

10-5-2012

Guidance for Interpreting the 2010 Comprehensive Land Use Plan 2012

Maine Land Use Planning Commission

Maine Department of Agriculture, Conservation and Forestry

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Recommended Citation

Maine Land Use Planning Commission and Maine Department of Agriculture, Conservation and Forestry, "Guidance for Interpreting the 2010 Comprehensive Land Use Plan 2012" (2012). *Land Use Planning Commission Documents*. 7. https://digitalmaine.com/lupc_docs/7

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Guidance for Interpreting the 2010 Comprehensive Land Use Plan

Approved October 5, 2012

I. Background

The Maine Land Use Planning Commission (the LUPC or Commission) serves as the planning and zoning authority for the unorganized and deorganized areas of the State, including townships and plantations. These areas either have no local government or have chosen not to administer land use controls at the local level. Prior to the creation of the LUPC in 2012, the Land Use Regulation Commission (LURC) had regulatory authority within the unorganized and deorganized areas of the State.

The Commission is required by statute to adopt a Comprehensive Land Use Plan (the CLUP) and to “use that plan as a guide in developing specific land use standards and delineating district boundaries and guiding development and generally fulfilling the purposes of this chapter.” 12 M.R.S. § 685-C(1). The CLUP was last revised in 2010.

In 2012, the Maine Legislature made a number of changes to the statute that applies to the Commission’s activity (the 2012 Legislation). P.L. 2011, ch. 682 (enacting LD 1798). These changes included revisions to the description of the Commission’s purpose and scope and elimination of the Demonstrated Need criterion of the rezoning standard, among other changes. (Title 12, section 681, the statutory section containing the purpose and scope, as revised by the 2012 Legislation, is included as Attachment A.) The 2012 Legislation did not mandate revision of the CLUP.

The CLUP, itself, is not the equivalent of a regulatory standard and is not applied in the same manner as land use standards set forth in statute or rule. The CLUP, however, is an important guidance document that the Commission is required by statute to consider, and determine consistency with, when carrying out core planning and zoning functions and developing land use standards. The CLUP contains a vision for the unorganized and deorganized areas of the State and identifies goals and policies intended to help achieve this vision.

The CLUP states:

The Commission recognizes that goals or policies may at times conflict with one another and will, in such cases, balance the various policies so as to best achieve its vision for the jurisdiction.

(CLUP at 5.) Consistent with this recognition, when determining consistency with the CLUP or otherwise interpreting the CLUP, the Commission often must engage in a

balancing and, in so doing, assign the appropriate weight to be given to competing goals or policies. While the Commission has some discretion when interpreting the CLUP, this discretion is bound by statute. The Commission may not elect to interpret the CLUP in a manner inconsistent with State law. In light of the significant changes to the statutory provisions governing the Commission and its role, the Commission determined that it would be helpful to provide guidance to the Commission staff and the public as to how the changes contained in the 2012 Legislation affect interpretation of the CLUP.

This document is intended solely for guidance to Commission staff and the public when interpreting the Comprehensive Land Use Plan. The document may not be relied upon to create rights, substantive or procedural. The Commission reserves the right to act in accordance with its statute and regulations, including in a manner that may vary from this document. Nothing in this document shall be construed to supersede or replace the statute or rules administered by the Commission. In order to clarify the effects of recent statutory changes, the Commission states and adopts the following:

II. Role of the Comprehensive Land Use Plan

As set forth in statute, the Commission uses the CLUP in carrying out its planning and zoning responsibilities and in development of land use standards:

- For the Commission to adopt or amend a land use district boundary the proposed district must be consistent with the CLUP, 12 M.R.S. § 685-A(8-A)(A); *see also id.* § 685-C(1);
- For the Commission to add a place to the State's expedited permitting area for wind energy development the proposed addition must not compromise the principal values and the goals identified in the CLUP, 35-A M.R.S. § 3453(3); and
- For the Commission to adopt or amend land use standards the proposed standards must be consistent with the CLUP, 12 M.R.S. § 685-A(8-B); *see also id.* § 685-C(1).

In addition, in the course of reviewing a permit application or Department of Environmental Protection (DEP) request for certification, to help resolve uncertainty about how to interpret or apply an applicable standard, specifically including those contained within Chapter 10 (Land Use Districts and Standards) of its rules, the Commission uses the CLUP as guidance to help inform its decision-making. The Commission's determination of conformance with the CLUP in the permitting and certification context does not call for findings of conformance with each of the CLUP's numerous and often competing goals and policies, but instead for conformance with the CLUP as more particularly expressed through specific land use standards articulated in statute and rule. 12 M.R.S. § 685-B(4)(E).

III. Statutory Changes Affecting the Commission

The changes to the statutory sections governing the activities of the Commission contained in the 2012 Legislation range from broad policy statement revisions to highly technical changes. How the Commission interprets the CLUP in recognition of these changes is discussed below. This discussion is intended to serve as guidance to Commission staff and the public.

A. An Increased Focus on Planning and Zoning

The 2012 Legislation shifts permitting of development that triggers review under the Site Location of Development Law to the DEP. The Commission must certify that these projects permitted by the DEP (a) are an allowed use within the subdistrict or subdistricts in which they will be located and (b) meet any land use standards established by the Commission and applicable to the project that are not considered by the DEP in its review. P.L. 2011, ch. 682, § 15 (enacting 12 M.R.S. § 685-B(1-A)) and § 33 (enacting 38 M.R.S. § 489-A-1). Along with this shift in regulatory authority, the 2012 Legislation establishes that the former Land Use Regulation Commission is now the Land Use Planning Commission, *id.* §§ 6-7 (repealing 12 M.R.S. § 683 and enacting § 683-A), and directs the new Commission to initiate prospective zoning in coordination with local planning organizations and regional planning and development districts, *id.* § 34. Together, these changes reflect the intent that the Commission operate less as a reactive regulatory agency focused on protection of the jurisdiction through project-specific permitting and rezoning, and serve more as a forward-looking planning agency focused on helping residents, landowners, and people of the State to ensure a vibrant and sustainable future for the unorganized and deorganized areas of Maine.

The CLUP is a visionary guidance document and, in this respect, is consistent with the refocusing of a core part of the Commission's responsibilities on forward-looking planning and zoning. As part of its planning and zoning responsibilities, the Commission is tasked with balancing potentially competing interests and objectives. The need for this balancing is exemplified in the revised purpose and scope section of the statute governing the Commission. *Id.* § 3 (amending 12 M.R.S. § 681). In conducting the balancing that is necessarily part of its planning and zoning responsibilities, the Commission interprets the CLUP in a manner consistent with the Commission's revised purpose and scope, which, as discussed below, places increased emphasis on:

- Serving the regions in which the unorganized and deorganized areas are located,
- Honoring the rights and participation of residents and property owners, and
- Encouraging and facilitating regional economic viability.

B. The Significance of Unorganized and Deorganized Areas to the Regions in Which They are Located and the Importance of Recognizing the Rights and Interests of Residents and Property Owners

The 2012 Legislation alters the composition of the Commission, increasing membership to nine and establishing that, after completion of a transition period, eight members of the Commission will be nominated and appointed by each of the eight respective counties with the most acreage in the unorganized and deorganized areas; one member will be nominated and appointed by the Governor. *Id.* § 7 (enacting 12 M.R.S. § 683-A). Additionally, the 2012 Legislation allows for delegation of permitting authority to individual counties, *id.* § 16 (enacting 12 M.R.S. § 685-B(1-C)), and for a county or a group of counties to request that the Commission develop and implement a regional comprehensive land use plan and associated zoning for all the unorganized and deorganized areas within the requesting county or counties, *id.* § 22 (enacting 12 M.R.S. § 685-C(1-A)). Also, as noted above, the 2012 Legislation directs the Commission to engage in prospective zoning in cooperation with local and regional planning groups. *Id.* § 34. These changes reflect a desire to ensure that the Commission is responsive to local needs and interests, and attune to regional differences that may exist among different areas within the unorganized and deorganized portions of Maine. The Commission is respectful of this legislative intent when interpreting the CLUP.

The 2012 Legislation amends the statutory purpose and scope, adding language that directs the Commission “to honor the rights and participation of residents and property owners in the unorganized and deorganized areas.” *Id.* § 3 (amending 12 M.R.S. § 681). In light of this new language, the Commission pays particular attention to the rights of residents and property owners when interpreting the CLUP and, for example, places new emphasis on those provisions that (a) reference working cooperatively with land owners and residents and (b) encourage exploration of voluntary and incentive-based measures as an alternative to zoning restrictions and new regulation.

While the Commission interprets the CLUP with an increased emphasis on resident and landowner rights and participation and on acknowledgement of the local and regional significance of the unorganized and deorganized areas, the Commission continues, also as directed by the revised purpose and scope, to recognize the unique value of the lands and water in these areas to the State as a whole. *See id.*

C. The Importance of Sound Planning and Zoning in Encouraging Appropriate Development and in Encouraging and Facilitating Regional Economic Viability

The 2012 Legislation establishes that among the Commission’s purposes is to encourage appropriate economic development. This is reflected in the prospective zoning directive, as well as in multiple changes to the Commission’s purpose and scope. In addition to extending principles of sound planning and zoning to the unorganized and deorganized areas, the Legislature now has stated it is important to extend principles of sound

“development” to these areas, as well. *Id.* The 2012 Legislation also establishes that the Commission should no longer just “provide” for appropriate residential, recreational, commercial, and industrial land uses, but should now “encourage” these appropriate land uses. *Id.*

In recognition of these changes, the Commission views its role as not just regulating development and allowing this activity when regulatory standards are met, but also as using its planning and zoning authority to actively encourage appropriate economic development activity. The Commission interprets the CLUP in a manner consistent with this role. For example, the Commission places new emphasis on the provisions that reference a proactive approach (a) to identifying areas best suited for economic development activities, as well as (b) to siting appropriate residential, recreational, commercial, and industrial land uses, including through prospective zoning.

The 2012 Legislation places special emphasis on “Maine’s natural resource-based economy,” adding this phrase to the purpose and scope section in two places. *Id.* The statutory language makes clear that the Commission should work to “support and encourage” this sector of the economy and to “prevent” residential, recreational, commercial, and industrial uses detrimental to this key economic sector. *Id.* In recognition of the new, express references to Maine’s natural resource-based economy, the Commission interprets existing CLUP provisions addressing this economic sector with an increased emphasis on supporting and encouraging the natural resource-based economy, including existing and emerging industries within this sector.

The 2012 Legislation also establishes that it is within the Commission’s purpose and scope “to encourage and facilitate regional economic vitality.” *Id.* This statement combines the recognition of both the importance of the unorganized and deorganized areas to the regions in which they are located and the ability of the Commission, through advancement of principles of sound planning, zoning, and development, to help create an environment where economic development activities are better positioned to succeed. In recognition of its responsibility to help encourage and facilitate regional economic vitality, when interpreting the CLUP and balancing the goals and policies in this guidance document the Commission gives more active consideration to the impacts of its interpretations on regional economies.

D. The Importance of Sound Planning and Zoning in Encouraging a Sustainable Future for the Unorganized and Deorganized Areas

As discussed above, the 2012 Legislation refocuses key components of the Commission’s mission. For example, the Commission now has an increased focus on serving the regions in which the unorganized and deorganized areas are located, honoring the rights and participation of residents and property owners, and encouraging and facilitating regional economic viability. While the Commission now places new emphasis on these responsibilities, the 2012 Legislation also reaffirms, through both the retention of previously existing purpose and scope language and the addition of new language, that

the Commission’s responsibility to support and encourage “strong environmental protection” continues. *Id.*

The 2012 Legislation provides new direction to the Commission about how to balance its multiple responsibilities in light of varying and sometimes competing interests. Sustainability is the goal. This is reflected in amendments that favor conservation over preservation and recognize that conservation and economic vitality are not mutually exclusive. For example, the 2012 Legislation states that one of the Commission’s purposes is to “conserve” ecological and natural values, where previously the Commission was to “protect” these values. *Id.* This revised purpose is listed along with the other purposes discussed above. The revised purpose and scope also contains the Legislature’s declaration that it is in the public interest “to encourage the well-planned and well-managed multiple use, including conservation, of land and resources and to encourage and facilitate regional economic viability.” *Id.*

The importance of sustainability is further evident in the focus on supporting and encouraging Maine’s natural resource-based economy. Supporting this economy depends on responsibly and sustainably managing the resources that form the basis of this economy. This also is reflected in the new, express reference to the importance of the “long-term health” of the unorganized and deorganized areas and of Maine natural resource-based economy. *Id.*

The CLUP is an extensive document that acknowledges and discusses the varied responsibilities of the Commission. While the 2012 Legislation does not create entirely new responsibilities for the Commission relative to the CLUP, what is significant about the legislation is that it directs the Commission to refocus some of its efforts as discussed above. Accordingly, the Commission interprets the CLUP in a manner that is respectful of the current law, as amended by the 2012 Legislation, when balancing the competing goals and policies in this guidance document.

E. The Removal of the Demonstrated Need Criterion from the Zoning Standard

Finally, the 2012 Legislation amends the criteria for adoption or amendment of land use district boundaries, *i.e.*, the rezoning standard, by eliminating the requirement that the proposed land use district satisfy a “demonstrated need” in the community or area. *Id.* § 13 (amending 12 M.R.S. § 685-A(8-A)). The Commission interprets the CLUP in a manner consistent with this statutory change and no longer giving weight to language related to the demonstrated need criterion.

IV. Duration of Guidance

The Commission will apply this Guidance for Interpreting the 2010 Comprehensive Land Use Plan until the earlier of (a) any future revision of the CLUP approved by the Legislature or adopted by the Commission following legislative inaction, or (b) a formal vote of the Commission to modify or repeal this guidance.

Attachment A:

12 M.R.S. § 681

Section 681. Purpose and Scope

The Legislature finds that it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to support and encourage Maine's natural resource-based economy and strong environmental protections; to encourage appropriate residential, recreational, commercial and industrial land uses; to honor the rights and participation of residents and property owners in the unorganized and deorganized areas while recognizing the unique value of these lands and waters to the State; to prevent residential, recreational, commercial and industrial uses detrimental to the long-term health, use and value of these areas and to Maine's natural resource-based economy; to discourage the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and detrimental uses of the water in these areas; and to conserve ecological and natural values.

The Legislature declares it to be in the public interest, for the public benefit, for the good order of the people of this State and for the benefit of the property owners and residents of the unorganized and deorganized townships of the State, to encourage the well-planned and well-managed multiple use, including conservation, of land and resources and to encourage and facilitate regional economic viability. The Legislature acknowledges the importance of these areas in the continued vitality of the State and to local economies. Finally, the Legislature desires to encourage the appropriate use of these lands by the residents of Maine and visitors in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.