



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

COMMISSION DECISION

IN THE MATTER OF

Washington County Commissioners

Findings of Fact and Decision

ZONING PETITION ZP 767

The Maine Land Use Planning Commission, at a meeting of the Commission held August 9, 2017, at Brewer, Maine, after reviewing the petition and supporting documents submitted by the Washington County Commissioners for Zoning Petition ZP 767, agency review and staff comments, and other related materials on file, pursuant to 12 M.R.S. Sections 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. Petitioner: Washington County Commissioners  
PO Box 297  
Machias, ME 04654
2. Date of Completed Petition: July 17, 2017
3. Location of Proposal: Baring and Grand Lake Stream Plantations, Washington County

Baring

Map: WAP01, Plan 5, Lot 1  
Map: WAP01, Plan 5, Lot 4A  
Map: WAP01, Plan 2, Lot part of (p/o) 34

Grand Lake Stream

*Area 1*

Map: WAP03, Plan 1, p/o Lot 13, p/o Lot 17  
Map: WAP03, Plan 2, p/o Lot 2, p/o Lot 24A  
Map: WAP03, Plan 4, p/o Lot 14, p/o Lot 15

*Area 2*

Map: WAP03, Plan 1, p/o Lot 6, p/o Lot 15, p/o Lot 16  
Map: WAP03, Plan 3, p/o Lot 38A, p/o Lot 39  
Map: WAP03, Plan 4, p/o Lot 7A



*Area 3:*

Map: WAP03, Plan 1, p/o Lot 6

4. Present Zoning: M-GN, General Management Subdistrict, and D-RS, Residential Development Subdistrict
5. Proposed Zoning: D-GN, General Development Subdistrict
6. Size of Area to be Rezoned: 265.4 acres

Background Information

7. In 2015, the Commission selected Washington County to be the third region to participate in a Community Guided Planning and Zoning (CGPZ) process. CGPZ provides an opportunity for those who live, work, own land, and have other interests in the unorganized or deorganized areas in Maine to evaluate present and future land use needs for their region and work together to develop a strategy to meet those needs. The planning project for Washington County focused on: identification of areas appropriate for growth based on existing patterns of development, natural resource constraints, and future needs; and improving predictability and increasing flexibility for property owners.
8. The planning process for the CGPZ included three distinct phases: pre-planning, land use planning, and adoption & implementation. For Washington County, the process was led by the Washington County Council of Governments (WCCOG). The pre-planning phase included two workshops intended to identify regional interest in a CGPZ project and to define the process by which it would move forward. WCCOG worked with a steering committee and the LUPC to develop a document that described the proposed planning process, reflected time and resources available for the project, and reflected the basic CGPZ principles outlined by the Commission (the process document). The process document was approved by the Washington County Commissioners at their July 16, 2015 meeting. Then, the process document was submitted to the LUPC for its review and approval at their August 12, 2015 Commission meeting.
9. The land use planning phase followed the pre-planning phase, and included an extensive effort to inform and include residents, landowners and others with ties to the unorganized territories in Washington County. A Planning Committee, which included a broad cross-section of stakeholders, held monthly meetings in Washington County between January 2016 and February, 2017. In addition, there were a total of 13 public meetings and an online survey to gather input from the public. From all of the data and input, WCCOG prepared *A Regional Plan for the Washington County Unorganized Territories*, dated July 2017 (hereinafter "Regional Plan").
10. In the last phase of the process, adoption & implementation, the Washington County Commissioners endorsed the Regional Plan, and the recommendation to move forward first with a zoning petition to prospectively zone certain properties identified through community planning and landowner interest in Baring and Grand Lake Stream Plantations. The properties

in Baring are located off US Route 1 and the Moosehead Road (Lot 05-1; 1.41 acres), US Route 1 (Lot 05-4A; 6.49 acres), and US Route 1 and Center Street (Lot 02- p/o 34; 10.8 acres). The properties in Grand Lake Stream are located off Water Street (Area 1; 118 acres), Tower Road (Area 2; 74.6 acres), and the Milford Road (Area 3; 54.1 acres).

### Petition Details

11. The Washington County Commissioners are requesting prospective zoning changes in Baring and Grand Lake Stream Plantations as part of the implementation phase of the Washington County CGPZ project. The proposal includes rezoning a total of 18.7 acres in Baring from D-RS and M-GN to D-GN, and 246.7 acres of M-GN to D-GN in Grand Lake Stream.
12. In Baring, Lot 05-4A is currently developed for the Knock on Wood retail store. The proposed rezoning from D-RS to D-GN will allow expansion of uses requiring a permit, such as the ability to offer food and beverages prepared on the premises. The rezoning will not address any remaining non-conformities relating to lot coverage limitations. Lot 05-1 was formerly used for the O'Neills Garage. The property is the subject of a current US EPA/ WCCOG Brownfields Assessment to determine contamination (if any) from above ground storage tanks on the property associated with a former asphalt batch plant. The proposed rezoning will allow re-use of the property, possibly as a retail/ demonstration site for manufactured homes. The Lot 2- p/o 34 rezoning will allow expansion of a current D-GN to a portion of the lot that is located behind the existing Downeast Glass business for expanded commercial retail businesses consistent with the D-GN subdistrict. The affected property owners participated in the Washington County CGPZ process and were provided copies of the public notice on the zoning petition. No comments were submitted in response to the public notice.
13. For Grand Lake Stream, most of the land area proposed for prospective zoning involves three lots created as part of a larger land conservation transaction that are now owned by the Plantation. The remaining land proposed for rezoning involves thirteen private property owners in the village. All of the areas are proposed for rezoning to D-GN. Grand Lake Stream formed a Lands Committee to consider development options on the Plantation's properties and decided in July of 2016 that their prospective zoning proposals could be included with any generated by the Washington County CGPZ project. Development considerations for the Plantation's property in Area 1 include senior residential housing, Area 2 considerations include expansion of the Grand Lake Stream village and mixed use area, and Area 3 considerations include light industrial uses. Rezoning on the remaining land in Grand Lake Stream will generally accomplish three purposes: relocate the existing D-GN boundary to match property lines in the village, allow more flexibility for a property owner that expressed interest in developing their property, and to provide a uniform regulatory structure for the entire village. The Plantation held several public meetings as part of the community planning process, and voted in favor of the proposed rezoning. Landowners significantly affected by the proposed rezoning and listed on the *GrandLakeStreamPlt.taxinfo* spreadsheet provided by the Plantation were sent a copy of the public notice for the zoning petition. In addition, according to The Musson Group, a planning consultant supporting the Grand Lake Stream Lands Committee, Grand Lake Stream Assessors contacted all affected property

owners directly or by voicemail on August 1, 2017, and reported that none of the property owners have objected to the rezoning to date.

#### Current Conditions and Existing Uses

14. The Washington County CGPZ project included extensive data analysis with the intent to define suitable locations for residential and commercial growth, and its location relative to towns and rural areas, as well as supporting services and infrastructure. The data analysis included review of four GIS suitability analyses; development suitability, conservation suitability, resource-dependent industry suitability, and recreation suitability. Factors included in the models for each suitability analysis included proximity to services, proximity to infrastructure, low-density development soils, resource-dependent industries, agriculture, forestland, shellfish harvesting, critical habitats, wetlands, conserved lands, and recreation assets and access. The Regional Plan, submitted with the zoning petition, provides details on the process, data collection, and data analysis. WCCOG and the County Commissioners concluded, for the areas included in the zoning petition, the development suitability analysis indicates strong agreement with the areas being used for development; they are all near services and infrastructure, and generally possess soils that can accommodate development.
15. All the properties in Baring proposed for rezoning are located along a developed section of Route 1. Existing uses surrounding the properties include rural residential, home-based businesses, a greenhouse and garden center, auto glass repair, warehousing, and blueberry processing. Lots 05-4A and 05-1 have some existing development, but otherwise are vegetated with mixed growth. Lot 02- p/o 34 is wooded with mixed deciduous/ coniferous growth. None of the properties have water frontage, a significant amount of freshwater wetland (based on National Wetland Inventory mapping), or steep slopes. Lot 02-34 has a small freshwater wetland mapped just outside of the area proposed for rezoning. The existing protection subdistricts (P-WL and P-SL) will remain to protect the functions and values of the wetland. Although the soils for the lots in Baring are rated by the Natural Resources Conservation Service as very limited due to depth to saturation and shrink-swell concerns, most development in Baring faces the same challenges because it is a general problem for the township. Other development in the surrounding area have utilized engineering solutions to successfully overcome the limitations.
16. Area 1 in Grand Lake Stream is located south of the village area, Area 2 is north of the village, and Area 3 is outside of the village area near the municipal recycling depot. The Plantation properties proposed for rezoning in Grand Lake Stream represent the last remaining undeveloped property in the Plantation that is not encumbered by a conservation easement, and therefore represent the only areas for growth in the Plantation. Areas 1 and 2 will expand the existing village. Surrounding uses for those areas include village center/mixed uses, single-family residential, and a local cemetery. Area 3 is intended for light industrial use. As noted, there is an existing transfer station/ recycling center nearby. Existing conditions on the properties include varying amounts of cleared area, dirt roads, and mixed deciduous/ coniferous growth. There are a few existing structures located on private property within Areas 1 and 2 including a residential dwelling, garage, accessory building, and cell tower. None of the properties have water frontage or steep slopes. Areas 1 and 2 have existing forest/shrub freshwater wetlands ranging in size from 2.6 to 8.6 acres in size, located on the

edges of properties. The existing protection subdistricts (P-WL and P-SL) will remain to protect the functions and values of the wetlands.

#### Existing Natural, Historical and Recreational Resources

17. The proposal is not anticipated to impact existing natural, historical, or recreational resources. A review of available ArcGIS map layers indicated no fish, wildlife, plant community, or historical resources of concern in or near the proposed areas for prospective zoning. Critical habitats were included as a factor in the Washington County CGPZ suitability analysis, and there were no critical habitats identified for the proposed areas. In terms of recreational resources, the Washington County CGPZ recreation suitability analysis found the proposed zone changes would provide greater economic opportunity to landowners near recreation assets while having no direct negative impacts on the recreation values themselves.

#### Public Services

18. As part of the zoning petition, the Washington County UT Supervisor provided a letter outlining the public service providers for Baring and Grand Lake Stream. For Baring, emergency medical service is provided by the City of Calais; law enforcement, fire, and solid waste disposal services are provided by the Town of Baileyville. For Grand Lake Stream, EMS is provided by the Indian Township Fire and Rescue; fire protection is provided by Grand Lake Stream; law enforcement is provided by the County Sheriff; and solid waste disposal is provided by the Town of Baileyville. All public service providers were included in the public notice for the petition and none of the providers raised concerns about the proposed prospective zoning for general development in the plantations.

#### Review Comments

19. The Maine Department of Inland Fisheries and Wildlife commented by email that they have no concerns with the proposed rezoning because any potential impacts to significant wildlife habitat protected by the Natural Resources Protection Act would be minimal.
20. In an e-mail dated July 17, 2017, the Maine Historic Preservation Commission (MHPC) stated that there are no known archaeological sites along Route 1 in Baring. They further commented that the only potential for archaeology would be within 100 yards of the St. Croix River. None of the Baring properties are located within that distance to the river. In addition, MHPC found no historic structures on or near the properties in Baring. For Grand Lake Stream, MHPC commented that there are prehistoric and historic sites along the stream. However, they found that none of the sites fall within the three properties proposed for zoning changes. In general, MHPC concluded they would not be concerned about mixed-use development occurring on the properties.
21. The Maine Natural Areas Program also reviewed the petition and found, according to their current information, there are no rare botanical features that would be disturbed within the project areas.
22. The facts are otherwise as represented in Zoning Petition ZP 767 and supporting documents.

### Review Criteria

23. In accordance with Title 12, Section 685-A, Subsection 8-A of the Commission's statute, a land use district boundary may not be amended unless there is substantial evidence that:
- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the Commission's *Comprehensive Land Use Plan* and the purpose, intent and provisions of the chapter; and
  - B. 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.
24. Under provisions of Section 10.21,C,1 of the Commission's *Land Use Districts and Standards*, the purpose of the D-GN subdistrict is to recognize existing patterns of development in appropriate areas and to encourage further patterns of compatible development therein and adjacent thereto. It is the Commission's intent to promote these areas as future growth centers in order to encourage the location of compatible developments near each other and to minimize the impact of such development upon incompatible uses and upon public services and facilities. Thus, the Commission's purpose is to encourage the general concentration of new development, and thereby avoid the fiscal and visual costs of sprawl, and to provide a continuing sense of community in settled areas.

Under provisions of Section 10.21,C,3,c,(5) and (17) of the Commission's Standards, commercial and industrial facilities having not more than 2,500 square feet of gross floor area, including retail stores and services, and single and multi-family residential dwellings, are allowed uses in a D-GN subdistrict upon issuance of a permit by the Commission. Larger retail stores are allowed by special exception provided the applicant can show that the proposed uses can be buffered from other uses with which they are not compatible.

25. The following are key goals and policies regarding development within the Commission's jurisdiction from the Commission's *Comprehensive Land Use Plan*:

A. Location of Development:

*Goal:* Guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.

*Policies regarding the location of development on a jurisdiction-wide level:*

- a. Provide for a sustainable pattern of development, consistent with historical patterns, which directs development to suitable areas and retains the principal values of the jurisdiction, including a working forest, integrity of natural resources, and remoteness.

- b. Guide development to areas near existing towns and communities and in other areas identified as appropriate development centers. Identify areas which are the most appropriate for growth when considering: (1) proximity and connectivity by public road to economic centers, organized towns and well established patterns of settlement; (2) compatibility of natural resources with development; (3) demonstrated demand for and public benefit from development; and (4) availability of public infrastructure, facilities and services.
- c. Discourage growth which results in scattered and sprawling development patterns.

*Policies regarding the location of development on a community or regional level:*

- d. Undertake prospective zoning within certain areas of the jurisdiction where there is a need to achieve balance between expected development pressures and high resource values in order to provide greater regulatory predictability.

**B. Economic Development:**

*Goal:* Encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction's principal values.

*Policy:* Encourage economic development in those areas identified as the most appropriate for future growth.

**Based upon the above Findings and the following analysis, the Commission concludes:**

Consistency with the Standards for District Boundaries

- 26. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission's statute, a proposed rezoning must be consistent with the Standards for district boundaries in effect at the time.
  - A. Section 10.21,C,1 of the Commission's *Land Use Districts and Standards* establishes that the purpose of the D-GN subdistrict is "to recognize existing patterns of development in appropriate areas and to encourage further patterns of compatible development therein and adjacent thereto." The properties proposed for rezoning in Barring are located along Route 1 and are surrounded by or across the street from existing D-GN subdistricts. All the Grand Lake Stream properties are located on roads owned and maintained by the Plantation. Two of the three areas in Grand Lake Stream are located directly adjacent to the existing D-GN subdistrict for the village. The third area is located outside of the village area, but near the existing municipal recycling depot.
  - B. Allowed uses requiring a permit in the D-GN include single family dwellings, two-family dwellings, and multi-family dwellings; retail stores and services; as well as other small commercial and industrial facilities. Because the petition involves prospective zoning, the proposal does not include specific development plans. However, the general uses

anticipated in the Regional Plan for the Washington County CGPZ are expected to meet the allowed uses requiring a permit in the D-GN.

27. Because the proposed rezoning includes expansion of existing D-GN subdistricts or creation of a new D-GN subdistrict near existing development, and the anticipated uses are expected to be compatible with existing uses, the Commission concludes that the proposed rezoning to D-GN subdistricts in Baring and Grand Lake Stream is consistent with the current standards of that subdistrict.

#### Consistency with the Comprehensive Land Use Plan

28. The proposed rezoning is consistent with the Commission's Comprehensive Land Use Plan as follows:
  - A. Specific CLUP policies on the location of development seek to provide for sustainable patterns of development, consistent with historical patterns, which direct development to suitable areas and retain the principal values of the jurisdiction. Factors for identifying areas most appropriate for growth include availability of public infrastructure, facilities, and services; and compatibility of natural resources with development. (*CLUP, page 6.*) Those types of factors were considered in the suitability analysis completed for the Washington County CGPZ project and for the proposed rezoning. The rezoning is consistent with the Commission's goals and policies regarding the location of development in that the properties are located proximate to existing mixed residential and commercial development with frontage on existing state and local public roadway systems, the range of allowed uses in the general development subdistrict are anticipated to be compatible with those existing uses, and no significant natural resources are expected to be adversely impacted.
  - B. In considering development on a community or regional level, the CLUP directs the Commission to undertake prospective zoning within certain areas of the jurisdiction where there is a need to achieve a balance between expected development pressures and high resource values in order to provide greater regulatory predictability. (*CLUP, page 6.*) The proposed rezoning is the result of a regional planning initiative, which determined prospective zoning would address local needs and existing development pressures, while providing greater regulatory predictability for the landowners.
29. The CLUP also encourages economic development that is connected to local economies, and utilizes services and infrastructure efficiently. (*CLUP, page 7.*) The proposed rezoning is consistent with the Commission's goals and policies regarding economic development since the proposed general development subdistricts resulted from a regional planning initiative involving people who live and work in the areas that were determined most appropriate for future growth. New development in the expanded general development subdistricts will be connected to local economies and, given their location on public roads and near existing development, will utilize services and infrastructure efficiently.



Consistency with Chapter 206-A

30. According to 12 M.R.S. § 685-A(8-A)(A) of the Commission's statute, a land use district boundary may not be adopted or amended unless the proposed land use district is consistent with the purpose, intent, and provisions of Chapter 206-A.
  - A. 12 M.R.S. § 685-A(1) establishes the Commission's zoning authority: "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 shall fall into land use districts and designate each area in one of the following major district classifications: protection, management and development."
  - B. The Commission evaluated the petition with respect to consistency with Chapter 206-A and the principles of sound planning, zoning, and development. Having considered the location of the subject properties, the surrounding uses and resources, the type and scope of development the rezoning is intended to foster, the review of agency comments, and the record as a whole, the Commission concludes approval of the petition would be an act of sound land use planning. Therefore, the Commission concludes the proposed rezoning is consistent with the purpose, intent, and provisions of Chapter 206-A, which cumulatively are designed to promote sound planning.

No Undue Adverse Impact

31. For Baring Lot 05-1 and Lot 05-4A, development is proposed on lots with existing development, near similar businesses, and served by existing infrastructure. For Baring Lot 02- p/o 34, future development will be allowed on a portion of the parcel near existing businesses; however, the portion of the lot that is near existing residences will remain in D-RS to provide a buffer from any new general development activity. In addition, a portion of the parcel that contains a freshwater wetland is not proposed for rezoning to protect the functions and values of the wetland. No significant natural, cultural, or recreational resources were identified on the properties.
32. Proposed zoning changes for Grand Lake Stream Areas 1 and 2 extend the existing village to the north and south by approximately 1500 feet in both directions up to the boundary of the conservation easement that surrounds the village area. According to the zoning petition, the change from M-GN to D-GN will allow the Plantation to plan for a range of future uses on the properties awarded as part of a conservation transaction. Portions of several other lots not owned by the Plantation are already in D-GN and the proposed zone changes will provide a uniform regulatory environment for the entire village. Area 3 is outside of the village area and near the existing recycling depot. The intent for Area 3 is to allow growth for light industrial, small manufacturing, storage, or other commercial uses, uses that may not be as compatible with existing village development. The Regional Plan found overall impacts would be positive given that the Plantation is choosing to allow flexibility in future choices on the only remaining land in the Plantation now available for development. Small freshwater wetland areas exist on Areas 1 and 2; however, the protection subdistricts will remain in place to protect and buffer the wetlands from future development. No significant natural, cultural or recreational resources were identified on the properties.

33. Given the locations and existing conditions for each of the properties and supported by comments submitted by State natural resource agencies, no undue adverse impacts are anticipated from the proposed rezoning to D-GN subdistricts.

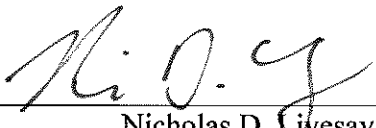
#### **Final Conclusions**

34. In summary, and for reasons explained above, the Commission concludes that the proposed rezoning of approximately 265.4 acres to allow additional opportunity for development in Baring and Grand Lake Stream:
- A. Is consistent with the standards for district boundaries in effect at the time;
  - B. Is consistent with the Commission's 2010 Comprehensive Land Use Plan;
  - C. Is consistent with the purpose, intent, and provision of Title 12, Chapter 206-A; and
  - D. Has no undue adverse impact on existing uses or resources.

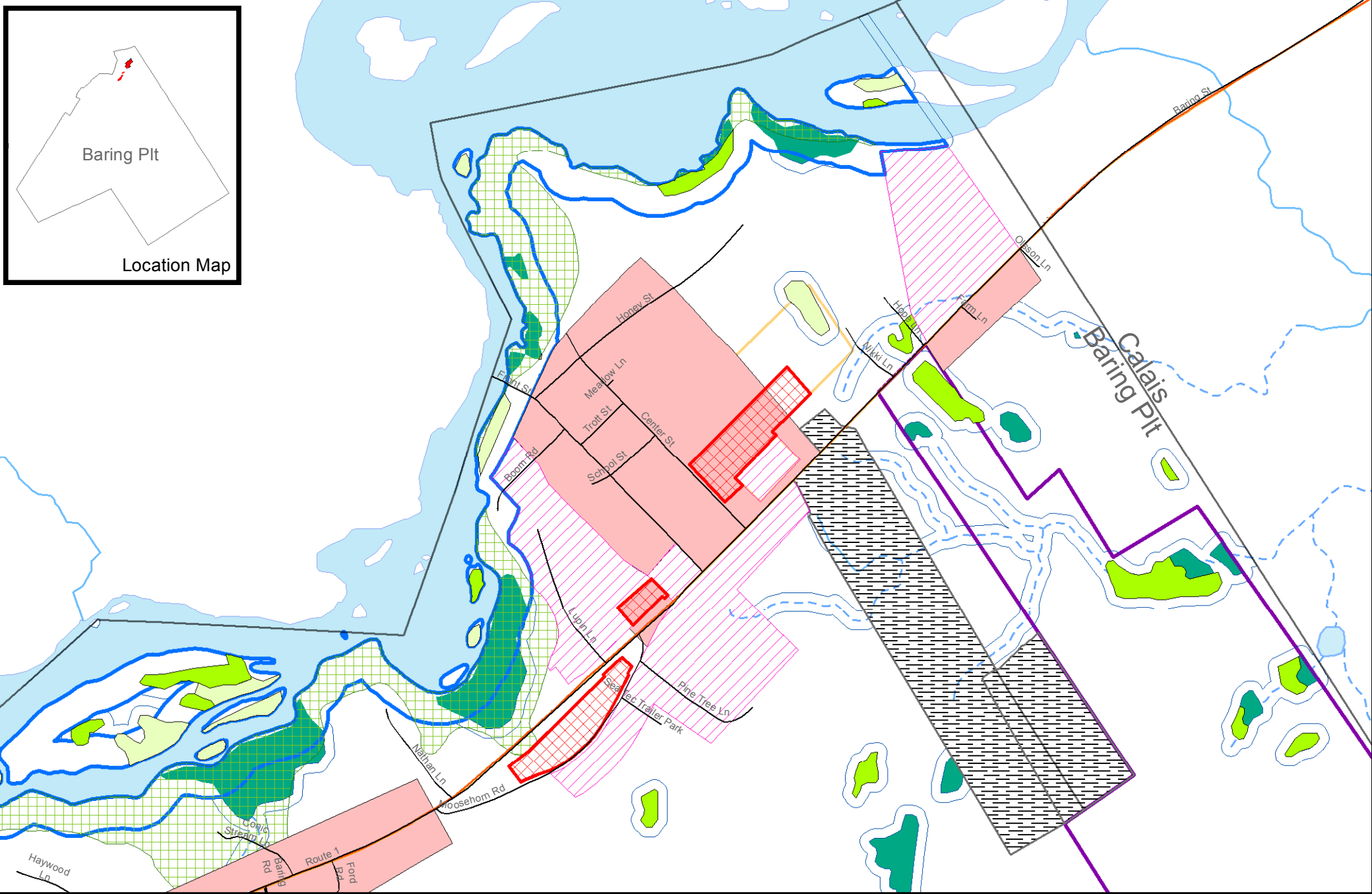
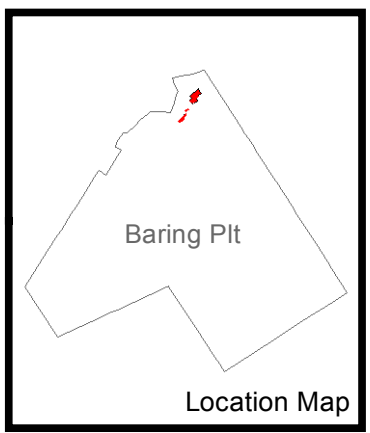
**Therefore, the Commission approves the petition of the Washington County Commissioners to rezone 265.4 acres from Residential Development Subdistrict (D-RS) and General Management Subdistrict (M-GN) to General Development Subdistrict (D-GN) as shown on the attached maps.**

In accordance with 5 M.R.S., Section 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.

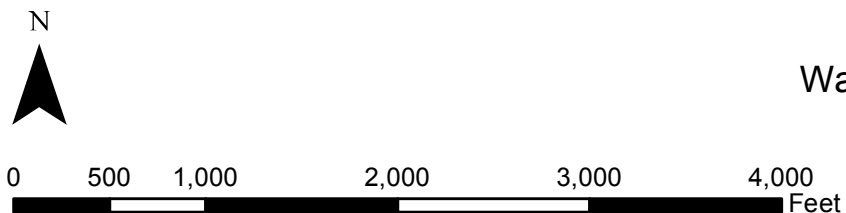
DONE AND DATED AT BREWER, MAINE THIS 9th DAY OF August, 2017.

By:   
\_\_\_\_\_  
Nicholas D. Givensay, Director

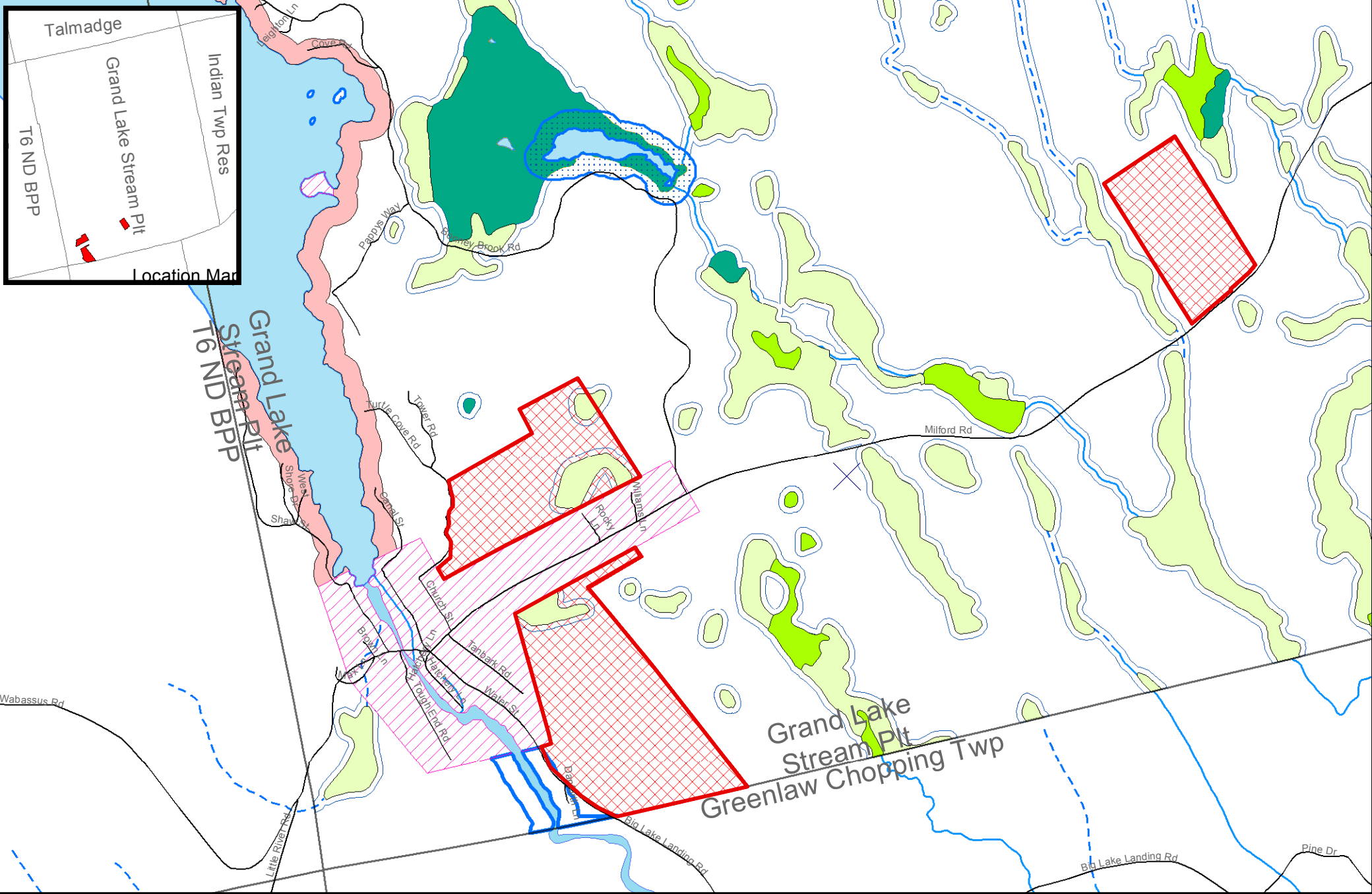
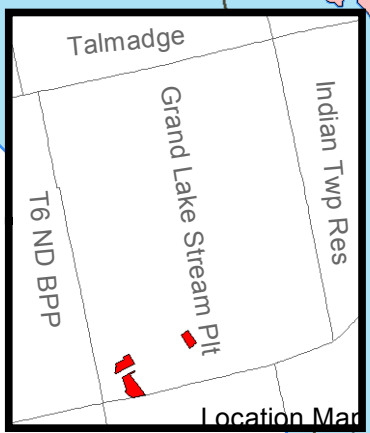
This change in subdistrict designation is effective on August 24, 2017.



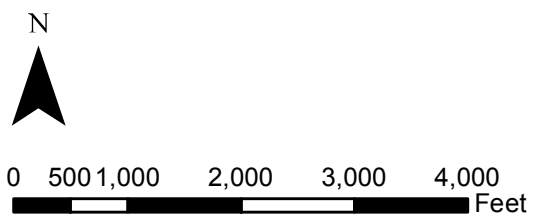
Baring Pt.  
Washington County  
**ZP 767**



- |               |                                         |                 |
|---------------|-----------------------------------------|-----------------|
| Proposed D-GN | D-CI: Commercial Industrial             | Perennial       |
| Towns         | D-GN: General                           | Intermittent    |
|               | D-RS: Residential                       | Ephemeral       |
|               | M-GN: General                           | Stream or River |
|               | P-FP: Flood Prone                       | Lake or Pond    |
|               | P-SL1: Shoreland - 250'                 |                 |
|               | P-SL2: Shoreland - 75'                  |                 |
|               | P-UA: Unusual Area                      |                 |
|               | P-WL1: Wetlands of Special Significance |                 |
|               | P-WL2: Scrub-shrub Wetlands             |                 |
|               | P-WL3: Forested Wetlands                |                 |



Grand Lake Stream Pit.  
Washington County  
**ZP 767**



- Proposed D-GN
- Towns
- D-GN: General
- D-RS: Residential
- M-GN: General
- P-GP: Great Pond
- P-SL1: Shoreland - 250'
- P-SL2: Shoreland - 75'
- P-WL1: Wetlands of Special Significance
- P-WL2: Scrub-shrub Wetlands
- P-WL3: Forested Wetlands
- Zones
- Perennial
- Intermittent
- Ephemeral
- Stream or River
- Lake or Pond