



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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MEMORANDUM

December 27, 2020

To: Commission Members

From: Marcia Spencer Famous, Acting Senior Planner

Re: Amendment B to ZP 693 – Post for public comment 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 Plan and Resource Plan Protection (P-RP) Subdistrict.

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. In order to put alternative zoning in place by the Concept Plan's expiration date, Commission staff has prepared a draft of proposed zoning to replace the P-RP Subdistrict. A draft map showing the proposed subdistricts accompanies this memo for your review.

Background

In 2005, the Commission approved a 15-year Lake Concept Plan for a parcel of land owned by Linkletter, consisting of Lot #1 on Plan 01 and Lot #5 on Plan 04 in Kingsbury Plantation, Piscataquis County, totaling 11,920 acres located in the northern portion of Kingsbury Plantation (*see* Zoning Petition ZP693). The parcel 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.

Four lakes are present within this parcel: 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. Four subdivision permits were approved between 2006 and 2009:

- Two groups of fee lots around Whetstone Pond, including nine shorefront lots, three backlots, and one common lot (Subdivision Permits SP4065 and SP4066);

- Two groups of lease lots on Foss Pond were also granted subdivision approval, including four lots on the east side and three on the west side (SP4067);
- Six lease lots along Thorn Brook (SP4077); and
- Six lease lots along Happy Corner Road and Route 16 (SP4077).

Several 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.

In addition, a conservation easement in perpetuity was granted for two areas within the Concept Plan parcel. 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 DP4856), 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.

Also, Kingsbury Plantation is currently undertaking the process required to leave the Commission's jurisdiction, 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 rezones the area previously covered by the P-RP Subdistrict. As in prior re-zonings of P-RP Subdistricts, the proposed rezoning is limited to those lands currently covered by the P-RP Subdistrict. 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. 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.”

The following subdistricts, as described in the Commission's Chapter 10 rules, that would otherwise apply to the Concept Plan area in the absence of the P-RP Subdistrict are proposed, as shown on the draft map:

- 1. Residential Development (D-RS).** In accordance with the Commission's 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.”

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.”

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.

2. **General Management (M-GN).** The M-GN Subdistrict applies to all areas not otherwise zoned for protection or development, covering areas that do not need special protection and that are appropriate for agriculture or forestry. 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.”
3. **Great Pond Protection (P-GP).** The shorelines of Whetstone Pond, Foss Pond, and Hilton Pond #1¹ will be zoned P-GP Subdistrict: 250 feet, measuring in a straight line from the normal high-water mark of bodies of standing water 10 acres or greater in size. The purpose of the P-GP Subdistrict is “to regulate residential and recreational development on Great Ponds to protect water quality, recreation potential, fishery habitat, and scenic character.”
4. **Shoreland Protection (P-SL2).** A 75-foot 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 #2²). 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 Chapter 10 as “a flowing water upstream from the point where such water drains less than 50 square miles”. There are no major flowing waters³ qualifying for a P-SL1 Subdistrict in the Concept Plan area.
5. **Wetland Protection (P-WL1, 2 & 3).** All wetland areas depicted on the National Wetland Inventory map for the Concept Plan area will be zoned P-WL1, 2, or 3 Subdistrict, as applicable. 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.”

¹ 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.

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

³ “A flowing water downstream from the point where such water drains 50 square miles or more.” Ch. 10, section 10.02,118.

6. **Soils and Geology Protection (P-SG).** There is one area located on the southwest side of Foss Pond that will be zoned P-SG Subdistrict. The purpose of the P-SG Subdistrict is to “protect areas that have precipitous slopes or unstable characteristics from uses or development that can cause accelerated erosion, water sedimentation, mass movement, or structural damage, all of which could cause public danger or threaten public health.”
7. **Fish and Wildlife Protection (P-FW).** There is one area located along Thorn Brook, straddling the border between Kingsbury Plantation and Blanchard Twp., that 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). 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.”

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

Landowner Review

In 2018, 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. 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 development⁴. The owner was informed that they can also comment on the proposed zoning during the public comment period.

Recommendation

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

Staff recommends that the Commission post Amendment 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, to a 30-day public comment period.

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

Attachment: Draft Kingsbury Plantation land use guidance map

⁴ 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).