas in order to maintain water quality, plant, fish and wildlife habitat and in order to protect and enhance scenic and recreational opportunities." The term "minor flowing water" is defined in section 10.02,139 of the Commission's rules, Chapter 10 as "a flowing water upstream from the point where such water drains less than 50 square miles".

(2) In accordance with the Commission's rules, Chapter 10, section 10.23,L,2, the P-SL2 Subdistrict includes "[a]reas within 75 feet, measured as a horizontal distance landward, of (a) the normal high water mark of flowing waters upstream from the point where such channels drain 50 square miles; (b) the upland edge of those freshwater wetlands identified in Section 10.23,N,2,a,(1),(c) and (2), and (3); and (c) the normal high water mark of bodies of standing water less than 10 acres in size, but excluding bodies of standing water which are less than three acres in size and which are not fed or drained by a flowing water."

(3) A 75-foot wide P-SL2 Subdistrict will be placed along minor flowing waters, the upland edge of wetlands of special significance, and bodies of water less than 10 acres in size (including Hilton Pond #2[3]). There are no major flowing waters[4] qualifying for a P-SL1 Subdistrict in the Concept Plan area.

E. *Wetland Protection (P-WL1, 2 & 3)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.23,N,1, the purpose of the P-WL Subdistrict is to "conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform."

(2) In accordance with the description of a P-WL Subdistrict in the Commission's rules, Chapter 10, section 10.23,N,2, all wetland areas meeting the definition, in particular those wetland depicted on the National Wetland Inventory map for the Concept Plan area, will be zoned P-WL1, 2, or 3 Subdistrict, as applicable.

F. *Soils and Geology Protection (P-SG)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.23,K,1, the purpose of the P-SG Subdistrict is to "protect areas that have precipitous slopes or unstable characteristics from uses or development that can cause accelerated erosion,

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[2] Commission's Ch. 10, App. C: Wildlands Lake Assessment Findings – Hilton Pond #1 is listed as lake #0304; 13 acres in size; inaccessible, undeveloped, resource class 3, management class 7. Hilton Pond #1 is a water quality limiting lake.

[3] Hilton Pond #2 is not a great pond and is not listed in the Commission's rules, Chapter 10, Appendix C: Wildlands Lake Assessment Findings. It is shown of the Plantation's zoning map as lake #0306, 8 acres.

[4] "A flowing water downstream from the point where such water drains 50 square miles or more." Ch. 10, section 10.02,118.

water sedimentation, mass movement, or structural damage, all of which could cause public danger or threaten public health."

(2) In accordance with the Commission's rules, Chapter 10, section 10.23,K,2, the P-SG Subdistrict includes "[a]reas, 10 acres or more in size, identified by the Commission as having average slopes greater than 60 percent, or areas, 10 acres or more in size, identified by the Commission as having unstable soil which, due to a combination of slope, vegetation, soil type and underlying geology, are subject to accelerated erosion or mass movement."

(3) There is one area located on the southwest side of Foss Pond that will be zoned P-SG Subdistrict.

G. *Fish and Wildlife Protection (P-FW)*

(1) In accordance with the Commission's rules, Chapter 10, section 10.23,D,1, the purpose of the P-FW Subdistrict is to "conserve important fish and wildlife habitats essential to the citizens of Maine because of their economic, recreational, aesthetic, educational or scientific value."

(2) In accordance with the applicable subsections of the description of a P-FW Subdistrict in the Commission's rules, Chapter 10, section 10.23,D,2, one area located along Thorn Brook, straddling the border between Kingsbury Plantation and Blanchard Twp., will be zoned P-FW Subdistrict. This P-FW Subdistrict was shown on the Kingsbury Plantation zoning map prior to the approval of the P-RP Subdistrict, and indicates the presence of an existing deer wildlife management area (#080633).

Public Notice and Comment

17. On January 8, 2020, at the regular monthly business meeting held in Orono, Maine, Staff requested that the Commission direct it to post Amendment B to Zoning Petition ZP 693 for public comment. The Commission unanimously approved the request.

18. Notice of the zoning petition was provided by posting a notice in the Bangor Daily News; by U.S. Postal Service mail to the owner of the land to be rezoned, landowners and lease holders within, and within 1000 feet of, the Concept Plan area; and by email to resource agencies and interested persons that have asked to be notified of Commission rulemaking proposals. A copy of the proposal was also provided by e-mail to the Kingsbury Plantation Board of Assessors and the Kingsbury Plantation Acting Planning Board. The draft map was posted on the Commission's website along with instructions describing how to comment on the draft map and how to obtain additional information.

19. The public comment period opened on January 15, 2020 and closed on February 14, 2020. Several private landowners inquired about the staff-initiated rezoning and the expiration of the Concept Plan but did not choose to submit written comments. A public hearing on this proposal was not held. The Commission received written comments from the Department of Inland Fisheries and Wildlife (IF&W) and the Natural Resources Council of Maine (NRCM).

<u>IF&W Comments:</u>

The Department of Inland Fisheries and Wildlife (IF&W, or the Department) commented that there are a number of habitat resources of concern in the area proposed for rezoning, but these concerns may be addressed during review of future permit applications for development or other land use activities, and are not the basis for specific zoning measures at this time. Habitat resources of concern include habitat for wood turtles, a species of special concern, located near the point where Thorn Brook drains out of Whetstone Pond; mapped Inland Wading Bird and Wildlife Habitat (IWWH) areas near Whetstone and Hilton Pond; and designated State Heritage Fishing Waters (Foss and Hilton Ponds). The Commission should consult with IF&W during review of any permit applications for development, water crossings, or other land use activities in these areas to ensure that habitat resources are not negatively impacted.

Response:

The Commission's current practice is to consult with IF&W while reviewing pending permit applications to identify potential adverse impacts to wildlife habitat, and the LUPC will continue this practice in the area proposed for rezoning. Any potential adverse impacts to Wood Turtles or other species can be addressed during permitting through use of permit conditions that limit potentially harmful development or other activities.

NRCM Comments:

NRCM commented that rezoning concept plan areas along the four-mile stretch of Route 16 from P-RP to M-GN is not appropriate because of the potential for future development to occur in this area resulting in increased fragmentation and sprawl in Maine's North Woods. NRCM also commented that the presence of primary locations in Kingsbury Plantation are an example of a flaw in a recent rulemaking to change the way the Commission applies the adjacency principle, and that these areas are farther than seven miles from the nearest rural hub by road, even if they may fall within seven miles in a straight-line measurement from the town boundary of the nearest rural hub.

Response:

This rezoning proposal is a result of the landowner voluntarily deciding not to renew a concept plan for their property. When concept plans expire, the Commission must rezone the area with appropriate management, protection, or development subdistricts based on current conditions. Although it will be possible for the landowner to petition the Commission for a zone change to allow for development in the future, the landowner has not expressed an interest in doing so at this time.

The Commission recently went through a rulemaking process to update application of the adjacency principle, which considered where a landowner could petition the Commission to rezone for development. The potential for future rezoning petitions in areas such as the one discussed by NRCM in their comments were considered during the rulemaking. The Commission decided that, because plantations have local government, often have sizable populations, and have relatively high levels of development activity compared to other places

in the Commission's service area, plantations would be included in primary locations. Therefore, in accordance with Section 10.08-A,C,2,b, primary locations exist everywhere within one mile of a public road in Kingsbury Plantation, regardless of an area's proximity to the nearest rural hub.

Contrary to what the commenter suggests, being in a primary location, and therefore satisfying the adjacency principle, does not automatically "open" an area for development. The adjacency principle is a policy used by the Commission as an initial, high-level screen to help determine where someone can start the rezoning process. Once a petition to rezone is filed, the Commission considers the specific area and the potential for undue adverse impacts to existing uses and resources associated with the proposal. If the petition is approved and a new zone created, most uses still must apply for a permit before development occurs. A permit applicant must demonstrate that the proposal will satisfy all the permitting standards. For those reasons, the Commission does not agree that rezoning this area to an M-GN subdistrict would lead to "increased fragmentation and sprawling development in Maine's North Woods."

Review Criteria

20. *Resource Plan Protection (P-RP) Subdistrict*. Pursuant to the Commission's rules, Chapter 10, section 10.23,H,8, "[a]t the termination of a plan, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is reasonably consistent with zoning of equivalent areas. Any variation from existing regulations or development occurring as a result of a resource plan cannot be used to justify a subsequent re-zoning, to meet adjacency requirements, or to otherwise change the zoning on property either within or outside the resource plan area upon its expiration."

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

21. *Statute*

    A. The Commission's statute, 12 M.R.S. § 685-A (1), provides that "the Commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development."

    B. The Commission's statute, 12 M.R.S., § 685-A (8-A), the criteria for adoption or amendment of land use district boundaries, provides that "a land use district boundary may not be adopted or amended unless there is substantial evidence that:

(1) The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
(2) The proposed land use district has no undue adverse impact on existing uses or resources, or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area."

22. *Comprehensive Land Use Plan (CLUP).* The Commission's CLUP includes goals and policies to:

A. "Regulate land use activities to protect habitats, including deer wintering areas and coastal bird nesting sites, ecosystems, food sources and other life requisites for wildlife species to maintain biodiversity in the jurisdiction." *[CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, H. Plant and Animal Habitat Resources, (9), page 17]*

B. "Regulate land uses generally in order to protect natural aesthetic values and prevent the incompatibility of land uses." *[CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, J. Scenic Resources, (2), page 18]*

C. "Conserve and protect lakes, ponds, rivers, streams and their shorelands, which provide significant public recreational opportunities." *[CLUP, Goals and Policies, II, Natural and Cultural Goals and Policies, K. Water Resources, (4), page 18]*

D. "Support uses that are compatible with continued timber and wood fiber production, as well as outdoor recreation, biodiversity and remoteness, and discourage development that will interfere unreasonably with these uses and values." [CLUP, 1.2 Goals and Policies, II, Natural and Cultural Resources Goals and Policies, F. Forest Resources, (2), page 14]

E. "In areas that are not appropriate as new development centers, allow for (a) planned developments which depend on a particular natural feature, subject to site plan review, and (b) other development subject to concept plan review" *[CLUP, Goals and Policies, I. Development Goals and Policies, 7. Policies regarding the location of development on a community or reginal level. page 7]*

23. The facts are otherwise as represented in Amendment B to Zoning Petition ZP 693 and supporting documents.

Based on the above information and supporting documents, the Commission makes the following findings and conclusions:

1. The proposed zoning is consistent with the Commission's *Land Use Districts and Standards*, in that the zoning will revert to the M-GN Subdistrict and the Protection Subdistricts P-GP, P-SL2, P-WL1, P-WL2, P-WL3, P-SG, and P-FW Subdistricts, all of which previously applied to the Concept Plan area and are appropriate for the protection and management of

existing uses and resources in the absence of the P-RP Subdistrict. The proposed subdistricts are consistent with the zoning of equivalent areas.

2. The proposed areas of D-RS Subdistrict to be located on Whetstone Pond and Foss Pond meet the criteria of section 10.21,M,2,a(2) of the Commission's rules, Chapter 10, in that these areas contain "[r]ecorded and legally existing single family residential subdivisions, including mobile home parks, having 4 or more lots." Each of the proposed D-RS Subdistricts contains groups of 4 or more residential lots that have been granted subdivision approval by the Commission and are recorded in the Piscataquis County Registry of Deeds.

3. The rezoning, as proposed, carries out the policies of the Commission's *Comprehensive Land Use Plan*, in that the management subdistrict as applied has as its purpose appropriate utilization of land and water resources, and the protection subdistricts as applied have as their purposes the conservation of land and water resources warranting protection. The development subdistricts are designated around existing residential subdivisions created as part of a concept plan.

4. The proposed zoning is consistent with the purpose, intent, and provisions of 12 M.R.S., Chapter 206-A, §685-A (1) and (8-A).

Therefore, the Commission approves the petition of the Maine Land Use Planning Commission Staff to replace the Resource Plan Protection Subdistrict with other appropriate zoning in Kingsbury Plantation, per the accompanying map.

In accordance with 5 M.R.S. § 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT ORONO, MAINE THIS 11th DAY OF MARCH 2020.

By:

_____

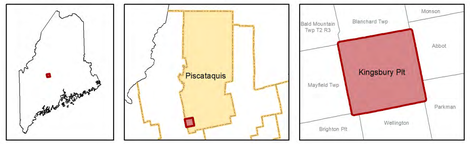
Judith C. East, Director

This Zoning Petition for Kingsbury Plantation is effective on May 19, 2020.

Kingsbury Plt.

T3 R2 BKP EKR

Piscataquis County



Land Use Guidance Map

Department of Agriculture, Conservation and Forestry

Maine Land Use Planning Commission

Legend

DEVELOPMENT SUBDISTRICTS

- D-RS: Residential

MANAGEMENT SUBDISTRICTS

- M-GN: General

PROTECTION SUBDISTRICTS

- P-FW: Fish and Wildlife
- P-GP: Great Pond
- P-SG: Soils and Geology
- P-SL2: Shoreland - 75'
- P-WL1: Wetlands of Special Significance
- P-WL2: Scrub-shrub Wetlands
- P-WL3: Forested Wetlands

DRAFT

For complete descriptions of those areas included within the various subdistricts, and the associated regulations, refer to the Commission's Chapter 10 rules: Land Use Districts and Standards. Where any inconsistencies exist between the district boundaries, as shown on this map, and those described by the Commission's Land Use Districts and Standards, the latter shall govern.

For simplicity, this map does not show all the Wetland Protection Subdistricts for areas identified pursuant to Section 10.23,N,2 such as the beds of rivers, lakes, and other water bodies, and freshwater wetlands within 25 feet of stream channels. Nevertheless, these areas are within P-WL Subdistricts. In addition, this map does not show the Shoreland Protection Subdistricts along stream channels flowing through wetlands. Nevertheless, these areas are within P-SL2 Protection Subdistricts. If the locations of flowing waters or bodies of standing water existing on the ground differ from those shown on the map, then, pursuant to 12 M.R.S., Section 685-A(2)(G), P-GP, P-RR, P-SL, P-WL, and other subdistrict boundaries that are based upon the location of such waters shall, as appropriate, be deemed to follow the flowing water or body of standing water existing on the ground.

This Land Use Guidance Map was adopted by the Maine Land Use Planning Commission on , and became effective on

This map is certified to be a true and correct copy of the Official Land Use Guidance Map of the Maine Land Use Planning Commission.

By: _____, Director, Maine Land Use Planning Commission.

Amendments			
Location #	Zoning Permit	Effective Date	Remarks
1	ZP693	05/19/2005	Expires May 19, 2020
2	ZP693A	12/22/2005	Time extension until February 19, 2006
3	ZP748	09/25/2014	

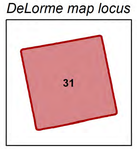
DRAFT

0 0.5 1 1.5 2 Miles

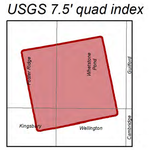
0 1,000 2,000 3,000 4,000 Meters

0 2,000 4,000 6,000 8,000 Feet

DeLorme map locus



USGS 7.5' quad index



(1) Map amendment location

▲ Point at which a river drains 25 square miles - symbol points upstream (12 M.R.S. Sec. 682-B(4))

9999 MIDAS number: Unique number assigned to each standing body of water in Maine.

WQLL Water Quality Limiting Lake - Refer to Section 10.23,E,3,g of the Commission's Land Use Districts and Standards.

MC# Lake Management Classes - Refer to Section 10.02 (Definitions) of the Commission's Land Use Districts and Standards.

SOURCES: Maine Land Use Planning Commission, USGS

Godsoe, Benjamin

From: Stratton, Robert D
Sent: Tuesday, March 03, 2020 5:07 PM
To: Beyer, Stacie R
Cc: Perry, John; Godsoe, Benjamin
Subject: RE: Urgent Message RE: review comments - Whetstone, Foss, and Hilton Ponds Concept Plan, Kingsbury Plantation

Good afternoon Stacie,

Thank you for discussing this issue with me this afternoon. I want to clarify that the comments below are recommendations related to resources of concern, typically provided in the context of a development proposal review and efforts to avoid or minimize potential adverse impacts. They are not intended to suggest specific zoning measures at this time. To clarify, MDIFW recommends that resource-based zoning be implemented consistent with other areas of the Unorganized Territories and is not requesting special zoning in this area. I hope this clarifies the issue. If you have any further questions or concerns, please let me know. Thank you, Bob.

Bob Stratton
Wildlife Biologist
Environmental Program Manager
Maine Department of Inland Fisheries & Wildlife
284 State Street; 41 State House Station
Augusta, Maine 04333-0041
Tel: (207) 287-5659
mefishwildlife.com

Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

Godsoe, Benjamin

From: Settele, Rebecca
Sent: Wednesday, February 12, 2020 1:40 PM
To: Godsoe, Benjamin
Cc: Spencer-Famous, Marcia; Perry, John
Subject: RE: Request for review comments - Whetstone, Foss, and Hilton Ponds Concept Plan, Kingsbury Plantation

Hi Benjamin,

We offer the following recommendations and ask that they be considered to minimize the impacts of potential future development for some sensitive wildlife resource concerns in this region:

1. Wood Turtles (Species of Special Concern) have been documented in the area where Whetstone Pond drains into Thorn Brook. This at-risk species is best protected by maintaining high water quality and intact riparian buffers. As such, we recommend that a riparian management zone of 300 feet be established along Thorn Brook where the southern end of Whetstone Pond drains within which land-use conversion activity from development and agriculture is avoided or minimized.
2. There are several Inland Waterfowl and Wading Bird Habitats mapped on the edges of Whetstone and the Hilton Ponds. The Department recommends that direct impacts to these resources be avoided, including no clearing within the 250-foot upland zone from the wetland edge
3. The Hilton Ponds and Foss Pond are considered Maine Heritage Fish Waters. Maine Heritage Fish Waters are native and wild brook trout lakes and ponds which represent unique, valuable, and irreplaceable ecological and angling resources. MDIFW recognizes the unrivaled historic and economic importance of Maine's wild and native brook trout resource and focuses on the conservation and protection of this uniquely valuable resource. MDIFW's primary intent for managing wild brook trout in lakes and ponds is the protection and conservation of these self-sustaining fisheries. We request that MDIFW be notified should any future development or clearing be proposed near these waterbodies.
4. We generally recommend that 100-foot undisturbed vegetated buffers be maintained along streams. Buffers should be measured from the edge of stream or associated fringe and floodplain wetlands. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e. natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in providing habitat connectivity for fish and other aquatic organisms.
5. Consult MNAP for priority plant and natural community resources.

Thank you for the opportunity to review,

Becca Settele
Wildlife Biologist
Maine Dept of Inland Fisheries & Wildlife
Wildlife Division

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Correspondence to and from this office is considered a public record and may be subject to a request under the Maine Freedom of Access Act. Information that you wish to keep confidential should not be included in email correspondence.

From: Spencer-Famous, Marcia <Marcia.Spencer-Famous@maine.gov>
Sent: Thursday, January 23, 2020 9:38 AM
To: Rocque, David <David.Rocque@maine.gov>; Petruska, Liz <Liz.Petruska@maine.gov>; Obrey, Tim <Tim.Obrey@maine.gov>; Kane, Douglas <Douglas.Kane@maine.gov>; Perry, John <John.Perry@maine.gov>; St.Hilaire, Lisa <Lisa.St.Hilaire@maine.gov>; Mohney, Kirk <Kirk.Mohney@maine.gov>; Rideout, Megan M <Megan.M.Rideout@maine.gov>; Locke, Daniel B. <Daniel.B.Locke@maine.gov>
Cc: Spencer-Famous, Marcia <Marcia.Spencer-Famous@maine.gov>; Godsoe, Benjamin <Benjamin.Godsoe@maine.gov>
Subject: Request for review comments - Whetstone, Foss, and Hilton Ponds Concept Plan, Kingsbury Plantation

To Review Agencies –

The 15-year "Whetstone Pond, Foss Pond, and Hilton Ponds Lake Concept Plan" located in Kingsbury Plantation, Piscataquis County, is due to expire on May 19, 2020. The landowner has decided to not renew the plan. As such, the Land Use Planning Commission staff have initiated the process of rezoning the Concept Plan area to the zones that will replace the current Resource Plan Protection Subdistrict (P-RP) when it expires. This request for review comments is being sent to you because your agency commented on the Concept Plan and P-RP Subdistrict when it was put in place in 2005.

If you are interested in commenting on the draft zoning map for Kingsbury Plantation, the comment period is currently open and comments are being accepted. The comment period will close on February 14, 2020. The draft map and other relevant information is available on the Commission's website (see "Featured Links" on the right hand side of the page). http://www.maine.gov/dacf/lupc/index.shtml

If you have questions or need additional information, please feel free to contact me, or Ben Godsoe (Benjamin.Godsoe@maine.gov) if I am not available.

Marcia Spencer Famous
22 State House Station
18 Elkins Lane
Augusta, ME 04333
207-287-4933
marcia.spencer-famous@maine.gov

Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330 • www.nrcm.org

Comments of the Natural Resources Council of Maine
Regarding Amendment B to ZP 693
February 14, 2020

Dear Members of the Land Use Planning Commission,

We appreciate the opportunity to provide comments on Amendment B to ZP 693 – A staff-initiated petition to rezone lands owned by Linkletter & Sons, Inc. ("Linkletter") in Kingsbury Plantation in Piscataquis County. Our comments focus on the potential for sprawling development and ecological harm, if the concept plan is terminated, in the context of the recently amended adjacency rule.

The proposed rezoning would designate part of the Linkletter-owned property to a General Management Subdistrict (M-GN). According to the amended LUPC adjacency rule, a portion of the proposed M-GN land is Primary Location, encompassing an area one mile north of an approximately four miles of frontage on Rt. 16. Notably, this area would not have met the "one mile by road" requirement of the prior, long-standing adjacency rule. This four-mile stretch of Primary Location that would become a M-GN subdistrict within the township would be opened to residential and commercial development, a change to the landscape that we are concerned will become commonplace and incrementally harm Maine's natural areas over time.

We believe this proposal for Linkletter's property is an example of a flaw in the amended adjacency rule that designates Primary Locations in relation to rural hubs. The closest rural hub is Guilford to the east, which is on the other side of Abbot Township. The actual distance between the developed portion of Guilford and the proposed Primary Location within the M-GN is very likely over seven miles, but because the Guilford *township* boundaries were designated as the point from which the seven mile area is calculated – not the developed portion of the *town* of Guilford – areas in Kingsbury Plantation are technically within the seven mile development location. In reality, homes and businesses that could be built in this Primary Location along Rt. 16 in Kingsbury are further than seven miles from similar developed areas. We believe that this mismatch between the adjacency rule amendment and actual impacts on the ground could lead to many instances of development having the opposite of the desired effect of the adjacency rule amendment, geographically spreading out development and fragmenting wildlife habitat.

Though we support development in areas that are adjacent to existing areas of development, we believe that a Primary Location in a M-GN subdistrict is not appropriate for this four-mile stretch along Rt. 16 and believe the proposal as a whole illustrates issues we can expect to arise repeatedly under the amended adjacency rule. We are concerned that changes akin to the one described above over time will increase fragmentation and sprawling development in Maine's North Woods, an area that's ecologically valuable for being vast, remote, and contiguous.

Thank you for your consideration of these comments.

Sincerely,

Melanie Sturm
Forests and Wildlife Program Director