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# HCPC NEWSLETTER

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Hancock County Planning Commission

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## HCPC Executive Board

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### HCPC Staff

Thomas E. Martin, Executive Director

James H. Fisher, Senior Planner

Jennifer Boothroyd, Planner I

Sheri Walsh, Administrative Assistant

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## **PLANNING NEWS**

*By Tom Martin and Jen Boothroyd*

### **SHORELAND ZONING DEADLINE IS APPROACHING**

Remember that all shoreland zoning ordinances are presently under a July, 2008 deadline to meet the revised DEP guidelines. The HCPC has available printed and electronic copies of the guidelines. It is also available to assist towns in making the revisions. It has already worked with several towns in drafting the required language. Furthermore, we have the latest electronic copies of the medium and high value wetland maps and can produce a full-color map for your town. Feel free to contact Tom Martin if you have any questions. (See article on next page)

### **COMPREHENSIVE PLANNING AND ZONING ORDINANCE GRANT ASSISTANCE MAY BE AVAILABLE LATER THIS WINTER**

The State Planning Office presently expects to have matching funds available for the following purposes:

1. Comprehensive Planning Grants

These are for towns that have never received a grant to update their comprehensive plan. The

only eligible towns in the HCPC region are Amherst, Osborn, Waltham and Isle Au Haut. Contact Tom Martin for details.

## 2. Implementation Grants

This program funds towns to draft zoning provisions that are recommended in an adopted comprehensive plan that has been determined consistent with the State Planning Office review criteria. Towns that previously received an implementation grant are not eligible to apply, even if that grant was awarded in the early 1990s. Presently, we expect that each dollar of state grant money will be required to be matched by a dollar of local funds.

## 3. Comprehensive Plan Update Grants

These grants are for the updates of previously prepared comprehensive plans. Here again, a dollar per dollar local match of state grant funds is required. The updated plans must employ smart growth strategies.

If your town is thinking of applying this spring, we advise you to raise the local matching funds at your town or council meeting. We can assist you in drafting a budget and otherwise assess your needs.

A specifically worded warrant article is required, contact us for the wording or see: <http://www.maine.gov/spo/landuse/finassist/grants.php> We expect 2008 data to be placed on this website as soon as it available.

## **Shoreland Zoning Updates**

In 2006, the Department of Environmental Protection amended the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The Board's action requires that municipalities in Maine update their individual ordinances accordingly, and must do so by July 1, 2008. As the deadline approaches, municipalities that have not begun this process are encouraged to do so. Here is a summary of the issues and options your municipalities has for ordinance amendments.

**Timber Harvesting.** Each Maine municipality must choose an option for dealing with timber harvesting activities within the shoreland zone. There are three options that municipalities have to choose from.

First, a municipality can opt to repeal its local regulation of timber harvesting in the shoreland zone, thereby ceding regulation and enforcement to the Maine Forest Service. A municipality choosing this option would no longer have any timber harvesting provisions in their ordinance, and the Maine Forest Service would take over the regulation and administration of state-wide timber harvesting standards for shoreland areas.

A town may also opt to adopt the state-wide timber harvesting standards as written. In so doing, a municipality takes on the primary responsibility for regulating timber harvesting in the shoreland areas, but will be able to obtain assistance from the Maine Forest Service upon entering into a "memorandum of agreement" with the agency.

The third option that a municipality has is to keep their current timber harvesting standards. If a town chooses this option, however, it loses the ability to obtain enforcement assistance from the Maine Forest Service.

The state-wide standards will take effect on "the first day of January of the 2<sup>nd</sup> year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards." Until then, all municipalities will continue regulating timber harvesting activities according to their adopted standards.

**Freshwater Wetlands.** Maine municipalities must also review their regulation of areas within 250 feet of freshwater wetlands. Formerly, areas within 250 linear feet of non-forested freshwater wetlands which were rated moderate/high value by the Department of Inland Fisheries and Wildlife as of 1973, were required to be zoned as Resource

Protection. Recently, all municipalities were sent updated maps showing moderate/high value wetlands, as of 2006; these wetlands should now be used as the basis for Resource Protection determination. In most cases, this will result in additional areas being zoned as Resource Protection. As towns face this task, DEP offers a few tips. First, a municipality does not need to zone the entire shorefront of a great pond as Resource Protection; only the wetland that's associated with the great pond needs to be. Second, areas already designated as Stream Protected with a 75-foot setback do not rezoned as Resource Protection with a 250-foot setback. Third, municipalities are not expected to put developed areas into Resource Protection.

If you have any questions or need assistance, please contact Tom Martin at 667-7131.

Adapted from DEP's Shoreland Zoning News

## RECENT COURT CASES

*reprinted from the Southern Maine Regional Planning Commission Newsletter Fall 2007*

### *Case Notes by Madge Baker, Esq.*

#### ***Gregory G. Gensheimer et al. V. Town of Phippsburg, Maine Supreme Judicial Court, decided July 10, 2007***

##### **Shoreland Zoning case**

**Facts:** Mr. and Mrs. Gensheimer own an 1895 residence which is located in a Resource Protection District (RPD). As a result it is a legally existing non-conforming use. They want to build a new road as an alternate means to access their residence. The Planning Board and ZBA denied their application to build a new access because the Shoreland Zoning ordinance prohibits construction of a road or driveway in the RPD unless there is no reasonable alternative route or location. Superior Court disagreed, concluding that the non-conforming residence is a *permitted* use in the RPD so the driveway is permitted.

**Issue:** Is the non-conforming residence a permitted use in the RPD?

**Ruling:** No, said the Supreme Judicial Court. The Justices arrived at this conclusion after examining the language of the ordinance in question and the implications. It found, for instance, that uses permitted in the RPD are public in nature not private. A residence is private and is not contemplated as permitted in the RPD. This case may be of particular interest to lawyers. The Gensheimers argue that a previous Maine Court decision controls: *Gerald v. Town of York*, 589 A.2d 1272 (1991). The Justices have no choice but to distinguish this case from *Gerald*. The majority concludes they can, on public policy arguments at least. Justice Alexander does not think they can, and he dissents. I have not read *Gerald* so I offer no opinion.

#### ***Lisa Comeau v. Town of Kittery, Maine Supreme Judicial Court, decided June 26, 2007*** **Zoning case**

**Facts:** The Town Planning Board approved the construction of a public recreation center after several meetings and public hearings. The neighbors were not happy. They appealed.

**Issues:** 1. The Planning Board failed to adopt written findings. 2. The Town failed to show the project complied with the Town Land Use Ordinance and Comprehensive Plan. 3. The Planning Board failed to allow adequate opportunity for public comment.

**Ruling:** The only serious challenge to the Planning Board's decision was its failure to adopt written findings. The Planning Board never wrote up findings. Instead it designated the minutes of the meetings to serve as findings. The Court was not pleased. The case was remanded to the Planning Board to make written findings.

***Sanborn et al. V. Town of Sebago et al,***  
**Maine Supreme Judicial Court, decided May**  
**17, 2007**

## **Zoning and Building Code case**

**Facts:** The Andersons got approval to demolish a trailer and replace it with a two-story house. The abutters, the Sanborns, appealed. The Sanborns alleged five problems with the proposed house. The ZBA denied the Sanborns' appeal. Superior Court found the ZBA did not have jurisdiction over the appeal because the appeal challenged a building permit issued pursuant to the Building Code, and the ZBA only had jurisdiction to hear appeals from building permit denials.

**Issue:** Does the ZBA have jurisdiction?

**Ruling:** Yes. “. . .we conclude that the ZBA had jurisdiction over the Sanborns' appeal because it alleged violations of the Shoreland Zoning Ordinance. It would be a waste of resources for the ZBA to divide the appeal and decide only the issues related to the Shoreland Zoning Ordinance, while requiring the Sanborns to appeal the Building Ordinance issues to another forum, presumably to Superior Court.” The Justices go on in the same vein, saying that as a matter of public policy it is sensible to have parties challenging a building code approval to go through an administrative process before going to court. In this case that process would be to appeal to the ZBA. The case was remanded to the ZBA for additional findings with respect to the location of the road.

**Comment:** There is no question the Building Code in this case did not give the ZBA jurisdiction over challenges to building permits issued pursuant to the Building Code. If confronted with the similar building code language, a ZBA must look for the applicant to raise a zoning violation to grant jurisdiction.

## **CDBG NEWS**

*by Tom Martin*

While the much-in-demand CDBG (Community Development Block Grant) Public Facility and

Infrastructure grants Letter of Intent deadline will have passed by the time this newsletter has gone to print. It is still possible to seek CDBG funds for housing, public service, economic development and general purpose planning grants. For details, please contact Tom Martin or Jen Boothroyd at the HCPC.

The 2007 CDBG grant year was a good one for Hancock County. Blue Hill received two grants to help fund the Friendship House, an adult day care facility at the former Left Bank Café site. Winter Harbor received funds for improving its Main Street. The towns of Hancock and Trenton continue to work on economic development grants. We encourage all towns to take advantage of this diverse program.

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

### ***Striking a Balance in Hancock County***

*by Tom Martin*



### **Eleventh Striking a Balance Workshop Scheduled for January 30, 2008 (storm date January 31)**

While we are still finalizing the agenda, we expect to have the following topics addressed:

1. Light Pollution: What is it? Why is it a Problem in Maine? Peter Lord, *Island Astronomy Institute*
2. How to Regulate Light Pollution Through Local Ordinances, Tom Martin, *Hancock County Planning Commission*

3. [State Gravel Mining Regulations: An Overview by the DEP, speaker to be announced](#)
4. [State Gravel Mining: The Gravel Extractor's Perspective, speaker to be confirmed](#)

The session will be held at the VFW Hall, Washington Junction Road, Ellsworth. It will start with a light meal at 5:00 PM and ends at 8:30 PM. Detailed information will be mailed to all towns. Feel free to call Tom Martin (667-7131, [tmartin@hpcme.org](mailto:tmartin@hpcme.org)) if you have any questions.

## WATER QUALITY NEWS

### **Holiday cheer shows up in sewage**

According to University of Washington researchers, those snicker doodles you scarfed down during the holidays could have an impact on the water system. Associate professor of chemical oceanography Rick Keil and researcher Jacquelin Neibauer tested sewage sent into Puget Sound near Seattle from the nearby West Point treatment plant. They showed that from November 14 - December 9, 2006, levels of cinnamon, vanilla, and artificial vanilla rose dramatically, with the biggest spike occurring right after Turkey Day.

While the scientists are unclear how the baked goodies might affect public health, they theorize that the chemicals might affect fish in the water-salmon, for example, who rely on their sense of smell to find their home stream during spawning season. Also, based on data, scientists estimated that people in the area served by the plant ate 160,000 butter and chocolate-chip cookies and 80,000 cinnamon-flavored cookies during Thanksgiving weekend.

*From [Public Works](#) magazine, February 2007*

## JOINT PURCHASING

*by Tom Martin*

In our last issue we reported on the savings we had achieved through the cooperative salt bid. We are presently exploring two other possible joint

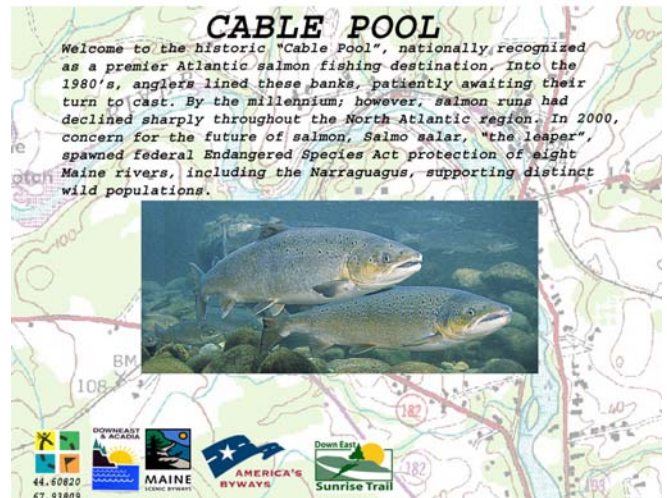
purchase ventures. The first is a cooperative purchase of public safety equipment. This may involve communications gear, computer software and hardware, turnout gear and similar items. We do not presently plan to include fire trucks and police cruisers since departments tend to prefer to buy vehicles from local vendors that can provide prompt servicing.

The second venture would be with public water and sewer systems. We are assessing the interest in a joint purchase of water and sewer related equipment such as treatment chemicals, testing services and meters. This project would be contingent upon United States Department of Agriculture funding.

## TRANSPORTATION NEWS

*by Jim Fisher*

### **Downeast Explorer Geo-Tourism Initiative Links Downeast Byways, Trails and Health**



HCPC is taking the initiative for integrated regional byway and trail promotion. The Geo-Tourism project will provide residents and visitors with way-finding tools, easy connections to information about specific tours, podcasts of local voices, and perhaps most intriguing, we'll be highlighting destinations with small geo-tour signs that will also function as waypoints for travelers using GPS and other new traveling technologies. It all starts at [www.downeastexplorer.org](http://www.downeastexplorer.org).

**Geo•tourism** n: *Tourism that sustains or enhances the geographical character of a place—its environment, culture, aesthetics, heritage, and the well-being of its residents.* (from [www.nationalgeographic.com/travel/sustainable](http://www.nationalgeographic.com/travel/sustainable))

We have some of the nations best loved, but also least discovered touring and outdoor recreational opportunities. Best known is Acadia National Park. Little known are the Schoodic to Tunk Mountain hiking trails and waterways and the heritage tour opportunities on Blue Hill peninsula. Soon to exist will be an 86 mile multi-use trail connecting Ellsworth with eastern-most Washington County.

Like the proverbial tree falling in the woods, much of what we have to offer is hidden, or worse, lost in a confusing mix of promotions, logos, signs and brochures. The geo-tour initiative does not seek to become yet another trail, but functions as a way-finding assistant for people who want to learn about our region, spend some quality time driving, pedaling, hiking or snowmobiling to destinations both well known and well hidden.

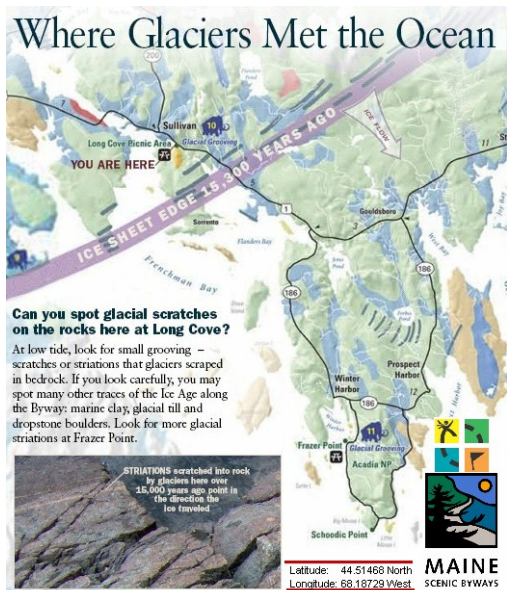
By adopting new technologies we hope to engage young people in the great outdoors. A national initiative to “leave no child inside” requires that we marry high technology and high value outdoor recreation. The Geo-tourism initiative borrows several new and emerging technologies to this end:

- 1) Website: the internet is a portal, or port-key for Harry Potter fans, to our region. Visitors, school teachers, retirees, and weekend warriors need good leads on where to go, what to do, great destinations, places to rent kayaks, you name it. Information about wireless access gives travelers more opportunities to make good decisions as they travel.
- 2) Podcasting: we have more than our share of local story tellers, humorists, historians, guides and writers who can help visitors to the website and to regional visitor centers to interpret our heritage and resources.

- 3) Wireless inquiry: These informal audio tours may be delivered over cell phones to people who want to learn about a place on the road. In years to come we’ll be grabbing audio on demand through our car radios or pointing our cell phones like magic wands to retrieve information about our surroundings.
- 4) Wikis and Blogs: Sounds like science fiction, but open-source learning and local participation are enhanced when we provide residents and visitors with tools to add information to the geo-tour website. Towns can trumpet places to visit or provide visitors with helpful hints for low impact touring.
- 5) Geo-Caching: Already an international phenomenon, and one of this holiday’s big gift ideas, the global positioning system (GPS) craze is taking off. GPS technology is a great fit with our region. Visitors to the Geo-Tourism website will be able to download trail maps right onto their GPS systems. Knowing where you are and where you are going is a key to reducing accidents, frustration and missed opportunities. We will be placing small waypoint interpretive signs in familiar as well as remote locations letting people know they’ve arrived and what is ahead.

Many of these tours, when connected end-to-end, form thematic loops including local history, natural resources, sustainable agriculture, lighthouses and outdoor recreation. As we promote the region and our economy, geo-tourism guidelines stipulate that we care for our natural resources and protect the scenic, cultural and historic assets that make this region unique.

The Downeast Geo-tour project is already rolling out, but there’s much more to be done. You can see our prototype of the Geo-Tour website at [www.downeastexplorer.org](http://www.downeastexplorer.org). Please take advantage of the suggestion box and send us ideas for improvements, new places to visit and guidelines for “treading lightly.” You can also contact Jim Fisher ([jfisher@hpcme.org](mailto:jfisher@hpcme.org)) at HCPC for more information.



*Another example of a geo-tour sign*

## **SOLID WASTE**

*by Jen Boothroyd*

The HCPC has recently sent our solid waste services brochure to Hancock County municipalities, transfer stations, and other interested parties. This publication outlines the types of solid waste-related services that are available to area communities through HCPC. In the past, we have worked with towns to design transfer stations, plan household hazardous waste collections, and sponsor bulk compost bin purchases. Why not let us help you with these things and more? The staff at HCPC has the knowledge, enthusiasm, and experience to help your municipality implement a composting program, provide education to your residents about recycling and waste reduction, and to create regional partnerships for lower costs and improved services. If you would like additional copies of the solid waste services brochure, or have questions about the services HCPC can provide, please call Jen Boothroyd at 667-7131.

## **HEALTH NEWS**

*by Jim Fisher*

### **Common Health Broadcast Schedule**

Common Health is a community radio series hosted by Jim Fisher of the Hancock County

Planning Commission. Common Health airs on the third Wednesday of every month from 10:00 – 11:00 a.m. on WERU-FM (89.9 Midcoast and Downeast, 102.9 in Bangor, weru.org on the web). Many of our past programs are available online at [www.commonhealth.org](http://www.commonhealth.org).

Our upcoming topics include:

**December 19:** Gifts for the World: Philanthropy and Public Health

**January 16:** Art and Health: The private and public connections

**February 20:** Homelessness: Long Term Strategies

**March 19:** Dying: Palliative Care and the Hospice Movement

### **Fighting Youth Obesity and Community Health Audits**

The rise of obesity in America and in Maine particularly has been startling. Now the number-one threat to our health, even surpassing tobacco, obesity is creating new patterns of illness even among our children. HCPC is working with Dr. Jonathan Fanburg and area schools to better understand the reasons that obesity is rising locally and to create programs emphasizing improved diet and physical activity.

While we are still in the middle of this study, obesity and other threats to health and safety have important implications for local governance. The Hancock County Planning Commission in conjunction with our emerging Regional Health Coordinating Council will be assisting interested towns to conduct health audits. We will be looking at a variety of public policies and programs that can help to reduce our waistlines as well as related municipal expenditures on emergency response and health services. The health audit and health impact assessment process help to identify problems such as disconnected land uses and weak transportation connections that require driving over walking or biking, school lunch programs that do not include adequate fresh vegetables and fruits,

residential subdivisions that lack connecting streets and require residents to travel along high speed highways, even for short trips.

Conducting health audits and identifying the connections between land use and transportation is an important stepping stone to developing future transportation proposals. Early in 2008 the Maine

Department of Transportation will release a municipal guide for coordinating transportation and land use planning. We're assisting in developing this guidebook and will be sharing details soon. Please contact HCPC if you are interested in conducting a health audit for your community.



## Seasons Greetings

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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.**

**Winter 2007 Newsletter**

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