

Fall 2008



SOUTHERN MAINE REGIONAL PLANNING COMMISSION

Regional Newsletter

EXECUTIVE DIRECTOR UPDATE

In the midst of what is either the beginning or already the start of a recession, I just wanted to highlight the work that SMRPC continues to conduct even though development activity has slowed (as an illustration to that statement we estimated that two-three years ago our Land Use staff were reviewing over one hundred subdivision applications a year for member communities. This year it may be about four).

The work highlighted below demonstrates how we have effectively diversified our services:

- We have received an additional \$400,000 in EPA Brownfields Assessment grants and are quickly moving to expend those dollars throughout York and Oxford Counties. Furthermore, we have allocated 1 million dollars in our Brownfields Revolving Loan fund and are about to apply for another 1 million.
- We are now working with the New Hampshire Estuaries Program, which actually covers 10 Maine towns along our border with New Hampshire. This has provided environmental land use planning funding for those areas.
- We are about to apply for a federal Economic Development Administration Planning grant to assist with the closure and reuse planning of Prime Tanning in Berwick (200 job losses) and Whatman in Sanford (another 250 jobs lost.)
- We are finalizing Shoreland Zoning updates and mapping in numerous towns in York and Oxford counties.
- We have recently applied for and hope to receive a grant for a Corridor Management Plan for the Pequawket Trail (Rte. 113) Scenic Byway.
- Completing the first phase an adapting to climate change project funded by the Maine Coastal program.
- Have recently finalized the cooperative purchase (\$90,000) of new high resolution aerial photography for much of coastal York County.
- Continue to work with seacoast New Hampshire on joint ventures surrounding economic development and energy efficiency.
- Working with York County Emergency Management Agency we are about to complete a template for municipalities on Emergency Management Planning (which they can simply modify to fit their own community).
- Continue to work with the ME/NH Traffic Incident Management Group on communications improvements during a traffic incident on I-95 and other roadways.

Finally, we continue to work with all towns on additions to our cooperative purchasing program (included in this newsletter.)

As always feel free to call us with your questions, concerns or assistance.

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GROUP PURCHASE OF AERIAL PHOTOGRAPHY

What do eleven towns, the KKW Water District, the Maine Turnpike Authority, and six State Agencies have in common? They all got a great deal on new digital aerial photography. The pictures are so clear you could almost find that GEICO car insurance gecko, if he was sitting on a dark rock (well, maybe I am exaggerating.)

Typically a job such as this would cost an individual town between ten and fifteen thousand dollars, but by acting as a group, and with a grant of \$35,000 from the US Geological Survey, the participants spent less than \$3,000 a piece.

We anticipate that by having color photography at good resolution from both 2003 and 2007, some interesting analysis may now be possible, by looking at land cover changes and patterns of growth. At additional cost, these photos can be further processed to analyze vernal pools (using red wavelengths) or to pull contours for siting of construction projects.

So when someone asks during budget time, just what good are those Planning Commission dues, anyway? Remember to say...We save thousands on group purchasing!

CDBG UPDATE

The Maine Department of Economic and Community Development, Office of Community Development's 2009 Community Development Block Grant program will begin accepting letters of intent and applications for various programs in December, 2008. 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.

SMRPC SUCCESSFUL IN ACQUIRING REGIONAL COMMUNICATIONS GRANT

SMRPC has received a grant through the Maine Emergency Management Agency (MEMA) to help fund the programming of police radios for twelve communities in York County and the York County Sheriff's Department.

The funds will be used to program department radios for additional frequencies to aid inter-agency communications during emergencies. These "CONOPS" frequencies are part of a program to improve communications during incidents that involve several different jurisdictions and agencies.

"With the current strained municipal budgets, this funding is a great help for all the departments involved," explained Lt. Charles Szenjowski of the York Police Department. "It will greatly improve our communications during incidents." The grant, totaling \$23,720, will also be used to reimburse departments that send staff to CONOPS training sessions being coordinated through MEMA and the York County Emergency Management Agency. SMRPC will be coordinating the effort over the next four to six months.



TRANSPORTATION HIGHLIGHTS

- ◆ SMRPC has been working with the Town of Fryeburg to develop a Model Bicycle and Pedestrian Plan to be used as a step-by-step guide to improving biking and walking in the community. The goal is to create a village atmosphere, with a vibrant downtown area, that provides safe access for bicyclists and pedestrians alike. An active working group has been busy handing out surveys, working on a vision statement, and brainstorming new and improved trails, paths, crosswalks and bike lanes. This is a joint project funded in part with a generous grant from the Maine Department of Transportation, the Town of Fryeburg and SMRPC.
- ◆ This summer the Route 113 Corridor Coalition, staffed by SMRPC and the Greater Portland Council of Governments has been meeting on a regular basis. The Committee has been working on creating a Pequawket Trail Scenic Byway Brochure for the 2009 season, along with a light box to be displayed at the Fryeburg Visitors Center. In August there was a golden spike ceremony to celebrate the State's purchase of the Mountain Division right of way to complete the rail connection from Greater Portland to Fryeburg. The Route 113 Corridor Coalition has been instrumental in the restoration of the rail service.
- ◆ SMRPC, through the Kittery Area metropolitan Planning Organization (MPO), contracted with Sebago Technics to perform a regional traffic signal audit. The study included signals in the towns of Berwick, Eliot, Sanford, and York. The report, which is just wrapping up, will verify timing and phasing sequences of existing signals, identify deficiencies, recommend short and long-term capital improvements and establish a practical course of action to upgrade the region's signals in order to improve user experience and reduce delay.
- ◆ SMRPC has just wrapped up another season of traffic counting. Each summer, staff trek through poison ivy, defend themselves from speeding traffic, endure rain storms, and fight off New England insects to set up traffic counting equipment on to the region's roads. This summer was no exception, we saw it all. Next year we hope to have one less location monitor, as the MPO recently purchased a new solar powered counter, which will be permanently installed at a location still to be determined.

Beginning with Habitat (BwH) provides wildlife habitat information to help local decision-makers make informed land use decisions that mesh wildlife habitat conservation with future growth needs.

BwH has a new electronic quarterly newsletter to promote the importance of conservation planning at the local level. In the newsletter you will get a taste of BwH's new directions and enhanced services provided to help you act locally to protect and preserve Maine's natural resources, quality of place, and economic future.

New Web-Based Map Service Coming Soon!

You will soon be able to view BwH data and create and print your own customized maps right from their website. Until now BwH has relied on hard copy maps, downloadable .pdf format maps and the annual distribution of digital data (for those with GIS capacity) to distribute natural resource information. Hard copy and .pdf format maps, however, go out of date as new information is incorporated and many do not have access to GIS to utilize the digital data. In order to improve accessibility and ensure land use decisions are made with the best information available, BwH is developing an interactive online map service that will make BwH's most up-to-date natural resource data as well as basic online mapping tools freely available to anyone with a computer.

The map service will allow you to view current BwH data right from their website, www.beginningwithhabitat.org, pan around the state to your area of interest, zoom in and out on information, turn BwH data and selected reference layers on and off and create and print customized maps showing the BwH information in your area of interest.

In addition, the map service will link to an interactive online biodiversity "encyclopedia" which will include species and habitat fact sheets, photographs, conservation information and links to additional information. The encyclopedia is envisioned to provide those viewing the BwH data through the online map service with the ability to: 1) link to a broader "story" that includes information regarding the importance of conservation planning and biodiversity; and 2) the ability to access specific information regarding habitats and species, State regulations, and suggested habitat management techniques. For example, clicking on an eagle nest site in the online map viewer will bring up information on bald eagles, their habitat needs, Essential Habitats and the Maine Endangered Species Act.



The map service and encyclopedia are intended to enhance BwH efforts to assist planners, landowners, developers and the general public with understanding and appreciating the significance and diversity of species and habitat types distributed across Maine's landscape. In addition to providing the map service, BwH will continue to provide hardcopy maps and .pdfs and to distribute digital data annually. Even with this unprecedented access to natural resource data, there is no substitute for direct contact with BwH staff and Regional Biologists.

Habitat Conservation Tools Used by Maine Communities Compiled in the BwH Toolbox

BwH has added a Toolbox to the BwH website. The Toolbox is a guide intended to help towns and organizations achieve their habitat conservation goals. It includes an introduction to using BwH data and principles in municipal comprehensive planning and open space planning, as well as example tools created by towns throughout Maine that address common conservation issues. For example, the Toolbox includes examples of wildlife habitat overlay districts, conservation subdivision ordinances, transfer of development rights, shoreland zoning amendments, resource protection and wetland protection ordinances, impact fee ordinances, and information on land bonds, grant sources, and more.

The information and examples included in the Toolbox offer perspective into how other towns are addressing their habitat needs and they provide possible approaches for your town or organization to consider and implement when addressing habitat-related goals. The BwH Program will continually be updating and adding to the list of tools provided on the site. Please forward any additional examples that you feel should also be included.

BwH Offers Specialized Presentations and Technical Assistance

In addition to an introductory presentation, which provides an introduction to the program, principles, maps and data, BwH is now providing more specialized presentations and technical assistance focused on putting BwH information to use. BwH is providing presentations focused on using BwH information in comprehensive planning and open space planning, how to use the BwH toolbox, and on the development and implementation of specific tools to meet your community or organizations needs. BwH meets with local boards and committees to, for example, walk through examples of how municipalities have created and adopted open space plans, passed local land acquisition bonds, drafted conservation subdivision ordinances, or passed habitat oriented overlay districts. Similarly, BwH is also available to assist local land trusts in strategic conservation planning and prioritizing local conservation focus areas.

A New Look to BwH Maps

If you haven't seen the BwH maps lately, you're in for a surprise! Each map has a new look and improved appearance and some include additional information. Information related to aquifers, watersheds and drinking water supply has been added to the Water Resources and Riparian Habitats Map, for example, and impervious surface coverage has been added to most maps. The Conserved Lands Map and Aerial Imagery Map have been combined into one and we are now providing a Regional Map, which presents data from the three core BwH maps (Water Resources and Riparian Habitats, High Value Habitats and Undeveloped Blocks) from a regional perspective.



You can find all this information and more at www.beginningwithhabit.org.

FLOODPLAIN MANAGEMENT HANDBOOK

In recent CEO Workshops the Maine Floodplain Management Program handed out copies of a relatively new publication for floodplain managers. It provides a wealth of detailed information on the floodplain program and can be used as a study guide to enhance the knowledge and skills of local officials responsible for administering and enforcing local floodplain management regulations. It is also intended to broaden their understanding of floodplain management strategies that can be applied at the local level. Local officials and others can also use the study guide to help them study for the exam for the Association of State Floodplain Manager's (ASFPM) Certified Floodplain Manager designation. Guidance is included on how to handle many of the issues and information provided that will help floodplain managers explain the requirements to citizens of your community. The Floodplain Management Handbook can be ordered on-line. They are a great resource, but keep in mind that your ordinance may be more restrictive than the national program.



The handbook is free and only available in printed form which can be ordered from the FEMA Library at www.fema.gov.

COOPERATIVE PURCHASING SAVINGS

The member towns who participated in SMRPC's cooperative purchasing program saved an estimated \$343,114 for salt, copy paper and road striping purchases. By these numbers, it appears that this program is working and very beneficial to all, especially in these tight times.

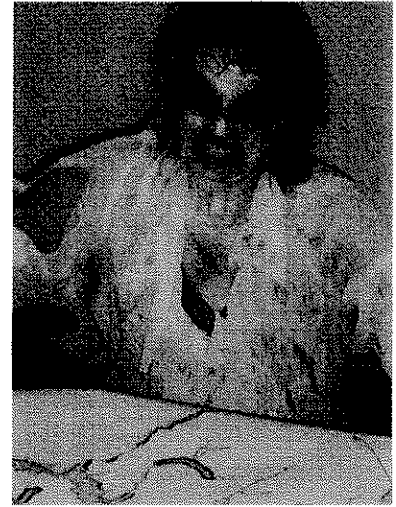
With the economy the way it is, and towns trying to save money, we strongly encourage all member towns to continue using this program, and ask us about our other joint purchase items available (tires, signs, fuel, etc.) to maximize your potential savings. For more information, contact Marian Alexandre at malexandre@smrpc.org.

COMMUNITY	SALT	PAPER	ROAD STRIPING	TOTAL
Acton	\$11,503.32	\$108.00		\$11,611.32
Alfred	\$10,801.71	\$27.00		\$10,828.71
Arundel	\$3,947.52		\$171.00	\$4,118.52
Baldwin	\$4,510.35			\$4,510.35
Berwick	\$26,784.54	\$234.00		\$27,018.54
Biddeford	\$45,789.69			\$45,789.69
Buxton	\$21,379.83			\$21,379.83
Cornish	\$4,055.46			\$4,055.46
Dayton	\$4,965.24		\$85.18	\$5,050.42
Eliot				\$0.00
Hollis	\$14,494.80			\$14,494.80
Kennebunk		\$117.00		\$117.00
Kennebunkport	\$8,712.30		\$1,020.00	\$9,732.30
Kittery		\$234.00	\$2,408.50	\$2,642.50
Lake Arrowhead	\$2,282.16		\$2,946.50	\$5,228.66
Lebanon				\$0.00
Limerick	\$6,661.44			\$6,661.44
Limington	\$9,020.70			\$9,020.70
Lyman				\$0.00
Newfield	\$3,454.08			\$3,454.08
North Berwick	\$13,800.90			\$13,800.90
Ogunquit				\$0.00
Old Orchard Beach		\$535.50		\$535.50
Parsonsfield	\$11,721.49			\$11,721.49
Saco		\$540.00		\$540.00
Sanford	\$47,239.17	\$189.00		\$47,428.17
Shapleigh	\$6,360.75	\$45.00	\$2,789.76	\$9,195.51
South Berwick			\$2,620.60	\$2,620.60
Waterboro	\$16,854.06			\$16,854.06
Wells	\$8,172.60			\$8,172.60
York		\$675.00		\$675.00
York County	\$282,512.11	\$2,704.50	\$12,041.54	\$297,258.15
				\$0.00
Baldwin				\$0.00
Brownfield	\$2,552.01	\$112.50		\$2,664.51
Denmark	\$4,834.17	\$270.00		\$5,104.17
Fryeburg	\$12,536.46	\$1,125.00		\$13,661.46
Hiram	\$10,169.49			\$10,169.49
Lovell	\$5,859.60			\$5,859.60
Porter	\$2,798.73	\$22.50		\$2,821.23
Stoneham	\$755.58	\$9.00		\$764.58
Stow	\$4,811.04			\$4,811.04
Sweden				\$0.00
Non-York County	\$44,317.08	\$1,539.00		\$45,856.08
Grand Totals	\$326,829.19	\$4,243.50	\$12,041.54	\$343,114.23

SHORELAND ZONING WORK—THOSE WAVES KEEP COMING

Below is a summary of the state of our Shoreland Zoning update work here at SMRPC. As you can see, we have been helping more than a dozen towns to comply with this DEP program, which has a deadline of July 1, 2009. For those communities who haven't gotten deep into this yet (or perhaps haven't even started), beware that the text changes required to comply tend to run between 60 and 100 pages, single-spaced, depending on whether you have a "stand-alone" shoreland zoning chapter, or a set of shoreland standards that's integrated into and spread all over your Land Use Ordinance. So if you need help from us on updating your text, please let us know so we can get you into our production schedule. We may not be able to help you in time for a spring 09 Town Meeting, but will probably be able to finish by next fall. Costs have run between \$3000 and \$9000 per town, depending on whether help on both map and text is required (or just one or the other), as well as the condition of the existing text and map.

One of the benefits of updating maps using GIS has been that many towns now can put their zoning map on the Town's website, once we provide it in Adobe Acrobat "PDF" Format. Check out Lovell's map, which can be found easily at <http://www.lovellmaine.us/Documents.htm> . Pretty good for a Town, where only last year, if you needed to see the zoning map, you had to go into the conference room, where the only copy was behind a frame up on the wall.



*Spooky Halloween Zombie!
Or
Staff going crazy reviewing
Shoreland Zoning changes?*

Town	Map Status	Text Status	DEP Review Status	Town Meeting/ Council Adoption
Acton	Done, awaiting final IWWH data	Text editing in process	Not submitted yet	Scheduled-June 09
Alfred	Done, awaiting final IWWH data	Initial Draft Complete, Inter-board review mtg - Nov 08	Will submit in Nov 08	Scheduled-March 09
Berwick	Done, awaiting final IWWH data	Text editing in process	Not submitted yet	Scheduled Spring 09
Buxton	Kickoff Meeting - Nov 08			unknown
Dayton	Requested proposal			
Eliot	Done, awaiting final IWWH data	Done	DEP reviewed and required small edits, redrafting com- plete	Scheduled-March 09
Fryeburg	Proposal for Map Requested	Staff will do text		unknown
Hollis	Done, but want to compare map of Minimum DEP standards with their standards	Text editing in process	Not submitted yet	Scheduled Spring 09
Kennebunk	Illustration of DEP Minimum Guidelines Requested and com- pleted	SMRPC not involved in Text	unknown	unknown
Kennebunkport	Done, but New IWWH data not added yet	Last 15% of Text Done by Dec 1, 2008	Spring and Fall 08 Changes reviewed, required small edits, redrafting underway	Several Parts of Text already adopted Spring & Fall 08, Rest of Text and Map sched- uled for June 2009
Kittery	Illustration of DEP Minimum Guidelines Requested, Scheduled for Nov 30 Delivery	SMRPC not involved in Text	Not submitted yet	unknown
Limington	Done	Done	Approved	Adopted February 08
Lovell	Done	Done	Approved	Adopted March 08
Ogunquit	Done	Done	Approved by DEP	Vote on Nov 4, 2008
Parsonsfield	Done	Done	DEP reviewed and required small edits, redrafting com- plete	Adopted September 08, small edits required by DEP will be on next TM ballot
Porter	Map Done, New IWWH added	Staff has completed text	unknown	unknown
Waterboro	Requested proposal			
Wells	Requested proposal			

CASE NOTES

By: JT Lockman and Madge Baker, Esq.

Vickie L. Mills v. Town of Eliot, et al., Maine Supreme Judicial Court, Decided August 28, 2008

Facts The CEO approved a building permit for a third house in a “family subdivision,” which had been recorded without Planning Board approval. All those involved in the recording believed themselves to be exempt under the definition of “subdivision” in the Subdivision Law. Aggrieved neighbor Mills appealed the CEO’s building permit issuance, alleging that the Cullen and Bullis family divisions were made with the intent to avoid the objectives of the statute. Mills’ appeal was denied by the Eliot Board of Appeals. The ZBA found that there was no intent to avoid, and that Mills’ appeal was late. The Superior Court upheld the Appeals Board decision. The Maine Supreme Court vacated the judgment of the Superior Court, remanding the decision all the way back to Code Enforcement Officer, to do the decision over.

Issues and Rulings::

- 1: Mills was not late in her appeal, even though the family subdivision was filed in 2001. Because the possibility of a violation of the subdivision law would not emerge until the CEO issued a third permit within five years on that parcel, you should use the issuance date of the 3rd building permit rather than the time of filing of the family subdivision, to count 30 days from the decision. Although the CEO approved the creation of the family subdivision in 2001, the filing of a family subdivision requires no municipal decision. When a CEO checks a family subdivision it is not a “legally cognizable action.”
- 2: The CEO was responsible for determining whether the intent of the families was to avoid the objectives of the Statute – not the ZBA or appellant.
- 3: The CEO did not make findings of fact or in any way document that he investigated the intent of the land dividers before issuing the 3rd permit.
- 4: The town should not have been involved in the review and approval of the family subdivision in 2001, as it never had adopted a stricter or broader definition for a “subdivision” than the one found in the statute.

Planning Implications:

CEO’s should not assume that a particular family subdivision is OK because it has been recorded for many years and no one has ever challenged it. The CEO needs to investigate and document the “pedigree” of lots that are part of exempt family subdivisions before issuing permits. For more information, see the text of the opinion at http://www.courts.state.me.us/court_info/opinions/2008%20documents/08me134mj.pdf.

Thanks to alert reader Steve Burns, York Community Development Director, for pointing this case out.

Jade Realty Corp. v. Town of Eliot, Maine Supreme Judicial Court, decided May 8, 2008

Subdivision case

Facts: In 2006 Jade Realty applied for and received a permit to construct an access road to an undeveloped portion of its large subdivision. In 2005 the Town had amended its zoning ordinance to provide that no new access road serving more than 14 lots is permitted if it connects to a public street that does not meet current town street standards at the intersection of the access road and the street. The CEO interpreted the ordinance as requiring that the access road only needed to meet town street standards. Several town citizens appealed the CEO’s decision. The ZBA disagreed with the CEO and conditioned the permit upon upgrading the public road. Jade Realty took the case to Court. Superior Court upheld the CEO’s decision and overruled the ZBA.

Issue: Does the Town road at the intersection of the Town road and the subdivision road have to be upgraded?

Ruling: Yes it does. Apparently Superior Court had agreed with the CEO that the definition of “intersection” was vague enough as to be open to interpretation. The Supreme Court did not concur. The Justices concluded that no matter how you interpret “intersection,” the intent of the ordinance language was clear: both the private and the public roads at the intersection had to meet Town road standards.

WHAT TOWNS CAN DO ABOUT SEA LEVEL RISE

As you may have read in our last issue, SMRPC is working with the Towns of Scarborough, Old Orchard Beach, Saco and Biddeford, to identify vulnerabilities to sea level rise, and to create action plans to deal with the problem. However, it is worth mentioning the forward thinking of the Town of Ogunquit, which is the first in our area, to our knowledge, to take a concrete step of adjusting its zoning in response to sea level rise.

This policy started when Ogunquit adopted a Comprehensive Plan several years ago, with an implementation strategy to “require development in coastal areas be sited and designed to accommodate sea level rise.” Then, in the spring of 2007, during the implementation of zoning to make the comp plan recommendations a reality, the Town adopted the following language, defining the beginning of upland area of the coast, at “a contour line at an elevation 11.0 feet above mean sea level as determined by a land surveyor based on the nearest U.S.G.S. benchmark.” This means that rather than using the highest tide line as the place to begin measuring the 75 foot ocean setback, Ogunquit starts a bit farther up the hill.

Here are the predictions for the highest annual tides for 2008 in the Ogunquit area, according to the DEP:

DEP Highest Annual Tide – 2008 Predictions.

Location	Highest Annual Tide Height (elevation in feet, NGVD29)
Kennebunkport	7.0
Wells, Webhannet River	6.9
Cape Neddick	6.8

This means that Ogunquit is using a position four feet higher than the highest tide as the start of its setback. This step should prevent flood damage from sea level rise to any new construction in Town. In the area of marsh between Route 1 and the barrier beach, the FEMA 100-year flood is predicted to rise to an elevation of 9 feet. So this means that the contour line set for measuring the setback is two feet higher than the height of the 100-year flood (in the salt marsh area).

This simple step should insure a high margin of safety for any new construction near the tidal shoreline in Ogunquit. Given that 100-year storms have been observed to occur more frequently as of late, this is good news indeed!



*Getting There from Here:
Connecting Maine's Students to The World.*

The Move! Program is an education program that explores transportation through science, mathematics, social studies, visual & performing arts, and career preparation. Move! (formerly known as Kids and Transportation) is an exciting series of classroom presentations, resources and activities developed to engage young minds by teaching Maine students how transportation impacts our world. With 30 different presentations that span the K-12 spectrum in mathematics, science and technology, social studies, visual and performing arts, and career preparation—the program offers Maine teachers an opportunity to bring something new and exciting to the classroom at no cost. This is possible because the Move! Program is underwritten by the Maine Turnpike Authority and MaineDOT.

Led by SMRPC, the program is housed at both SMRPC and GPCOG to deliver services in York and Cumberland Counties. The Move! sponsors and hosts hope to expand the Program in the near future to offer services throughout Maine.

Each presentation is provided by a Move! educator who travels from school to school, working with teachers on a pre-arranged schedule. All presentations and resources are designed in house and are aligned with the Maine Learning Results. For more information, please contact Dave Carpenter at www.themoveprogram.org or carpenter@themoveprogram.org

Happy Holidays

From the Staff at SMRPC

If you would prefer to receive our bulletins, newsletters and any pertinent articles electronically,
Please contact
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SOUTHERN MAINE
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