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Memorandum

To: LUPC Commissioners
From: Naomi Kirk-Lawlor, Senior Planner
Date: March 4, 2016
Re: Road Setback Rule Change Recommendations

1. Introduction

The Commission has been reviewing its road setback regulations with the goal of increased flexibility in more densely developed areas and on internal roads. At the February Commission meeting, the staff presented background material and discussed working recommendations for changes to road setback regulations. Commissioners weighed in on the process to date and directed the staff to continue to refine their recommendations and develop rule revision language for the Commission to consider.

2. Process

As part of their review, the staff have researched vehicular crash data, compiled a history of LUPC's road setback rules, interviewed design professionals, made field observations, surveyed the Commissioners, reviewed DOT rights of way, and performed a quantitative analysis of potential prevailing setback rules. Staff considered a variety of strategies to address the desire for more flexibility in road setbacks including: reducing the general residential road setback, introducing a prevailing setback rule, adding specific exceptions to road setbacks, reducing the road setback in certain subdistricts, and eliminating the larger setback requirement for State and U.S. routes. After careful consideration, staff chose which rule making strategies to pursue based on the goals of road setbacks, the locations where the current rules have presented difficulties, and the desire to balance simplicity with flexibility.

3. Road Setback Measurement Methods

At the Commission meeting in February, commissioners discussed different methods for measuring road setbacks. The LUPC rules currently use the edge of the traveled roadway as a starting point for making road setback measurements. Alternative methods, including using legal

rights of way boundaries or the road's center line were discussed. The benefits and challenges associated with each of these measurement options are summarized below.

Using a legal right of way boundary or deeded edge of the property for measurements would discourage applicants from building structures where they were not legally allowed. This may prevent future problems for building permit applicants who would not otherwise be aware of the legal boundaries of their property. However, this method also presents several disadvantages. It is not uncommon for roads in the LUPC service area to have no legally defined right of way. In many cases, there may be competing or poorly described deeds that make it very difficult for property owners or permitting staff to determine where, or if, a legally defined right of way exists. Using this method would also place additional burdens on landowners, who may end up being required to perform and pay for a professional survey of their property in order to build a shed or other accessory structure.

The traveled way of a road will shift over time due to the natural tendencies of drivers, especially on gravel roads. However, the center line of the road does not shift over time, making it a consistent boundary upon which to base a measurement. The center line can be found using the pavement seam on paved roads or by measuring the point equidistant from the top of both shoulders on ditched, gravel roads. The advantage of using the center line as a starting point to measure road setbacks is that, unless the road is re-constructed in a different location, the center line remains stationary through time. This would allow for a consistent measurement of road setback at a given location. The disadvantage is that, because the Commission's road setback regulations apply to all roads regardless of width, this method would produce variable effective road setbacks. For example, a 50 foot setback from the center line would produce an effective setback from passing traffic of ~38 feet for a 24 foot wide road and ~46 feet for an 8 foot wide road. If the Commission were to measure road setbacks beginning at the center line, then it would likely be necessary to require different road setback lengths from different width roads. This would require a more detailed road classification scheme, something the Commission has avoided in the past.

The major benefits of using the edge of the traveled way as a starting point for measuring road setbacks include the simplicity of measurement for both landowners and permitting staff and consistent effective setbacks from traffic. LUPC permitting staff prefer this method because it allows them to give a very simple answer to landowners who call asking us how road setbacks work. It is also the easiest method for them to use when making field measurements. Continuing to use the Commission's current methods for measuring road setbacks would also prevent the Commission from having to require different setbacks on different types of roads. The disadvantages of the current rules are that, in some cases, the Commission's rules may not prevent someone from building within a legal right of way and the edge of the traveled way may shift through time, especially on gravel roads. However, the staff feel that the benefits of using a

new method of measurement would not outweigh the added rule complexity and the additional measurement challenges that would be required.

4. Recommended Changes to Land Use Standards

The redline draft of the proposed road setback rule revisions developed by the staff is attached to this memo as Appendix A and summarized here. Staff believe that these changes will address the great majority situations in which the permitting staff report that more flexibility would be helpful. For reference, the current rules require the following road setbacks: 50 feet for single-family residential structures, 75 feet on certain designated roadways, 75 feet for multi-family and commercial structures, and 20 feet on coastal islands.

Staff recommends the following rule changes:

- Reduce the road setback required for all structures (residential and non-residential) and campsites to 30 feet within D-RS and D-GN subdistricts
- Eliminate the 75 foot road setback requirement for single family residential structures on named State and U.S. routes
- Reduce the vegetative buffer requirement on public roads to 30 feet in D-RS and D-GN subdistricts for consistency
- Reduce the vegetative buffer requirement to 30 feet in D-RS subdistricts within Prospectively Zoned Areas for consistency
- Add a new exception that allows for the Commission to reduce the road setbacks for commercial, industrial and non-residential structures to no less than 20 feet. Reductions would be evaluated based on criteria including:
 - The road is internal to the development and not a throughway
 - It is impracticable to extend the road in the future to create a longer road or throughway
 - The road will be used primarily by clients or customers
 - There will be no undue adverse impact on natural resource, community character or scenic quality of the area

5. Additional Considerations- Prospectively Zoned Areas

The Commission received a letter from a landowner commenting on our ongoing road setback rule revisions. This landowner owns a subdivision lot located within a D-RS3 subdistrict in Dallas Plantation and would like to reconstruct or expand the existing structure to a size larger than the current road setback regulations allow. He urged the Commission to reduce the road setback requirement to 20 feet, from the current 50 feet, in D-RS3 subdistricts.

In the past, the Commission has resisted making piece-meal changes to the Land Use Districts and Standards specific to the Rangeley Region Prospectively Zoned Areas (PZA). At present, the staff do not recommend any changes to the subdistricts that are unique to the Rangeley Plan. The Rangeley Plan was developed with extensive input from local residents and adopted by the

Commission in 2000. D-RS3 is a subdistrict unique to the Prospectively Zoned Areas and was developed based on the desire of local residents to preserve the character of their region. It is the most restrictive subdistrict in the PZA and does not allow the prevailing road setback exception of other subdistricts in the PZA. The effectiveness of the Rangeley Plan was evaluated in a 2014 progress report and the subdistricts were found to be functioning as intended to support the local residents' future vision of their area.

6. Next Steps

During the drafting of the proposed road setback rule changes, another issue came to light. Some applicants want to build a garage on an undeveloped lot near their residential lot. Frequently, this situation arises when someone owns land that is bisected by a road not owned by them. If the residence is on one side of the road and the applicant wants to build a garage on the other side of the road, the permitting becomes problematic. Staff are currently researching this issue and working on possible solutions to present at the April Commission meeting.

Staff recommend that, at present, the Commission consider the proposed rule revisions that relate to road setbacks (Appendix A). These proposed revisions represent part one of a two part rule making package, the second of which will address the accessory structure issue and be presented in April. At the March meeting, staff will look for a decision from the Commission as to whether to include the road setback rules in the rulemaking packet that is expected to be complete in April.

Appendix A:
Road Setbacks Proposed Rule Revisions

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B. REVIEW STANDARDS FOR SUBDISTRICTS IN PROSPECTIVELY ZONED AREAS

These standards apply only in areas that have been prospectively zoned and for all the subdistricts listed. Prospectively zoned areas are identified in Section 10.08 of these rules.

1. Dimensional Standards.

- a. Road frontage requirements: See Section 10.26,C.
- b. Building setbacks from roads: See Section 10.26,D.
- c. Lot coverage requirements: See Section 10.26,E.
- d. Structure height: See Section 10.26,F.

2. Buffering Standards. These standards complement the existing standards for clearing contained in Section 10.27,B.

- a. All principal and accessory buildings in the D-GN, D-GN2, D-GN3, D-RS, D-RS2, D-RS3, D-ES, and D-CI subdistricts shall be visually screened by a vegetative buffer made up of native trees and shrubs, except as provided in Section 10.25,B,2,c below. Wooded buffers shall be comprised of both under- and overstory material that can be either maintained using existing vegetation or established where no such buffer exists.
- b. Minimum widths for the vegetated buffer are as follows:

	Width of Vegetative Buffer (feet)							
	D-GN	D-GN2	D-GN3	D-RS	D-RS2	D-RS3	D-ES	D-CI
Roadway	25	25	25	30 50	50	50	75	75
Side & rear property lines	15	15	15	15	15	15	15	15
Subdistrict boundary	NA	NA	NA	NA	NA	NA	50	50

Table 10.25,B-1. Width of vegetative buffers.

The Commission may require buffer widths exceeding the minimum width, along with other screening as necessary, in order to ensure that unsightly uses such as junkyards and automobile graveyards are completely screened from view.

c. Exceptions to the buffering requirements are allowed under the following circumstances:

- (1) Property line buffer from adjacent development that is of a similar type, use, and intensity where adjacent landowners provide written agreement that a property line buffer is not needed;
- (2) Existing development where extensive clearing already exists at the time of adoption of these rules January 1, 2001;
- (3) New development where the establishment of buffers would eliminate or interfere with existing scenic views;

- (4) In a “Main Street” setting, that is defined as an area where 80% of a street is developed with buildings, where side and rear property line buffers would interfere with pedestrian circulation or access; and
- (5) Buffer for a D-ES and D-CI subdistrict boundary where adjacent uses are compatible.

D. VEHICULAR CIRCULATION, ACCESS AND PARKING

- 1. General circulation.** Provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along existing roadways and within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.
- 2. Access management.** Access onto any roadway shall comply with all applicable Maine Department of Transportation safety standards. For subdivisions and commercial, industrial and other non-residential development, the following standards also apply:

 - a.** The number and width of entrances and exits onto any roadway shall be limited to that necessary for safe entering and exiting.
 - b.** Access shall be designed such that vehicles may exit the premises without backing onto any public roadway or shoulder.
 - c.** Shared access shall be implemented wherever practicable.
 - d.** Access between the roadway and the property shall intersect the roadway at an angle as near to 90 degrees as site conditions allow, but in no case less than 60 degrees, and shall have a curb radius of between 10 feet and 15 feet, with a preferred radius of 10 feet.
 - e.** The Commission may require a traffic impact study of roadways and intersections in the vicinity of the proposed project site if the proposed development has the potential of generating significant amounts of traffic or if traffic safety or capacity deficiencies exist in the vicinity of the project site.
- 3. Parking layout and design.** The following standards apply to all subdivisions and commercial, industrial and other non-residential development, except for parking areas associated with trailered ramps and hand-carry launches which are regulated under the provisions of Section 10.27,L:

 - a.** Sufficient parking shall be provided to meet the parking needs of the development. The minimum number of parking spaces required shall be based on parking generation rates determined in accordance with standard engineering practices. In cases where it is demonstrated that a particular structure can be occupied or use carried out with fewer spaces than required, the Commission may reduce number of required spaces upon finding that the proposed number of spaces will meet the parking needs of the structure or use and will not cause congestion or safety problems.
 - b.** Parking areas and access roads shall be designed such that runoff water is discharged to a vegetated buffer as sheet flow or alternatively collected and allowed to discharge to a concentrated flow channel, wetland or water body at a rate similar to pre-construction conditions. If runoff water is discharged to a concentrated flow channel, wetland or water body, a sediment basin shall be constructed to collect sediment before the runoff water is discharged.

- c. **On-street parking.** In areas where on-street parking already exists, new development shall have on-street parking where practicable and if there are sufficient spaces available in the immediate vicinity. Otherwise, parallel or diagonal on-street parking is permitted where the Commission finds that it will adequately meet the parking needs of the development and will not cause congestion or safety problems. Perpendicular on-street parking is prohibited.
- d. Off-street parking for commercial, industrial and other non-residential development.
- (1) Where practicable, off-street parking shall be located to the side or rear of the principal structure.
 - (2) Notwithstanding the dimensional requirements of Section 10.26, the Commission may reduce the minimum road setback requirement by up to 50 percent, but in no case shall the reduction result in a setback less than 20 feet, for development utilizing on-street parking in accordance with Section 10.25,D,3,c or for development whose parking area is located to the rear of the principal structure, except where the Commission finds that such parking will cause an undue adverse impact to the natural resources or community character of the area.
 - (3) Off-street parking shall not be directly accessible from any public roadway. Ingress and egress to parking areas shall be limited to driveway entrances.
 - (4) Off-street parking areas with more than two parking spaces shall be arranged so that each space can be used without moving another vehicle.

D. MINIMUM SETBACKS

1. The minimum setbacks for structures, other than those described in Section 10.26,D,2 and except as provided in Section 10.26,G are:
 - a. 75 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a coastal wetland, and from the upland edge of wetlands designated as P-WL1 subdistricts;
 - b. 100 feet from the nearest shoreline of a flowing water draining 50 square miles or more and of a body of standing water 10 acres or greater in size;
 - c. 50 feet from the traveled portion of all roadways except as provided for in Section 10.26,D,1,d and e or Section 10.26,D,5 below;
 - d. 30 feet from the traveled portion of all roadways within D-RS and D-GN subdistricts;
 - ~~d. 75 feet from the traveled portion of the following roadways: Routes 1, 2, 2A, 4, 9, 27, 163, 201, 161 from Caribou to Fort Kent, 157 in TA R7 (Penobscot County), and 6 in Orneville Township (Piscataquis County), except as provided for in Section 10.26,D,5;~~
 - e. 20 feet from the traveled portion of all roadways on coastal islands; and
 - f. 15 feet from side and rear property lines.

These setbacks also apply to all parking areas associated with single-family residential uses, parking areas for trailered ramps or hand-carry launches, those structures within a recreational lodging facility constructed solely for the housing of guests, and residential campsites.

2. The minimum setbacks for multi-family dwellings and commercial, industrial, and other non-residential principal and accessory structures, other than those described in Section 10.26,D,1 and 3 and except as provided in Sections 10.26,G and 10.27,Q are:
 - a. 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a wetland, and from the upland edge of wetlands designated as P-WL1 subdistricts;
 - b. 150 feet from the nearest shoreline of a flowing water draining 50 square miles or more and a body of standing water 10 acres or greater in size;
 - c. 75 feet from the traveled portion of the nearest roadway except as provided for in Section 10.26,D,2,d and e below;
 - d. 30 feet from the traveled portion of all roadways in D-RS and D-GN subdistricts;
 - e. 20 feet from the traveled portion of all roadways on coastal islands; and

f. 25 feet from the side and rear property lines.

Except as provided for in Section 10.26,D,1 above, these setbacks also apply to all parking areas associated with multi-family dwellings and commercial, industrial, and other non-residential uses, and all other structures within a recreational lodging facility, including, but not limited to, a main lodge, dining area, workshop and parking area.

3. These requirements apply to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.

4. Campsites.

a. Campsites shall be set back such that the area designed for camping, including cleared or graded areas, fire rings, tables, and related construction, is at least 75 feet from shorelines, 25 feet from property lines, 30 feet from roads in D-RS and D-GN subdistricts, and 50 feet from roads in all other subdistricts, and 25 feet from property lines. Any structure located at or as part of a campsite shall also be set back 75 feet from the upland edge of wetlands designated as P-WL1 subdistricts. Notwithstanding the above, the area designed for camping must be set back at least 10 feet from roads internal to a campground, and campsite parking areas may be located adjacent to such roads, except that the Commission may require a greater setback where necessary due to site conditions in order to protect public safety.

b. Remote campsites shall be set back at least 50 feet from roads, 25 feet from property lines, and 25 feet from shorelines, except that the Commission may require a greater setback from shorelines for remote campsites where necessary due to site conditions in order to avoid accelerated soil erosion or sedimentation of surface waters.

5. Flexible Building Setbacks in Prospectively Zoned Areas.

a. For commercial or residential development in the D-GN, D-GN2, D-GN3, D-RS, and D-RS2 subdistricts, building setback distances from roads may be less than specified in Section 10.26,D in order to meet prevailing setbacks on adjacent properties. The prevailing setback is the average setback of those principal and accessory structures on lots within 500 feet on either side of the subject parcel.

b. In the ~~D-GN~~, D-GN2, D-GN3, ~~D-RS~~, and D-RS2 subdistricts, road setbacks for commercial buildings may be reduced to 50 feet where all parking areas are to be placed to the side or rear of the structure.

c. These reduced setbacks will be granted where the existing character of an area will be maintained and provided that the reduction will not adversely impact public safety.

G. EXCEPTIONS TO DIMENSIONAL REQUIREMENTS

1. The Commission may reduce dimensional requirements for individual buildings in a cluster development, in accordance with Section 10.25,R.
2. The dimensional requirements applicable to D-PD subdistricts shall be established by the Commission pursuant to the provisions of Section 10.21,G, provided that the shoreline setback requirements hereof shall not be reduced.
3. Notwithstanding other provisions of these rules, in a proposed subdivision or area that has or is likely to have relatively dense development, the Commission may increase the minimum lot size when the Commission determines that:
 - a. A larger lot size is required to provide sufficient area of suitable soil to accommodate the principal building and accessory structures, and subsurface waste water disposal, including a replacement system; and
 - b. The density of development in the vicinity of the proposed site is likely to cause nitrate or other contaminant levels in ground water to exceed public drinking water standards at any public or private well or at the property boundary. The Commission may require a nitrate study to estimate likely nitrogen levels in ground water as part of a subdivision application.
4. Where development would otherwise have an undue adverse impact on existing uses, scenic character or natural and historic resources in the area likely to be affected by the proposal, the Commission may impose additional or more protective standards with respect to clearing, frontage and setback requirements, waste water disposal, and other aspects of the development to reasonably assure that undue adverse impact is avoided.
5. An exception may be made to the shoreline, road, and/or property line setback requirements for structures where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use. Structures which must be located near to the shoreline include structures which require direct access to the water as an operational necessity, such as piers, docks, retaining walls, and structures necessary for commercial fishing activities or water dependent uses within a D-MT subdistrict. This provision shall not apply to boat houses or float plane hangars not included within a D-MT subdistrict.
6. An exception may be made to the minimum extent necessary to the shoreline frontage and lot size requirement on coastal wetlands for structures necessary for commercial fishing activities or water dependent uses within a D-MT subdistrict where such reduction would better serve the purpose of this subdistrict.
7. Where development is proposed in the vicinity of a water quality limiting lake, the Commission may vary the applicable dimensional requirements in accordance with Section 10.23,E,3,f.
8. To the extent consistent with 12 M.R.S.A. §685-B(4), the Commission may reduce the minimum lot size required for a structure whose sole purpose is to house a public utility facility or to function as a public utility, provided that:

- a. the size, height, and bulk of the facility is of a scale that permits such a reduction without adverse effect on surrounding properties; and
 - b. the facility is sited and buffered to fit harmoniously into the surrounding environment.
9. Notwithstanding the provisions of Section 10.11, structures necessary for disabled persons to gain access to buildings or facilities may be greater than the allowable size or located less than the standard setback distance from a shoreline, road and property line to the minimum extent necessary when the following criteria are met:
 - a. A person with a disability as defined in 5 M.R.S.A. §4553 resides in or regularly uses the dwelling or facility;
 - b. The encroachment into the standard setback distance or exceeding of the allowable size applies only to the installation of equipment or construction of structures necessary for access to or egress from the dwelling or facility by the person with the disability;
 - c. The access structure is necessary to create an accessible route;
 - d. The access structure cannot reasonably or feasibly be created without exceeding the allowable size or encroachment into the standard setback distance; and
 - e. The design of the access structure minimizes the need for exceeding the allowable size or encroachment into the standard setback distance.
10. The Commission may reduce the minimum road setback requirement ~~for subdivisions and commercial, industrial and other non-residential structures and uses, in accordance with Section 10.25,D,3,d,(2);~~ in the following cases:
 - a. For subdivisions and commercial, industrial and other non-residential structures and uses, in accordance with Section 10.25,D,3,d,(2), by up to 50 percent, but in no case shall the reduction result in a setback less than 20 feet.
 - b. For commercial, industrial and other non-residential structures and uses, to no less than 20 feet provided the following criteria are met:
 - (1) The road is internal to the development and not a throughway;
 - (2) Extension of the road in the future to create a longer road or a throughway is impracticable based on factors including, but not limited to, geography, physical features, natural resource constraints, surrounding development, or other site characteristics;
 - (3) The road will be used primarily by clients or customers of the facility(ies); and
 - (4) The reduction in road setback will not cause an undue adverse impact to the natural resources, community character, or scenic quality of the area.
11. The Commission may reduce the minimum water body setback requirement for a residential driveway in accordance with Section 10.27,H,2,b,(2).
12. The Commission may reduce the minimum road frontage requirement for individual lots within subdivisions with shared driveways in accordance with Section 10.25,Q,3,c.

13. The Commission may reduce the property line setback where there is no practical alternative and upon prior written agreement of the adjoining property owner.
14. The Commission may reduce dimensional requirements for the purpose of providing affordable housing opportunities, in accordance with Section 10.25,U.
15. Notwithstanding any other provision of these rules, the Commission may increase the maximum lot coverage above the limits set in Section 10.26,E for any lot in a D-CI subdistrict upon a finding that the increase in the maximum lot coverage will not have an undue adverse impact on existing uses or natural resources.
16. Notwithstanding any other provision of these rules, the Commission may increase the maximum lot coverage above the limits in Section 10.26,E for any lot in a D-MT subdistrict, used for a non-residential use, upon a finding that the increase in the maximum lot coverage will not have an undue adverse impact on existing uses or natural resources.
17. The Commission may apply the dimensional requirements and standards for recreational lodging facilities in accordance with Section 10.27,Q.
18. For lots improved with public recreational facilities the minimum lot size is 20,000 square feet, the minimum shoreline frontage is 100 feet, and the minimum road frontage is 100 feet, provided:
 - a. the abutting land is subject, in perpetuity, to legally binding provisions that prohibit incompatible land uses in locations that would be adversely affected by the public recreational facility, and
 - b. the public recreational facility is otherwise sufficiently sized to fulfill the use for which it is designed.

For lots improved with a public trailered ramp or public hand-carry launch that do not satisfy the above provisions, but where the ramp or launch will not have an undue adverse impact on existing uses in the project area, the minimum shoreline frontage is 200 feet. Except as provided here, the dimensional requirements contained in Section 10.26,A through F apply to lots improved with public recreational facilities. For purposes of this section, public recreational facilities are trailered ramps and hand-carry launches; trailheads; and associated facilities; that are owned, leased, or operated by a public entity and made available with or without a fee.

B. VEGETATION CLEARING

Vegetation clearing activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following requirements shall apply to vegetation clearing activities for any purpose other than road construction, road reconstruction and maintenance, wildlife or fishery management, forest management, agricultural management, public trailered ramps or hand-carry launches:

1. A vegetative buffer strip shall be retained within:
 - a. 50 feet of the right-of-way or similar boundary of any public roadway except as provided for in Section 10.27,B,1,b below,
 - b. 30 feet of the right-of-way or similar boundary of any public roadway in D-RS and D-GN subdistricts,
 - c. 75 feet of the normal high water mark of any body of standing water less than 10 acres in size, or any coastal wetland or flowing water draining less than 50 square miles, and
 - d. 100 feet of the normal high water mark of a body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.