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# HCPC NEWSLETTER

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Hancock County Planning Commission

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Volume XXVII, Issue 3

Fall 2005

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## PLANNING NEWS

*By Tom Martin*

### **SUPREME COURT EMINENT DOMAIN CASE: WHAT DOES IT MEAN FOR MAINE?**

*By Attorney General G. Steven Rowe with edits by Tom Martin*

On June 23, 2005, the U.S. Supreme Court issued a decision involving the scope of state authority under the Fifth Amendment of the U.S. Constitution to take private property by eminent domain, *Kelo v. New London*, 2005 U.S. LEXIS 5011 (“*Kelo*”). Just what will be the impact of this decision on the state of Maine? A recent opinion by Attorney General G. Steven Rowe may help answer this question. An edited version of this opinion follows. A full version appears on our web site: <http://www.hpcpcme.org/index.html>. Contact Tom Martin if you have any questions on this case.

### **Summary of Case**

The *Kelo* case involved the City of New London’s plan to re-develop an economically depressed district by constructing a new hotel, restaurants, retail stores, residences and office space. To allow for the new construction, the City authorized the acquisition of property in the development area by eminent domain. A Connecticut statute expressly authorized the use of eminent domain to promote economic development. Several landowners in the area of the planned development challenged this use of

the City's eminent domain authority. The landowners argued that the development plan failed to serve a *public purpose*, and therefore failed to satisfy the Fifth Amendment's requirement that government may take private property only for *public use*.

The Supreme Court found that the development plan served a public purpose and therefore constituted a public use under the Takings Clause of the Fifth Amendment. In reaching this conclusion, the Court determined that the plan did not benefit a particular class of identifiable individuals. Importantly, the Court's opinion only addresses the limits that the United States Constitution places on the exercise of eminent domain authority, and is careful to point out that states are free to place restrictions on the use of this authority that go beyond the Federal Constitutional limits.

### **Limits on State Eminent Domain Authority under Maine Law**

Maine law is different. Article I, Section 21 of the Maine Constitution provides: "Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it." This language differs from the takings clause of the U.S. Constitution with the additional requirement of "public exigencies."

There are numerous Maine statutes authorizing the taking of property by eminent domain. The general municipal eminent domain power statute is found at 30-A M.R.S.A. § 3101, which applies only to takings not authorized by another statute. Section 3101 permits a municipality to acquire real estate or easements for "any public purpose" using the condemnation procedure for town ways, subject to two very significant limitations: 1) the municipality may not take any land without the consent of an owner if the owner or the owner's family reside in a dwelling located on the land; and 2) land taken under this provision may only be used for the purpose for which it was originally taken.

*Kelo* held that owner occupied residential property could be taken by eminent domain consistent with

the Fifth Amendment. That result could not occur in a taking under Section 3101 because of the requirement of owner consent; however, § 3101 expressly states that it does not apply to any taking authorized "by any other law." Accordingly, we must look to the precise terms of the particular statute that forms the legal basis of a taking. Maine law contains several such statutes. Examples include: 23 M.R.S.A. § 3022-3023 (local highways and easements); 30-A M.R.S.A. 3402 (sewers and drains); 30-A 3510 (transportation districts); and 30-A M.R.S.A. § 4746 (housing authorities).

An urban renewal authority created by a municipality may use eminent domain power to acquire property to prevent, clear and redevelop blighted areas; this may include the transfer of the acquired property to a redeveloper, pursuant to 30-A M.R.S.A. §§ 5101-5122. A municipality may also adopt a community development plan to provide either low and moderate income housing or public facilities to expand economic opportunity under 30-A MRSA §§ 5201-5205. Under the latter statutes, a municipality has general authorization to acquire by eminent domain "any vacant or undeveloped land" and "any developed land and structures, buildings and improvements existing on the land located in designated slum or blighted areas for the purposes of the demolition and removal or rehabilitation and repair or redevelopment of property so acquired." 30-A M.R.S.A. § 5203(3)(A). Unless there is a formal declaration of blight, land may generally not be taken in Maine by eminent domain for economic development purposes.

### **Recent Maine Court Cases**

*By Madge Baker, Esq. Reprinted from the Southern Maine Regional Planning Commission Newsletter*

### ***Phaiah v. Town of Fayette, Maine Supreme Judicial Court, decided 1/ 28/05, Variance case***

**Facts:** The owners of a parcel applied for and were granted a building permit in 1991. Soon after Phaiah bought the property. Subsequently, the building permit expired and later the zoning

ordinance was amended. In 2002 Phaiah hired an engineering firm which determined there was no place to construct a house that would conform to the ordinance. Phaiah applied for a building permit, was denied, then applied for a variance. The ZBA denied the variance on the grounds the applicant or prior owners were at fault because they did not take advantage of the 1991 building permit. Superior Court overturned this decision. The Town appealed.

**Issue:** Should the variance have been denied?

**Ruling:** The Supreme Judicial Court agreed with Superior Court that the ZBA should not have denied a variance. A failure to build does not bar any subsequent attempts to build. The Court remanded the case to the ZBA to clarify its findings with respect to reasonable return.

***Gensheimer v. Town of Phippsburg, Maine Supreme Judicial Court, decided 2/2/05, Shoreland zoning case***

**Facts:** The Gensheimers applied to the Phippsburg Planning Board seeking to use and maintain an existing roadbed on their property as an alternate access. They argued the subdivision road was dangerous. The PB denied the application.

The Gensheimers appealed. The ZBA agreed with the PB that the current subdivision access road is available and approved. The Gensheimers appealed. Superior Court upheld the ZBA's decision to affirm the PB decision.

**Issue:** Was the PB right or wrong?

**Ruling:** A significant portion of the opinion deals with which municipal decision the Court reviews and whether the ZBA undertook an appropriate review of the PB decision. After reviewing the case law and the Phippsburg ordinance, the Court determined the ZBA should have conducted an appellate review but instead conducted an evidentiary hearing and made independent factual determinations about the existing subdivision road. Based on that finding, the Court concluded it should review the PB decision. When reviewing the PB decision the Court decided to remand the case to the PB for them to make an evidentiary finding concerning a key fact.

**Comment:** As a general rule, ZBA's are not permitted to do anything more than review the decision of the PB or CEO. This is called an "appellate" review. No new evidence is gathered. The ZBA looks for errors and findings not supported in the record. These cases are very different from variance and interpretation appeals where the ZBA conducts the evidentiary hearing. It is important for ZBAs to understand the differences between the two kinds of appeals.

***Lewis v. Town of Rockport, Maine Supreme Judicial Court, decided 4/1/05, Variance case***

**Facts:** The Steinglasses have lived on the property since 1973. At sea level is a boathouse, and ten feet above and set further back was a house. Over time they converted the boathouse into a dwelling and sold the house to the Lewises, but kept a portion of the land and in 1984 got permits to build a garage. In 1999 they applied to remove the garage and replace it with a house. The Lewises appealed and the Steinglasses shelved their plans. In 2002 the Steinglasses obtained a special exception to lift the boathouse, install a new foundation, and place a larger structure on the foundation. The Lewises could not attend the application and were denied a continuation to when they could attend. Then the Steinglasses applied for a variance from the Floodplain Management ordinance, and the Lewises appeared in opposition. The ZBA decided that: a failure to grant the variance would result in undue hardship; and the need for a variance was due to the unique circumstances of the property. The Steinglasses obtained permits from the CEO to proceed. The Lewises appealed, claiming that the permits were based on expanded plans not approved by the ZBA, and that the CEO did not have authority to issue them. The ZBA affirmed the granting of the permits, ruling that the section of the Land Use Ordinance pertaining to elevation above the flood plain applied to *new* structures only. Superior Court consolidated the appeals and concluded the Lewises lacked standing. At the same time Superior Court held that the finding that the property could not yield a reasonable return without the variance was not supported by the record.

**Ruling:** The ZBA decisions were overruled.

**1. Standing:** The Supreme Court decided the Lewises did have standing because the proposed enlarged building was right next door. (Why Superior Court had trouble with this issue is not explained.)

**2. Variance:** The Court found that the Steinglasses would not need a variance if they expended less than 50% of the value of the boathouse on repairs. In addition, the boathouse alone is valued at \$220,000. It appeared to the Court the owners could sell it for a significant sum. The Supreme Judicial Court therefore agreed with Superior Court on this issue: the owners did not prove they would not receive a reasonable return.

**3. Building Permit:** The Court found that the ordinance is clear: flood elevations apply to *all* buildings and structures.

## **NEW MAINE STORMWATER MANAGEMENT RULES**

After 8 years, Maine Stormwater Management Law and regulations are being revised. Proposed changes have been approved by the Maine Legislature and will be brought to the Board of Environmental Protection this fall for final adoption. The rules will likely become effective in October or November 2005. Visit the following website for the new rules, and additional information concerning their progress through the Legislature and for other useful tools for its implementation.

<http://www.maine.gov/dep/blwq/docstand/stormwater/rule500and502/material.htm>

The highlights of the rule changes include a change in the threshold for jurisdiction and the application of water quality standards in all watersheds. The threshold for needing a permit previously was set at 20,000 square feet or 1 acre impervious area, depending on whether or not the watershed was designated either “most at risk” or “sensitive or threatened,” or 5 acres of disturbed land. If not designated in either of those categories, a development project was not required to meet water quality standards. Under the new program, the threshold in all instances will be 1 acre of disturbance, which is the same as

the threshold under the federally mandated construction general permit, also administered by the Maine DEP.

The standards that apply will depend on the amount of impervious area, and whether or not the watershed is impaired, or in the case of lakes, designated as “most at risk” (lakes are the only water resources which will still be subject to the “most at risk designation). Smaller projects will only need to do “Basic” standards which consist of erosion and sedimentation control, inspection and maintenance, and follow good housekeeping practices. Larger projects will need to meet “General Standards” and will have a choice of several Best Management Practices designed to address both water quantity and quality concerns.

These standards will apply in all watersheds. Additional requirements will also apply for larger, Site Law sized projects. The changes in statute are expected to become effective 90 days after the Legislature adjourns (mid to late September). After that, final approval of rule changes will still need to be made by the Board of Environmental Protection, so the effective date for all of the changes will likely occur late in 2005. For more information on the changes, visit Maine DEP’s web page at:

<http://www.maine.gov/dep/blwq/docstand/stormwater/index.htm>, or contact either Judy Gates at 287-7691 (e-mail:[judy.gates@maine.gov](mailto:judy.gates@maine.gov)) or Don Witherill at 287-7725 (e-mail:[donald.t.witherill@maine.gov](mailto:donald.t.witherill@maine.gov)).

## **DEVELOPMENT TRACKING GUIDE NOW AVAILABLE**

*The Hancock County Planning Commission, in cooperation with the State Planning Office has completed work on Development Tracking: A Guide for Hancock County Communities. A draft copy is available for review on our web site:*

<http://www.hcpcme.org/index.html>

## **WHY TRACK DEVELOPMENT?**

Tracking development helps us assess where growth is occurring and how it is affecting our

region. We all know that much of Hancock County is growing rapidly. As we travel our roads, we see new driveways and homes and businesses being built. But no one has taken a comprehensive look at just where all this development is occurring. Is it mainly along back roads, main roads, around lakes and the shore? We need to answer these questions if we are to understand how development is changing our county and to plan for the future.

Planning for services such as school bus routes and fire department substations requires information on where current beneficiaries live and where future beneficiaries will live. Towns may have only one opportunity in several decades to build a fire station or new school house. Choosing the right location for the present and for the future can make a significant difference in emergency response time and travel times for children riding school buses.

Development tracking is one of the most effective ways to learn if a town has enacted a successful comprehensive plan. Tracking data allows a town to evaluate how successful its plan has been in attracting development to its growth areas, and protecting its rural areas. This shows a town if its land use strategies are effective or if they need adjustment.

The report offers suggestions on how to best track development in your town. Each town must adjust its method to reflect local conditions and needs. The HCPC would be happy to help towns develop their own approach. Feel free to contact Jim Fisher or Tom Martin for assistance.

## **SUBDIVISION DEVELOPMENT AND PERSONAL PROPERTY RIGHTS:**

### ***Striking a Balance in Hancock County*** *by Sherry Churchill*

The third forum of our on-going series was held on Thursday, June 30, 2005. Panelists selected for this forum are well experienced in the site plan review and ordinance development process. They included the HCPC's own Tom Martin, Michelle

Gagnon, Ellsworth City Planner and two local land use attorneys, Edmond Bearor and James Patterson. The VFW Hall proved to be such a refreshing and much appreciated venue that the next forum will take place at the same location.

The fourth forum's topics include subdivision and personal property rights issues related to conservation easements and liquidation harvesting. Please join us to become better informed about the pros and cons of having conservation areas located within your municipal borders, and get the latest updates on the liquidation harvesting rules. The forum is scheduled for Thursday, October 27, 2005 from 6:00 p.m. until 9:00 p.m. Like previous events, doors will open at 5:00 for a light dinner and drinks. A registration fee of \$17.00 per person includes materials and a light meal; pre-registration is required.

Details of the evening's program are still being organized as this newsletter heads to the printers. Please contact us as we approach the date if you are interested in attending to confirm the meeting time/location/panelist details. Partners in this ambitious endeavor include the Hancock County Planning Commission, Down East Resource Conservation and Development Council, Gouldsboro Planning Board, and the Union River Watershed Coalition. Contact Sherry Churchill, HCPC Planner at 667-7131 or [schurchill@hpcme.org](mailto:schurchill@hpcme.org) for more information.

## **LEGISLATIVE NEWS**

*By Tom Martin*

Here are some of the relevant pieces of legislation enacted into law in Maine during the most recent session of the Legislature:

### **LD 472 – An Act To Amend the Statewide Building Code.** (Sponsored by Rep. Koffman of Bar Harbor) **Enacted; PL 2005, c. 200**

This Act establishes the International Existing Building Code (IEBC) as the model building rehabilitation code in Maine. The Act does not preempt existing rehabilitation codes, nor does it

mandate the adoption of the IEBC. Any town that chooses to adopt a rehabilitation code must adopt the IEBC. The adopting town may make amendments to the code.

**LD 185 – An Act To Amend the Law on Mercury-added Products.** (Sponsored by Rep. Koffman of Bar Harbor) **Enacted; PL 2005, c. 148**

This Act amends the law regarding the removal, recycling and disposal of mercury switches in scrapped motor vehicles. Among other provisions, the Act authorizes municipal code enforcement officers to enforce the prohibition on the crushing of motor vehicles without first removing any mercury switches

**LD 286 – (New title) Resolve, Directing a Review of Comprehensive Planning and Growth Management in Maine.** (Sponsored by Rep. Joy of Crystal) **Finally Passed; Resolves 2005, c. 73**

This Resolve directs the State Planning Office to study current law, policy and procedures regarding land use planning, management and regulations. The purpose of the study is to review the effectiveness of Maine's growth management laws and identify changes in state law, policy and procedures that would facilitate more effective land use planning. The State Planning Office is directed to assess its procedures and policies for reviewing comprehensive plans, consider ways to provide greater recognition and reward for municipalities that manage growth, and develop recommendations to change the focus and context of comprehensive plans. The SPO report is due to be submitted to the Legislature by February 1, 2006.

**LD 1161 – (New title) An Act To Provide for Variance Notification in the Shoreland Zoning Law.** (Sponsored by Rep. Hutton of Bowdoinham) **Enacted; PL 2005, c. 440**

This Act requires all municipalities to provide formal notification to the Department of Environmental (DEP) whenever a person files a request with the municipal Board of Appeals for a variance from the standards in the local shoreland

zoning ordinance. The notification must include the application and all supporting documentation provided by the applicant. The DEP is authorized to provide its comments to the municipality if the Department believes the variance, if granted, would not be in compliance with state law.

**LD 1268 – An Act To Amend the Law on Junkyards, Automobile Graveyards and Automobile Recycling Businesses.** (Sponsored by Sen. Cowger of Kennebec County) **Enacted; PL 2005, c. 424**

This Act amends the law governing the licensing of junkyards, automobile graveyards and automobile recycling business to correct or adjust the comprehensive amendment of those laws enacted two years ago. Specifically, the Act: (1) authorizes municipalities to require automobile hobbyists to meet the statutory screening standards for junkyards and automobile graveyards and certain statutory environmental standards; (2) allows a municipality to provide electronic notice, rather than mailed notice, of an application to establish a new automobile graveyard or recycling business; (3) prohibits the renewal of a license if there is clear evidence that the permitted activities have contaminated a well; (4) establishes a requirement that the applicants for a license for a junkyard or automobile graveyard are engaged in the activity for commercial purposes; (5) clarifies that the applicants are financially responsible for the direct costs of notice of the licensing hearings; and (6) requires municipalities to provide written or electronic notice to the Secretary of State's Office, at least seven days before the municipal officers hold a hearing on the proposed suspension or revocation of a junkyard, automobile graveyard, or automobile recycling business.

**LD 1506 – An Act To Update the Laws Governing Borrow Pits and Quarries.** (Sponsored by Sen. Nass of York) **Enacted; PL 2005, c. 158**

This Act makes a number of changes to the state-level standards governing gravel pit and topsoil excavation and quarry mining. With respect to municipalities, the Act allows for variances from

the setback and natural buffer standards from public roads and right of ways if the public entity or entities with the authority to grant those variances provides written authorization.

**LD 1574 – An Act To Assist Towns with the Implementation of the Laws Governing Growth Management.** (Sponsored by Sen. Edmonds of Cumberland County) **Enacted; PL 2005, c. 290**

This Act amends the laws governing the permitted uses of resources distributed through the Municipal Investment Trust Fund to include the restoration of public service infrastructure and the acquisition of open space.

**LD 1588 – An Act To Amend Certain Laws Administered By The Department of Environmental Protection.** (Sponsored by Rep. Koffman of Bar Harbor) **Enacted; PL 2005, c. 330.**

This Act is the Department of Environmental Protection's omnibus bill containing 42 sections. Of interest to municipalities, the Act changes the effective date of the disposal ban on products containing cathode ray tubes from January 1, 2006 to 9 months following the adoption of the rules that will govern the disposal ban. Accordingly, the approximate effective date of the disposal ban is July 1, 2006.

**LD 1633 – An Act To Prohibit the Disposal of Dangerous and Unsafe Material in Solid Waste Facilities.** (Sponsored by Rep. Daigle of Arundel) **Emergency Enacted; PL 2005, c. 406 (6/17/05)**

This Act establishes as a civil violation the act of knowingly concealing dangerous or unsafe materials within other waste materials and disposing of the dangerous materials in a solid waste facility. Dangerous and unsafe materials are defined to include pressure tanks or propane tanks, flammable materials, or explosive materials. The Department of Environmental Protection is directed to adopt rules further defining "dangerous or unsafe material". The maximum penalty for the civil violation is \$500.

**LD 991 – An Act To Restore Municipal Authority To Review Development Using Flexible Standards.** (Sponsored by Sen. Mills of Somerset County) **Enacted; PL 2005, c. 244**

This Act amends the law governing the granting of variances from dimensional zoning standards in zoning ordinances, which is currently controlled by a 6-part statutory "practical difficulty" test. The Act establishes that a zoning ordinance may explicitly delegate to the municipal planning board the ability to approve development proposals that do not meet the dimensional standards otherwise required by the ordinance for the purpose of promoting cluster development, accommodating lots with insufficient frontage or providing for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the "parameters" of an ordinance delegating this kind of discretionary authority, the approval of the development is deemed not to be considered the granting of a variance. This delegation of authority does not allow for the reduction of the dimensional standards required under the state's mandatory shoreland zoning laws

## **CDBG NEWS**

### **UPDATE ON CDBG INCOME SURVEYS**

The Maine Office of Community Development (OCD) has prepared a new methodology for conducting income surveys. Towns that need to determine household incomes of a particular service area often conduct surveys. The OCD will only accept surveys that are consistent with its methodology. If you are planning to conduct a survey be sure to check with Tom Martin or Jef Fitzgerald at the HCPC to assure that you are following the required procedures. You may also check the OCD web site: <http://www.meocd.org/forms/policies.php> and review Policy Statement # 19.

# **PROPOSED CHANGES IN THE FY-06 CDBG PROGRAM**

There are a number of proposed changes in the CDBG program for the upcoming grant round. We will keep you posted on the status of these changes as they evolve. Proposed changes include the following:

## **Community Enterprise Grants**

1. Eliminate the Micro-Loan Program activity.
2. Communities will not be able to receive a Downtown Revitalization and a Community Enterprise award in the same program year.
3. The maximum award amount will be increased to \$150,000.

## **Downtown Revitalization Grants**

1. Change the criteria for the 3 bonus points from service center status to Maine Downtown Center (MDC) Designation.
2. Communities may not submit an application for the Downtown Revitalization program if they have received two DTR awards within the five year period prior to the program year for which they are applying.

## **Housing Assistance Grants**

1. Program awards will be for the current year only instead of announcing awards for two years from one round of applications.
2. Communities may not submit an application for the Housing Assistance program if they have received or benefited from two HA awards (rehabilitation, innovative or a combination) within the five year period prior to the program year for which they are applying.
3. The maximum HA program award will be \$300,000.

## **Public Service Grants**

1. The eligible activities will be expanded to include some for which area wide benefit may be used to meet the program requirement if at least 51% of the residents of the community meet the HUD established income limits.
2. The maximum award amount will be reduced to \$40,000.

## **Economic Development Program**

1. Establish a minimum program request amount of \$100,000.
2. Establish a project maximum of \$5,000,000. This means that CDBG funds will not be available for projects that have a total proposed cost of over \$5,000,000.

## **Community Planning Grants**

1. Housing assessments will remain an eligible activity.
2. The maximum award amount of all Community Planning Grants will be \$10,000.
3. The cash match requirement will be increased to 25% of the award amount.

## **PROPOSED APPLICATION DEADLINES**

Application are due in Augusta by 4:00PM EST on the dates listed. *Please note that the Public Facilities and Public Infrastructure grants now require a preliminary letter of intent before submitting an actual application.*

### **Public Facilities and Public Infrastructure**

Letter of Intent and Verification of CDBG National Objective.....on or before December 2, 2005

Applications.....January 13, 2006

Downtown  
Revitalization.....February 10, 2006

Community Enterprise .....February 10, 2006

Non-Profit Development Grants.....February 10, 2006

Economic Development Program.....February 10, 2006  
May 12, 2006  
August 11, 2006

(May 12 and August 11 application deadlines are based upon availability of funds)

Housing Assistance.....March 3, 2006

Public Service.....March 31, 2006

Community Planning.....April 21, 2006  
August 4, 2006

Urgent Need .....1<sup>st</sup> come basis beginning March 3, 2006

Interim Financing Program.....Open

Project Development Phase Planning Grants.....Open

## **TRANSPORTATION NEWS**

*by Jim Fisher*

### **Regional Transportation Assessment Public Forums Planned**

The Hancock County Planning Commission in conjunction with the Eastern Maine Development Corporation (EMDC) completed a Regional Transportation Assessment (RTA) in June. This analysis will help to steer Maine Department of Transportation (MaineDOT) long term planning efforts.

Region 4, comprised of Hancock, Knox, Penobscot, Piscataquis, Waldo and Washington Counties includes numerous commercial centers and connecting corridors. The RTA summarizes economic, land use and transportation issues with detailed analysis and recommendations for eleven

of the most important corridors. These recommendations have been incorporated in a regional Comprehensive Economic Development Strategy (CEDS). Both documents are now working their way into state plans. You can read and respond to the RTA at [www.hpcme.org/transportation/needs/](http://www.hpcme.org/transportation/needs/) or visit HCPC to read it in our library.

Maine DOT, HCPC and EMDC are planning a series of public meetings to get additional feedback. We will hold a series of meetings in service-centers throughout the six Eastern Maine counties in September and October. Hancock County service centers are Bucksport, Ellsworth, Blue Hill, Bar Harbor and Southwest Harbor. Bar Harbor and Southwest Harbor discussions may be combined.

Transportation Commissioner David Cole will host eastern Maine regional forums in Machias on October 4<sup>th</sup> and Bangor on November 2<sup>nd</sup>. These forums will be an opportunity for MaineDOT to speak with local leaders, legislators and transportation advocates about current transportation needs, fiscal constraints Maine will be facing in addressing these needs and the economic consequences of the mounting backlog of transportation projects. These meetings are an essential step in the preparation the six-year transportation plan.

Precise dates, times and meeting places for the service center and regional forums will be published on our website and announced through the press when they are set. Please contact Jim Fisher at HCPC if you have any questions.

### **Looking to the Future**

MaineDOT recently concluded a two-day forum on the future of Maine’s economy and transportation. Presentations by a panel of 9 economists, planners and regional transportation specialists at this forum looked forward 25 years to changes in Maine’s population, economy, technology and transportation.

Dark clouds on the horizon include:

- A rapidly aging population living in relatively remote areas with little prospect for efficient mass transit,
- Rising productivity and diminishing resources in traditional industries resulting in significant manufacturing worker layoffs,
- Southern New England traffic gridlock slowing transportation systems into Maine,
- Lagging technology resulting in poor competitive economic performance.

The panelists also identified a few silver linings on the horizon, including:

- A growing reservoir of highly educated and motivated retirees providing our workforce and voluntary groups with extraordinary talent,
- New opportunities for ocean-going transportation, such as the “blue highway” east coast freighters,
- Technological advances that will enable us to travel with less difficulty and communicate worldwide.

Visit [www.hcpcme.org/transportation/longrange/](http://www.hcpcme.org/transportation/longrange/) for a summary analysis of future trends, transportation issues and policy alternatives.

## Penobscot Narrows

The Penobscot Narrows Strategic Transportation Planning process is underway. The HCPC and EMDC under contract from the Maine Department of Transportation are working with the towns of Bucksport, Orland, Verona Island and Prospect to identify obstacles and opportunities for travel throughout the region particularly for visitors who do not have private automobiles.

Until the 1930s many visitors to eastern Maine arrived by steamships, trains and buses. Early “rusticators” covered most of the distance from their homes in New York and Massachusetts by public transport. The rising popularity of private cars following World War II and the creation of the interstate highway system all but eliminated the public transportation alternatives.

In recent years we are seeing a small, but growing number of visitors traveling to Maine by bus, plane, train, cruise ship and bicycle. This trend may accelerate with rising fuel prices and expanding international travel.

In a few places visitors can be fully accommodated. The MDI Island Explorer is the gold standard for accommodating non-automotive travelers. Island explorer buses travel almost the entire island, in many cases running every 30 minutes. This year the Island Explorer added two vans specifically designed to carry a dozen cyclists with their bicycles on specially equipped trailers. In their first year of operation the vans have seen heavy use, often filling to capacity.

On the other end of the spectrum are many great destinations with few means to reach them. Fixed route transit in Hancock County is provided by Down East Transportation, Inc. with most towns receiving bus service one day per week, insufficient for the needs of visitors. The Penobscot Narrows region has a few additional options. The Bucksport waterfront is the first stop for a small cruise line that originates in Bangor and travels to destinations including Belfast, Bar Harbor and Castine. Bucksport is currently the only town in Hancock County with an active rail line, though like most rail lines in Maine it is currently dedicated to freight. The existing Waldo-Hancock Bridge has no accommodation for pedestrians and cyclists, a barrier that will be eliminated when the new bridge is opened in 2006. The new bridge will have wide paved shoulders and a sidewalk that runs underneath the deck. Motor coach service continues to be light, but may expand as the Penobscot Narrows communities become more of a destination. For more information visit [www.hcpcme.org/transport.html](http://www.hcpcme.org/transport.html)

## Calais Branch Corridor Management Plan

On July 15<sup>th</sup> on the banks of the Machias River Governor Baldacci announced that the Maine Department of Transportation will embark on a multi-year effort to replace the out-of-service

Calais Branch railroad tracks with a shared use trail extending from Ellsworth to Machias.

This decision follows years of debate over the feasibility of restoring rail passenger and freight services to this track, the relative costs and benefits of rails versus trails and the long range land use, transportation and economic impacts of conversion. The decision was made only after overwhelming political support was expressed by towns in Hancock and Washington Counties and funds were obtained for management planning.

Concepts like “rail-banking”, “rail-to-trail”, “rail-with-trail” and “shared use” are new to Maine, but have been in use for decades in many other states. Here’s what we mean:

- Rail banking – the tracks are removed and the scrap iron is sold. However, the corridor is retained for future rail use when demand is sufficient to justify reconstruction.
- Rail-to-trail – tracks and ties are removed and the trail is built in their place
- Rail-with-trail – the tracks are retained and a trail is constructed parallel to the tracks with separation to protect the safety of trail users.
- Shared use – more than one kind of travel is permitted, often including walking, bicycling, horseback riding, rollerblading, skiing, snowmobiling and off-road vehicles (ATV’s)
- Management plan – a document that describes how a trail will operate, including financing, design, management, the role of town and county governments and more.

The Calais Branch committee began meeting on August 23<sup>rd</sup> and hopes to conclude their work by late November. Visit [www.sunrisetrail.org](http://www.sunrisetrail.org) for information and contacts or contact Jim Fisher at HCPC.

## **HEALTH NEWS**

### **ARE YOU LEAD SMART?**

*by Jef Fitzgerald*

Many houses and apartments built before 1978 have paint that contains high levels of lead. Lead

from paint, chips, and dust can pose serious health hazards if not taken care of properly, especially during renovations.

Federal law requires that individuals receive certain information from landlords, sellers and renovators before renting, buying, or renovating pre-1978 housing. A pamphlet entitled, "Protect Your Family from Lead in Your Home" produced by the US Environmental Protection Agency explains many of the details. Following are some excerpts:

#### **Lead Exposure Facts:**

- \* People can get lead in their bodies by breathing dust or swallowing water, soil or paint.
- \* Exposure to even low levels of lead can harm children, even before they are born.
- \* Lead is especially dangerous to children under the age of 6.
- \* Removing lead-based paint improperly can increase the danger to your family.
- \* If you work with lead, you could bring into your home on your skin or clothes.

#### **Effects of Lead on Children:**

- \* Nervous system, hearing and kidney damage
- \* Speech, language, learning and behavior problems.
- \* Decreased bone growth and muscle coordination.
- \* Exposure to high levels can have devastating effects including seizures, unconsciousness and even death.

#### **Effect of Lead on Adults:**

- \* Increased chance of illness, muscle and joint pain
- \* Infertility, high blood pressure and digestive problems.
- \* Nerve disorders, memory and concentration problems.

#### **More Lead Facts:**

- \* The federal government banned lead-based paint from housing in 1978.
- \* Lead can still be found in and around homes, including soil.

- \* In general, the older your home, the more likely it has lead based paint.
- \* Get your child's blood checked if you suspect exposure to lead.
- \* Have your home tested and fix any lead hazards you may have especially if it was built before 1978 and has paint in poor condition.

**For More Lead Information:**

- \* Call 1-800-424-LEAD (5323) to ask for a brochure entitled "Reducing Lead Hazards When Remodeling Your Home."
- \* To access lead information via the web, visit [www.epa.gov/lead](http://www.epa.gov/lead) and [www.hud.gov/offices/lead/](http://www.hud.gov/offices/lead/).
- \* Call 1-800-426-4791 for information about lead in drinking water.
- \* Call Jef Fitzgerald (a "lead smart renovator") at HCPC (667-7131) with any questions on projects that may involve lead.

**Common Health for Hancock County**

*By Jim Fisher*

Tune into Live and lively WERU / FM 89.9 FM the third Wednesday of every month at 10:00 AM for Common Health!

This shameless promotion serves a good cause - our health. The Hancock County Planning Commission is into year three of a successful collaboration with University Cooperative Extension, Healthy Hancock and WERU to bring discussion of public health, health care access and quality. This year we have featured discussions of protecting our water supply, food security, public choices for health care services, local health programs, air pollution and more.

WERU is both a bully pulpit for our invited guests and a town meeting where listeners are encouraged to share their ideas and concerns by calling during programs and by visiting [www.commonhealth.org](http://www.commonhealth.org) to learn more about public health issues and send in questions.

**SOLID WASTE**

*By Sherry Churchill*

**City of Ellsworth Resumes Control of Transfer Station and Recycling Center**

For more than the previous five years, Pine Tree has held a contract to operate the Ellsworth Transfer Station and Recycling Center. Though the contract was due to expire this summer, it was extended through the month of September to give the newly formed solid waste management committee time to analyze costs and study all existing options. After putting the project out to bid, several proposals were accepted by the City for careful consideration. Committee members quickly concluded that it would realize significant cost savings if the facilities were under City management. That is the recommendation that the committee made to the City Council, which members unanimously voted to approve at August 15 meeting.

The transfer station and recycling centers will now be absorbed by the Public Works department. Committee members hope to increase the amount of recyclable materials and lower the amount of waste being generated so that the overall costs of waste management will be improved. Among the more immediate changes recognizable to the public will be more personable service, increased education, and greater efficiency. If you have ideas for improvements, please do not hesitate to contact the City of Ellsworth at 667- 2563. The HCPC also will be happy to pass suggestions along to committee members; we can be reached at [schurchill@hpcme.org](mailto:schurchill@hpcme.org) or 667-7131.

**Greater Ellsworth Regional Household Hazardous Waste Collection a Huge Success**

On Saturday, August 27, 2005, the second annual Greater Ellsworth Regional household hazardous waste (HHW) collection attracted more than 250 people who dropped off items for safe recycling and disposal. Unlike last year's event, universal waste, (UW - items commonly containing mercury) also was collected.

Oil-based paint, pesticides and aerosols were among the most popular HHW items collected. Computer and television monitors were popular drop-off items for the UW portion, as were

fluorescent bulbs. One Deer Isle resident delivered more than 100 PCB ballasts for proper disposal.

As successful as this year's event was, it is important to note that we are still only capturing a small percent of the hazardous waste generated among Hancock County households; there still is a long way to go if we are to maintain a safe and healthy environment. Special thanks go out to the University of Maine Cooperative Extension, Mark Wright Disposal, the Union River Watershed Coalition, and our many volunteers who participated in the planning process, many of whom were present on collection day to help direct traffic, answer questions, and greet participants. We will soon begin planning a similar event for the summer of 2006; please contact us if you are interested in volunteer opportunities or would like additional information about responsible methods of hazardous waste disposal. The HCPC can be reached at [schurchill@hcpcme.org](mailto:schurchill@hcpcme.org) or 667-7131.

### **MDI HHW/UW Collection Event Scheduled for October 1**

The Hancock County Planning Commission and Acadia Disposal District announce that 2005 household hazardous and universal waste permits are now available for residents from sponsoring communities of the greater Mount Desert Island region. The collection will take place on Saturday, October 1 from 9:00 to 1:00 at the MDI Regional High School. In order to participate in the collection for free, residents of sponsoring communities are required to pre-register and bring permits to the collection site on collection day. People from non-sponsoring towns who wish to participate will be required to pay for material disposal; the cost will be determined according to the amount of materials brought to the collection site. Sponsoring communities include:

Bar Harbor  
Cranberry Isles  
Lamoine  
Mount Desert

Southwest Harbor  
Tremont  
Trenton

Examples of household hazardous waste include cleaning solvents, oil-based paint, pesticides, used motor oil or brake fluid, and battery acid. Universal waste commonly contains mercury and includes items such as rechargeable batteries, mercury thermometers, thermostats, fluorescent light bulbs, and computer or television monitors. Residents will be limited to 10 gallons or 40 pounds of hazardous material disposal at no cost. With the exception of Bar Harbor residents, participants must pre-pay for television or computer monitors. The cost is \$8 for units 17 inches in size or less and \$11 for anything bigger. Bar Harbor residents may drop materials off at the recycling center during regular business hours. Unacceptable items include latex-based paint, propane tanks, flashlight batteries, asbestos, and biological waste.

Permits are available at the Bar Harbor Highway Department for Bar Harbor residents. Others may get a permit from their town office. Permits will be collected on the day of the event. For more information, please contact your town office or Sherry Churchill, HCPC Planner, at 667-7131 or [schurchill@hcpcme.org](mailto:schurchill@hcpcme.org).

### **Coastal Recycling Honored for Role in Eastern Hancock County Communities**

Coastal Recycling recently became the recipient of two impressive awards, both reflecting the positive turn the facility has taken in previous years. The facility just became recipient of a \$50,000 grant from the Roxanne Quimby Foundation, which will be used to fund much-needed infrastructure improvements and on Saturday, August 20<sup>th</sup>, U.S. Representative Michael Michaud presented the facility with an Environmental Protection Award from the Department of Environmental Protection. According to the EPA website, the award honors "pioneers in the cause of environmental protection."

Relatively recently, Coastal Recycling expanded its hours of operation and began taking in materials from more commercial establishments. There have also been several staff and board changes. Congratulations to Coastal Recycling for a job well done! For more information, Coastal Recycling staff can be reached on Wednesdays from 7:00 a.m. until 4:00 p.m. or Thursdays and Saturdays from 8:00 a.m. until 4:00 p.m. The telephone number is 422-6766.

## **GRANT NEWS**

*by Tom Martin and Jim Fisher*

### **SHORE AND HARBOR TECHNICAL ASSISTANCE GRANTS**

The State Planning Office, Maine Coastal Program announces the availability of technical assistance grants for shore and harbor planning activities in coastal municipalities. Grants are awarded to municipalities to promote sound planning, harbor management, and balanced development of shore and harbor areas to improve marine infrastructure and assure access to the shore. Funds may be used for harbor planning, including harbor management plans, ordinances, and mooring plans; as well as, planning studies for public and working access, planning and designing harbor improvements, developing management plans for municipal facilities in harbors and waterfronts that border upon and include state-owned submerged lands.

#### **Grant Requirements**

A match, in cash or in-kind, of 25% of total project cost is required. Projects showing a substantial additional municipal share will improve the competitiveness of the project proposal. Individual grants may not exceed \$25,000.

#### **Application**

Application materials are available from the State Planning Office, Maine Coastal Program, #38 SHS, Augusta Maine 04333. You may also find the application on-line at [www.maine.gov/spo](http://www.maine.gov/spo) or

from Sheri Walsh at the HCPC office and also on our website at [www.hcpcme.org/landuse](http://www.hcpcme.org/landuse)

Project application deadline is September 26, 2005. Potential applicants are encouraged to contact Jim Connors, Maine Coastal Program. Tel. 287-8938, Email [jim.connors@Maine.gov](mailto:jim.connors@Maine.gov) to discuss project ideas and consistency with the purposes of the Shore and Harbor Grant Program. The Hancock County Planning Commission can also help in the process. Feel free to contact Tom Martin at the HCPC.

### **Recreation Trail Funding Available**

The Maine Bureau of Parks and Lands has announced a deadline of December 9, 2005 for grant applications for construction and maintenance of recreational trails through the federally-funded Recreational Trails Program.

This grant will provide for the distribution of funds available from the anticipated federal fiscal year 2006 appropriation to the State of Maine from the Federal Highway Administration. Funds available to municipalities and nonprofit trail organizations for construction and maintenance projects are expected to be approximately \$430,000, while approximately \$30,000 is anticipated to be available for projects that promote trail safety education or environmental education. For more information, visit [www.maine.gov/doc/parks/programs/community/PDF/RecTrails\\_GrantMan04.pdf](http://www.maine.gov/doc/parks/programs/community/PDF/RecTrails_GrantMan04.pdf) (big file) or contact Jim Fisher

### **Digital Mapping Services**

The Maine Office of Geographic Information Systems (MEGIS) is about to launch a second round request for proposals for towns to digitize their tax maps. Over the past five years a majority of towns in Hancock County have worked with HCPC to create a unified digital tax map.

Digital tax maps enable better decision making for towns, that are able to create more precise overlays of environmental characteristics, such as wetlands and floodplains with parcels. Towns can quickly assemble abutter lists and send

notifications to property owners when proposals will affect them. Towns can identify development trends, where new land is being developed and how these trends are likely to affect municipal service demands, water quality and more.

Towns that have started down the digital path and those that are interested in starting should contact Jim Fisher or Jef Fitzgerald at HCPC for information and applications forms. The HCPC can help you to prepare a proposal and manage implementation of digital parcel mapping. Also, visit [www.hpcme.org/landuse.htm](http://www.hpcme.org/landuse.htm) to see examples of digital mapping.

## **HCPC LIBRARY NEWS**

### **New Publications**

HCPC recently received several books and publications as a donation to our library. They are on a variety of planning topics such as Green Building, Superstore Sprawl, Natural Resource Management, Population, Immigration and the Environment, A Handbook for Creating Successful Public Spaces, Parks as Community Spaces, Smart Growth for Better Schools, and Revitalizing Communities. These and many other publications are valuable resources available to planning boards and the cities and towns of Hancock County. You are welcome to borrow the materials. We ask that you sign them out and return them in a timely manner so that others may be able to access the information.

We would like to thank the individuals who donated the materials to the HCPC Lending Library. Your contribution allows us to help the municipalities of Hancock County.

### **Smart Growth Tool Box**

Our library also has a variety of publications and videos on smart growth techniques. If your community is exploring “smart” options on how to manage growth, you may want to use this resource. A full list of publications is available on the State Planning Office web site: <http://www.state.me.us/spo/landuse/resources/sprawl.php> and these can be downloaded from the site.

Feel free to contact Tom Martin at the HCPC if you have any questions.

## **DATES TO REMEMBER**

### **Wednesday, September 21**

10:00 AM WERU 89.9 FM

#### **Common Health**

### **Monday, September 26**

Maine Resource Recovery Annual Conference & Safety Training

Hutchinson Center

Route 3, Belfast

8:45 a.m. -3:00 p.m.

Registration: \$25.00

### **Saturday, October 1**

Mount Desert Island Regional HHW/UW Waste Collection

Sponsored by the Acadia Disposal District and HCPC

MDI Regional High School

Eagle Lake Road, Bar Harbor

9:00-1:00 p.m.

### **Tuesday, October 4<sup>th</sup>**

Transportation Assessment Public Forum

Machias – Precise Time and Location to be announced on HCPC website

### **Saturday, October 22**

MDI Farm-School Conference

Ellsworth High School, Ellsworth

### **Thursday, October 27**

6:00-9:00 p.m. (registrations begin at 5:00)

#### **Striking a Balance – Forum #4**

Land Conservation & Liquidation Harvesting

VFW Hall, Washington Junction Road, Ellsworth

Registration: \$17.00 Pre-registration is required

Please contact Sheri Walsh at 667-7131 or via email at [hpcp@hpcme.org](mailto:hpcp@hpcme.org).

### **Wednesday – November 2<sup>nd</sup>**

Transportation Assessment Public Forum

Bangor – Precise Time and Location to be

announced on HCPC website

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**Hancock County Planning Commission is a partner with local and county government to: protect our heritage and resources, plan for the future and promote a sound economy for the people of Hancock County.**

**FALL NEWSLETTER**

**Change Service Requested**