



Maine Association of Planners

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Renew Your
Membership!
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MAP Newsletter Deadlines (Submission / Publication)

Winter '10
February 12th / February 26
Spring '10
April 9th / April 23rd
Summer '10
August 13th / August 27th

2010 MAP Legislative Policy Mark Your Calendar for January 8, 2010

General Membership Meeting Scheduled for January 8, 2010 - The MAP membership is invited to a meeting on Friday, January 8th at noon in Augusta, immediately following the Board of Directors January meeting (location to be announced). At the General Membership Meeting, the Legislative Policy Committee (LPC) will review pending bills and present a short-list of bills potentially of most relevance to MAP. Members in attendance will be asked to add to the short list of bills, offer thoughts about bills on the short list, and define MAP's legislative priorities for 2010. Additional information about the meeting and the short list of bills will be forwarded to the MAP list serve and posted on the web site approximately one week before the General Membership Meeting.

Legislative Priorities – Recognizing that MAP is usually in the position of reacting to legislative proposals and that there are far too many bills of interest to engage on in a typical legislative session, those who attended the June 2009 MAP Annual Meeting, identified legislative priorities in the following order:

- Integration of land use, economic development, and transportation
- Healthy communities
- Regionalization and Economic development (tied)
Energy and Site Law (tied)

Other areas of interest included quality of place, transportation/transit, climate change, Municipal Investment Trust Fund/community investment strategies, working waterfronts, bonds, the Land Use Regulation Commission, consolidation, and water quality.

Since the close of last year's session, the Department of Environmental Protection (DEP) has continued working on changes to the Site Law. Dave Hediger has been representing MAP at these meetings. MacGregor Stocco and Helen Edmunds have also attended some of the meetings. At the upcoming MAP's General Membership Meeting on January 8th, we will discuss DEP's efforts, how MAP should be involved, and form a group to continue exploring site law

(Continued on page 12)



Letter from the President

MAP Board 2008-2009

President

Maureen O'Meara
ceplan@maine.rr.com

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bethdellavalle@maine.rr.com

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Newsletter Editor

Jessa Berna
Jessa.berna@gmail.com

To MAP Members:

On behalf the membership, I would like to thank the Conference Planning Committee for putting together an excellent program at the MAP/NNECAPA conference in Belfast this past September. It was a great opportunity to catch up with fellow planners, update knowledge and skills, and polish off those last AICP continuing education requirements.

Just as the flurry of conferences starts to wind down a bit, the MAP Legislative Policy Committee begins to gear up. The entire membership is invited to attend the annual membership meeting, to be held on January 8, 2010 (save the date!) in a location yet to be determined. This initial meeting is very valuable for any planner who wants to influence MAP activity on state legislation, rule making, etc, and anyone who just wants to better understand the legislative process. Please watch the listserve for more information on this upcoming meeting.

MAP members may also want to check out MAP's new website at meplan.org. The MAP Board decided to update the format and hopes the new site will make a positive impression on anyone who wants to learn about MAP. The site is new, and adjustments are anticipated, so comments are appreciated.

Maureen O'Meara
MAP Prez

Maine Brownfields: Lots of Cash, National Recognition and a 2010 State Conference

Judy East, AICP

Maine is fairing very well in the awarding of money and kudos for our Brownfields initiatives. Brownfields are abandoned, idled or underused industrial or commercial facilities where expansion or redevelopment is complicated by environmental contamination. This year a total of \$6.15 million of federal Brownfields funding was allocated in Maine to do assessments, clean-ups and revolving loan funds (see Table). Augmented by federal stimulus funding, “this is the most money awarded on a per capita basis to any state in the nation”, reports Nick Hodgkins, DEP Brownfields Program Manager.

Type of Grant	Grantees	Amounts
Revolving Loan Fund	Northern Maine Development Corporation	\$1 million
	Southern Maine Regional Planning Commission	\$1 million
Assessment and Clean up grant	Town of Sanford	\$600,000
Clean-up grant	Museum L-A, Lewiston	\$200,000
	Town of Orono	\$200,000
Assessment grant	City of Augusta	\$350,000
	City of Bath	\$200,000
	City of Lewiston	\$200,000
	Town of Howland	\$600,000
	Town of Windham	\$200,000
	Passamaquoddy Tribe at Pleasant Point	\$200,000
	Piscataquis County Economic Development Council	\$200,000
	Washington County Council of Governments	\$400,000
	Greater Portland Council of Governments	\$400,000
	Maine Department of Environmental Protection	\$400,000

First time grantees are required to attend the national Brownfields conference in New Orleans (Nov 16-18, 2009). At the conference Mainers will honor the City of Brewer, this years Phoenix Award winner for the redevelopment of the former Eastern Fine Paper mill. In the past several years the city of Brewer obtained several Brownfields assessment and cleanup grants from Maine DEP and the U.S. Environmental Protection Agency to mitigate the hazards and change the former mill into a 500-employee module manufacturing facility.

The Phoenix Award honors the transformation of ‘blighted and contaminated areas into productive new uses’ and is given annually based on the magnitude of the Brownfields project, innovative techniques used, how solutions to regulatory issues were resolved and impact of the redevelopment on the community. Congratulations to all the public and private partners who worked on this project with city of Brewer!

In the works for next year is the first **statewide Brownfields Conference** since the late 1990s. Mark your calendars for the, **still tentative, date of April 6, 2010**. The many municipalities and regional councils who are currently hiring consultants, meeting with advisory committees, assessing sites and planning for clean-ups should have more success stories to share with the planning and development community in Maine.



Planning Bytes and Pieces

by Rodney Lynch

Last spring **Kris Hultgren** moved from his position as Staff Planner for Bar Harbor to serving as Town Planner for Brunswick. He began in Bar Harbor in 2007 after earning his masters in Community Planning and Development from the Muskie School of Public Service, University of Southern Maine.

Brian Madigan has replaced Hultgren as Staff Planner for Bar Harbor. He is also a LEED Accredited Professional and has attended the Muskie School of Public Service at the University of Southern Maine.

Also last spring, **Rebecca Schaffner-Tousignant** accepted a Planner position with the Greater Portland Council of Governments where she will focus on regional planning matters. Prior to her move Schaffner served as the Town Planner for New Gloucester, Maine for over two years. Previously she worked as a planning consultant working on community driven planning initiatives. She holds a masters in Community Planning and Development from the Muskie School of Public Service, University of Southern Maine.

And again last spring **MacGregor Stocco** transitioned from his position as Community Planner with the Kennebec Council of Governments to Senior Land Use Planner with the Maine State Planning Office. Prior to settling in Maine Stocco served as a resource planner for the New Jersey Pinelands Commission, a neighborhood planner for Harris County, Texas, and a planner for Orange County, Virginia. He holds a masters in Urban and Environmental Planning from the School of Architecture, University of Virginia.

Replacing Stocco, **Jennifer Boothroyd** has been hired as the Community Planner for Kennebec Valley Council of Governments. She recently completed her Masters degree in Public Administration from the University of Maine. Her prior experience includes working as a community planner for EMDC, working for the Hancock County Planning Commission, and the Maine Departments of Environmental Protection.

Joel Greenwood has joined Eastern Maine Development Corporation (EMDC) as a Planner. He previously worked as a community planner in the North of England specializing in revitalization projects and local development plans.

Rebecca Lambert joined Greater Portland Council of Governments as a Planner where she is working on energy and transit initiatives. She holds a Masters in Environmental and Natural Resources from the University of Vermont. Her graduate work included research for the Maine legislature on biofuels policy.

Paul First has been hired as the Town Planner of New Gloucester. He previously served as Executive Director of the Woodie Wheaton Land Trust in Washington and Aroostook counties, and serves on the Durham Planning Board.

Sandra Mowery now serves as the Zoning Administrator for Gorham. Her previous work includes working as the Town Planner for Kittery and Old Orchard Beach.

2009 NNECAPA Conference Wrap Up

Rebecca Schaffner-Tousignant, NNECAPA Maine State Rep

This year's annual NNECAPA Conference was held on September 24th and 25th in beautiful Belfast, Maine. The conference, Yes We Plan! Seizing Opportunity, attracted over 120 attendees including a handful from Southern New England and even one from Florida.

The conference offered eighteen sessions in three tracks relating to the local economy, rethinking transportation and the new built environment. In addition to the classroom style sessions mobile workshops visited Unity College, a small scale commercial wind project, The Colonial Theater to view *Visible Community*, historic Belfast, the Penobscot Narrows Bridge and Observatory, and Bay-side neighborhood.

Attendees enjoyed three keynote presentations by Jay Waterman, Uri Avin and Michael Shuman. Jay Waterman, LEED AP, Senior Project Manager with Fore Solutions discussed innovations in sustainability and land development. Uri Avin, FAICP, Lead Planning Advisor with PB PlaceMaking discussed reframing transportation and land use strategies. And Michael Shuman, Director of Research and Public Policy with the Business Alliance for Local Living Economies discussed the "small-mart" revolution.

The evening reception was held at the City's Boathouse and featured food catered by Trillium and fine views of Belfast Bay. John Barstow, Director of Communications for the Orton Family Foundation kicked off the evening's event with inspiring words to remind us of the importance of our work.

The annual NNECAPA awards were also presented at the reception. Plan of the Year was awarded to the City of Keene, New Hampshire for *Keene Community Vision 2008*. A certificate of merit was also presented to the Maine Department of Transportation for *The Gateway 1 Action Plan*. Project of the year was awarded to New Hampshire's nine regional planning commissions and the *Innovative Land Use Planning Techniques Handbook*. Professional Planner of the Year was awarded to Dana Farley of Vermont, and Citizen Planner of the Year was awarded to Scott Mapes also of Vermont.

Conference materials are being uploaded to the NNECAPA website and can be found at: <http://www.nnecapa.org/resources/conference.php>. If you presented at the conference and haven't submitted your materials we'd like to be able to offer them as a resource to attendees. Please forward any materials (handouts, powerpoints, etc) to Sandrine Thibault at: sthibault@ci.burlington.vt.us.

BERNSTEIN SHUR

C O U N S E L O R S A T L A W

WRIGHT-PIERCE 
Engineering a Better Environment

GrowSmart Maine's Standish Corner Village Planning Initiative: Update #3

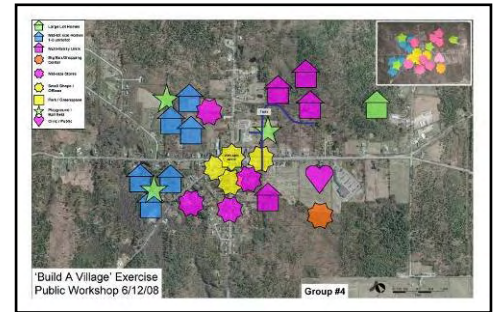
Bruce Hyman, AICP

Maine Model Town Director, GrowSmart Maine

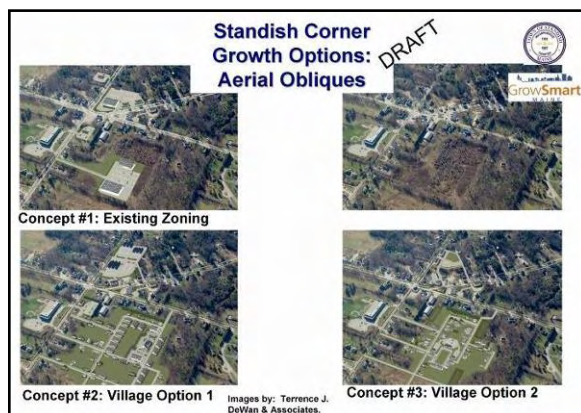
Last fall I shared with you the work GrowSmart and its partners had completed with the Town of Standish as it continues to implement its 2006 Comprehensive Plan. Our village planning initiative seeks to deliberately define the form and pattern of development desired by the town's residents, businesses and landowners at Standish Corner. Recent development has been happening in a high-way, strip-style pattern along Route 25, the main arterial through the village center.

To recap:

Phase I of our work (spring/summer 2008) explored the building blocks that together create a coherent, traditional village center. As part of small groups, workshop #1 attendees created their own general patterns of development that would meet the Vision for Standish Corner, assembling residences, businesses and civic/open spaces. This and subsequent work built upon the recently completed Village Master Plan (2007).

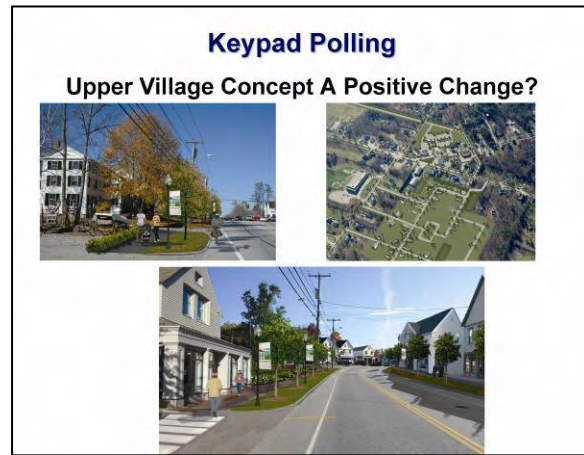
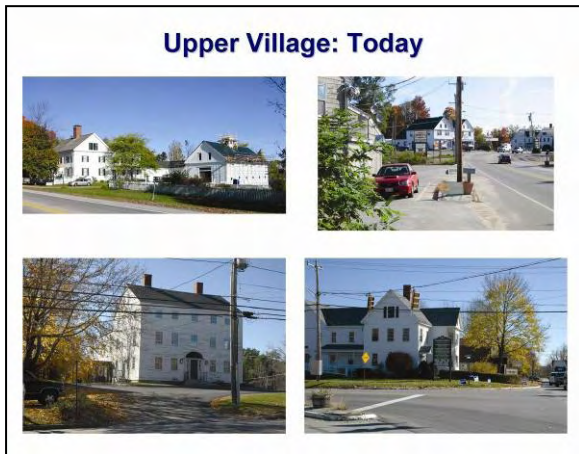


Phase II (fall/winter 2008) explored two growth concept variations that meet the Vision and 'the Trend' development pattern that does not as a baseline for comparison. A well-attended, interactive public workshop #2 in November gathered likes and dislikes from the general public in small group discussions and via keypad polling. Two styles of visualizations -- 'birds eye'/aerial oblique and street-level photo-simulations -- were developed and used to elicit feedback on the different growth concepts. From this workshop the committee got invaluable input on preferences on street networks as the framework for future growth, development scale and density in different areas within the village, and the quality and characteristics of the public realm/streetscapes.



Phase III, building on the November input and continued committee deliberations, developed a ‘Recommended Village Growth Concept.’ Additional visualizations describing the concept were presented at public workshop #3 in May. Large group discussion and keypad polling gauged the relative level of support for the various aspects of the recommended concept. Visualizations focused on two areas that would comprise the central, more commercially-oriented, mixed use portion of the village center: the Upper Village and the Lower Village. Mixed housing neighborhoods would immediately abut and be integrated with this central area.

The Upper Village is where most of the ‘historic bones’ of the village remain and is centered on the very busy intersection of Routes 25 and 35. In this area, smaller scale new infill and redevelopment is recommended to complement the remaining historic structures that are now mostly converted to commercial use. The Upper Village’s public realm has been dramatically degraded over the past two decades due to lack of quality development and public investment.



The Lower Village is where most of the recent development activity has taken place, but in a manner that does not support the Town’s goals. Development on large parcels that are currently for sale could define the village for a generation or more. The recommended growth concept, if embraced by the town through its development regulations and investments, would put village development on a

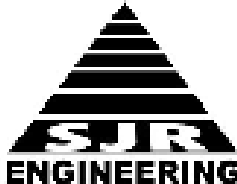
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**JENSEN BAIRD
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Tel/Fax: (207) 622-1676
Email: steve@sjreng.com

FEMA's New Coastal Zone Flood Maps for Cumberland County

Prepared by:

Robert G. Gerber, P.E. & Certified Geologist
Vice President, Environmental Engineering
Sebago Technics, Inc.

This past summer FEMA released new flood zoning maps (FIRMS) for the coastal municipalities of Cumberland County. These maps were released for municipal review prior to a formal start of a 90-day appeal period, which now appears as though it will not begin before the end of 2009. There are several “new” things about these maps: 1) the use of LIDAR and ArcGIS to establish a fairly accurate (± 6 inches) topographic map base on to which to place calculated flood levels; 2) the use of a new set of methods and procedures promulgated by FEMA for determining coastal flood zone hazard—particularly the V-zone extent; 3) the vertical reference datum has changed from NGVD29 to NAVD88 (0.7' difference); 4) elevations were increased 0.05' for a change in sea level from the 1980's to now. Residential flood insurance will cost over \$7000 per year. No new calculations were made on inland freshwater bodies but the position of the flood lines on the map were moved to adjust previously-calculated elevations to the new LIDAR-determined contour lines. Further, FEMA did not perform new transect calculations on some of the inner Casco Bay towns such as Falmouth, but rather adjusted previously-calculated V-zone lines to conform to new LIDAR-determined contour lines.

For those municipalities in which FEMA performed new wave transect calculations according to the new guidelines, most of the V-zones have migrated higher and landward from their previously-calculated positions from the 1980's. There has been significant media attention around the fact that almost all of the Portland waterfront would be placed in a V-zone, whereas it is not currently in a V-zone. The City is very concerned that the “working waterfront” concept is dead if this V-zone determination becomes final. In other areas, such as along the South Portland shoreline just north of the Cape Elizabeth boundary, the V-zone elevation has increased, for example, from elevation 18 to 41 feet NAVD88. Most previously granted LOMAs and LOMRs will be superseded by the new maps. Shoreline structures are assumed to fail unless “certified” by a P.E. to be able to withstand the 100-year storm.

Portland, South Portland, Cape Elizabeth and Falmouth have each retained Sebago Technics to do a critical evaluation of the FEMA calculations. Although our work is not yet complete, we have found several issues that seem to result, for the most part, in higher elevations of V-zones than should rationally be the case:

- Use of 71 mph wind (from a structural engineering wind chart of the United States) to generate fetch-derived waves;
- Use of simple 2-D models that over-estimate wave height compared with 3-D wave models;
- Lack of comparison of historical wave runup with predicted wave runup on transects (particularly for the Patriot's Day storm, which is close to the 100-year storm parameters)
- Extrapolation from worst case transect locations to long lengths of shoreline that have different runup characteristics (e.g., there is only one transect for the north side of Portland Harbor).

We are currently evaluating Casco Bay area wind data from the Jetport weather station (data from 1930 to present) and the NOAA offshore weather buoy (1980-present) to determine the 1% annual chance, one-hour duration wind to replace the “handbook” curves. Preliminary data suggests the local value will be more like 55 to 60 mph. The FEMA “critical” wave height

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Maine Rejects “Drive By” Standing for Appeals

By Brian Rayback, Pierce Atwood LLP

The Maine Supreme Judicial Court (“SJC”) has narrowed the concept of standing in a recent decision called *Nergaard v. Town of Westport Island*, 2009 ME 56, that addressed the question of who may challenge a permit for a development project. The result, in the words of the SJC’s Justice Alexander, who filed a concurring opinion, is that Maine has rejected so-called “drive by” standing.

The *Nergaard* case began with a shoreland zoning application filed with the Westport Island Planning Board to expand a public boat launch. The expansion project was expected to increase traffic to and from the site by 36 trips per day during the peak season. The Maine Department of Transportation estimated that 1,638 vehicles pass through the intersection nearest to the boat launch every day in August, which is the high season on the Island.

Two Island residents – Nergaard and Stern – challenged the decision of the Planning Board to grant approval for the project by appealing to the Zoning Board of Appeals. Neither Nergaard nor Stern owned property that was either abutting or in close proximity to the project site, but both claimed that they frequently drive through the intersection near the site and, in essence, that the increased traffic increased the risk that they would be involved in an accident. The Board of Appeals concluded that Nergaard and Stern did not have standing to appeal, and thus rejected their claims.

The SJC began with the usual requirement that only an “aggrieved” party has standing under the applicable local ordinance to pursue an appeal. This language is common to many local ordinances throughout Maine. To be “aggrieved” under the Island’s ordinance, one must demonstrate that he or she (1) owns land that abuts or is otherwise directly or indirectly affected by the project; or (2) will suffer a “particularized injury” as a result of the project.

Because neither Nergaard nor Stern could show that he owned property that would be affected by the project, or apparently used the launch, the SJC focused its inquiry on whether merely driving past the site on a regular basis was enough to demonstrate a particularized injury. The SJC explained that a particularized injury occurs “only when that person suffers injury or harm that is in fact distinct from the harm experienced by the public at large.” In other words, the harm must be personal in some manner, and not the same as that suffered by everyone else. The SJC concluded that Nergaard and Stern would not suffer a particularized injury, stating: “There is no difference between the potential harm asserted by Nergaard and Stern and the potential harm to these 1638 drivers and to their passengers – members of the public – who use the same road on a daily basis.” In addition, it is important to note that the SJC in *Nergaard* did not question whether the projected 0.02% increase in traffic was itself sufficiently grave to constitute an “injury” of any kind, let alone a particularized one, but merely asked whether this increase would somehow affect Nergaard and Stern differently from the rest of the motoring public.

The most interesting aspect of the *Nergaard* decision is the question, raised by the Court’s justices themselves, whether the SJC has narrowed the concept of standing in Maine. In the majority opinion, written by Justice Gorman, the SJC rejects an argument by Nergaard and Stern that a prior decision, *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189 (Me. 1979), supported their standing argument. In *Fitzgerald*, the plaintiffs argued that the Park Authority’s decision to clear timber blow-downs caused by a severe storm directly affected their rights to the use and enjoyment of Baxter

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First Gateway 1 Target Reached

By Stacy Benjamin

The Gateway 1 Corridor Action Plan was finalized in late July and sent to all participating communities. The Plan proposes a series of state and local actions and strategies that, if implemented, will help preserve the mobility and safety of mid-coast Route 1 into the future.

See www.gateway1.org for background information about the project and to download the Gateway 1 Plan

Last spring, MaineDOT released an RFP for project administration, and the Steering Committee selected Stacy Benjamin, who is partnering with Evan Richert, AICP, Uri Avin, FAICP, and others to help coordinate the first phases of plan implementation.



Camden
Lincolnville
Thomaston
Edgecomb
Newcastle
Rockland
Rockport
Waldoboro
Bath
Nobleboro
West Bath
Searsport
Brunswick
Damariscotta
Stockton Springs

The Planning Steering Committee opted to start implementation in two phases. The first step was to reach the MaineDOT target of having 12 communities signed on to a Start-up Agreement by October 31. This agreement is essentially a hand-shake, and asks communities to appoint an Implementation Steering Committee member to help shape the more formal Corridor Coalition and to work over the next year toward adopting the Gateway 1 plan as part of their local comprehensive plan.

As of October 31, community leaders in **15** towns and cities along the Route 1 corridor have voted to continue participating in Gateway 1. There was an incentive – because 12 communities signed by October 31, \$500,000 in technical assistance funds from MaineDOT have become available to participating corridor towns. These funds will be allocated through an application process with awards ranging from \$10,000 to \$35,000. The goal is for each community that signs on to receive funding to help start implementing the Gateway 1 Plan. Most communities will use these funds to hire professional planning assistance in evaluating how the Gateway 1 plan strategies and actions compare with local comprehensive plans and ordinances.

The overwhelming support for the start-up agreement in most communities is due in large part to the continuous efforts of the local Gateway 1 Planning Steering Committee representatives, who have worked with local leaders to help them understand the Gateway 1 Corridor Action Plan and the importance of participating in this start-up period. The first Implementation Steering Committee (ISC) meeting is scheduled for December 10th in Rockland.

The next stage in implementation is the creation of the Corridor Coalition. Participation in this Coalition will be voluntary on the part of each community, and the Coalition would be formed under the Inter-local Cooperation Act, a familiar tool for many Maine towns.

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Planning in Kabul

By Judy Colby-George

During 2009 I got the chance to spend several months in Kabul working on a website for the Afghan Ministry of Interior. I was a little apprehensive about working near a war-zone, but the opportunity to travel to Afghanistan proved irresistible. Kabul has a ground elevation of a mile above sea level and a climate similar to Denver. It feels like you are surrounded by mountains on all sides.



The area I stayed in is well protected, with armed guards and escorts for us whenever we went out. Houses in Afghanistan are all built with a perimeter wall surrounding an inner courtyard. The courtyards will have grass and a small garden.

Few of the streets in Kabul are paved. The city doesn't produce a lot of tax revenue, so infrastructure is slim. One of the major activities performed by building guards is spraying down the street in front of their villa to keep the dust down.

One of the major pastimes in Afghanistan is kite flying. Their kites do not have the long tails that we are familiar with. This makes the kites very maneuverable, but difficult to fly. We could always see several kites in the air at one time. One day I counted over a hundred.



(Continued from page 1)

2010 MAP Legislative Policy *cont.*

rulemaking later in January. In the meantime, Dave encourages fellow MAPers to become more involved and aware of the amendments that are being discussed and start by checking out http://www.maine.gov/dep/blwq/topic/site_storm_revisions/index.htm.

Legislative Tutorial – To continue encouraging members to participate in the legislative process, the LPC will once again offer a two-hour Legislative Tutorial, immediately following the General Membership Meeting on January 8th. This year's Tutorial will focus on the nuts and bolts of how a bill becomes law as well as on coalition building and collaboration in the legislative process. The LPC believes that by increasing understanding about the legislative and LPC processes, more members will participate in the process, increasing the visibility and effectiveness of the Association. Stay tuned for more details on the Tutorial through the MAP list serve and web site.

Legislative Handbook – The 2010 Legislative Handbook is intended to demystify the operation of the LPC, including a summary of how the LPC process generally works, how to track bills on the State Legislative Web Page, and how to prepare and deliver testimony. Each member of the LPC will be provided with a copy of the 2010 Legislative Handbook, which also will be posted on the MAP web page prior to the start of this year's legislative session.

If you are interested in joining the MAP Legislative Policy Committee, please contact Beth Della Valle at bethdellavalle@maine.rr.com. In an attempt to encourage greater participation by members, following the General Membership Meeting on January 8th, the LPC plans to conduct most of its meetings by conference call again this year. Thanks.

(Continued from page 10)

First Gateway 1 Target Reached *cont.*

The framework for the Coalition is included in the Gateway 1 Plan, and participation will require a vote of a town's legislative body. If 12 towns agree to form a Corridor Coalition, MaineDOT has set aside an additional \$1.3 million to assist with further plan implementation.

As envisioned, the Corridor Coalition will serve several functions in the region. It will:

- Set priorities for MaineDOT funding in corridor (not safety or maintenance)
- Provide technical assistance/outreach on recommended actions
- Provide advisory comments to local Planning Boards on review of projects with regional impacts on the corridor

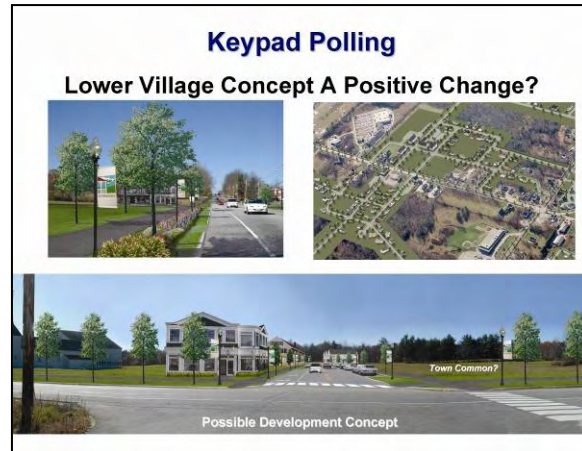
Evan Richert will be working with a sub-committee of the ISC over the next year to finalize the framework for the Coalition.

Gateway 1 is the brainchild of Kat Beaudoin (formerly Kat Fuller), Chief Planner at MaineDOT, and is getting much national recognition. Kat has been travelling the country sharing the Gateway 1 experience with other state DOTs, who are struggling to find ways to preserve capacity on important transportation corridors similar to mid-coast Route 1. For more information about Gateway 1, contact Stacy Benjamin at sbenjamin@mainecollaborativeplanning.com.

(Continued from page 7)

GrowSmart cont.

different path. Large majorities at workshop #3 voted in favor of the recommended growth concept. town through its development regulations and investments, would put village development on a much different path. Large majorities at workshop #3 voted in favor of the recommended growth concept.



The tagline for our work is: “Future Village Growth: By Choice or By Chance?” Once the desired form and pattern was arrived at, we then asd: “What Next? What is the most effective way to actively pursue the Vision?” that is reflected in the images. Subsequent meetings of the village committee and a joint planning board-town council meeting endorsed pursuing a form-based codes approach within Standish Corner Village. This regulatory approach leaves much less to chance than traditional use-based zoning by choosing the form and functional outcomes the town wishes to achieve as part of its overall growth management strategy. Stay tuned to see if Standish succeeds.

I would like to take this opportunity to thank our project funders: the Orton Family Foundation, the Samuel L. Cohen Foundation, and the members of and donors to GrowSmart Maine.

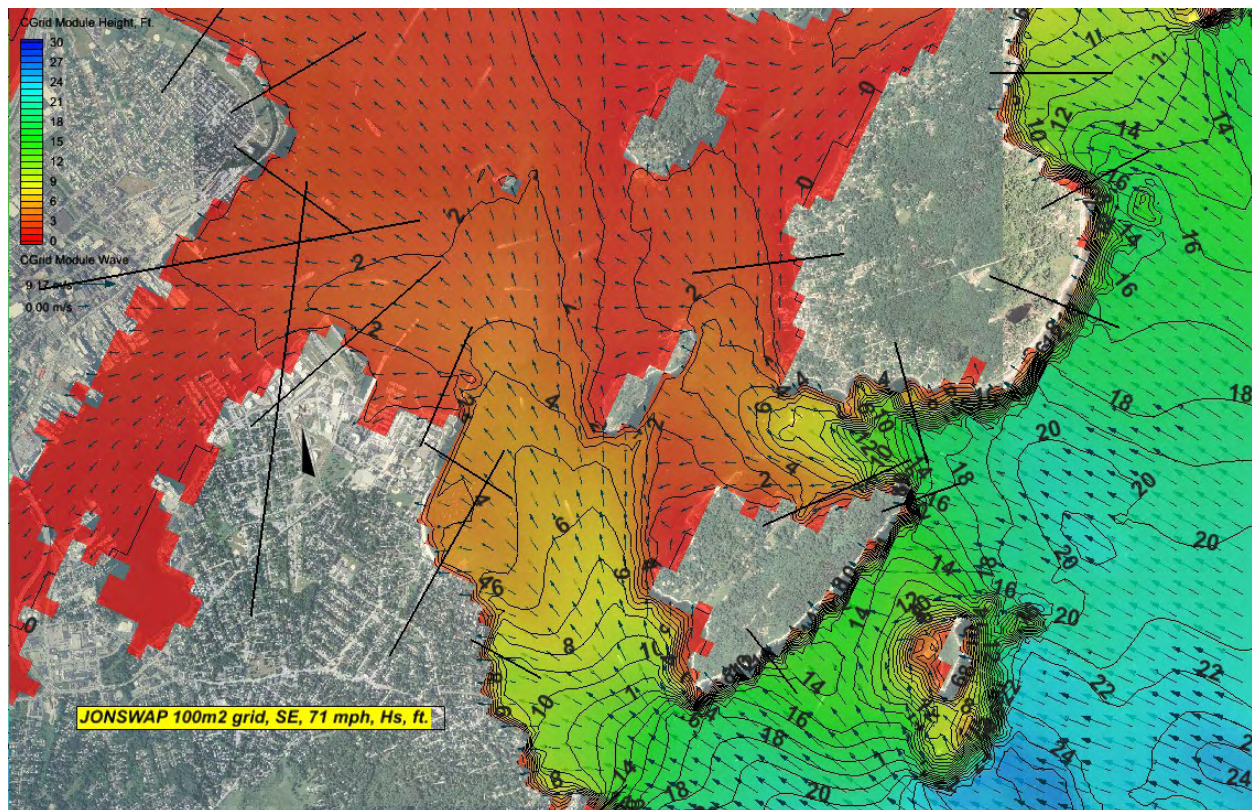
GrowSmart Maine will be taking our ‘Lessons Learned’ from our work in Standish on the road around the state this fall and winter in a series of workshops. If you would like to discuss partnering with us and hosting such a workshop, please email me at bhyman@growsmartmaine.org. These workshops are being funded by the Maine Community Foundation with matching funds from the Ferguson Family Foundation.



(Continued from page 8)

FEMA's New Coastal Zone Flood Maps for Cumberland County cont.

(equivalent to the average of the 1% highest waves during the 2 hours of the peak of the 100-year storm) is estimated from local fetch-generated waves within the Bay or from the 1% annual chance wave calculated from the statistics of the NOAA offshore buoy, depending on the particular shoreline exposure. Smaller wind velocities will produce smaller initial wave heights at the beginning of the wave transects along which FEMA uses a 2-D wave model called WHAFIS to propagate a fetch-limited wave to the shore. The problem with the use of the offshore 1% wave is that this height of wave (26.6 feet for the average of the one-third highest waves, H_s) rarely reaches the shore because of shoaling and refraction in shallower waters as it approaches the shore. Wave setup and other characteristics used in determining the V-zone are based on the "deepwater" wave height and this height is more likely in the 10' to 20' range, for example, along the Cape Elizabeth shoreline. This determination is based on our use of the 3-D wave model STWAVE which starts the 1% wave in very deep water offshore and brings it toward shore from various compass directions in combination with the 100-year wind velocity. The small excerpt of one wave contour map below illustrates the way a wave attenuates as it enters Casco Bay. The FEMA wave transects are shown as the black straight lines.



Finally, wave runup is based on another set of models and calculations. Here, the most sensitive parameter is slope roughness. The FEMA models assume slopes equivalent to smooth plane concrete, and very few slopes have that degree of smoothness. Although the FEMA guidelines require a review of historical runup data to temper the calculations, there is no evidence this was done here.

In a meeting we had with FEMA and the City of Portland recently, FEMA agreed to accept locally-derived wind data, and to accept the use of STWAVE to generate the initial waves for the WHAFIS transect models for municipalities where we can show the proposed maps have significant errors.

(Continued from page 9)

Maine Rejects “Drive By” Standing for Appeals *cont.*

State Park. Justice Gorman’s opinion in *Nergaard* explains that, unlike *Nergaard* and *Stern*, the plaintiffs in *Fitzgerald* were “not merely members of the public” but were instead “actual users of the Park,” and thus suffered particularized injury as a result of Park Authority’s decision.

Although he joined in the opinion written by Justice Gorman, Justice Alexander wrote a separate, concurring opinion, to stress his view that the *Nergaard* decision narrows the law of standing because it necessarily conflicts with the *Fitzgerald* decision. He argued that the *Fitzgerald* plaintiffs showed no greater right to use Baxter State Park, a public park, than any other member of the public, and that they were no different from those who use the public roads to drive past the boat launch at issue in *Nergaard*. He describes the Court’s decision to mean that “one’s status as a user of a public facility, even a frequent user, does not create a status sufficiently distinct from any member of the public to become a ‘person aggrieved’ with standing to challenge in court an action that, allegedly, may affect one’s use and enjoyment of the public facility.” As a result, Justice Alexander contends that the Court has rejected what he called “drive by” standing for individuals seeking to challenge development approvals.

Despite the debate within the SJC as to the precise meaning of the decision, it seems clear that *Nergaard* signals a narrowing of the concept of standing for local appellate review boards. Thus, local boards and the land use lawyers that practice before them should pay particular attention to whether members of the public are truly able to identify an injury – even if it is minor, as in the case of a 0.02% traffic increase – that is in some way different from that experienced by everyone else. The *Nergaard* decision thus re-emphasizes that not every member of the public necessarily has the right to appeal a local permitting decision.

In addition, if the zoning board of appeals is reviewing the case on a purely appellate basis (meaning that it is not taking new evidence in a *de novo* hearing), this evidence of particularized injury must already be included in the administrative record compiled during the initial proceedings at the planning board or before the code enforcement officer. If it is not, then the appellant cannot show for the first time before the board of appeals that he or she has standing to even bring the appeal, and the case should be dismissed.

Brian Rayback is a partner in Pierce Atwood’s Portland office, specializing in environmental and land use law. He is available at (207) 791-1188 or brayback@pierceatwood.com.

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http://www.umaine.edu/waterresearch/outreach/environment_seminars.htm

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New MAP Board member biographies:

Judith C. East, AICP is Executive Director for the Washington County Council of Governments. With 21 years of professional experience at the local, regional and state levels in Maine, New York and Vermont she currently works with communities throughout Washington County on varied issues in land use planning and public facilities investment. Judy is a member of the American Institute of Certified Planners and has a Bachelors Degree in Biology and Economics and a Masters Degree of Science in Planning. She has a particular interest and expertise working with rural communities as they balance land and resource conservation with economic development.

Rod Melanson is the Town of Topsham's Natural Resource/ Assistant Planner. Having nearly 10 years of experience with state, regional, and municipal planning within Maine, his focus on Natural Resource Management and Planning lead to his current role. Rod is also a Muskie School of Public Service student within the Community Planning and Development program, perpetually working on a capstone project (aka: ABC'er). Prior to entering the field of planning, he taught environmental education, served on land trust boards and was a wilderness trip leader in Maine. Rod continues his involvement in outdoor recreation and education through ski and paddling instruction.



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