PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

May 6, 2015

Dear Interested Stakeholders:

The Land Use Planning Commission would like to thank you for your participation in the agency's subdivision rule review process. The feedback that you have provided and, hopefully, will continue to provide, as we work through the review process is valuable. We appreciate all the time that you have contributed to help improve the regulation of subdivisions in the unorganized and deorganized areas of the State.

The Report of Stakeholder Meeting Four has been drafted and is available on our website:

Featured Projects, Review of Subdivision Rules

LUPC staff plan to present this report to the Commission at its May 13, 2015 regular business meeting. Please review the Meeting Four report in advance of the Commission meeting, and let us know if you identify any errors or inaccuracies. We welcome any comments that you have on this report.

The next step will be to take the results of the stakeholder process and develop specific rule proposals for the Commission's consideration. Staff will seek direction on this next phase at the May 13 Commission meeting. As we develop additional materials, we will provide opportunity for stakeholder feedback. In the meantime, if you have any questions about the process or possible options under development, please feel free to contact Stacie Beyer at 207-941-4593, or Samantha Horn Olsen at 207-287-4932.

We look forward to working with you further as we complete the subdivision rule review process.

Sincerely,

Samantha Horn Olsen
Planning Manager

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Report of Stakeholder Meeting #4
Subdivision Rule Review Process
Maine Land Use Planning Commission

Introduction

The Land Use Planning Commission (LUPC) has initiated a project to review and potentially revise the portions of the Commission's rules that govern the process of creating subdivisions in the Unorganized Territory (UT). As part of this project, the Commission set up a process with three meetings to solicit stakeholder expertise and opinions. As a result of weather problems associated with the third meeting, a fourth stakeholder meeting was held.

The first stakeholder meeting was held on October 29, 2014. The focus of the meeting was on identifying the issues with the subdivision rules that should be the highest priority for review. The issues were divided into technical issues with the current rules and broader policy issues.

Following the first stakeholder meeting, LUPC staff determined that the best use of the second stakeholder meeting was to focus on the broad policy issues raised at the first meeting. These issues included the types of residential subdivisions including Level 2 subdivisions, the layout and design of subdivisions including the provisions for community centered design, the treatment of cluster development, and provisions for open space as part of subdivisions.

The second stakeholder meeting to look at the broad policy issues was held on Wednesday, January 6, 2015 at Jeff's Catering in Brewer. In preparation for the second meeting, LUPC staff and Planning Decisions developed a set of questions about each of the policy issues based on the feedback from the first meeting. These questions were used to guide discussion at that meeting. The questions focused on what might be done to address the policy issues identified at the first meeting. The intention was that the LUPC staff would then take the ideas generated at this meeting and develop concepts for possible revisions to the rules that would be discussed at the third meeting.

The third meeting was scheduled on February 25, 2015 at Jeff's Catering in Brewer. As a result of a snow-related accident that closed a portion of I-95 that morning, a number of participants in the meeting including LUPC staff and commissioners and the meeting facilitator where unable to reach Jeff's or were substantially delayed. Therefore, LUPC staff decided not to proceed with the policy discussion portion of the agenda for Stakeholder Meeting #3. However, since a number of people were able to get to the meeting, Samantha Horn Olsen reviewed the staff-generated options outline that had been prepared and distributed prior to the meeting (see Appendix A) and answered questions about the outline. Discussion of the options was postponed to Meeting #4.

To allow full discussion of the policy options relative to the subdivision rules, a fourth stakeholders meeting was held on Wednesday, April 1, 2015 at Jeff's Catering in Brewer. The agenda for this meeting was the same as the agenda would have been for Meeting #3 and the same staff outline of options was used as the basis for discussion. Sixteen stakeholders signed-in at the meeting (See Appendix B). In addition, three LUPC commissioners (Betsy Fitzgerald, Everett Worchester, and Mike Theriault) attended Meeting #4 along with four LUPC staff and Mark Eyerman, the meeting facilitator from Planning Decisions.

The objective for Meeting #4 was to provide the staff with as much guidance as possible from the stakeholders to allow the staff to begin to develop proposals for revising the subdivision rules to be discussed with the Commission at an upcoming commission meeting. In some areas, a clear sense of direction emerged from the discussion of the staff options while in others there was a lack of agreement among the group. It appeared that much of the disagreement arose from different views of the objectives for managing subdivision activity in the Unorganized Territory (UT).

A. Overarching Issues

During the discussion of the staff options, two issues emerged that are not specific to one of the other topic areas. These issues appeared throughout the discussion of the various topics:

1. **Primitive Subdivisions** -- There was a recurring sentiment among some stakeholders that the subdivision rules need to deal with different types of subdivisions in different ways. A particular area of concern was the treatment of subdivisions for "primitive" camps. One stakeholder described these as seasonal units that are "off the grid". As used in this meeting, primitive camps would seem to be located on large parcels, not be permanent, year-round homes, not be

connected to utilities, and have limited accessibility via private roads or trails. It was suggested by a few stakeholders that a "Law of the North Woods" be established indicating that these types of primitive camps would not be provided with normal public services including fire protection and the occupant would be on their own. Distinguishing the treatment of "primitive" camp subdivisions was important to the discussion since some stakeholders felt that some locational and other criteria that might be appropriate for other types of subdivisions were not or might not be appropriate for "primitive" subdivisions. Since stakeholders were not always clear as to whether their comments related to all subdivisions or were influenced by consideration of primitive development, there may be some confusion in the interpretation of the comments that follows.

2. **Adjacency Principle** – LUPC staff was clear as part of the opening presentation that "the adjacency principle" that requires new development in the UT to be located in proximity to existing developed areas is a major policy issue that goes beyond the consideration of revisions to the subdivision rules. Therefore staff suggested that any proposals to significantly deviate from the established Commission practice with respect to adjacency should be discussed in the larger context of the entire structure of the land use regulations for the UT. Even with this background, there was significant discussion of possible revisions to the subdivision rules that could be seen as deviations from the "adjacency principle". These proposals resulted in discussion among the stakeholders and led to disagreement about both staff and stakeholder generated options for addressing subdivisions. There was broad agreement among the stakeholders that this is an important issue but that consideration of the issue needs to be thorough and not rushed. The stakeholders recommended that the Commission undertake a comprehensive review of adjacency independent of the review of subdivisions.

B. Feedback on Staff Generated Options

The LUPC staff developed an outline of possible options and approaches that could address many of the issues raised in Meeting #2 (See Appendix A). This outline was provided to all stakeholders prior to Meeting #3. As noted in the introduction, the outline was presented at the abbreviated Meeting #3. The outline was provided to stakeholders again as part of the information packet for Meeting #4. This was used to guide discussion at the meeting. Appendix C includes the notes taken during the discussion at Meeting #4.

The following sections summarize the stakeholder feedback on the concepts and options laid out in the outline. These summaries are based on the comments and suggestions of the individual stakeholders. The comments do not necessarily reflect the opinion of the entire group and there was no attempt during the meeting to either quantify the support for various positions or to reach a consensus.

PART I – Types of Subdivisions

Location of Various Levels/Types of Subdivisions

1. Primary Factors: The staff identified a number of factors that could be considered in evaluating the appropriate locations for various types of subdivisions. These possible factors were reviewed with the stakeholders. The following summarizes the feedback on the various factors:

i. Distance from public road (measurable) – This factor was seen as appropriate for some types of subdivisions but not for all types. Some stakeholders suggested that distance from or access by private roads should also be a factor.

ii. Access to service hub (see service hubs proposal) – This factor is appropriate.

iii. EMS/Fire response time (Data may not be readily available? Can get general sense of proximity to EMS/Fire locations) – Some stakeholders raised concerns about using this factor and felt that it could rule out all development. It was suggested that subdivision plans include a note that emergency services are not available (see discussion about a Law of the North Woods above).

iv. Distance from other residential development – See discussion of adjacency principle above.

v. Trend of residential development locally (new dwelling permitting data) – A few stakeholders raised concerns about using this factor. They expressed a concern that the current rule has established the trend in development and therefore this is not an independent consideration. There was also a concern expressed that there is limited recent data available especially with respect to Level 2 Subdivisions.

vi. Status as a town or plantation (known) – No specific feedback on this factor.

vii. Waterfront/ backland (what is appropriate distance – ¼ mile? ½ mile from shore?) – This was seen as an appropriate consideration and there was some sense that a quarter of a mile was a reasonable distance.

viii. Separation from high-value resources

1. Class 1,2,3,6 lakes (what is appropriate distance?) – No specific feedback on this factor.

2. Remote areas (Can use public road proximity as proxy?) – Some stakeholders saw this as being redundant with the distance to a public (or private road) factor.

3. High-value habitats (Difficult on a large scale – may need to be a township-level review) – No specific feedback on this factor.

ix. Avoid large blocks of soils unsuitable for development (LDD soils in map layer, but need to be aware of data limitations) – A number of stakeholders raised concerns about the use of this factor based on a feeling that most of the UT has a low or very low suitability rating as a result of the design and application of the rating system.

x. Avoid high-value agricultural soils (Data available, but need to be aware of limitations) – No specific feedback on this factor.

xi. High-level screen for conserved land (but layer does not represent development potential or lack of it) – No specific feedback on this factor, however it was noted that if it were to be used, there are some recent easements that would need to be added.

2. <u>UT Service Hubs</u>: The staff proposed developing a list of UT specific service hubs to be used in considering locations for various types of subdivisions. The basic concept is to use sales tax data to identify smaller hubs that provide substantial services to UT areas to supplement the state-defined service centers. There was substantial support for this concept among stakeholders. It was suggested that the Service Hubs identified on the map presented at the meeting be reviewed to possibly include a few more hubs where sales tax data may be suppressed due to the number of reporting establishments. There seemed to be general support for these Service Hubs along with the Service Centers playing a role in defining where various types of subdivisions should be allowed.

Large Lot Subdivisions

1. <u>New Large Lot Subdistrict</u>: The staff suggested that one way to allow "large lot subdivisions" would be to create a new large lot subdistrict that would require an applicant to file concurrent rezoning and subdivision applications. This proposal sparked considerable discussion. Some stakeholders expressed a desire to have an approach that would allow large lot subdivisions without the need for a rezoning.

Other stakeholders expressed concerns that if it is allowed in a broad area, it could change the character of the UT. It was suggested that this approach might be a good option to use outside of zones where subdivisions are allowed – a sort of backup approach.

2. Lot Sizes in a Large Lot Subdivision: Stakeholders were asked_what size the lots should be in a large lot subdivision. There were suggestions that the minimum lot size should be large enough to allow the land to remain in the Tree Growth tax program – this was seen as translating into a minimum of 10 acres of woodland plus the home site or approximately 11-12 acres. A few people suggested that the upper limit for lots might be 1,000 acres.

3. Location of Large Lot Subdivisions: The staff presented a proposal that large lot subdivisions could be allowed in areas of the UT that meet the following criteria:

- Are within 20 miles if identified service hubs
- Are within 5 miles of a public road
- Are at least a half mile away from bodies of water of 10 acres or more and flowing waters draining 50 square miles or more
- Are not in high growth areas where land is in short supply
- Are not where there are high value natural resources

Some stakeholders suggested that consideration be given to including private roads in the criteria since private roads provide the primary access in much of the UT and some private roads are better than the public roads. It was also noted that the relationship to high value natural resources could be addressed at the permitting stage.

Stakeholder Proposal

A group of stakeholders presented an alternative proposal based on the concept of allowing subdivisions within any township that is within three townships of a service center (see map in Appendix D) or within approximately 18 miles of a township that includes a service center. This approach could apply to any type of subdivision but was presented in the context of the discussion about the possible location of large lot subdivisions and/or to Level 2 Subdivisions. The stakeholders emphasized that this map is intended to be a screening tool to help think about where subdivisions could be located.

The stakeholder generated map sparked considerable discussion among the stakeholders at the meeting. The stakeholders who were involved in the development of the map suggested that the townships that are colored green on the map are not completely suitable for development and that areas such as conserved land, protection

subdistricts, and significant habitats would not be included in the area for potential subdivisions. The basic concept that was presented was that these townships are where some subdivision activity could occur without the need for rezoning.

A number of stakeholders raised concerns about the alternative subdivision locations map. A primary concern raised by a number of stakeholders was the compatibility of the proposal with the goals of the Comprehensive Land Use Plan (CLUP). The concept of adjacency was raised as a concern. It was noted that the core principles that are reflected in the CLUP emphasize the protection of forestry, recreational, and traditional uses of the UT as well as maintaining the character of the area. It was suggested that the map goes too far, too fast but there was some sentiment that the map might be a starting point for discussions about the location of some types of subdivisions but not all types. Stakeholders raised the issue of promoting economic development in the UT. It was noted that economic development can involve more than subdivisions such as recreational activity.

Level Two Subdivisions

1. Alternative Approaches for Increasing the Area Where Allowed: The staff suggested that there are two possible approaches for increasing the area within which Level 2 Subdivisions are allowed. One would be to increase the number of townships within which Level 2 Subdivisions are allowed and the second would be to increase the distance from a public road criteria. There appeared to be broad support among stakeholders for the concept of increasing the number of townships where Level 2 Subdivisions are allowed. The option of increasing the distance from a public road was graphically displayed on maps of two townships. There were questions as to whether increasing the distance by even up to a mile from a public road would actually create the potential for additional Level 2 Subdivisions.

2. Increasing the Number of Townships in Which Level 2 Subdivisions are Allowed: The staff presented a map showing the expansion of the Level 2 area to include the townships that are within two townships of a service center or larger hub and within one township of a smaller hub with a public road connecting to the hub in either case. The stakeholders appeared to support the general concept but there was differences of opinions as to how much area should be added (see discussion of stakeholder proposal above as well as the discussion of adjacency in the overarching issues section). Included in the discussion were opinions about starting by adding a smaller number of townships and then adding more if that was not adequate versus including a larger number of additional townships and scaling back if there was an overabundance of Level 2 Subdivisions. During this discussion, some stakeholders raised questions and

concerns about the need to consider other concerns such as the impact on fragmentation and natural resources.

3. Distance from a Public Road: Stakeholders were asked about how much the distance from a public road criteria might be increased, to a ¼ mile or a ½ mile or a mile. As noted above, there were questions as to whether increasing the distance up to a mile would actually increase the amount of Level 2 Subdivision activity.

Change Permitting Requirements

In Meeting #2, some stakeholders suggested that the rules should be modified to make it easier to gain approval for a subdivision. The staff developed a number of proposals to try to address this concern.

1. Make Level 2 Subdivisions Easier: The staff developed a number of possible revisions to address this:

- Change the maximum number of lots in a Level 2 Subdivision to 14 to be consistent with the requirement for DEP review of subdivisions – Stakeholders supported this change.
- Increase the maximum aggregate land area excluding open space – There was support for this approach. A stakeholder suggested a maximum area of 75 acres and there was no vocal opposition to that suggestion.
- Eliminate the current cluster requirement – This concept was supported. There was a suggestion that if a clustering requirement or alternative is retained that it should be converted into a requirement for a conservation subdivision based on a site analysis.
- Revise the maximum stream channel or wetland provision – This was not discussed by the stakeholders.

2. Phasing for Level 1 Subdivisions: The staff presented an approach that would allow a subdivider to develop a subdivision in up to 3 phases. The overall development concept would be approved including the provision of infrastructure for the entire subdivision and then each phase could be permitted separately. Stakeholders expressed no opposition to this approach.

3. Cumulative Development over Time: The staff developed a set of possible approaches for addressing the cumulative development of a number of small-scale subdivisions over time and how adequate infrastructure can be provided. Stakeholders appeared to support the idea of exploring options that would allow a subdivider to make or fund improvements to nearby infrastructure, recreational facilities or gathering places in lieu of providing common infrastructure or open space within the subdivision.

4. Adjacency: As discussed in the Overarching Issues section of this report, the question of adjacency was a major factor in the discussion of a variety of topics relating to subdivisions. During the discussion, a number of opinions about the adjacency principle and how it is applied to various types of subdivisions emerged including:

- Some stakeholders expressed a concern that the adjacency requirements may drive subdivision activity to land that is less well suited for it than other land where subdivisions are not currently permitted – the requirements create an incentive to develop less desirable land.
- There were recurring comments about the potential impact of relaxing the adjacency requirements on commercial forestry, land fragmentation, habitats and other natural resources.
- A few stakeholders suggested that adjacency needs to be addressed differently when considering subdivisions that may be occupied year-round versus seasonal use for camps.

PART II – Layout and Design

Optional Site Analysis Approach

The staff suggested that subdividers could be given the option of developing a site inventory and analysis and then designing the subdivision to reflect that analysis rather than conforming to the layout and design standards set forth in the rules. The stakeholders supported providing that as an option for applicants.

Develop Different Design Standards that Could Apply in Different Situations

Stakeholders appeared to support the general concept of having a set of different standards that would be applied in different situations. There was some concern about increasing the complexity of the rules that an applicant must deal with, but the stakeholders felt that given how many types of settings the Commission encounters, the complexity is justified in this case. The group did not review the matrix developed by staff in detail but did provide some feedback on the layout options and situations:

- One stakeholder suggested that hillside development needs to be addressed either as a separate category or through performance standards
- There was a suggestion that there should be a category for rural, scattered development
- There were suggestions that the "near other waterbodies" categories needs to be clarified and include rivers

- There was a suggestion that cluster development and mixed-use development should not be lumped into one type of development

One of the issues raised in the staff options, is whether there is a need to include provisions for using nearby resources to meet community needs if the community center design requirement is eliminated. There was a suggestion that there be consideration of connecting open space to provide for wildlife travel corridors.

Future Backlot Development

The staff options suggested that the rules could allow for the future development of backlots in some circumstances rather than requiring current backlot development if appropriate provisions are made in the subdivision layout. This was seen as an important concept to pursue but there were questions about how future development would be connected to the original subdivision and whether future backlots would be counted in the number of lots in the subdivision.

Road Setbacks

This topic was not discussed at the stakeholders meeting since it is being addressed in other LUPC discussions.

Shared Driveway Requirement

A number of stakeholder (but not all) support eliminating mandatory requirements for shared driveways but the sense is that it should remain an option for subdividers to use.

Allow for the Conservation of Shorefront in a Nearby Location

Stakeholders generally supported the concept of allowing conserved shoreland to be located outside of the subdivision in a nearby location. This was seen by some as a good alternative to a number of small open space areas. There was a note of caution that in some cases conservation may be needed within the subdivision itself; that there be some connection between the impacts of the development and where the conservation occurs; and also that conserved shoreland should not be simply nearby undevelopable land.

PART III – Clustering

When Clustering Should Be Required

The staff developed a range of options for when cluster development should be required ranging from never to a variety of options focused on Class 4/5 lakes and site analysis (see staff outline). The preferred option based on the stakeholders' feedback was to allow developers on Class4/5 lakes to either do a cluster development or to design the subdivision based on a site analysis. It was noted that a goal should be to encourage that areas with significant natural resource value be included in the open space. There was discussion about the difference between conservation subdivisions and more traditional cluster subdivisions and that a conservation subdivision approach requires the applicant to identify areas with the best potential for open space and to include those in any common open space in the subdivision.

Percentage of Land Set Aside as Open Space

In Meeting #2, some stakeholders suggested that the amount of land required to be set aside as open space was too high a percentage of the overall land area. The staff raised a number of possible options from keeping the amount the same to reducing it for backland or for both backland and waterfront land. The feedback from the stakeholders included some sentiments that it is important that the open space include developable land, that the approach needs to take into account situations where there is a high percentage of undevelopable land within the subdivision, and that the approach should identify those situations where providing open space within the subdivision may not be necessary.

PART IV – Open Space

The staff options paper identified six possible areas of revision to the subdivision rules. During Meeting 4, there was no significant feedback on these issues except as reported in earlier sections. There did seem to be support for allowing a single land owner to hold open space with appropriate deed covenants.

Appendix A

Staff Policy Options Outline

Land Use Planning Commission
Subdivision Rules Review Stakeholder Process
Policy Options Outline – February 18, 2015

At the January 6, 2015 meeting #2, stakeholders discussed the primary policy issues that were identified in meeting #1 and generated ideas and considerations for further work by staff. The meeting #2 discussion is summarized in a report from the facilitator. Since that time, Commission staff have followed up on the policy items that were discussed. This document presents, in outline form, the options that staff developed in response to stakeholder suggestions. These options are presented here because it appears that they are generally implementable, and are in keeping with specific suggestions made by one or more stakeholders. Commission staff have not taken a position as to which options should move forward for further consideration. At meeting #3 on February 25, the stakeholders will work through the options and make recommendations to the Commission regarding what action should be taken. Stakeholders requested to review some mapping information, and staff will present maps for stakeholder discussion during the meeting.

Part I – Types of subdivisions

A. **Information Available**: Please see Attachment A for a list of datasets that Commission staff have reviewed and compiled in working on this project.

B. **Location of Various Levels/Types.** These factors will be relevant to the options that follow later in the document. The group should consider whether these are the factors that are most important in planning for development:

1. **Primary factors in locating levels/types of subdivision** (not in priority order)

    a. Distance from public road (measurable)

    b. Access to service hub (see service hubs proposal)

    c. EMS/Fire response time (Data may not be readily available? Can get general sense of proximity to EMS/Fire locations)

    d. Distance from other residential development (see adjacency discussion)

    e. Trend of residential development locally (new dwelling permitting data)

    f. Status as a town or plantation (known)

    g. Waterfront/ backland (what is appropriate distance – ¼ mile? ½ mile from shore?)

    h. Separation from high-value resources

        I. Class 1,2,3,6 lakes (what is appropriate distance?)

        II. Remote areas (Can use public road proximity as proxy?)

III. High-value habitats (Difficult on a large scale – may need to be a township-level review)

i. Avoid large blocks of soils unsuitable for development (LDD soils in map layer, but need to be aware of data limitations)

j. Avoid high-value agricultural soils (Data available, but need to be aware of limitations)

k. High-level screen for conserved land (but layer does not represent development potential or lack of it)

2. **Use retail sales and other information to generate list of UT service hubs**. (Will look similar to list of recreation hubs) The purpose of this effort is to identify communities that provide substantial services to UT areas, but that may be smaller than the state-defined "service centers".

   a. This could have 2 levels – larger and smaller based on retail sales volume or other factors. The two levels could be used to determine how far away from that hub to allow certain subdivision.

   b. Use this to expand list of level 2 townships, locate large lot subdivisions, or for other similar purposes.

C. **Considerations for subdivision levels and permitting intensity/ requirements**:

1. **Large lot subdivisions**: Some stakeholders have indicated that there is market demand for large lots, and that the ability to divide off two lots every five years will not meet that demand. The Commission's present zoning structure does not work well for large lot subdivisions. Staff have outlined below one method for allowing large lot subdivisions.

   a. **New large lot subdistrict (zone) that requires concurrent filing of subdivision permit application**. Concurrent filing necessary because lot size can be so variable for large lots. In approving rezoning, the Commission would need to understand lot size to understand impacts.

   b. **What should the lot size range be?**

   c. **Large lot subdivision locations**: Locational factors would be built into the description of the subdistrict. One example of locational factors that would provide a substantial area for potential rezoning follows. From staff's initial analysis of the factors that can be mapped, it appears that this would identify approximately 3 million acres as meeting the initial locational screen. This may be on the higher end of the scale of options, but serves as a basis for discussion.

      I. Within 20 miles of service hubs

      II. Within 5 miles of a public road

III. At least ½ mile away from bodies of water 10 acres or larger and flowing waters draining 50 square miles or more. (There may be a better method for identifying separation from rivers, this bears some discussion.)

IV. Not in high-growth areas where land is in short supply

V. Not where there are high-value natural resources such as deer yards.

2. **Level 2 subdivision location**: Some stakeholders indicated that it would be desirable to increase the area in which level II subdivisions are allowed. There are two primary ways to do this within the existing structure: expand the townships and/or expand the allowable distance of the edge of the subdivision from public roads.

   a. **Add to list of level 2 townships based on factors above**. Options:

      I. All townships, anywhere (this may be difficult to justify based on statute)

      II. Two-tier approach around service hubs:

         i. Larger hubs – 2 townships out from border, contains public road that connects to hub?

         ii. Smaller hubs – 1 township out from hub border, contains public road that connects to hub?

      III. Current townships.

      IV. Look at all factors – including residential permit data, soils, conservation etc., and come up with revised list. This could be done in conjunction with options 1, 2 or 3 above, or as a standalone.

   b. **Increase distance from public road** (currently 1,000')

      I. ¼ mile?

      II. ½ mile?

      III. 1 mile?

D. Change permitting requirements: Some stakeholders felt that subdivisions should be easier to permit. There are several options here, outlined below. Because some subdivisions trigger DEP Site Law review, these options should be coordinated with DEP in the early stages of rule development. In the case of cumulative development issues, the stakeholders will need to consider how some requirements (such as community centers) could be replaced by requirements that are more adaptable to the circumstances. This is discussed below.

1. **Make level 2 easier**:

   a. Change upper limit on lots to 14 to match DEP site law trigger

b. Revise maximum aggregate land area (excluding open space)

   I. Current limit is 20 acres if no cluster. Any need to change this? Should it be different in certain circumstances?

c. Eliminate cluster requirement

d. Area for stream channel or wetland is currently 10%. Keep it the same or increase this to 20%?

2. **Phasing approach for level 1 subdivisions.** Develop a phased development process that:

   a. Pre-approves, in concept, up to 3 phases of development

   b. Freezes dimensional requirements for the future phases\

   c. Each phase can be permitted separately

   d. Phase 1 must be started no later than two years following approval, phase 2 no later than 5 years following approval, and phase 3 no later than 8 years following approval.

   e. Infrastructure must be planned from the beginning, but can be built out in phases (e.g., road widening as you go as long as ROW is in place)

3. **Address idea of cumulative subdivision development over time**. Incentivizing multiple small developments by exempting them from infrastructure requirements will lead to disjointed, piecemeal development. However, it is not feasible to require small developments to build infrastructure for the neighboring small developments that may or may not be built in the future. The goals are to provide adequate infrastructure for durable roads, utilities, storm water management, etc. and to provide a place for residents to gather or recreate (should they desire to) so as to not unduly burden other local resources.

   a. **Provide options for identifying nearby infrastructure, recreation or gathering places**; developer would assess the needs for improvements or funding and build that into proposal; where available, use this as an alternative to common space or infrastructure within the development.

   b. **Utilize a "common scheme of development" concept**: if a developer is proposing multiple small developments in an area, require that the infrastructure and common spaces are sized to provide for all of them.

   c. **Require road connections between neighboring subdivisions**: where feasible, neighboring subdivision roads should connect to provide access and escape routes, and convenient travel routes for residents.

   d. **Permit review**: this idea of accounting for cumulative impacts would argue against a "permit by rule" type of subdivision level.

4. **Adjacency**: Currently, level 2 subdivisions skip the rezoning step because the locations are likely to satisfy rezoning requirements, except for adjacency. The adjacency principle is still built into level 2 subdivision permitting by requiring the subdivision be located no more than 1 road mile from similar, compatible development. Proposals for subdivision permits that do not require rezoning would either have to follow the existing adjacency interpretation, like the current level 2, or a refined version of the Commission's interpretation of adjacency. If there is a need to refine the interpretation of adjacency, it is a big picture policy issue that would benefit from a holistic review following this round of changes. Approaching adjacency interpretation in a piecemeal fashion would not account for the many different uses that need space including residential, commercial, industrial, recreation, etc. It is important to consider all types of uses when looking at location of development, rather than just singling one out.

    a. **Adjacency for large lot subdivisions**: The large lot subdistrict should describe the types of settings that would be appropriate (see discussion above). In the current interpretation of adjacency, similar compatible development for large lot subdivisions would be scattered residences. As is current practice, the one mile measurement would be taken from the edge of the rezoned area, giving a wide area around the proposed lots from which to derive adjacency. In many cases, adjacency would not provide the primary locational control for large lot subdivisions; rather it would be the subdistrict description.

Part II – layout and design

A number of stakeholders expressed that the current layout and design standard is often a poor fit for some of the most common settings for development in the Commission's service area. What follows are some options that could be used as stand-alone changes or in combination to amend or replace the current standard.

A. **Develop optional site analysis approach.** The intent would be to provide an alternative to the specific layout and design standards in cases where a site is unusual or the developer has an alternative site design in mind. The Commission would write a rule that would describe the site analysis approach in the context of the LUPC service area. There are other communities that follow this procedure, and so there are some materials to use as a starting place. The process would need to be described quite specifically to be effective and predictable, and may require a peer review at the applicant's cost. It would be more time-consuming and costly to go through this review process than a standard review process, but would provide additional flexibility and may yield better quality designs.

B. **Repeal the current layout standard and develop 3-4 different design standards that could be applied in certain situations.** An example of the considerations follows:

Layout options	Village setting	Near class 4/5 waterbodies	Near other waterbodies	Distant from waterbodies and villages	Islands
Traditional			X	X	
Cluster/mixed use	X	X	X	X	X
Conservation subdiv.	X	X[1]	X	X	X
Large lot				X	
Site Analysis (custom)	X	X	X	X	X

Is this the right approach? Are these generally the right categories? The following would also need to be considered if current layout and design standard is eliminated.

1. If community center requirement is eliminated, make provision for nearby resources to meet community needs (see cumulative subdivision impacts discussion in Part I)

2. Look at connection to future development/infrastructure/recreation access (see cumulative subdivision impacts discussion in Part I)

C. **Develop method to make provision for future backlot development/ water access.** This could be an alternative to requiring current backlot development in some circumstances.

[1] Whether to allow conservation subdivisions near class 4/5 water bodies depends on whether clustering is required (discussed below).

D. **Road setbacks** – The Commission has expressed an interest in addressing road setbacks for all development. This group could contribute to the discussion by recommending factors that should be influential in determining setback requirements. What follows are the factors that staff have initially identified.

1. Through road?
2. ROW placement, and is it known?
3. Speed limit
4. Utilities
5. # of entrances
6. Density of structures and uses
7. Future widening potential
8. Future improvements that would increase speed
9. Existing conditions with other structures
10. Need for buffering – visual, character of area
11. Need for connectivity for neighboring properties
12. Presence/absence of existing buffer (trees) – visual and preventing collisions with structures/people
13. Other?

E. **Eliminate shared driveway requirement**: this was a stakeholder suggestion and does not need further explanation.

F. For P-GP2 and clusters, allow conservation of developable shorefront land in nearby location that serves same purpose, same land area, just maybe separated a little. (This item needs further consideration – it may be only a P-GP2 issue)

Part IIIA Clustering

A. **Staff will propose technical standards changes** to address some of the difficulties that are apparent when the rule is applied.

B. **Alternatives for when to require clustering**: There were differing views among stakeholders about when clustering should be required. What follows is a list of options that staff considered implementable.

   1. Never – always voluntary
   2. Cluster always on class 4/5 lakes
   3. Cluster on class 4/5 lakes unless performance standards met. Examples of performance standards are:
      a. Contiguous wildlife habitat, especially access to water and corridor to neighboring open land
      b. Equal or better control of phosphorous
      c. Natural-appearing shoreline
   4. Site analysis always on class 4/5 lakes
   5. Site analysis or cluster on class 4/5 lakes – developer's option.

C. **Reduce % of land set aside**: some stakeholders felt that the required set aside was too high a percentage of the overall land area. Current requirement is 50% net developable land, 50% net developable shore frontage. Should the set aside be reduced for backland only? Backland or waterfront? Kept the same?

Part IIIB Open Space

A. **Staff propose clarifying existing provisions** to address some of the difficulties that are apparent when the rule is applied.

B. *Open space bonus* – this was discussed, but does not appear feasible because adjacency and site conditions are typically the limiting factors on number of lots, and these are addressed at rezoning to determine the size of the rezoned area. There is no specific control on number of lots at the subdivision permitting phase.

C. Change P-GP2 requirements to allow nearby land set-aside? (This item needs further consideration because is only affects one zone and is very setting-specific)

D. Open space requirement kicks in at # of lots in subdivision? # of lots in a radius? This is essentially the same issue as the cumulative effects of small subdivisions discussion in Part I.

E. Existing nearby conservation could be used instead of open space, but then in-lieu fee payment? (see discussion in Part I – is this relevant to open space only for P-GP2 and cluster developments?)

F. **Add to list of holder options:** Single land owner can hold open space with appropriate deed covenants.

LUPC SUBDIVISION RULES REVIEW – POLICY OPTIONS

ATTACHMENT A

GIS MAP PROJECT LAYERS

Layer Name:	Description:
Annotation.syml	An annotation layer for town name labeling created by the LUPC in ArcGIS.
Airports	A dataset of 179 public and private airports, heliports, seaplane bases and landing strips for ultralight aircraft from a semi-annual update of the FAA database.
New Dwellings	A classification of MCDs using graduated symbols to depict the total number of new dwellings approved in the community from the inception of the LUPC to January 30, 2015.
E-911 Structures	Point locations of addressable structures and locations for 9-1-1 applications. The dataset is updated on a daily basis by the Emergency Services Communication Bureau.
ME DOT CompRteSys	ME DOT routes and mile measurements along public road centerlines. The dataset is created weekly from the ME DOT GIS roads 'basemap' and associated attributes.
County	State and county boundaries, names and county codes at a 1:24,000 scale.
Towns (UT and Organized)	Political boundaries, common town names, and geocodes for Maine at 1:24,000 scale. The coverage was created by the Maine GIS from various data sources including the USGS, 7.5 minute map series, town boundaries.
Towns with Public Roads	A selection from Towns including unorganized minor civil divisions (MCDs) that contain ME DOT routes as identified through the ME DOT CompRteSys layer.
Towns with Structure Values	A classification of MCDs using graduated colors and based on the total building valuation in the community from data provided by the Maine Revenue Service.
Level II MCD's	A selection of MCDs where Level 2 subdivisions are currently permitted.
Emergency Services	Name and location data for selected manmade features created by the ME GIS. The dataset includes ambulance, hospital, fire and EMS, and police facilities. Data for ambulance and hospital services was updated as part of a data stewardship agreement with the USGS.
Service Centers 2012	Regional service centers in Maine depicted at a 1:24,000 scale, based on information developed by the Municipal Planning Assistance Program of the ME DACF.

Public Roads Buffered	Outlines of the area included within 1000 feet, ½ mile, and 1 mile of ME DOT routes as identified through the ME DOT CompRteSys layer.
Pubrds_buffer2640	A depiction of the area included within ½ mile of ME DOT routes as identified through the ME DOT CompRteSys using a single solid fill symbol.
Recreational Lodging	A selection of Towns showing retail hubs identified during the recreational lodging rule making process.
Statewide Conserved Lands	Conserved land ownership boundaries for Maine land in federal, state, municipal, and non-profit ownership with easements. Conserved Lands is an inventory of approximate property boundaries originally produced in 1989 by the State Planning Office, and continually updated monthly. The Conserved Lands layer does not contain information about what types of development are allowed in each easement or fee ownership area.
Zones	Resource & elevation, protection zones, development zones, and wetland zones showing current LUPC zoning information.
Aquifers	Delineated glacial deposits that may be significant ground water resources for water resource evaluation and ground water protection digitized at a scale of 1:24,000 from printed maps published by the Maine Geological Survey.
Flood (FIRM) areas	Q3 Flood Data for special flood hazard areas from the Flood Insurance Rate Maps published by FEMA mapped at a 1:24,000 scale.
Soils- 2014	Information on the kinds and distribution of soils on the landscape. The dataset is a digital soil survey developed by the National Cooperative Soil Survey and published by the USDA, NRCS.
Level2 MCD Soils	Classification of soils using graduated colors to depict soils with low and very low potential for low intensity development and soils with potential for low intensity development above a low potential rating.
Hydrography	Streams, water bodies, LUPC mgt class lakes, and rivers. The stream, water bodies, and river dataset comes from the high resolution National Hydrography Dataset developed at a 1:24,000 scale. The LUPC Management Class Lakes data is from a collection of datasets for use with the ME DEP Lakes Program.

Appendix B

Meeting 4 Sign-In Sheets

LUPC Subdivision Rule
Stakeholder Meeting #4
Wednesday, April 1, 2015

Name	Affiliation	Email address
Steve Howell	Soil Solutions	showellsoilsolutions@gmail.com
Luke Muzzy	Plum Creek	luke.muzzy@plumcreek.com
Bill Ferdinand	Eaton Peabody	bferdinand@eatonpeabody.com
Gordon Mott	Forester	forestry@[illegible].us
Eliza Donoghue	NRCM	eliza@nrcm.org
Kaitlyn Bernard	AMC	kbernard@outdoors.org
RICK DUNTON	MLDC	rick@main-landdci.com
Sally Stockwell	Maine Audubon	sstockwell@maineaudubon.org
Elgin H. Turner	H.C. Haynes, Inc.	elgin@hchaynes.com
Bob STrattor	MDIFW	Robert.D.Strattor@maine.gov

LUPC Subdivision Rule
Stakeholder Meeting #4
Wednesday, April 1, 2015

Name	Affiliation	Email address
Ken Lamond	Family Forestry	Ken.familyforestry@gmail.com
Alexa Burman	Burman Land & Tree Co	blburman@gmail.com
John Kolenik	P+C	jjkolenik@prentissandcarlisle.com
John Kelly	P+C	jmkelly@
Mike Lane	Pieti	mlane@pieti.com
Sarah Medina	Seven I	smedina@sevenislands.com
Betsy Fitzgerald	WASH Co / LUPC	

Appendix C

Meeting Notes

Land Use Planning Commission
Subdivision Rules Review Stakeholder Process
Meeting #4 April 1, 2015

Part I Review of Staff Options - Types of Subdivisions

	Consider		Comments - Suggestions
	Yes	No	
B.1 Factors in locating levels/types of subdivisions			
a. Distance from public road (measurable)			Use in certain circumstances and in some types of subdivisions, but not all. Important consideration seasonal vs permanent.
b. Access to service hub (see service hubs proposal)	X		
c. EMS/Fire response time (Data may not be readily available? Can get general sense of proximity to EMS/Fire locations)		X	Could rule out all development. Require note on plat no EMS service.
d. Distance from other residential development (see adjacency discussion)			
e. Trend of residential development locally (new dwelling permitting data)		X	Data has been conditioned by existing rule. Insufficient data set.
f. Status as a town or plantation (known)			
g. Waterfront/ backland (what is appropriate distance – ¼ mile? ½ mile from shore?)	X		Support for 1/4 mile.
h. Separation from high-value resources			
i. Class 1,2,3,6 lakes (what is appropriate distance?)			
ii. Remote areas (Can use public road proximity as proxy?)		X	Redundant
iii. High-value habitats (Difficult on a large scale – may need to be a township-level review)			Add protection zones?
i. Avoid large blocks of soils unsuitable for development (LDD soils in map layer, but need to be aware of data limitations)		X	Concern soil survey info not accurate. Too conservative. Handle at permit phase.

j. Avoid high-value agricultural soils (Data available, but need to be aware of limitations)		
k. High-level screen for conserved land (but layer does not represent development potential or lack of it)		

	Agree		
	Yes	Maybe - Neutral	No
B.2 Concept of Identifying and Using UT Service Hubs			
a. Idea of two levels of Service Hubs	X		
b. Idea of using Service Hubs to locate Level 2 townships, large lot subdivision, etc	X		

List looks good, may need to add a few places with fewer establishments.

Inform on types of subdivision, but not used to rule out all types.

	Agree		
C.1 Large Lot Subdivisions	Yes	Maybe - Neutral	No
a. Concept of creating a large lot subdistrict (zone)			
b. What range of lot sizes?			

Potential to change character if area is broad. Increase lot size in Level II. Good tool to use outside of zone. Back-up.

Not an efficient use of Do not want to go through rezoning. Need some areas that don't require rezoning.

Look at policy history as we more forward.

12 acres- 2 for bldg area and 10 in tree growth. Good size. Creates strip development. Impact on road maintenance

Can reduce density on the shore.

11-1000 acres.

	Agree		
	Yes	Maybe - Neutral	No
c. Base the location of large lot subdivisions on factors			

Possible location factors:				
i. Within 20 miles of service hubs				
ii. Within 5 miles of a public road			X	Private roads provide sufficient access.
iii. At least ½ mile away from bodies of water 10 acres or larger and flowing waters draining 50 square miles or more.				
iv. Not in high-growth areas where land is in short supply				
v. Not where there are high-value natural resources such as deer yards.				

2. Level 2 Subdivisions

	Preferred Option		
Increase area in which Level 2 Subdivisions are allowed			
Option 1 - add to the list of Level 2 Townships	1		Support to add townships. Monitor results of adding smaller changes instead of a large change all at once. History shows development not all at once. Converse- allow changes and reduce later if undesirable result.
Option 2 - increase distance from public road	2		Increase distance from public road an option, is going up to 1 mile going to be successful, capture the desirable area?
Null option - No change in area	Null		Some prefer to eliminate distance from road as a factor.

a. Factors for increasing townships for Level 2 Subdivisions Preferred Option

I. All townships, anywhere (this may be difficult to justify based on statute)	1		Not in proposal
II. Two-tier approach around service hubs: i. Larger hubs – 2 townships out from border, contains public road that connects to hub? ii. Smaller hubs – 1 township out from hub border, contains public road that connects to hub?	2		Distance from service hub supported. If the area is not large enough, large landowners won't be able to meet objectives.
III. Current townships.	3		
IV. Look at all factors – including residential permit data, soils, conservation etc., and come up with revised list. This could be done in conjunction with options 1, 2 or 3 above, or as a standalone.	4		What are issues that need to be considered, fragmentation, concentrating development

b. Option for increased distance from a public road		Preferred Option
I. ¼ mile	1	
II. ½ mile?	2	
III. 1 mile?	3	
IV. Other _____	4	
V. Other _____	5	
VI. Other _____	6	
VII. Stay the same	7	

D. Change permitting requirements

		Agree	
1. Make Level 2 easier	Yes	Maybe - Neutral	No
a. Change upper limit on lots to 14 to match DEP site law trigger	X		

b. Revise maximum aggregate land area (excluding open space)	X			75 acres, depends on what is there, locations vary, trade-off, Staff should develop proposal
I. Current limit is 20 acres if no cluster. Any need to change this?	X			Revise to conservation subdivision,
II. Should it be different in certain circumstances?				
c. Eliminate cluster requirement				
d. Area for stream channel or wetland is currently 10%. Keep it the same or increase this to 20%?				

	Yes	**Agree** Maybe - Neutral	No
2. Concept of Phasing for Level 1 Subdivisions	X		

2. Phasing approach for Level 1 Subdivisions

	Yes	**Agree** Maybe - Neutral	No
a. Pre-approves, in concept, up to 3 phases of development			
b. Freezes dimensional requirements for the future phases\			
c. Each phase can be permitted separately			
d. Phase 1 must be started no later than two years following approval, phase 2 no later than 5 years following approval, and phase 3 no later than 8 years following approval.			
e. Infrastructure must be planned from the beginning, but can be built out in phases (e.g., road widening as you go as long as ROW is in place)			

3. Cumulative Subdivision Development

	Yes	**Agree** Maybe - Neutral	No

a. Provide options for identifying nearby infrastructure, recreation or gathering places.	X			Support looking at options to address this.
b. Utilize a "common scheme of development" concept.				
c. Require road connections between neighboring subdivisions.				
d. Permit review				

	Agree			
	Yes	Maybe - Neutral	No	
4. Adjacency	X			Does adjacent incentivize development of less desirable land?
				Revisited? Yes, very high priority, if not tackled for subdivisions, may impact other aspects of discussion
a. Adjacency for large lot subdivisions				Important, but shouldn't try to rush. Needs thorough review. Address primary residence vs. seasonal camp.
				Generally high priority

Part II Review of Staff Options - Layout and Design

	Agree			
	Yes	Maybe - Neutral	No	
A. Optional Site Analysis Approach	X			
B. Concept of developing 3-4 different design standards	X			Diversity of the UT served better with options
Are the categories generally the right ones?				Concern - increasing complexity
Village setting				
Near class 4/5 waterbodies				

Near other waterbodies				Include other major water bodies- rivers
Distant from waterbodies and villages				
Islands				Should there be another category for rural, scattered development?

Distinquish between cluster residential development and mixed use
Include hillside development as an area or address by standard

1. If community center eliminated, make provisions for nearby resources				Consider connecting openspace for travel corridors.

		Agree		
	Yes	Maybe - Neutral	No	
C. Provision for Future Backlot Development				Important to pursue this and connection to future development. Would back lots be counted in lot total?

		Agree		
	Yes	Maybe - Neutral	No	
D. Road Standards				
1. Through road?				
2. ROW placement, and is it known?				
3. Speed limit				
4. Utilities				
5. # of entrances				
6. Density of structures and uses				
7. Future widening potential				

8. Future improvements that would increase speed			
9. Existing conditions with other structures			
10. Need for buffering – visual, character of area			
11. Need for connectivity for neighboring properties			
12. Presence/absence of existing buffer (trees) – visual and preventing collisions with structures/people			
13. Other _____			
14. Other _____			
15. Other _____			
16. Other _____			

	Agree			
	Yes	Maybe - Neutral	No	
E. Eliminate Shared Driveway Requirement				Allow as an option. Generally supported, but not everyone in group.

	Agree			
	Yes	Maybe - Neutral	No	
F. Allow conservation of developable shorefront land in nearby location	X			Support for grouping conserved land as an alternative to small openspace areas.

Part IIIA Review of Staff Options - Clustering

B. Alternatives for when to require clustering	Preferred Option		
1. Never – always voluntary	1		
2. Cluster always on class 4/5 lakes	2		

3. Cluster on class 4/5 lakes unless performance standards met.	3			
4. Site analysis always on class 4/5 lakes	4			
5. Site analysis or cluster on class 4/5 lakes – developer's option.	5	X		Allows options for landowner

Openspace sets aside unbuildable/ high value areas

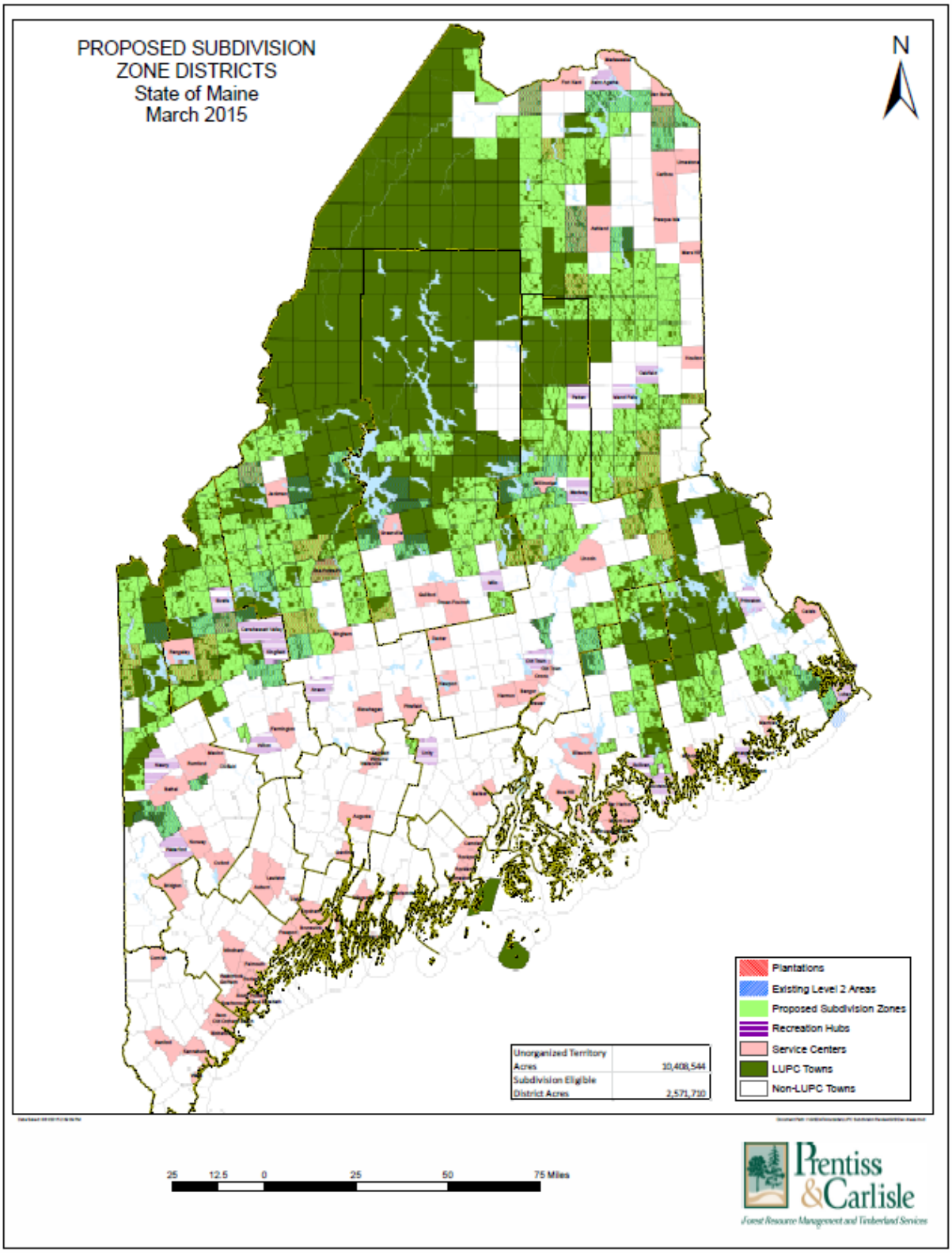
C. Reduce % of land set aside	Preferred Option			
1. Reduce set aside for backland only	1			keeping developable land in open space important. Need to address parcels with high percentage of undevelopable land. Identify any areas where open space may not be necessary.
2. Reduce set aside for backland and waterfront	2			
3. Keep the current requirement	3			

Part IIIB Review of Staff Options - Open Space	Yes	**Agree** Maybe - Neutral	No
B. Open Space Bonus			
C. Change P-GP2 requirements to allow nearby land set-aside			
D. Open space required only for more than # lots in a subdivision			
Open space required only when nore than # lots within a certain radius			
E. Use exising conservation land but with an in-lieu-of payment			

F. Allow holder to be a single land owner with appropriate deed covenants			

Appendix D

Stakeholders Alternative Location Map


PROPOSED SUBDIVISION
ZONE DISTRICTS
State of Maine
March 2015
N
Plantations
Existing Level 2 Areas
Proposed Subdivision Zones
Recreation Hubs
Service Centers
LUPC Towns
Non-LUPC Towns
Unorganized Territory Acres 10,408,544
Subdivision Eligible District Acres 2,571,710
25 12.5 0 25 50 75 Miles
Prentiss & Carlisle
Forest Resource Management and Timberland Services