

## **CHAPTER 6. CURRENT AND FUTURE LAND USE PLAN - ISSUES AND RECOMMENDATIONS**

### **6A. CURRENT LAND USE**

Southwest Harbor is a small coastal village that has historically identified itself with the marine resources available at our doorstep (fishing and boat building) in conjunction with subsistence activities typical of small Maine towns and, since the late 19<sup>th</sup> century, with meeting the needs of summer visitors to the quiet side of Mt. Desert Island. At 8884 acres (12% of Mount Desert Island), Southwest Harbor's land area makes it the smallest town on the island and Acadia National Park owns 50% (4430 acres) of the town's land area, including most of the wetlands and steep slopes.

The town was originally settled along the shore and along what have become the major roads, with village centers in Manset and in the present town center. Summer visitors began to build second homes during the later years of the 19<sup>th</sup> century, filling in along the shores and in between existing homes and businesses. Both our harbor and Acadia National Park are major attractions for those who live or visit here.

Because proposals for Future Land Use depend on current land use and the issues surrounding it, we will consider those first.

Southwest Harbor and the neighboring town of Tremont are unique in the state of Maine for their mixed-use zoning that has deep roots in community traditions. To quote from our most recent (1996) Comprehensive Plan, "Traditionally land within SWH has been used not only for a mixture of uses upon one lot at one time, but also for a succession of different uses....This tradition of mixed land-use is an important part of the culture of SWH." Our economy has always relied on a mix of fishing, subsistence farming in home gardens, boat-building, summer visitors and residents, and work based at home. "Another tradition which contributes to the character of SWH is the home occupation. A large proportion of the year-round residents conduct a business from their home, be it the major occupation of the family or just augmenting the family income." (1996 Comprehensive Plan)

Although this mix of business, industry and residence can create conflicts from time to time, resistance to regulation is also strong. It was not until 1988 that Southwest Harbor passed its first zoning ordinance. A public forum in June, 2009, reaffirmed our sense that zoning in the harbor area has effectively protected the character of the harbor and central village, and mixed use zoning in the town at large protects the rural/suburban atmosphere of a small working community favored by residents.

Recent development has been mostly residential and has included redevelopment and expansion of existing uses in the built up portions of the community. Additional development is occurring lot by lot in subdivisions with many undeveloped house lots throughout. Most of these subdivisions are bordered in the rear by Acadia National Park, and so, by design, ingress and egress is via the same street opening. Where these

subdivision are located in Zone C, a more rural character is preserved that seems appropriate adjacent to the Park.

Southwest Harbor's character and identity has always been closely linked to its harbor, and our Land Use Ordinance (LUO) reserves some areas of the harbor shore for Commercial Fishing/Maritime Activities (there are currently two commercial fish wharves in town) and for Maritime Activities, although residential and a few other uses are grandfathered in these two areas. Remaining shoreland is either in the Harbor zone near the village center, zoned Shoreland Residential, or in Acadia National Park. The three mixed-use zones for residences, businesses and industry (Zones A, B, and C) have larger required lot sizes as one gets further from the town center and are based on the existence of, or potential for, town water and/or sewer service. Developers of subdivisions in the last 14 years have (with one exception) created private roads that the town does not expect to take over (often because they do not meet the standards for town roads). Mobile homes are allowed anywhere where other LUO provisions and standards are met. Mobile home parks are permitted in Zone A where existing density standards are consistent with State law.

Buffering and setback requirements are intended to prevent conflict between uses within these zones. All the National Park land in town is in a Resource Protection Zone. The state has identified another Resource Protection Zone at Seawall Pond at the boundary between the Park and privately held land and the town has recently increased restrictions and setbacks to protect it. The Park owns much of the land that forms the watershed of our town water supply, as well as steep slopes on our mountains, significant wetlands, bogs, tidal marshes, and other habitats crucial to the flora and fauna of the Gulf of Maine region.

Land use in Southwest Harbor is regulated by a group of ordinances which are summarized in Appendix 13, including the Land Use Ordinance, the Subdivision Ordinance, a Floodplain Ordinance, a Coastal Waters and Harbor Ordinance, a Road Ordinance, Water and Sewer Ordinances, and a Board of Appeals Ordinance. They contain lot dimensions, performance standards, and so forth, and are enforced by a full-time, certified Code Enforcement Officer assisted by appointed volunteer Planning and Appeals Boards with seven and five members, respectively. Consistent application and enforcement of these ordinances will engender public support and confidence.

Land use regulation is overseen by a full-time Code Enforcement Officer (CEO) and a seven member volunteer Planning Board whose members are appointed by the Selectmen. Remaining vacant (for last 11 years) is the staff position of a part-time planner. Elsewhere, this Plan has recommended that the Town consider contracting for a planner as needed to assist with comprehensive land use and subdivision ordinance updates.

The information and data to support these statements can be found in Maps and Tables in Appendix 13, Land Use.

## **6B. FUTURE LAND USE PLAN**

The Future Land Use Plan aligns with the community's vision statement through its discussion of current and anticipated development pressures, recommendations for changes to the Land Use Ordinance particularly in the areas of buffering, density and stormwater runoff standards. The Plan also includes recommendations for further protection of Critical Natural Resource areas and the further and continuing development of the Capital Improvement Plan and assessing data. The Future Land Use Map illustrates the recommendations for future land use included in this Plan.

The Town seeks to protect its rural character where possible and encourage in-fill building along existing roads in the more densely developed parts of town. This approach reflects the town's historical pattern of development as well as recent development patterns. As one of only two towns in Maine with town-wide mixed-use zoning, Southwest Harbor has taken the approach of permitting a mix of residential, commercial and industrial uses in all zones, using appropriate buffering to protect neighbors from unwanted impacts. This pattern reflects land uses in place before we had any zoning ordinance, our history of development along the shore and major roads, and our encouragement of small entrepreneurship and home occupations. This approach is not without occasional tensions, but it continues to receive the support of residents in all parts of town.

For this planning period and beyond, our best information on development trends and population projections indicate that there will not be a need for many new market-rate residential units. It is anticipated that any residential development will occur in vacant lots near the town center or in existing subdivisions.

Land values, location, lack of space and traffic patterns likewise preclude any significant commercial or industrial expansion. There will likely be a need for expanded medical and healthcare services for the elderly. These will likely develop in and around the center of the village in either Zone A or B. Limited commercial and any industrial development is anticipated to occur using existing commercial spaces for different commercial uses, in keeping with the community's vision and desire to maintain a small coastal village atmosphere with commercial and residential uses intermixed.

The Commercial Fisheries/Maritime Activities zone on the north side of the inner harbor, with two fish wharves, US Coast Guard, two town docks, and several marine businesses affirms our support for traditional fishing and marine-related activities, as does the Maritime Activities zone to protect recreational boating activities on the south side of the harbor. The challenge for the future is how to encourage economic sustainability for these properties and businesses in the face of demand for waterfront residential property and shifts in our economic base towards the increasing impact of tourism.

The Shoreland Residential zone (to which we propose an addition to recognize the current and expected future reality) acknowledges both the historic importance of the waterfront to our residents as well as the economic importance of seasonal residents who know and care about our community. In the Harbor zone, new single-family residential development

is allowed, as are restaurants, boat businesses and a marina, but motels, hotels and multi-family residential development are prohibited in order to protect the character of the harbor. Town water is available in all these zones around the inner harbor as well as in Zone A and most of Zone B. Town sewer, which serves about half the town's households, is available in the areas right around the inner harbor, in Zone A and in some parts of Zone B. This part of town is well served by the state highway and town roads.

A look at the Growth Over Time Map shows that efforts to encourage growth in the "growth area" along Route 102 on the northern approach to town named in the 1996 plan have been unsuccessful. Most development in the last 30 years (and since the last plan in 1996) has been residential and has largely been scattered through new subdivisions in various parts of Zone C, zoned for the least density of development. Because our population is projected to remain stable or decrease slightly while also ageing somewhat during the next 10 years, we do not expect pressure to grow as a year-round community. As our population ages, more elder care and assisted living facilities will be needed, but because of municipal fiscal constraints and lack of a large population needing service, these will most efficiently be met regionally, in neighboring communities if possible. A modest growth in seasonal homes is possible, though difficult to predict at this juncture.

There is no regional economic development plan. Acadia National Park is the major factor in regional natural resource plans, and its boundaries have been established as of 1986. The fact that it occupies half the town's land area makes a significant contribution to natural resource protection. We recommend cooperating with the Park particularly in managing Bass Harbor Marsh and in replacing the Seal Cove Road culvert at Marshall Brook. Regional transportation planning has centered on the seasonal Island Explorer bus, and it allows visitors to access major points of interest throughout the town. This Plan recognizes that it may be some time before Southwest Harbor has the resources to create affordable workforce housing or assisted living facilities for elders, and we anticipate that these needs will partially be met by facilities in adjacent communities or by changes in the way services for the elderly are delivered in town.

In evaluating current land use patterns and proposing our Future Land Use Plan, as well as in the development of the Comprehensive Plan with issues and recommendations for action in Chapter 5, we have referred to (and often incorporated) the State Growth Management Goals and the State Coastal Management Policies. A summary of these goals and policies and where they are applied in this Plan can be found in Appendix 17, State Growth Management Goals and Coastal Management Policies.

Additionally, Chapter 4 (a long table) summarizes the key regulatory and non-regulatory approaches and strategies that Southwest Harbor will use to implement its Future Land Use Plan, delegates responsibility for oversight and suggests time frames.

## **6C. DESIGNATION OF GROWTH AND RURAL AREAS**

There is generally no popular appetite to legally restrict growth or to further define appropriate land use. The Ordinance consistently protects the harbor for its uses and appearance and voter support for this remains solid. Most people consider Acadia

National Park, with its ownership of half the town, sufficient to protect critical natural resources.

**Growth Areas:** Southwest Harbor’s policy of applying minimal restrictions to land development as characterized in its mixed use zoning ordinance has not limited development, which has been fairly slow and incremental and much to the general satisfaction of local residents. The State Planning Office required the insertion of a growth area into the 1996 Plan, and requires that growth areas be designated in this comprehensive plan in order for it to be consistent with Maine’s Growth Management Act. Growth areas are defined as an area that is designated as suitable for orderly residential, commercial, or industrial development, or any combinations of those types of development and related infrastructure, and into which most development projected over 10 years is directed. The growth area previously identified did not turn out to be the location where growth (such as it was) occurred. This probably suited the existing residents in that area very well.

**Rural and Critical Rural Areas:** The half of our town that is included in Acadia National Park amply fulfills the requirements in the Growth Management Act for a designated rural area, and it has been zoned as a Natural Resource Protection zone since at least 1996. For this reason, residents have understandably been reluctant to further expand Rural or Critical Resource Areas. The town recently created a Critical Resource Protection area around Seawall Pond, with accompanying restrictions and set-backs, at the State’s request. This Plan proposes evaluating two additional areas for Critical Resource Protection (Issue 6-5 below).

## **6D. ISSUES AND RECOMMENDATIONS**

### **State Growth Management Goal #1**

Encourage orderly growth and development in appropriate areas of each community, while protecting the state’s rural character, making efficient use of services, and preventing development sprawl.

**Issue #6-1: The 1996 Plan recommended that the area between the Manset corner and the Manset Town Dock be re-zoned from Harbor to Shoreland Residential to reflect its current (and fully developed) use.** Voters have identified protection of traditional Harbor uses as a priority, hence the Harbor designation, but as virtually all the properties in question are “grandfathered” for residential use, it may be a case of closing the barn door after the horse has run away. The current non-conforming status of most of the properties makes permitting difficult and contentious and arguably places an unreasonable burden on the property owners. Moreover the likelihood that any of these properties will ever be returned to traditional harbor uses is extremely remote.

**Policy:** The LUO should support the locations, types, scales, and intensities of land uses the community desires as stated in its Vision while reflecting the realities of modern land use requirements.

**Recommendations:**

1. Rezone the area between Manset Corner and the Manset Town Dock from Harbor to Shoreland Residential to reflect its current use (1996 Plan). The Planning Board should propose LUO changes with respect to this zone within 1 year.
2. Update the Floodplain Management Ordinance as needed.

**Issue #6-2: New types of residential development are changing the traditional character and appearance of the Town.** Just prior to adoption of a zoning ordinance in 1988 SW Harbor began to see the development of large condominiums built on speculation on lots that had once held single-family residences. The change in appearance was as alarming to some as the dramatic increase in density. These anxieties conflicted with traditional attitudes about property rights and a desire NOT to impede potential economic development in the form of home-based businesses and other commercial/industrial uses. The mixed use zoning ordinance that was eventually developed and passed by the voters in 1988, allows all uses in zones A, B and C, with different density limitations and buffering standards as warranted. Accessory uses are allowed. Accessory dwelling units are allowed and the density standards are less restrictive here. The LUO has no definition at all for condominiums. In the 90's property valuations climbed substantially. The Town's population was still increasing in significant part due to retirees who were downsizing and liked the small town community feel of SW Harbor and to a country-wide, prosperous upper middle class looking for second homes.

The general permissiveness of the LUO coupled with rising land values have created development opportunities/pressures that may not coincide with SW Harbor's vision.

**Policy:** The LUO should support the locations, types, scales, and intensities of land uses the community desires as stated in its Vision while reflecting the realities of modern land use requirements. The purpose of regulation should be to control the impact of development.

**Recommendations:**

1. The Subdivision and Land Use Ordinances should be clarified with respect to the development of condominiums where the subdivision owns land (and possibly buildings) in common, in combination with individual ownership of dwelling units. Planning Board to evaluate the Land Use and Subdivision Ordinances, propose changes if needed, and report to Selectmen within 1 year.
2. The Planning Board should develop definitions and standards for condominiums within 1 year.

**Issue #6-3: Buffering standards may not be effective particularly in the many areas of town where pre-existing development is non-conforming.** Residents continue to report concerns about buffering practices in areas of mixed use. Complaints about noise and light trespass are the most prevalent.

**Policy:** Buffering standards should be made adequate to protect mixed-use zoning and protect the types of land uses the community desires as stated in its Vision.

**Recommendations:**

1. The Planning Board and Conservation Commission should undertake a thorough review of the buffering standards and include recommendations and suggestions for how to meet standards within 2 years.
2. Augment buffering standards for commercial, industrial, and large residential developments with an emphasis on protecting rural character. The CEO should develop and the Planning Board evaluate proposed standards within 1 year.

**Issue #6-4: With recent weather events (two 100-year rainstorms within six months) storm water run-off has resulted in erosion, road damage, flooding and property damage.** SW Harbor's hilly terrain and shallow soil, coupled with development and impervious surfaces over what was once forested swamp land, have aggravated this problem. The LUO may not adequately address the incremental loss of remaining wetlands as development occurs.

**Policies:**

1. Coordinate land use strategies (and in this case stormwater management) with planning efforts related to the state highway.
2. Establish efficient permitting procedures, especially in growth areas.

**Recommendation:**

1. Continue to develop enforceable language for storm water run-off standards for individual residences as well as subdivisions. CEO and Planning Board to develop and evaluate standards, ongoing.
2. Cooperate with the Maine DOT to maintain State Roads 102 and 102A and their ditches, ongoing.

**Issue #6.5 - Growth and Rural Area Designation:** We do not predict any industrial growth, and any commercial growth is likely to be modest and could use facilities currently available. Only 52 new homes were built in the period 1996-2008, and we do not anticipate significant residential growth over the next decade. There are 46 lots still vacant in existing subdivisions (two with potential access to the town sewer, 29 with potential access to town water), and there are 39 units remaining in a new 40-unit subdivision that has both town water and sewer. These latter units are likely to appeal to seasonal residents and upper middle class retirees.

For municipal growth-related capital investment purposes, the growth areas are designated as those areas already built up that require repair and maintenance of existing

infrastructure (See Future Land Use Map). All of Zone A, parts of Zone B (designated as Zone BG), and the Maritime Activities zone in Manset are included in this area.

The remainder of Zone B and all of Zone C are considered Transition Areas, with the exception of those areas designated Critical Resource Area. Transition areas are neither intended for the amount or density of development appropriate for a growth area nor intended to provide the level of protection for rural resources afforded in a rural area or critical rural area. It is anticipated that some level of development will occur in these areas, but the town does not propose any investments to make these areas attractive to development.

All the National Park land in town is in a Resource Protection Zone, and is designated as rural area for the purposes of meeting state comprehensive planning requirements.

**Policies:**

1. Support the locations, types scales, and intensities of land uses the community desires as stated in the Vision Statement.
2. Support the level of financial commitment necessary to provide needed infrastructure in growth areas.
3. Protect critical resource areas from the impacts of development.

**Recommendations:**

1. Implement land use recommendations included in this comprehensive plan.
2. Target 75% of growth-related capital investments (State minimum) to Zones A and BG and the Maritime Activities zone in Manset.

**Issue #6-6: Two additional areas outside the Park’s boundaries have been identified by “Beginning With Habitat”** for possible inclusion as Critical Resource Protection Areas: 1) in the southern part of town, west of Seawall Road, with hydric soils, wetlands, and critical habitat, which the 1996 Plan suggested should be rezoned to protect the 91 priority species important to the ecology of the Gulf of Maine and 2) the western slopes of Freeman Ridge, a deer wintering yard with steep slopes draining into Marshall Brook and ultimately Bass Harbor Marsh.

**Policies:**

1. Support State Coastal Management Policies #6: “to protect and manage critical habitats and natural areas of state and national significance...”, and #8: “to restore and maintain the quality of our fresh, marine and estuarine waters...” by helping to alleviate storm water run-off in vulnerable areas.
2. Coordinate land use strategies with local and State land use planning efforts (for critical habitat areas).

**Recommendations:**



1. The Planning Board and Conservation Commission should study “Beginning with Habitat” maps and evaluate the importance of indicating these two areas as Critical Resource Protection areas with appropriate restrictions and set-backs as recently applied to Seawall Pond, and report to public within 2 years.
2. The Planning Board, within 2 years, should incorporate “Beginning with Habitat” maps into the planning review process under the Land Use and Subdivision Ordinances. Particular attention should be paid to high value habitats, priority species habitats, and wetland areas.

**Issue #6-7: The small-town and rural appearance of SWH is part of its character and appeal.** Dense, large-scale development, whether residential, commercial or industrial, threatens this character and impacts the provision of municipal services. In-building should be encouraged on vacant or underutilized lots in already developed areas in order to protect the rural character of the town.

**Policies:**

1. The LUO and the Subdivision Ordinance should support the locations, types, scales, and intensities of land uses the community desires as stated in its Vision.
2. Establish more efficient permitting procedures, especially in growth areas (by clarifying the ordinances).
3. Coordinate land use strategies with other local and regional planning efforts.

**Recommendations:**

1. The Subdivision and Land Use Ordinances should encourage cluster development in lieu of dispersed single family housing in Zone C. The intent should be to control the impact of development on the rural character of the town. Cluster development is used here to mean that the total acreage needed for a particular number of residences is unchanged, but the homes are clustered more closely together, with adjacent common open land. CEO and Planning Board should conduct this study and make recommendation to Selectmen within 2 years.
2. The Planning Board, within 1 year, should clarify the Subdivision and Land Use Ordinances with respect to condominiums where the subdivision owns land (and possibly buildings) in common, in combination with individual ownership of dwelling units. The purpose of regulation should be to minimize the impact of development, rather than to increase permitted density.
3. The Town and its committees should work more closely with Acadia National Park, the Friends of Acadia, Maine Coast Heritage Trust, and Hancock County Planning Commission on issues of land use and management, ongoing.

**Issue #6-8: Data on land parcels, land use, zoning changes, development and infrastructure are laborious to collect, which compromises the ability of the Planning Board and the Code Enforcement Officer to assess the effectiveness of the**

**Land Use Ordinance.** The old mapping software is out of date and does not interface with GIS (mapping) or TRIO (assessing) software, making updates to maps difficult and time-consuming. The maps, including data layers, are an important planning tool for the Town.

**Policy:** The Town should be more proactive in tracking land use changes, evaluating their impacts, and pursuing ordinance changes if and when needed in order to support the locations, types, scales, and intensities of land uses the community desires as stated in its Vision.

**Recommendations:**

1. The Town should maintain its assessing/tax parcel maps in the GIS format, update them annually using the assessor's data base, and coordinate the maps with the assessing data base for planning and public information purposes. The Selectmen should provide necessary funds for the updates (minimal, since we can collaborate with the GIS lab at College of the Atlantic). The Planning Board should immediately begin providing an annual training session for relevant town employees and volunteers in using this information, and provide ongoing training as needed.
2. The Town should contract with a professional planner as needed to advise the Planning Board and other volunteer committees on land use issues and to assist in reviewing and keeping the Land Use Ordinance and the Comprehensive Plan up to date. Selectmen should review annually.
3. Within one year of the passage of the Comprehensive Plan, the Planning Board shall review the LUO, the Subdivision Ordinance and other relevant ordinances for compliance and consistency with the Comprehensive Plan and propose necessary changes.
4. Evaluate the implementation of the Comprehensive Plan every two (2) years, and preferably annually. This should include a review of the degree to which Future Land Use plan strategies have been implemented, how municipal investments relate to growth areas, and how well critical resources are protected. This should be overseen by the Selectmen, with the assistance of a planner, an ad hoc advisory committee, and/or the Planning Board.
5. Within 6 months of the passage of the Comprehensive Plan, the Selectmen should appoint an Implementation Committee to serve as an information resource, to assist town boards and committees in implementing the recommendations, and to report on progress to the Selectmen.