



Natural Resources Council of Maine

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Samantha Horn-Olsen
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-022

February 11, 2013

Dear Samantha:

Thank you for the opportunity to respond to comments submitted on the proposed changes to Chapter 12 of the LUPC rules regarding land use district requirements for metallic mineral mining and Level C mineral exploration activities. NRCM has several rebuttal comments, all of which respond to comments submitted by Aroostook Timberlands to the Commission on December 28, 2012. Our rebuttal comments are organized in the order that each subject appears in the proposed rule and each statement references the comment to be rebutted.

Section 3. Certain Mining Activities to be Conducted in the Planned Development (D-PD) Subdistrict

- (1) Aroostook Timberlands recommends that the only restriction on the size of D-PD Development Subdistricts should be what is necessary for the mining operation itself and should not include associated buffers.

The proposed rule says that the size of the D-PD Development Subdistrict shall include, in addition to an area necessary to reasonably conduct mining, an area to adequately buffer mining activities from surrounding resources and uses. NRCM believes that a buffer should be included in the D-PD Development subdistrict in an effort (among other efforts) to protect surrounding resources and uses from adverse impacts from mining activities. Mining activity cannot be contained to the area necessary to conduct mining: space must be allocated for waste rock, tailings produce dust, blasting and other mining activities create noise, and there is a significant likelihood that surrounding waters will be contaminated. An adequate buffer is a necessary inclusion to the D-PD Development Subdistrict and NRCM recommends that Section 3 of the proposed rule remain as proposed.

Section 4.A Commission Approval Required

- (2) Aroostook Timberlands argues that a rulemaking hearing is not subject to APA adjudicatory hearing procedures and should not be subject to Chapter 5 of the Commission's rules.
Aroostook Timberlands recommends that the last sentence in Section 4.A should say that a rezoning petition shall be subject to the rulemaking requirements of the APA.

NRCM supports Section 4.A of the Commission's proposed rule and believes that mining rezoning petitions should be treated in the same manner as other rezoning matters. As in other rezoning proceedings, Chapter 5 rules are appropriate for those projects where adjudicatory hearings are held. This is consistent with the Commission's current practices for other types of rezoning. NRCM recommends retaining Section 4.A of the proposed rule.

Section 4.B. Criteria for Approval of a Petition to Change a Subdistrict to a D-PD Development Subdistrict for Metallic Mineral Mining and Level C Mining Exploration Activities

- (3) Aroostook Timberlands argues that Section 4.B goes beyond the rezoning requirements in the Commission's statute and into areas that the DEP will consider in permitting and recommends that Section 4.B(2) and 4.B(3) be removed.

Specifically, Aroostook Timberlands argues that the factors listed in Section 4.B(2), including impacts to Maine's natural resource economy and ecological and natural values, go "beyond" the Mining Act (P.L. 2011, Chapter 653 (enacting LD 1853)). The Mining Act charges the Commission with reviewing standards necessary to review a rezoning application. While impacts to Maine's natural resource economy and ecological and natural values may be considered by the DEP in their permitting review, such factors will be considered using a narrow, site specific lens. The Commission is unique in its capacity to consider impacts on a landscape level during the rezoning process and thus will consider such factors in manner wholly different, and not duplicative, of the DEP's permitting review. Furthermore, the location of the proposed project in relation to Maine's ecological and natural values is essential to rezoning decisions. It is also essential to understand the location of activities associated with Maine's natural resource based economy (including forestry, guiding, sporting camps, tourism, etc.) in relation to the proposed project. Therefore the Commission should consider the impact of the proposed D-PD Development Subdistrict on the natural resource based economy and natural resource values. NRCM recommends that the Commission retain Sections 4.B(2) and 4.B(3) and that the Commission include factors recommended by NRCM in its original comments (LUPC should modify Section 4.B(3) to require applicants to provide substantially equivalent protection to natural resources and should include consideration of whether the applicant can avoid impacts on existing uses and natural resources).

Section 4.C Submittal Requirements

- (4) Aroostook Timberlands argues that the Commission's proposed submittal requirements duplicate the DEP's review of environmental and natural resource issues during the permitting process.

The Commission's proposed rule includes within an applicant's submittal requirements a map of existing site conditions such as water courses, natural conditions, forest cover, wetlands, and scenic locations (Section 4.C(1)(f)), as well as a map identifying significant natural resources and sensitive natural areas (Section 4.C(1)(i)). As mentioned above, because the Commission is unique in its capacity to consider environmental and natural resource impacts on a landscape level (as opposed to the DEP's narrow, site specific lens), the submittal requirements do not duplicate the DEP's review. Furthermore,

these submittal requirements are necessary to review a rezoning application, where the location of existing site conditions will guide the Commission in their zoning decisions.

- (5) Aroostook Timberlands recommends that the Commission only consider the area to be rezoned in their submittal requirements (Section 4.C(1)(h)) and argues that the proposed three mile radius takes into consideration impacts that should only be reviewed by the DEP (Section 4.C(1)(j)).

Section 4.C(1)(h) calls for a map and description of existing infrastructure (including roadways and transportation routes to be utilized and potential impacts on this infrastructure) to be included in applicants' submittal requirements. This information is crucial from a broad planning perspective and thus should be included in the proposed rule. Similarly, it is crucial that the Commission consider impacts within a three mile radius of the mine or exploration site (NRCM recommends increasing this distance to eight miles). According to maps provided by Geologist Robert Marvinney at the Commission's February 2013 meeting, LUPC P-WL2 wetland zones are located within three miles of the Alder Pond sulfide deposit. Dr. Marvinney noted in his presentation at that meeting that he believes three miles is a reasonable distance to consider. The Dead River (a Class A river) is less than two miles from the Alder Pond site and so are several Class A tributaries (including Spencer, Little Spencer, and Enchanted Streams). The Commission needs information about water sources in the proximity of a mining site in order to consider impacts on drinking water sources for homes and business downstream, and due to the likelihood of groundwater mixing with lakes, streams and wetlands affecting fish and wildlife habitat. All of the information that Aroostook Timberlands argues should only be reviewed by the DEP is essential to making a rezoning decision, where the general location of the proposed activity is the issue at hand. NRCM recommends that the Commission retain consideration of areas beyond the area to be rezoned, and that the area to be considered be increased to eight miles as is the case with wind projects.

Section 4.D. Subdistrict Boundary Change for a Limited Period

- (6) Aroostook Timberlands argues that the Commission should not limit the duration of the rezoning (Section 4.D).

Section 4.D of the proposed rule states that if no mining activity occurs within ten years of the Commission granting the zone change, the D-PD Development Subdistrict designation shall automatically revert to the appropriate subdistrict designation. NRCM supports the inclusion of this provision, as it acknowledges that conditions may change over a ten year period that may render the Commission's zone change inappropriate.

Sincerely,

Eliza Donoghue

North Woods Policy Advocate & Outreach Coordinator