



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

COMMISSION DECISION
IN THE MATTER OF

Establishment of Zoning in Bancroft Township as a result of Municipal Deorganization

Finding of Fact and Decision

ZONING PETITION ZP 756

The Maine Land Use Planning Commission (the LUPC or Commission), at a meeting of the Commission held December 9, 2015 at Presque Isle, Maine, after reviewing the petition and supporting documents submitted by staff (the petitioner) for Zoning Petition ZP 756, review agency and public comments, and other related materials on file, pursuant to 12 M.R.S Sections 681 et. Seq. and the Commission's rules, finds the following facts:

1. Petitioner: Commission Staff (attention: Ben Godsoe)
Maine Land Use Planning Commission
22 State House Station
Augusta, ME
04333
2. Date of Completed Petition: 10/28/2015
3. Proposal Location: Bancroft Township, southern Aroostook County
4. Acres to be Zoned: 26,256
5. Affected Waterbodies: Lower Hot Brook Lake; Mattawamkeag River, Baskahegan Stream
6. Present Zoning: None
7. Proposed Zoning:
 - General Management Subdistrict (M-GN)
 - General Development Subdistrict (D-GN)
 - Residential Development Subdistrict (D-RS)
 - Aquifer Resource Protection Subdistrict (P-AR)
 - Flood Prone Areas Protection Subdistrict (P-FP)
 - Great Pond Protection Subdistrict (P-GP)
 - Shore Land Zoning Protection Subdistrict (P-SL1 and P-SL2)
 - Wetland Protection Subdistrict (P-WL1, P-WL2, and P-WL3)

Administrative Background

8. The town of Bancroft submitted a petition to the Maine Commission on Municipal Deorganization to deorganize. Bancroft then held a special town meeting to discuss the impacts of deorganization on May 3, 2012 and voted in favor of deorganizing.¹ They appointed a citizen committee to develop a deorganization procedure and then submitted it to the Maine Commission on Deorganization on July 13, 2012. The procedure was formally accepted and the town scheduled a special town meeting to discuss and vote on the deorganization procedure. The 126th Maine Legislature approved deorganization of the Town of Bancroft, as described in Public Law 2013, Chapter 390.² Residents of Bancroft issued final approval for the town to deorganize, in accordance with 30-A M.R.S. § 7209, during general elections held November 14, 2014. In accordance with 30-A M.R.S. § 7205(5), the Commission has one year from the effective date of deorganization, July 1, 2015, to adopt zoning for Bancroft Twp.
9. Commission staff hosted an informal open house on January 22, 2015. Commission representatives were available during regular hours at the Bancroft town office to answer questions that residents or property owners had about the deorganization process and land use services provided by the Commission.
10. A public informational meeting was held on March 19, 2015 and included an introduction to land use services provided by the Commission, as well as an overview of the prospective zoning process.³ Participants had a chance to review a series of maps depicting natural resources and existing development in Bancroft and to discuss likely zoning based on existing natural resources. Meeting participants, including current and prospective business owners, were encouraged to comment on what they would like for their town and to indicate where it would be appropriate to have development subdistricts.
11. A draft zoning map was developed based on the information depicted in the series of resource maps shown to property owners in Bancroft at the March 19, 2015 meeting.⁴ A second public informational meeting was held on May 7, 2015, and focused primarily on review of the draft zoning map. Participants were able to see the map, ask questions, and make comments. During further review of the draft map, it came to the Commission's attention that several proposed P-WL and P-FP subdistricts, which are based on information contained in the National Wetlands Inventory and USGS soils dataset, overlapped existing structural development. In these locations, Commission staff proposed to work closely with property owners and consultants to gather better information about existing soils at each site and more accurately delineate the boundaries of mapped wetlands and flood prone areas that overlapped existing structural development.
12. On June 10, 2015 the Commission directed staff to proceed with the wetland delineation for certain identified properties in order to finalize the draft land use guidance map, and then to

¹ Staff attended the meeting on May 3, 2012 and made an informational presentation.

² The Deorganization Procedure for the Town of Bancroft and Public Law 2013, Chapter 390 are included as Exhibit O, Items 2 & 4, in application materials for ZP 756.

³ Public Informational Meeting materials are included as Exhibit O, Item 3 in application materials for ZP 756.

⁴ The draft 'Land Use Guidance Map for Bancroft Twp' is included as Exhibit A in application materials for ZP 756.

initiate a public comment period.⁵ Wetland delineation was done on: 9/28/2015; 9/29/2015; 10/15/2015; and 10/28/2015. Once the P-FP and P-WL subdistrict boundaries were finalized, based on information obtained during wetland delineation by consultants, Staff initiated a 30 day public comment period from November 2, 2015 to December 2, 2015.

Public Notice

13. Notice of the proposed zoning petition was properly made to appropriate parties and the public as required under Chapter 4 of the Commission's rules. Notice of public informational meetings held in Bancroft was sent by mail to all property owners based on contact information provided by the town. Additionally, posters advertising the meetings were posted in a public, visible place in Bancroft. The Commission developed a webpage⁶ for the deorganization project and posted information about, and materials for, public meetings online. Over the course of the project, staff regularly corresponded with property owners who could not make it to the meetings but wanted to ask questions or make comments.

Project Information

14. The petitioner proposes establishment of management, development and protection districts within the township of Bancroft. Establishment of zoning would extend sound principles of planning, zoning, and development to Bancroft Twp as it joins the deorganized and unorganized areas of the state and comes under the jurisdiction of the LUPC.
15. The Commission prospectively zones Minor Civil Divisions (MCDs) that become part of the Jurisdiction after deorganizing. Prospectively zoning an entire township entails: identification in a land use inventory of existing natural resources eligible for inclusion in protection or management subdistricts; and identification of existing development and appropriate locations for future growth, which forms the basis for establishing development subdistricts.

The petitioner developed a series of maps, based on existing data that describes existing natural resources and existing development in Bancroft. Information about existing natural resources was obtained through the Maine Office of GIS and through discussions with state and federal agencies.⁷ The locations of existing structural development were verified during a land use windshield survey, conducted January 22, 2015 – January 23, 2015,⁸ and through outreach to individual property owners. Resource maps developed during the land use survey represent the best available data for the new township and are grouped into three broad topic areas:

- A. *Water Resources*. This map shows the location of hydrologic features such as lakes, ponds, rivers, and streams; significant sand and gravel aquifers (glacial deposits that are

⁵ Minutes from the June 10, 2015 Commission Meeting in Brewer are included as Exhibit O, Item 5 in application materials for ZP 756.

⁶ Bancroft Deorganization Website:

http://www.maine.gov/dacf/lupc/projects/deorganization/bancroft_deorg.html

⁷ A complete list of sources can be found in Exhibit O, Item 1 in application materials for ZP 756.

⁸ Survey included visual verification from public roads of location and use of existing structural development.

significant ground water resources); wetlands depicted in the National Wetlands Inventory (NWI); and 10 foot contour intervals showing changes in elevation.⁹

Lower Hot Brook Lake is located on the southern boundary between T8 R4 WELS and Bancroft with only the northern portion of the lake in Bancroft. Lower Hot Brook Lake is approximately 713 acres, resource class 3, and characterized as inaccessible and undeveloped by the Maine Wildlands Lake Assessment Findings (Chapter 10, Appendix C).

The Mattawamkeag River from the Reed Plantation and Bancroft Township town line to the East Branch, including its tributaries (e.g., Baskahegan Stream in Bancroft), is considered a Significant River Segment identified in 38 M.R.S. § 437. The Maine Rivers Study (Maine Dept. of Conservation, 1982) identified the sections of the Mattawamkeag River and Baskahegan Stream in Bancroft as Level B Rivers, exhibiting some outstanding characteristics of statewide significance. Both are noted for their undeveloped shoreline, scenic character, and recreational resources for canoe-touring and whitewater activities.¹⁰

- B. *Soil Resources.* This map shows the locations of different soil profiles in the township according to the National Cooperative Soil Survey (US Department of Agriculture Soil Conservation Service Southern Aroostook County Soil Survey). There currently are no Flood Insurance Studies, Flood Insurance Rate Maps (FIRM), Floodway Maps, or Flood Hazard Maps prepared by FEMA. Bancroft does not have an established Base Flood Elevation (BFE).¹¹
- C. *Existing Development.* This map shows existing property boundaries; structural development and known commercial, residential and municipal land uses; road networks; municipal facilities (e.g., sand/salt storage, cemetery, town office, etc.); and other development.¹²
- D. *Other Special Natural Resources.* Mapped information about wildlife habitat in Bancroft, including deer wintering areas and Inland Wading and Water Bird Habitat (IWWH) developed by the Maine Department of Inland Fisheries and Wildlife, and adopted in rule by the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act (NRPA).¹³
- E. *Revised Other Special Natural Resources.* A revised version of this map was developed after the Maine Natural Areas Program (MNAP) submitted newly mapped resources on

⁹ Water Resources Map can be found in Exhibit G, Item 1 in application materials for ZP 756.

¹⁰ Applicable excerpts from the Maine Rivers Study (Dept. of Conservation, 1982) can be found in Exhibit O, Item 6 in application materials for ZP 756.

¹¹ Soil Resources Maps can be found in Exhibit E in application materials for ZP 756.

¹² Existing Development Map can be found in Exhibit O, Item 2 in application materials for ZP 756.

¹³ Other Special Natural Resources Map can be found in Exhibit G, Item 2 in application materials for ZP 756.

November 5, 2015, during the public comment period. This map utilized the new data to depict a silver maple floodplain along Baskahegan Stream.¹⁴

Proposed New Zoning

16. New zones would be based on existing natural resources, existing development, and input from property owners and appropriate state or federal agencies. The following subdistricts are proposed in Bancroft:

- A. *General Development Subdistrict (D-GN)*. The D-GN subdistrict recognizes existing patterns of development in appropriate areas and encourages further compatible development therein and adjacent thereto. It is the Commission's intent to promote these areas as future growth centers and encourage the general concentration of future development. Two areas were identified by Commission staff as being appropriate for the General Development subdistrict. The two areas proposed for a D-GN Subdistrict include:
 - I. Kelly Road D-GN: The boundaries of the D-GN located on Kelly Road were drawn in consultation with property owners to include existing businesses and structures, and to incorporate enough additional area to accommodate planned small-scale commercial uses, but to exclude resources within proposed protection subdistricts.
 - II. Schoolhouse Road D-GN: The boundaries of the D-GN located on Schoolhouse and Bancroft Roads, in the southwest corner of the township, were drawn to include existing structures and exclude known natural resources that would otherwise be included in protection subdistricts. The proposed D-GN would include the former town office and veteran's memorial. The subdistrict is contiguous and includes areas within 250 feet of public roads along School House Road and a portion of Bancroft Road.
- B. *Residential Development Subdistrict (D-RS)*. The D-RS subdistrict is intended to set aside certain areas for residential and other appropriate uses so as to provide for residential activities apart from commercial development. The Commission's intention is to encourage residential development in and adjacent to existing, similarly developed areas. One D-RS subdistrict is proposed along Bancroft Road, in an area where four or more single family dwelling units exist within a 500 foot radius¹⁵, and are in a recorded single family residential subdivision.
- C. *General Management Subdistrict (M-GN)*. The General Management Subdistrict is proposed in areas that do not qualify for any other subdistrict and is intended to permit forestry and agricultural management activities to occur with minimal interferences from unrelated development in areas where the Commission finds that the resource

¹⁴ Revised Other Special Natural Resources Map can be found in Exhibit G, Item 3 in application materials for ZP 756.

¹⁵ The D-RS subdistrict description in Chapter 10 Land Use Districts and Standards (Section 10.21,J,2) contains this language, which pertains to the density of residential development within the subdistrict.

protection afforded by protection subdistricts is not required. In Bancroft Township, these areas are currently low density, dispersed residential development, or actively managed for agricultural or forestry activities.

- D. *Aquifer Resource Protection Subdistricts (P-AR)*. The P-AR subdistrict is proposed in three locations where information from the Maine Geological Survey indicates significant sand and gravel aquifers mapped at a scale of 1:24,000. These identified aquifers consist of glacial soil deposits and are a significant ground water resource for Maine. All three areas proposed for a P-AR subdistrict are classified as ATYPE1, and are expected to yield 10-50 gallons per minute for a properly constructed well. Two of the proposed P-ARs include small portions of aquifers that are mostly located in nearby Haynesville and Danforth.
- E. *Flood Prone Area Protection Subdistricts (P-FP)*. The P-FP subdistrict is proposed in areas identified as being within the 100 year flood plain, based on information about soils from the National Cooperative Soil Survey (US Department of Agriculture Soil Conservation Service Southern Aroostook County Soil Survey), and additional information about historic flooding activity and the presence of fill at developed sites obtained by staff and consultants during site visits. Specifically, P-FP subdistricts would include soils identified in the National Cooperative Soil Survey as “Mixed Alluvial Lands”.
- F. *Great Pond Protection Subdistrict (P-GP)*. The P-GP subdistrict is proposed for areas within 250 feet of the shoreline of Lower Hot Brook Lake within Bancroft Township, which is 713 acres and is characterized by the Wildlands Lake Assessment as resource Class 3, inaccessible, and undeveloped. *Shoreland Protection Subdistricts (P-SL1 and P-SL2)*. The P-SL1 subdistrict is proposed in areas within 250 feet of the normal high water mark of flowing waters within Bancroft Township that drain more than 50 square miles. The P-SL2 subdistrict is proposed in areas within 75 feet of the normal high water mark of flowing waters within Bancroft Twp that drain 50 square miles or less. Generally this includes, but is not limited to, the Mattawamkeag River and all of its tributaries.
- G. *Wetland Protection Subdistricts (P-WL1, P-WL2, and P-WL3)*. Wetland Protection Subdistricts are proposed throughout the township and would include areas identified in the National Wetlands Inventory (NWI), and through identification in the field, as: emergent wetlands (included in proposed P-WL1 subdistricts); scrub-shrub wetlands (included in proposed P-WL2 subdistricts); and forested wetlands (included in proposed P-WL3 subdistricts).

Review Criteria

17. Under 12 M.R.S § 685-A(8-A) of the Commission’s Statutes, and Section 10.08 of the Commission’s Land Use Districts and Standards, “A land use district boundary may not be adopted or 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 comprehensive land use plan and the purpose, intent and provisions of this chapter;¹⁶ 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.”

18. Sections 10.21, 10.22, and 10.23 of Chapter 10, Land Use Districts and Standards, sets out the subdistrict purpose and descriptions for each of the proposed subdistricts as follows:

- A. *10.21,C,1: General Development Subdistrict (D-GN).* “The Purpose of the General Development 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 development 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.”

Chapter 10, Section 10.21,C,2,a,(1) describes D-GN subdistricts as “Areas with the following patterns of existing intensive development use: (1) Areas where 4 or more principal buildings exist within a 500 foot radius provided that one or more of such buildings is other than a single family detached dwelling unit; and all such buildings are compatible with such residential units; or...”.

Chapter 10, Section 10.21,C,2,b describes D-GN subdistricts as “Areas which the Commission determines meet the criteria for redistricting to this subdistrict, pursuant to Section 10.08 hereof, are proposed for development which is consistent with the purposes of this subdistrict, and are suitable for the development activities proposed when measured against the standards of 12 M.R.S.A. § 685-B(4) and the Commission's Rules and Regulations relating thereto.”

- B. *Residential Development Subdistrict (D-RS).* “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 and adjacent to existing residentially developed areas.” (10.21,J,1)

Chapter 10, Section 10.21,J,2,b describes D-RS subdistricts as “Areas with the following existing patterns of intensive residential development: (1) Areas where four or more single family dwelling units exist within a 500 foot radius; ... The designated D-RS subdistrict boundaries shall include all single family dwelling units and accessory buildings and uses, paved areas and areas directly related to, and necessary for, the conduct of those activities associated with the above described single family dwelling

¹⁶ Criteria A is discussed below in findings 18, A – H. Discussion of Criteria B is included later under “Impacts on Existing Uses and Resources, on page 16.

units, as well as other intervening areas between such buildings, paved surfaces and areas...”

Chapter 10, Section 10.21,J,2,b describes D-RS subdistricts as “Areas which the Commission determines meet the criteria for redistricting to this subdistrict, pursuant to Section 10.08 hereof, are proposed for development which is consistent with the purposes of this subdistrict, and are suitable for the development activities proposed when measured against the standards of 12 M.R.S.A. §685-B(4) and the Commission's Rules and Regulations relating thereto.”

- C. *General Management Subdistrict (M-GN)*. “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.” (10.22,A,1)
- D. *Aquifer Protection Subdistrict (P-AR)*. “The purpose of the P-AR Subdistrict is to protect the quantity and quality of ground water supply used or potentially available for human or industrial consumption.” (10.23,B,1)

Chapter 10, Section 10.23,B,2 describes P-AR subdistricts as “Areas identified by the Commission as having soil rated as highly permeable and/or surficial geologic units that are highly permeable and are hydrologically connected through highly fractured bedrock units to a ground water supply which is currently, or anticipated to be, used for public, industrial, or agricultural purposes, or areas identified by the Commission as aquifer recharge areas based on studies by appropriate qualified persons or agencies where the Commission determines that such areas warrant water quality protection.”

- E. *Flood Prone Area Protection Subdistrict (P-FP)*. “The purpose of the P-FP subdistrict is to regulate in all flood prone areas, including areas of special flood hazard, certain land use activities in order to minimize the human, environmental, and financial costs of floods and flood cleanup programs, by protecting on-site, adjacent, upstream and downstream property from flood damage; and by minimizing danger from malfunctioning water supply and waste disposal systems in flood prone areas; and to comply with the cooperative agreement between the LUPC and the Federal Emergency management Agency (FEMA) regarding the regulation of land use according to the requirements of 44 CFR Part 60.3 of the National Flood Insurance Program, so that flood insurance can be made available to persons in flood prone areas” (10.23,C,1).

Chapter 10, Section 10.23,C,2 describes P-FP subdistricts as “Areas located within the 100 year floodplain, also known as areas of special flood hazard, as identified by the Commission after consideration of relevant data including, without limitation, areas determined to be flood prone by state or federal agencies, including the flood Insurance Studies and accompanying Flood Insurance Rate Maps, Flood Boundary and Floodway Maps or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, historical data, and the National Cooperative Soil Survey.

- F. *Great Pond Protection Subdistrict (P-GP)*. “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” (10.23,E,1).

Chapter 10, Section 23,E,2 describes the P-GP subdistrict as: "Areas 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."

- G. *Shoreland Protection Subdistrict (P-SL)*. "The purpose of the P-SL 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" (10.23,L,1).

The P-SL subdistrict includes two designations: (i) "*P-SL1*: Areas within 250 feet of the normal high water mark, measured as horizontal distance landward of such high water mark, of (a) coastal wetlands, and (b) flowing waters downstream from the point where such waters drain 50 square miles or more; and (ii) "*P-SL2*: Areas 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" (10.23,L,2).

- H. *Wetland Protection Subdistricts Description (P-WL)*: "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.

Preserving wetlands will promote the public health and safety of persons and protect property against the hazards of flooding and drought by holding back water during floods and retaining water during dry periods. Wetlands also maintain water quality for drinking, store nutrients from upland run-off in plant tissue, serve as settling basins for silt and sediment from upland erosion, stabilize water supply by maintaining the groundwater table and groundwater recharge and discharge areas, and provide plant, fish and wildlife habitat. Wetlands function as integral and irreplaceable parts of a larger natural system, influencing our climate, economy, environment, and natural heritage.

Insofar as this protection subdistrict also includes the area enclosed by the normal high water mark of surface water bodies within the Commission's jurisdiction, the purpose of this subdistrict shall also be to help insure compatible surface water uses on those water bodies where there is the potential for conflict with other uses and values of such water bodies" (10.23,N,1).

Chapter 10, Section 10.23,N,2,b states: "Areas meriting protection as P-WL1, P-WL2, or P-WL3 subdistricts will be identified by the Commission after consideration of relevant data including, without limitation, identification of freshwater and coastal wetlands 15,000 square feet or larger by the National Wetlands Inventory and, when on-site delineation is required, identification of freshwater and coastal wetlands of any size by methods described in the "Corps of Engineers Wetlands Delineation Manual" (1987)."

Chapter 10, Section 10.23,N,2,c states: "P-WL subdistricts described in Section 10.23,N,2,a above and identified on the Commission Land Use Guidance Maps may contain inclusions of upland areas or other wetland types smaller than 15,000 square

feet that do not conform to the description of P-WL subdistricts in Section 10.23,N,2,a. Such inclusions will be regulated in accordance with the mapped P-WL subdistrict in which they are located.”

19. A proposed rezoning must be consistent with the Comprehensive Land Use Plan. 12 M.R.S. § 685-A(8-A)(A). The Commission’s 2010 Comprehensive Land Use Plan (the CLUP) provides goals and policies that pertain to this proposal, which include:
- A. Broad Goals of the Commission (CLUP, pg. 5). “Support and promote the management of all the resources, based on the principles of sound planning and multiple use, to enhance the living and working conditions of the people of Maine and property owners and residents of the unorganized and deorganized townships, to ensure the separation of incompatible uses and to ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resource values of the jurisdiction.”
 - B. Location of Development Goal (CLUP, pg. 6). “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.”
 - C. Location of Development on a Jurisdiction-wide level, Policy # 1 (CLUP, pg. 6). “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, which includes a working forest, integrity of natural resources, and remoteness.”
 - D. Location of Development on a Community or regional level, Policy # 5 (CLUP, pg. 6). “Undertake prospective zoning within certain areas of the jurisdiction where there is a need to achieve balance between expected development pressures and high resources values in order to provide greater regulatory predictability.”
 - E. Water Resources Goal (CLUP, pg. 18). “Preserve, protect and enhance the quality and quantity of surface waters and groundwater.”
 - F. Water Resources Policy # 8 (CLUP, pg. 18). “Control land uses on identified aquifers and their recharge areas in order to prevent adverse effects on water quality or quantity.”
 - G. Wetland Resources Goal (CLUP, pg. 19). “Conserve and protect the ecological functions and social and economic values of wetland resources.”
 - H. Prospective Zoning (pg. 63). “Under prospective zoning, the Commission uses information on existing development patterns, natural resource constraints and recent trends to identify and zone areas appropriate for future growth. This allows the Commission to direct development on a regional level to areas that are suitable based on proximity to development centers and infrastructure. This approach brings more predictability to the permitting process and promotes concentrated economic development in suitable areas.”

20. A rezoning petition may not be granted unless the proposed land use district is consistent with the purpose, intent and provisions of Title 12, Chapter 206-A. 12 M.R.S. § 685-A(8-A)(A). Section 685-A(1) establishes the Commission 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." Section 685-C(1) required the Commission to develop the CLUP and establishes: "The commission must use the 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." Section 681 states 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, among other things, "encourage appropriate residential, recreational, commercial and industrial land uses."

Resource Agency Review Comments

21. Inland Fisheries and Wildlife (IF&W) reviewers recommended that the Inland Wading Bird and Waterfowl Habitat (IWWH) GIS layer be consulted in review of proposed development in Bancroft in addition to review of the zoning map because it includes some areas not included in P-WL or P-SL subdistricts.
22. The Maine Natural Areas Program (MNAP) identified a Silver Maple Floodplain in Bancroft along the Banks of Baskahegan Stream. The reviewer recommended that the Commission consider the feature in future development review in Bancroft Township and depict it on the resource maps included in the Land Use Survey.

Public Comments

23. As a result of additional information provided by consultants about the location of wetland boundaries on certain residential properties, Commission staff submitted the following comments during the public comment period:
 - A. On the residential property identified by Maine Revenue Services as Map 2, Lot 8-0, where wetland delineation was done by Boyle Associates on 10.28.2015, staff suggests minor adjustments to proposed P-WL and P-FP subdistrict boundaries in order to reflect the most recent data.¹⁷
 - B. On residential property identified by Maine Revenue Services as Map 4, Lot Unknown, where wetland delineation was done by Boyle Associates on 10.15.2015, staff suggests the proposed wetland subdistricts, identified as "Wetland A" in the final report submitted by Boyle Associates, be changed from a P-WL3 to a P-WL2 based on information contained in the final report.

¹⁷ Due to a few technical difficulties encountered by the consultant with software used for data collection in the field, additional data came to staff after the start of the public comment period. The resulting minor changes were not substantive.

Response to Comments¹⁸

24. Staff made minor changes to delineated portions of wetland boundaries on residential property Map 2, Lot 8-0 based on additional data supplied by consultants.
25. Staff changed the proposed wetland protection subdistrict on residential property Map 4, Lot Unknown, identified as "Wetland A" in the final report submitted by Boyle Associates, from a P-WL3 subdistrict to a P-WL2 subdistrict. The delineated boundary remained the same.

Based upon the above findings and the following analysis, the Commission concludes:

Consistency with the Standards for District Boundaries:

1. Pursuant to 12 M.R.S § 685-A(8-A)(A) – (B) of the Commission's statute, a proposed rezoning must be consistent with the standards for district boundaries in effect at the time.
 - A. The two proposed General Development subdistricts in Bancroft conform to the D-GN subdistrict purpose and description in Chapter 10 Land Use Subdistricts and Standards, Section 10.21,C,2.

The proposed zoning map for Bancroft Township was developed in response to the deorganization of the municipality of Bancroft. The Commission inventoried land uses and existing natural resources, and consulted with property owners to learn more about development trends and land owner intentions. The resulting land use inventory formed the basis for proposed new development subdistricts.

Some of the proposed development zoning is intended to match the current land use where certain structural development already exists. In other locations the proposed development zoning is prospective and allows future development in locations determined to be appropriate for that type of land use.

The Comprehensive Land Use Plan (CLUP) includes a discussion of prospective zoning, by which the Commission "uses information on existing development patterns, natural resources constraints and recent trends to identify and zone areas appropriate for future growth (CLUP, pg. 63). The CLUP goes on to describe several communities that have deorganized and been zoned in this way. In each Minor Civil Division the Commission "developed and adopted zoning maps which included development zones that have sufficient undeveloped land to accommodate future growth" (CLUP, pg. 64).

During the two public meetings and subsequently as the map was developed, property owners in Bancroft identified two areas as being appropriate future growth centers. Both proposed D-GNs either currently have, or have had in the past, non-residential uses. Both are proximate to other existing residential development and public roads, and were identified as community focal points by participants in the public informational meetings.

¹⁸ Changes made to the proposed zoning map in response to comments are reflected in the attached Bancroft Twp Land Use Guidance Map (Attachment 1).

The proposed Kelly Road D-GN (described in finding 16,A,1) meets the purpose and description of the subdistrict (set out in finding 18,A). It includes an existing store, which is a non-residential use, and adjacent property intended by the property owners for commercial development.

The proposed Schoolhouse Road D-GN subdistrict (described in finding 16,A,2) meets the purpose and description (set out in finding 18,A). It includes four or more principal buildings within a 500 foot radius. Prior to deorganization, this area contained the town office, which is a nonresidential use. This area was identified by participants at the public meetings as a community focal point and appropriate as a future growth center.

- B. The proposed Residential Development Subdistrict (described in finding 16,B) would conform to the D-RS Subdistrict purpose and description in Chapter 10 Land Use Subdistricts and Standards, Section 10.21,J,2 (set out in Finding 18,B). This is the only location in Bancroft where 4 or more single family dwelling units exist within a 500 foot radius and would not otherwise be eligible for a development or protection subdistrict.
- C. The proposed General Management Subdistrict (described in finding 16, C) would conform to the M-GN subdistrict description in Chapter 10 Land Use Subdistricts and Standards, Section 10.22,A,2 (set out in findings, 18,C). The Proposed M-GN would include all areas not otherwise eligible for a development or protection subdistrict.
- D. Proposed protection subdistrict boundaries would conform to the relevant subdistrict purposes and descriptions in the Commission's Chapter 10 Land Use Districts and Standards for the following subdistricts: (i) P-AR [10.23,b,1-2]; (ii) P-FP [10.23,C,1-2]; (iii) P-GP [10.23,E,1-2]; (iv) P-SL [10.23,L,1-2]; and (v) P-WL [10.23,N,1-2].

All protection subdistricts would include resources identified by staff during a land use inventory conducted for Bancroft Township in 2015. Information about existing natural resources comes from GIS data available through the Maine Office of GIS and from other state and federal resource agencies. That mapped data identifies those areas of Bancroft that meet the description of the proposed protection subdistricts listed below:

- I. Proposed P-AR subdistricts would include areas that are significant sand and gravel aquifers identified by the Maine Geological Survey in the Wytopitlock quadrangle (described in finding 16, D), and that meet the purpose and description of the subdistrict (set out in finding 18,D).
- II. Proposed P-FP subdistricts would include areas identified in the National Cooperative Soil Survey (US Department of Agriculture Soil Conservation Service Southern Aroostook County Soil Survey) that contain Mixed Alluvial Soils (described in finding 16, E), and that meet the purpose and description of the subdistrict (set out in finding 18, E, further discussion of which can be found below.).
- III. Proposed P-GP subdistricts would include areas within 250 feet of Lower Hot Brook Lake within Bancroft Township (described in finding 16, F).

- IV. Proposed P-SL subdistricts include: areas within 250 feet of flowing waters, downstream from the point at which such waters drain 50 square miles or more; and areas within 75 feet of flowing waters upstream from the point where such channels drain 50 square miles (described in finding 16, G).
- V. P-WL subdistricts would include areas identified in the National Wetland Inventory that contain emergent, scrub-shrub, or forested wetlands (described in finding 16, H), and that meet the purpose and description of the subdistrict (set out in Finding 18, H and further discussion of which can be found below).

These data sources proved sufficient for most protection subdistrict boundaries in Bancroft, with the exception of the boundaries of proposed wetland subdistricts and proposed flood prone area protection subdistricts in a few locations where mapped resources overlapped existing buildings and other structural development. In these locations the Commission worked with property owners and consultants to obtain more information about soils and to delineate wetland boundaries near developed sites.

There are no FEMA Flood Insurance Rate Map (FIRM) zones for Bancroft Twp. There is no known Base Flood Elevation (BFE). In a few locations, where mapped "Mixed Alluvial Lands" overlap existing buildings, the boundaries of these "Mixed Alluvial Lands" have been adjusted based on data collection in the field and photo interpretation of likely "Made Lands", which are commonly found in "built-up areas" according to the Aroostook County Soil Survey (USGS). The proposed Flood Prone Areas Protection Subdistrict would conform to the P-FP subdistrict description in Chapter 10 Land Use Subdistricts and Standards, Section 10.23,C,2.

- E. P-WL subdistricts are proposed around resources identified in the National Wetlands Inventory (NWI). In a few instances, mapped wetlands overlapped existing structural development. In these locations, P-WL boundaries were further refined to exclude existing buildings in consultation with property owners. The proposed, refined, boundaries of wetland protection subdistricts reflect data collected in the field by Commission Staff, data collected through formal wetland delineation by consultants Boyle Associates, and additional information collected in consultation with property owners. The proposed Wetland Protection Subdistricts would conform to the P-WL subdistrict descriptions in Chapter 10 Land Use Subdistricts and Standards, Section 10.23,N,2.

Consistency with the Commission's Comprehensive Land Use Plan (CLUP)

- 2. Upon its deorganization, Bancroft became part of the jurisdiction of the Land Use Planning Commission and the Commission is required to develop a land use guidance map for Bancroft within one year of deorganization [30-A M.R.S. § 7205(5)]. The proposed land use districts on the map must be consistent with the CLUP [12 M.R.S. § 685-A(8-A)].

The proposed map is consistent with the Broad Goals of the Commission (described in finding 19,A). The proposal seeks to preserve, to the extent practicable, development rights available to property owners prior to municipal deorganization, while simultaneously protecting and conserving existing natural resources. Prior to deorganization, Bancroft did not have any zoning

beyond state mandated shoreland zoning (38 M.R.S. § 435). Extension of the principles of sound planning and management for multiple uses through the Commission's regulatory framework will ensure existing natural resources and historical development patterns are supported and promoted by separating incompatible uses, and maintaining outstanding quality water, air, forest, wildlife, and other natural resources.

The proposed map is consistent with the Location of Development Goal (described in findings 19, B). The proposal includes Development Subdistricts that reflect historical development patterns and focus development near existing similar uses. The majority of Bancroft Township would be within the General Management Subdistrict (M-GN), which encourages land management activities such as forestry and agriculture. Proposed development and management subdistricts would exclude natural resources otherwise eligible for inclusion in a protection subdistrict.

The proposed map is consistent with the Location of Development on a Jurisdiction-wide Level Policy (described in finding 19,C). Proposed development subdistricts would include areas consistent with historical development patterns. While protection subdistricts were based on existing natural resources identified during the land use inventory, development subdistricts took into account historical development patterns, existing densities, and landowner intent. As a result they include undeveloped areas to accommodate future growth. During the two public meetings and subsequently as the map was developed, the Commission, with input from residents and property owners, identified two areas as being appropriate future growth centers. Both proposed D-GNs either currently have, or previously have had, non-residential uses. Both are proximate to other existing residential development and public roads, and were identified as community focal points by participants in the public informational meetings.¹⁹

The proposed map is consistent with the Location of Development on a Community or Regional Level Policy (identified in finding 19, D). The proposed zoning map was developed in a manner similar to past efforts to prospectively zone deorganized municipalities (described in findings 19,H). The CLUP includes a discussion of prospective zoning, by which the Commission "uses information on existing development patterns, natural resources constraints and recent trends to identify and zone areas appropriate for future growth" (CLUP, pg. 63). The CLUP goes on to

¹⁹ The Commission's central principles regarding growth and development are: (1) Discourage growth which results in sprawling development patterns, and (2) Encourage orderly growth within and proximate to existing, compatibly developed areas. (2010 CLUP, chapter 4, p.61). For most rezoning on a case-by-case basis, the Commission looks to meet those principles by requiring that new development be located near existing development. This "adjacency" principle has generally been interpreted by the Commission to mean "that most rezoning for development should be no more than one mile by road from existing, compatible development." (2010 CLUP, chapter 4, p.62).

The process for adoption of a land use guidance map for an entire township considers existing uses and resources, and considers trends and future needs, on a township-wide basis to identify subdistrict areas for current and future development. This process is a form of prospective zoning. "Under prospective zoning, the Commission uses information on existing development patterns, natural resource constraints and recent trends to identify and zone areas appropriate for future growth. This allows the Commission to direct development on a regional level to areas that are suitable based on proximity to development centers and infrastructure." (2010 CLUP, chapter 4, p.63) This prospective process allows zoning to meet the Commission's central principles regarding growth and development without requiring that development subdistricts be located "no more than one mile by road from existing, compatible development" as the Commission generally requires for case-by-case rezoning of property in conjunction with specific development proposals.

describe several communities that have deorganized and been prospectively zoned. In each MCD the Commission “developed and adopted zoning maps which included development zones that have sufficient undeveloped land to accommodate future growth” (CLUP, pg. 64).

The proposed map is consistent with the Water Resources and Wetland Resources Goals (described in findings 19, E & G). The proposal includes shoreland and wetland protection subdistricts to protect water and wetland resources within the township including emergent, scrub-shrub, and forested wetlands. The proposal is at least as protective of water-based natural resources in Bancroft Township as the municipality’s state mandated shoreland zoning ordinance. Bancroft’s shoreland zoning provided protection to a list of designated resources. All of these resources also fall within protection subdistricts in the Commission’s Jurisdiction. In some situations, the Commission’s regulatory framework would provide more protection for designated resources. For example, shoreland zoning would provide some level of protection for non-forested wetlands over 10 acres in size, while P-WL subdistricts provide additional protection to forested and other wetlands under 10 acres in size.

The proposed map is consistent with the Water Resources Policy (described in finding 19 F). Proposed P-AR subdistricts would contain identified aquifer resources. Prior to deorganization, Bancroft did not have any ordinances in place to provide specific protections for identified aquifer resources.

Consistency with Chapter 206-A

3. The Commission evaluated the petition and finds it to be consistent with Chapter 206-A and principles of sound planning, zoning, and development. Having considered the locations of existing natural resources and development as described in findings 15-16, the review of agency and public 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.

Impacts on Existing Uses and Resources

4. A rezoning petition may not be granted unless 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.

The Commission finds that proposed district designations have no undue adverse impact on existing uses and resources and. This proposal extends zoning to a township that now falls under the jurisdiction of the LUPC as a result of municipal deorganization, but which previously had no zoning in place to protect and manage its existing uses and resources.

The proposed development subdistricts reflect historical development patterns and growth centers identified in consultation with residents and property owners and should over time result in an overall positive impact on the community. The zoning will serve to direct development to the areas identified as being the most appropriate for those types of

development. The zoning also provides greater predictability for anyone interested in developing and therefore may facilitate some economic development in the community.

The zoning also serves to discourage development in places that are not appropriate due to the characteristics of the land, resources, and uses in the area. Potential future negative impacts from development would be minimized by establishing protection subdistricts in the new township where there was no prior protection in place for significant natural resources. Establishment of protection subdistricts would create a baseline from which future potential impacts from specific development proposals could be measured.

Potential impacts on existing uses and resources are considered broadly when land use districts are proposed for adoption. The Commission has made such considerations here through the land use inventory; community engagement, and resource data mapping. The Commission looks in greater detail at potential impacts from development during review of permit applications and would, for instance, consider special areas identified by Maine Natural Areas Program and Inland Wading Bird and Waterfowl Habitat during a development review process in Bancroft Township.

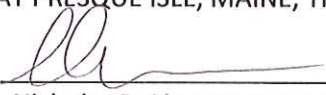
Final Conclusions

5. In summary, and for reasons explained above, the Commission concludes that the proposed rezoning of Bancroft Twp to: D-GN; D-RS; M-GN; P-AR; P-FP; P-GP; P-SL; and P-WL subdistricts:
 - A. Is consistent with the standards for district boundaries in effect at the time;
 - B. Is consistent with the Commission's Comprehensive Land Use Plan;
 - C. Is consistent with the purpose, intent and provision of Title 12, Chapter 206-A; and
 - D. Will not have undue adverse impact on existing uses or resources.

Therefore, the Commission approves the staff initiated petition to rezone Bancroft Township to: D-GN; D-RS; M-GN; P-AR; P-FP; P-GP; P-SL; and P-WL subdistricts.

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 part 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 PRESQUE ISLE, MAINE, THIS 9th DAY OF DECEMBER, 2015.

By: 
for Nicholas D. Livesay, Executive Director

This change in subdistrict designation is effective on December 24th, 2015.