

## 2010 CENSUS PREPARATION

Believe it or not, it's already time to prepare for the 2010 US Census. The first step in the process is to review local address lists. The address list is the basis of the Census, and the more accurate the address list, the more accurate the census count, and the better chance for additional public funding.

Recently, the US Census Bureau invited all local governments to participate in the 2010 Census Local Update of Census Addresses (LUCA) Program. The LUCA Program provides local governments the opportunity to review and update the Census Bureau's address list and maps.

Towns should be receiving Census address lists and maps within the next few months. The Census has given the towns several options to choose from in reviewing the data, but regardless of which option chosen, only 120 days of receipt of materials will be given to review and update the Census information. Find out more about the LUCA Program at [www.census.gov/geo/www/programs.html](http://www.census.gov/geo/www/programs.html) or contact Jamie Oman-Saltmarsh ([jamieos@smrpc.org](mailto:jamieos@smrpc.org)) at SMRPC.



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SOUTHERN MAINE REGIONAL PLANNING COMMISSION

# Regional Newsletter

## BI-STATE GREEN PROJECT

The Bi-State Green Project (BGP) is a strategic planning effort led by SMRPC and the Rockingham Economic Development Corp. to develop a coordinated regional response to three interconnected mandates – the need to use energy more wisely, the need to reduce greenhouse gas emissions, and the need to find new opportunities for sustainable economic growth in the region.

Record-high energy prices and unprecedented scientific and political consensus on the threat of global warming are likely to spur dramatic changes in the way we produce and use energy in the coming decades. Early adoption of innovative and effective strategies for reducing energy use and cutting CO2 emissions will give the Seacoast a competitive edge in the future. For the long-term economic and environmental well-being of the Seacoast region it is imperative that we respond proactively to the coming changes.

Effective planning and a shared vision are essential for this effort. Recently our region has seen dramatic growth in interest in reducing greenhouse gas emissions. But activities and communication in this area are not well coordinated, and there are large gaps in the private and public infrastructure for addressing this challenge.

Building on the Bi-State Summit "Looking Beyond the Shipyard" held in September 2006, the BGP will bring together relevant stakeholders from the business community, government, academia and the non-profit sector. The project is being funded with federal Economic Development Administration dollars.

The BGP will facilitate information exchange and communication on greenhouse gas reduction and energy efficiency projects and related economic development initiatives in the public and private sectors in Seacoast Maine and New Hampshire. This will be done by compiling a directory of existing efforts to be distributed via the Web and other media.

The BGP will make recommendations for short, medium and long-term demonstration projects. Emphasis will be on new and emerging technologies and new business opportunities in the region. Potential sources of funding will be identified as well as potential participants from the public and private sectors.

The BGP will assess existing and potential educational and training opportunities in energy efficiency and green technologies as well.

For more info call Paul Schumacher at 324-2952. A series of meetings culminating with a forum in the spring is planned to begin immediately.

## SMRPC RECEIVES NADO AWARD

SMRPC was recently selected to receive the Excellence in Regional Transportation award from the National Association of Development Organizations (NADO) for its work with the Maine – New Hampshire Traffic Incident Management Group. This work brought together agencies and municipalities from both States to better address traffic incidents in southern Maine and New Hampshire, and increase and improve coordination on a regional level.

It is also worth noting that all of Maine's Regional Planning Agencies, along with the Maine Department of Transportation, received another Excellence award for our work on the regional corridor planning programs over the last few years. Tom Reinauer, Transportation Director, recently attended the NADO Transportation Peer Learning Conference in Chattanooga, Tennessee to accept the award and also present at the conference. For more information on the Traffic Incident Management Group, please contact Tom Reinauer or take a look at the following link: <http://www.smrpc.org/transportation/timg/timg.htm>

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## SMRPC STAFF CHANGES

If you have called SMRPC recently, you may have noticed a different voice answering the phone. That new voice is Marian Alexandre, who has been hired as our new Office Manager. Peg Sawyer, the previous Office Manager, is still with SMRPC, but will be working Monday-Wednesday as the Bookkeeper. Peg, in semi-retirement mode, will continue to handle all financial and billing duties, while Marian will be handling all other administrative functions Tuesday-Friday.

Marian is a lifelong Sanford resident. She has previously worked for the York County Sheriff's Department and also ran her own trucking company doing state road projects. She lives in Sanford and in her spare time, she is raising her teen-age son Adam.

Another new staff member is Chris MacClinchy. Chris is pursuing his master's degree in community planning and development at the Muskie School of Public Service. Chris started at SMRPC this summer as an intern to fulfill school credit, but is continuing to work part-time to assist SMRPC with transportation, comprehensive planning, and research on the Bi-State Green Project. Chris lives in Kennebunk with his wife, 2 dogs and a cat.

### **Good-Bye to Josh Mack SMRPC Transportation Planner**

It is with mixed feelings that I recently announced to Southern Maine Regional Planning Commission that I will be moving to Keene, New Hampshire to be a Regional Transportation Planner. I will really miss working for this agency. SMRPC staff has truly been like having a second family. If I was writing a memoir about the last four years of work at SMRPC, the book would probably not sell very well, but I think its notable that my acknowledgements page would be very lengthy. I owe a debt of gratitude to many hard working, creative, and talented people that I have worked with—from all over the state as well as in southern Maine. Most of all, I'd like to thank Tom Reinauer, our Transportation Director, who has been my mentor the last four years, helping me understand our transportation system and understand *how to plan*. He has truly made me a better planner. Planning implementation usually takes a long time—I hope I've made some mark in assisting Southern Maine prepare for the future. I will continue to read about you in the newspapers and when I visit my family in Maine!

*Josh*

## 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.

**2007 LEGISLATIVE HIGHLIGHTS**  
**HELEN EDMONDS, ESQ. AND BRIAN M. RAYBACK, ESQ.**

The 1<sup>st</sup> Regular Session of the 123<sup>rd</sup> Legislature was an active one for land use, with the Legislature enacting a number of potentially far-reaching laws. Except for laws enacted as emergency legislation, the effective date for most new statutes is September 20, 2007. Although it is not possible to summarize all of the new laws in the context of this newsletter, here are a few of the highlights likely to be of most interest to planners:

**Comprehensive Planning and Land Use Ordinances**

P.L. 2007, c. 247 contains several sections of interest. First, the law clarifies 30-A M.R.S.A. § 4314(3), which provides that after January 1, 2003, any portion of a municipality's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan. The 2007 amendment provides that the portion of an ordinance that is not directly related to an inconsistency identified by a court or by the State Planning Office (SPO) during a consistency review remains in effect. In addition, a "zoning ordinance" does not include a town wide cluster development or design ordinance. Second, c. 247 elaborates upon the situations in which a municipality or multi-municipal region is not required to identify growth areas in a comprehensive plan.

Third, and most importantly, c. 247 enacts as 30-A M.R.S.A. § 4347-A(3-A) SPO's new procedure for reviewing the consistency of comprehensive plans. Pursuant to this procedure, SPO will not only solicit written comments from regional councils, state agencies and contiguous municipalities, but the review process will be streamlined such that SPO will render a completeness finding within 35 days after receiving a comprehensive plan, followed by consistency findings within 10 days thereafter. The new process includes a 20-day appeal period from adverse findings. A finding of consistency is valid for 12 years from the date of issuance.

**Clarification to Subdivision Act**

P.L. 2007, c. 49 amends the definition of "tract or parcel of land" in Section 4401(6) of the Subdivision Act, such that lands on opposite sides of a public or private road are considered each a separate tract or parcel of land, unless the road was established by the owner of land on both sides of the road after September 22, 1971. Previously, the date limitation was not included in the Act, requiring a sometimes difficult analysis of the history of roads dividing an applicant's land.

**Informed Growth Act**

The Informed Growth Act, P.L. 2007, c. 347, enacted as 30-A M.R.S.A. § 4365, et seq., establishes a significant, new, local review requirement for all so-called "big box" stores in excess of 75,000 square feet. This hard-fought piece of legislation – with both proponents and opponents strenuously arguing their positions before the Legislature – is reported to be the first of its kind in the nation and represents a major new permitting process for those local planners and planning boards who will be faced with its directives. While the immediate impact of the Informed Growth Act may be limited due to its apparent application to very large stores over 75,000 square feet, it remains to be seen whether future legislative efforts will be aimed at broadening the scope of the Act to include smaller retail projects or projects in other development sectors such as industrial or residential.

In summary, the Act applies to a developer of a "large-scale retail development," defined in the Act as "any retail business establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location," and including "any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet." The Act states that "other retail business establishments on the same site as the large-scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas." Thus, it appears that the intent at present is not to apply the Act to a shopping center as a whole, but only to a single retail establishment exceeding the 75,000 square foot threshold. Whether the definition will be applied more broadly, however, is open to question until the Act is interpreted by municipalities and citizens.

Under the Act, developers of large-scale retail developments are required to pay a \$40,000 review fee to the SPO, which will be used to fund a "comprehensive economic impact study" analyzing, among other issues, "the economic effects of the large-scale retail development on existing retail operations; supply and demand for retail space; number and location of existing retail establishments where there is overlap of goods and services offered; employment, including projected net job creation and loss; retail wages and benefits; captured share of existing retail sales; sales revenue retained and reinvested in the comprehensive economic impact area; municipal revenues generated; municipal capital, service

**MAINE DOT DESIGNATES ROUTE 113 STATE SCENIC BYWAY**

SMRPC and partners, Androscoggin Valley Council of Governments (AVCOG), and the Western Maine Cultural Alliance (WMCA) are pleased to see their hard work result in byway designation of Route 113.

Maine Department of Transportation (MaineDOT) Commissioner David Cole recently designated Route 113 as the Evans Notch Scenic Byway scenic byway. The Evans Notch Scenic Byway is approximately 60 miles long between Standish and the Batchelder's Grant-Gilead town line. Only those portions of Route 113 within the state of Maine are included in that designation.

"Typically, when local communities seek scenic byway designation, they're trying to identify and conserve intrinsic resources, promote economic development and provide a way to leverage funds for improvements along the corridor. We're talking about things like cultural, historical, archeological, recreational, natural and scenic features which make the corridor unique," Robert LaRoche, State Scenic Byway Coordinator notes.

"The first step for these new scenic byways is for the local advocacy groups to complete a corridor management plan, explaining how resources associated with the byway will be managed after official designation is finalized. Then, the communities along the corridor must adopt that management plan as part of their local comprehensive plan," LaRoche explains. "The intent is to assure that there are processes in place to protect the resources along the corridor that justified the designation in the first place."

The designation makes sponsoring communities and organizations eligible for federal funds specifically for byway development and protection. Competitive grant funding will be available to byway communities in addition to traditional general highway construction and maintenance funding for which the towns are eligible. Maine, which now hosts 15 byways in the state, has received over \$4 million in federal planning and capital project funding since 1993 through the scenic byway program.

"This is a great match for the Route 113 communities," explains Paul Schumacher, SMRPC Executive Director. "The Route 113 area is rich in natural beauty, recreational opportunities, history and culture. This program provides a means for the communities to promote economic development in the region while maintaining their rural character. Residents, businesses and visitors alike will benefit from the scenic byway program."

For more information about scenic byways visit [www.byways.org](http://www.byways.org) or contact Tom Reinauer at SMRPC at [treinauer@smrpc.org](mailto:treinauer@smrpc.org)

**COMMUNITY DEVELOPMENT BLOCK GRANTS**

The Maine Department of Economic and Community Development, Office of Community Development's 2008 Community Development Block Grant program will begin accepting applications for various program in December, 2007. Copies of the Final Statement and applications will be available from Southern Maine Regional Planning Commission or from the Office of Community Development.

Assistance in the explanation of the programs and to provide information on the development of applications is available from SMRPC at no cost to the municipalities. These services are financed through a contract with the Department of Economic and Community Development made possible as a result of your annual dues payment. We are able to meet with you to explain the types of activities eligible under the various grant programs, match the grant programs to the community and economic development needs of your community, or provide information on the development of an application.

Information on the various CDBG programs, including application deadlines, funding amounts, program descriptions and the Final Statement, is available at the Office of Community Development's website: [www.meocd.org](http://www.meocd.org). Contact Chuck Morgan at SMRPC at [cmorgan@smrpc.org](mailto:cmorgan@smrpc.org) if you have questions.

## DOWNTOWN MILL REVITALIZATION PLANS UNDERWAY

After years of vacancy and underutilization mill buildings throughout York County are now desired for their market potential. Once thought to be blights on communities and downtowns, these mills are now seen as key locations to attract businesses and residents to downtown areas. There are several reasons for this increased interest and activity. One reason is that these mill buildings are attractive for mixed-use commercial projects. Not only can these building provide affordable and workforce housing, they are great locations for creative economy businesses. Their central location in village centers also make them ideal candidates for senior housing projects.

A second reason is that many communities see renovated mill buildings as a key to the renovation and growth of their downtowns and local economies. Municipalities such as Sanford, Biddeford and Saco are investing significant fiscal resources in infrastructure as well as planning activities. Sanford received a \$500,000 CDBG Downtown Grant to support their plans for the growth and development of the downtown millyard area. They will be providing more than \$2,000,000 in matching funds and also have committed TIF revenues for the overall development of the millyard area. Biddeford received a \$60,000 EDA grant for a downtown Master Plan and will be matching it with \$100,000 in local funds. Saco has committed significant TIF revenues to support the renovation of Saco Island.

Another reason for this increased interest and activity is the receipt of significant fiscal resources from the Environmental Protection Agency's Brownfields Program. Sanford has received a \$200,000 Brownfields Hazardous Substances Assessment Grant. SMRPC has received \$400,000 in Brownfields Hazardous Substances Assessment Grants and a \$200,000 Brownfields Petroleum Assessments Grant. SMRPC was recently awarded a \$1,000,000 Brownfields Revolving Loan Fund Grant. These funds have been used for assessment projects at mill buildings located in North Berwick, Parsonsfield, Sanford, and Biddeford. The end result for most of these projects is that the environmental contamination is not as bad as was thought and the cost for remediation has been less than was thought. SMRPC's Brownfields Revolving Loan Fund will be able to provide the fiscal resources, at favorable terms and rates, to assist in the clean up of these facilities.

The evidence showing the increased interest in mill redevelopment is clear. SMRPC has committed all of its Brownfields Assessment funds and has a waiting list for any future funds. Several assessment projects are underway at mill buildings in the Town of Sanford and three assessment projects are underway at mill buildings in the City of Biddeford. Saco Island L.P. recently completed the purchase of Saco Island and intends to complete their comprehensive renovation project in four years. The Caleb Foundation has proposed to renovate the mill building in North Berwick into 35+ units of senior housing. Five years from now vacant and underutilized mill building in many communities will be but a memory.

## PLANNER MIGRATION PATTERNS 1996-PRESENT

SMRPC recently hosted a lunch for planners in our region to network, share ideas and discuss current planning topics. It also was an opportunity to reflect on planner "migration patterns" within the region over the last decade. Several odd migration patterns have resulted in interesting changes within the past few months.

The most recent change is Steve Burns' promotion in York to Planning Director, and the new hiring of Christine Grimando to fill his planning position. Another recent change is the move that Sandra Mowery recently made from Old Orchard Beach to become the Planning Director in Kittery. Gary Lamb, a short-term planner for SMRPC, who then made employment stops in Kennebunkport and Kennebunk, has recently settled in as Planning Director in Old Orchard Beach. Assistant Planner Caroline Segalla moved from Old Orchard Beach to Gary Lamb's recently vacated position in Kennebunk.

From a more historical perspective, current SMRPC planners, Dave Carpenter and Jamie Oman-Saltmarsh, are both past Sanford Town Planners. Over eight years ago J.T. Lockman, moved from Wells to SMRPC. About ten years ago, Paul Schumacher, current SMRPC Executive Director, was previously a Town Planner for Berwick and South Berwick simultaneously. And finally, Town Planner Bob Hamblen has been in Saco for several years after previously working in Biddeford.

Going a little beyond the SMRPC boundaries, Steve Burns in York originally migrated from Dover, New Hampshire. Town Planner Jim Fisk moved south from Westbrook to his current position in South Berwick, and Town Planner Aaron Shields jumped from Scarborough to Gorham before taking up his current post in Arundel.

I'm not sure what this all means, if anything, but if we take a look at the job changes that Code Enforcement Officers or Town Managers have made around the region the findings may be somewhat similar. What do they say about grass being greener on the other side... Maybe sometimes it is! In the next newsletter we'll highlight several Planner's in the region that have stuck around for awhile.

## HOUSING MARKET SLOWDOWN IN THE REGION

BY PAUL SCHUMACHER, EXECUTIVE DIRECTOR

The housing market slowdown has affected the SMRPC Land Use Department – but in some ways we see it as beneficial. About two years ago we estimated that we were likely the busiest planning office in northern New England as far as development review went.

At one point we estimated we had reviewed close to 75 separate subdivision applications in less than a years time. While that is work that certainly needs attention I am not sure if it classifies as fun. Within the past year that work has probably been reduced by two thirds, resulting in a lot less development review by our planners and also less development pressure on our rural communities.

While home builders and land owners might not see this as a good thing, it does give communities time to plan, update ordinances, get training and prepare themselves for what will assuredly be another round of development activity.

For SMRPC, we are now busier than ever. Jamie Oman- Saltmarsh and JT Lockman are currently working on thirteen Shoreland Zoning ordinance revisions including the accompanying maps. We have now become not only the development review specialists of northern New England, but the Shoreland Zoning experts (of at least Maine). In fact, they have little time to do anything else – and this serves as a reminder to towns...if you plan to adopt your own shoreland zoning guidelines you have until June 30<sup>th</sup> of 2008. Taking into account our unique brand of government called town meeting, and the public hearing/warrant process, you might want to get started if you haven't already.

In the meantime, this would also be a great time to fix other ordinance issues and of course, if you have adopted an comprehensive plan, start that implementation process. A window of opportunity to get a house in order comes about once every 10-15 years. I think ours is here right now.

I am also pleased to say that SMRPC now has a full and very active slate of Executive Committee members representing a wide variety of interests from our entire geographic region. They are:

Chair, Peter Morelli – Saco Economic Development Director  
Vice Chair Rob Heard – Selectman, Town of Porter  
Treasurer Dick Bicknell – Town of Eliot  
Secretary John Wood – Hollis Planning Board  
Jim Gulnac – Sanford Planner  
Sandra Mowery – Kittery Planner  
Wally Reid – Town of Kennebunkport  
Greg Tansley – Biddeford City Planner  
Judy Bernstein – Kennebunk Planner  
Chet Chapman – Porter Selectman  
Nancy Perkins – Cornish Selectperson  
Joyce Wood – Selectman's Assist, Alfred  
Roxanne Eflin – Buxton – Historic Preservation Consultant  
Mike Huston – Wells Planner

We greatly appreciate all the assistance these folks give us.