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DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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AMANDA E. BEAL
COMMISSIONER
JUDY C. EAST
EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners
CC: Judy C. East, Executive Director
From: Stacie Beyer, Planning Manager; Ben Godsoe, Chief Planner; and Tim Beaucage, Senior Planner
Date: January 8, 2021
Re: Workplan for Tracking the 2019 Adjacency and Subdivision Rule Revisions

The attached draft workplan would collect information over time to allow the Commission to evaluate the effectiveness of the 2019 rule revisions related to application of the adjacency principle and development of residential subdivisions. This information will help the Commission measure progress both on an annual basis and during formal review periods prescribed by the basis statement accompanying the rulemaking. (See the attached workplan for more information.)

Staff have updated the draft workplan based on feedback from stakeholders during a review process that included a virtual public meeting and accompanying written comment period held in September and October of 2020. We have also prepared a response to public comment and a draft report with available data from 2020.

Attached to this memo, please find four attachments:

1. the revised workplan based on feedback from the review process;
2. a document summarizing the review process, comments from people who participated, the staff response to each comment, and a description of any action taken as a result;
3. a preliminary report based on data collected in 2020; and
4. Written comments received during the comment period.

Background

- In a 2019 rulemaking, the Land Use Planning Commission (the LUPC) updated its interpretation of the adjacency principle, which is an initial screen for where new zones for development of a residential subdivision or business can be created. This high-level screen is just the first step – the rezoning process still applies, and permits would still be required for most uses. The 2019 rulemaking also improved the layout and design standards for subdivision development.
- At its meeting on March 11, 2020, the Commission reviewed the first draft of the workplan to measure the effectiveness of the 2019 Adjacency and Subdivision rulemaking and directed Staff to hold a public meeting and accompanying written comment period¹ before revising and finalizing the workplan.

Revised Draft Workplan

The draft workplan meets the commitments made in 2019 for review of the effectiveness of the rules, and proposes, with varying resource implications, going beyond that original commitment. For example, the workplan proposes:

- annually summarizing outcomes and outreach;
- collecting information about proposed development or rezoning for future development that ultimately were not submitted for review; and
- collecting certain data to be used in the evaluation of outcomes for both resource-based or recreation-based development, and more traditional proposals for residential or commercial development.

The draft workplan also outlines important challenges and limitations to collecting or interpreting data that should be considered during review of any reports on this topic.

Comments received during the comment period resulted in changes to the draft workplan. For example, staff reorganized the document to clarify which tasks would be done annually vs. after five years. See the attached summary of comments, and resulting actions, if applicable, for more information about what changed and why.

¹ In addition to the usual methods of submitting written comments, staff created a form on the LUPC website that anyone could use to submit comments.

Staff Recommendation:

Staff recommends that the Commission direct staff to move the work plan from “draft” to “final,” and to use the workplan to guide future data collection and analysis to measure the effectiveness of the new Location of Development and Subdivision rules.

If directed by the Commission, it is Staff’s intent to implement the work plan as written. Nevertheless, it is important to consider that the new rules are extensive and complex, the available data can be limited and is constantly evolving, and staff capacity can increase or decrease. Also, stakeholders made constructive requests that may not be possible to analyze today; however, advancement and statutory requirements to provide data not currently accessible to the Commission could allow for analyses not contemplated today. Thus, we anticipate that the workplan can and should allow for change in response to these dynamics. Any such changes will of course be brought to the Commission’s attention for review and input.

**Adjacency & Subdivision Implementation Tasks:
REPORTING SYSTEM WORKPLAN
(January 8, 2021 Draft)**

INTRODUCTION

The following describes the LUPC staff proposed workplan to summarize and assess outcomes of what was referred to as the 2019 Adjacency & Subdivision rulemaking. That rulemaking:

- made changes to the ‘adjacency principle;’
- improved subdivision standards; and
- added other standards regarding an impact-based approach for residential and non-residential development, home- and farm-based businesses, scenic byways, and hillside development.

Due to a number of factors, not all outcomes or aspects of performance can be measured or assessed quantitatively. In some instances, the workplan describes other information or assessments that may be informative substitutes.

Workload

This workplan includes an assessment of the workload anticipated to achieve each research and assessment task. While the Commission previously committed to certain tasks, and the additional tasks are valuable and appropriate, it will require the devotion of time and resources. Specifically, anticipated workloads are indicated as one of three levels:

Workload	Description
+	<u>Negligible effect on LUPC workload:</u> information is already collected by the LUPC; summaries are easily achievable;
+ +	<u>Some increase to LUPC workload:</u> data collection or analysis will require a moderate amount of backfilling, summary, or linking of data; or additional staff time will be required on a regular basis;
+ + +	<u>Significant increase to LUPC workload:</u> significant staff time or agency resources will be necessary to complete the task.

Experience implementing the rules and carrying out this workplan will further inform the Commission’s perspective, provide perspective on the workload, and may suggest whether refinements are appropriate.

CHALLENGES AND LIMITATIONS TO COLLECTING OR INTERPRETING DATA

This workplan and the related assessments are and will be influenced or otherwise limited by a number of factors. In order to provide context and to inform expectations, the following items describe several factors.

1. A number of changes included in the 2019 rulemaking do not warrant specific data collection or assessment. Examples include but are not limited to: basic change in terminology (e.g., home-based business, common open space); new defined terminology; format of citations and basic restructuring of the rule. These elements will be monitored for issues consistent with the agency's normal administrative responsibilities and efforts.
2. Assessment of some portions of the rule are not feasible, often due to the absence of data. Examples include but are not limited to:
 - a. Assessing the success or failure of some standards based on a ratio of approvals versus denials is constrained because it is not always possible to know the number of people who did not apply due to their knowledge of the applicable standards; and
 - b. Effects on the rate of parcelization¹ and exempt lot creation is limited due to the lack of any data² and limits to agency authority.

Whenever possible, other data will be considered provided that the data is viewed as a valuable substitute or proxy (in-part or in-whole).

3. To varying degrees, outcomes from current or prior rules may be influenced by outside factors, such as direct or indirect markets, landowner goals, and other regulatory programs. These factors are not within the Commission's purview and often change or fluctuate over time. Ultimately, assessment of any and all data should consider applicable factors to the extent possible.
4. Comparisons to historical permitting trends can become less informative as the Commission's rules evolve regularly. Further, in some instances, comparing recent outcomes to past trends may not offer valuable perspective due to the number of variables.
5. Impacts and benefits from development often occur at a slower rate than anticipated.
6. Development review and the approval process may occur in stages – zoning approval, subdivision approval, and development approval.
7. Construction activity and completion of any one site may take months, while full buildout may not occur for several years.
8. Habitation and regular use will likely be sporadic and indistinct.
9. Affects to local or regional resources, or the strain on community services, could be subtle or abrupt, but attributing impacts to a single cause or source likely will be difficult.

¹ The LUPC has limited access to parcel data in municipalities or plantations within its service area, who are not required by law to share parcel data with the LUPC.

² When a property owner uses a subdivision exemption(s) to create a lot division(s), there is no requirement to report the action to LUPC. While such divisions are recorded in the registry of deeds, currently the LUPC does not have the capacity to research, either periodically or on an ongoing basis, when and how exempt lots are created. (See Chapter 10, Section 10.25,Q,1,g for the list of exemptions.)

PURPOSE

To monitor, assess, and report on the outcomes of the 2019 rule revisions concerning adjacency and subdivision.

GOAL 1: Periodically assess the effectiveness and outcomes of the rulemaking³.

Strategies:

- a. Review rule revisions at predetermined intervals [see letter (i), below] with attention to emerging patterns of development and any potential long-term implications.

Predetermined review intervals/research and assessment tasks:

Workload

Task

- | | | |
|-------|-------|---|
| + + | (i) | Conduct a review of the effectiveness of the revised application of the adjacency principle: <ul style="list-style-type: none">- Five years after adoption (<i>i.e.</i>, 2024).- Following the approval of five petitions for rezoning to create new, or expand existing, development subdistricts in any single county. Group by resource-based and non-resource-based development [excluding certain resource dependent zones (D-PD, D-PR, and D-RF), deorganizations, and FEMA map revisions].- Conduct a review of the effectiveness and effects following the approval of 100 residential lots created through subdivision (excluding lots created in a concept plan). |
| + + + | (ii) | Survey rural hub towns potentially impacted by new development activity (e.g. located near, or serving, new development), and other municipalities as needed, to identify any long-term implications of the revised rules. |
| + + + | (iii) | Identify and describe the status or buildout of residential subdivisions or commercial development in subdistricts established after the effective date of the revised rules. |
| + + | (iv) | Summarize permitting and rezoning data in five-year increments, or in other date ranges if applicable and as needed. |
| + + + | (v) | Assess whether the hillside development standards effectively minimize views of development from scenic resources. |

³ “The Commission is committed to monitoring the effects of this policy change. In addition to collecting data about rezoning and permit approvals as part of the normal course of work, the Commission will initiate a review of the effectiveness of the application of the adjacency policy: five years after the adoption of the rules; upon the approval of five petitions for rezoning to create new, or expand existing, development subdistricts in any single county; or upon the approval of 100 residential subdivision lots outside of concept plans, whichever comes first.” June 17,2019 Chapter 10 basis statement, page 25.

- b. Annually track and report relevant development activity, with focus on identifying specific locations that may experience rezoning or permitting activity, flagging any issues that may emerge, and capturing lessons learned along the way.

Annual research and assessment:

<u>Workload</u>	<u>Task</u>
++	(i) Regardless of whether the rate and location of development triggers a formal review, as described above in strategy a,(i), staff will summarize outcomes to the Commission, and will likely include a summary in the annual performance report to the Legislative Committee on Agriculture, Conservation and Forestry.
++	(ii) Maintain a general summary of other outreach conducted by staff.
++	(iii) Work to measure or otherwise describe the number of potential projects that do not result in a permit application or zoning petition. Including:
++	- On a quarterly basis, check in with staff for anecdotal information regarding pre-application meetings / discussions that likely will not result in an application or petition; and
+	- Monitor use of the Commission’s mapping and informational resources.
+++	(iv) Analyze travel distances for emergency services from point of origin to new development zones. If applicable and practicable, also analyze distances by road and in a straight line from new development subdistricts to: the boundary of the nearest rural hub; and the center of the nearest rural hub.
++	(v) Reach out to potentially impacted rural hubs or municipalities during active permitting or rezoning processes to solicit comments, and then summarize feedback in annual reports.
++	(vi) Analyze implementation of the new wildlife corridor requirements, for residential subdivision designs and certain commercial development, to determine if wildlife corridors are being incorporated into designs as intended.
+	(vii) Share reports with stakeholders and the public.
+++	(viii) As appropriate or needed, the staff will check in with stakeholders.

ADDITIONAL GOALS, STRATEGIES, and TASKS

GOAL 2: Guide development subdistricts to appropriate locations, siting most development where there is existing development and where services can be provided efficiently.

Strategies:

- a. Replace the one-mile rule of thumb with a more refined and predictable system to locate non-resource-based commercial and non-recreation-based residential subdivision development closest to services.

Annual Research and Assessment:

Workload

Task

- | | |
|-----|--|
| + | (i) List all petitions processed for new or expanded (non-resource dependent) development zones. List to indicate: |
| + | - permit number, acres, Minor Civil Division (MCD), county, subdistrict, purpose, locational criterion (primary, secondary), lake management classification, disposition; and |
| ++ | - existing and resulting lake shoreline and area density calculations, and distance to the nearest rural hub; |
| + | (ii) Summarize approved petitions by subdistrict, county, and locational criterion; |
| +++ | (iii) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes; and |
| ++ | (iv) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern. |

- b. Allow subdistricts for resource dependent commercial uses to be located away from services, provided they do not undermine the quality of the surrounding natural or recreational resources, and do not create a burden for service providers.

Annual Research and Assessment:

Workload

Task

- | | |
|---|---|
| + | (i) List of all petitions processed for new or expanded resource dependent development zones. List to indicate: permit number, acres, MCD, county, subdistrict, purpose, locational criterion (resource or feature development is located near), and disposition; |
| + | (ii) Summarize approved petitions by subdistrict, county, and locational criterion; |

- + + (iii) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes;
- + + (iv) Identify and describe any adverse impacts on natural or recreational resources that have been identified;

c. Allow subdistricts for recreation-based subdivisions near certain management class lakes that are already developed, and near permanent trails serving motorized vehicles, nonmotorized vehicles, or equestrian users.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List all petitions processed for new or expanded D-RS subdistricts for recreation-based subdivisions. List to indicate:
+	- permit number, acres, MCD, county, subdistrict, purpose, applicable resource (lake or trail), lake management classification, disposition; and
+ +	- existing and resulting lake shoreline and area density calculations, distance to the nearest rural hub, and distance from a public road.
+	(ii) Summarize approved petitions by subdistrict, county, and locational criterion;
+ +	(iii) Assess the likelihood that the outcomes for approved and denied zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes;
+ +	(iv) If applicable, describe outcomes of any approvals or denials that have sparked reason for concern.

GOAL 3: Revise land use standards to improve flexibility and suitability for residential subdivisions proposed in the Commission’s rural service area.

Strategies:

- a. Encourage more lot creation through subdivision, rather than through exempt lot creation, by updating and broadening options for subdivision designs.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List all subdivisions processed. List to indicate: permit number, acres, MCD, county, subdistrict, net change in lots, purpose (for lease or sale), subdivision layout, and disposition;

- + (ii) Summarize approved subdivisions, by county and locational criterion, and by layout and density;
- + (iii) Comparison to historic data (20-year annual average of the net change in lots approved through subdivision); and
- + + (iv) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern.

GOAL 4: Increase flexibility for resource-based development in locations that do not undermine the quality of the surrounding natural or recreational resources or create a burden on the service providers in the region while simultaneously limiting the potential for similar development in locations near sensitive resources.

Strategies:

- a. Establish detailed and customized standards for new and existing allowed uses that accomplish or otherwise improve existing protections of natural and cultural resources. (For example, standards that protect views from development on hillsides, provide for wildlife passage and road associations, and require deeded access by road, etc.)

Annual Research and Assessment:

Workload

Task

- + (i) Summarize the number of applications (BPs, DPs, or SPs) where Section 10.25,E,2 (Hillside standards) applied; and
- + + (ii) Summarize the amount and type of hillside development that occurred near scenic byways.

- b. Allow new, and continue to allow existing, resource-based commercial uses to be located away from services, provided they do not undermine the quality of the surrounding natural or recreational resources, and do not create a burden for service providers.

Annual Research and Assessment:

Workload

Task

- (i) List all applications for resource-based uses processed. List to indicate:
 - + - permit number, MCD, county, subdistrict, use, resource dependency, general characterization of the type of activity (new site/use, expanded site/use, other), disposition; and
 - + + - distance to the nearest rural hub.
- + (ii) Summarize the number and type of permits by Use Listing: (i.e., natural resource processing, natural resource extraction, recreation

supply, recreation day use, home-based businesses, agricultural processing, agritourism). For each use listing, identify each business type (e.g., peat extraction; canoe rental)

- + (iii) Summarize approved permits, by use, county and resource;
- + + (iv) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes.
- + + (v) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern.

DRAFT

Adjacency & Subdivision Implementation Tasks:

REPORTING SYSTEM WORKPLAN

Summary of Relevant Public Comments

At its meeting on March 11, 2020, the Land Use Planning Commission (LUPC or the Commission) considered a draft workplan to measure the effectiveness of the 2019 Location of Development rule revisions. The Commission directed staff to hold a public meeting and accompanying written comment period to gather feedback on the draft workplan.

Staff held a virtual public meeting on September 30, 2020. Notice for the virtual public meeting was sent out by e-mail through the LUPC's GovDelivery system to a list of people who signed up for updates during the Adjacency & Subdivision Rulemaking Process. Two people attended the virtual public meeting. A written comment period was held from September 9, 2020 – October 30, 2020. The Commission received five written comments. One of the written comments was a group letter from seven organizations.

Below is a summary of relevant public comments about the workplan, including a description of any action proposed in response to comments.

Summary of Public Comments:

1. One commenter asked for clarification about the difference between an annual review, and a review completed after five years, or if triggered by one of the other criteria in the rulemaking basis statement. [These two reviews are referred to as the "annual review" and "five-year review" in the response below.]

Commenter:

- M. Sturm, Natural Resources Council of Maine

Response: The primary difference between the annual review and the five-year review is linked to the amount of data available for the Commission to analyze, and on which to report. Annual reviews would focus more on identifying particular locations that may have experienced development activity over the course of the year and help flag any potential problems or issues that may have emerged so far. Doing a review every year gives the Commission the opportunity to compare results to the previous year, or years, and a chance to act quickly if any problems emerge in the short term. The five-year review would analyze all the data collected up to that

point and focus on evaluation of longer-term implications of the permitting and rezoning trends that may have emerged over the review period.

Action: Restructured GOAL 1 to include two strategies describing research and assessment tasks to be undertaken annually, as well as during a review occurring at the five-year mark, or if triggered by one of the other criteria in the rulemaking basis statement.

2. One commenter said that the work plan goes above and beyond the commitments made in the basis statement by generating annual summaries on the full suite of outcomes the rule change aimed to improve. Annual summaries and updates to the Commission and the Legislative Committee on Agriculture, Conservation, and Forestry will be valuable opportunities to assess the changes. During the virtual public meeting held on this topic, another commenter noted that annual reporting on the effectiveness of the new rules will provide the Commission an opportunity to identify and act on any potential issues before too much time has passed.

Commenters:

- K. Bernard, The Nature Conservancy;
- E. Townsend, Appalachian Mountain Club

Response: The Commission remains committed to measuring the effectiveness of the Location of Development and Subdivision Rule Revisions and agrees that annual summaries will provide the Commission, Legislature, and the public a regular opportunity to assess progress.

Action: None

3. It will be very important to check-in with the local communities regularly to see how this changed rule is working on the ground.

Commenter: K. Bernard, The Nature Conservancy

Response: The Commission agrees and will make checking-in with local communities that provide services a priority during review periods. Additionally, the Commission already receives information directly from service providers during a rezoning process and will report any issues that come up.

Action: Clarified in the workplan, under GOAL 1, when to check-in with local communities, such as during any rezoning process, or during a review occurring at the five-year mark or if triggered by one of the other criteria in the rulemaking basis statement.

4. Comparing any outcomes under the new rule to potential outcomes that would have occurred under the previous adjacency rule structure will help all stakeholders better understand the new framework.

Commenter: K. Bernard, The Nature Conservancy

Response: *The Commission agrees and has already incorporated this concept into the workplan.*

Action: *None*

5. Track rezonings and development permit activity, noting build-out, where it occurred and if located in a primary or secondary location.

Commenters:

M. Sturm, Natural Resources Council of Maine¹
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: *Reporting on the total number of rezonings and permits issued is already done by the Commission on an annual basis and determining whether new zones are located in a primary or secondary location is included in the draft workplan. However, going further to track the buildout of new zones will be significantly more difficult and is described accordingly in the workplan. Accurately tracking buildout may require research into the permitting record for a property, and potentially a site visit, depending on the details of a proposal. For these reasons, and also because there may not be enough data to efficiently analyze build out annually, the Commission will not complete this analysis every year.*

Action: *The Commission will clarify in the workplan that analysis of the build-out of new development subdistricts will be done during a review occurring at the five-year mark, or if triggered by one of the other criteria in the rulemaking basis statement.*

¹ This comment was submitted in a letter submitted by the Natural Resources Council of Maine but also representing the views of: the Appalachian Mountain Club; GrowSmart Maine; Maine Audubon; Maine Wilderness Guides Organization; Moosehead Region Futures Commission; and RESTORE The Maine Woods.

6. The Commission should gather baseline information about the existence and location of structures, infrastructure such as roads, and parcel divisions throughout its service area. Not having such a baseline makes it difficult to measure changes in the overall development pattern over time. It may be possible to update existing or longitudinal studies of parcelization that have already been done by the Commission or other entities; or to use aerial imagery or other technology to conduct such a baseline study.

Commenters:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response:

Creation of a Land Use Inventory Providing Baseline Information

The purpose of the workplan is to measure the effects of the Location of Development Rule Revisions, which relate to locating new zones for development. While a base-line inventory of structures and infrastructure would potentially contribute to the Commission's understanding of conditions on the ground in a given location, it would be very resource intensive to create and not necessarily add information essential to understanding operation of the new rules.

There is no dataset currently available that identifies where all existing development is located in the UT. Gathering this type of information would be a large undertaking and only yield a "snapshot in time" of development conditions on the ground. Given the resources and time that a land use survey would entail, and the limited utility of a "snapshot in time," the Commission does not agree that a land use survey is required for the purposes of measuring adjacency, which is the first screen that determines whether an applicant can begin the rezoning process. Notably, no such inventory existed when the 1-mile rule of thumb was developed and the refined approach to application of the adjacency principle embodied in the new rules provides more certainty about the location of future rezoning than the prior system.

The availability of detailed aerial imagery has made it less difficult to obtain information about structural development. However, a useful land use inventory would also include information about the use of structures/infrastructure, not just a location. Additionally, many places in the

Commission's service area have a mature forest canopy obscuring aerial photography and making it difficult to determine if a structure is present.

Updating LURC Reports on Parcelization

Updating "An Examination of the Subdivision Exemptions of the Maine Land Use Regulation Commission Law, March 2006," or other similar reports, about the use of subdivision exemptions would be difficult to complete. The geographic size of the region is large, and the variety of development patterns within it are complex. Additionally, LUPC does not have access to up-to-date information about land divisions. Any update the Commission could make to these reports would be limited in scope, require extensive research at the registry of deeds, and would only represent a snapshot-in-time. Property owners are not required by law to notify the Commission when divisions occur, and municipalities and plantations are not required by law to share parcel data with the LUPC.

Action: None

7. Track the location of subdivisions and lots created through use of a subdivision exemption (e.g., divisions as a result of using the "2-in-5" subdivision exemption). Commenters also noted that the Commission should track the number of lots that existed when the parcel was developed, and track further divisions occurring over time.

Commenters:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: *The workplan proposes to track rezonings to D-RS subdistricts for the purpose of residential subdivision, and related permitting actions, and to analyze the buildout status of new subdivisions.*

However, tracking the creation of lots through use of subdivision exemptions is not possible at this time. While divisions that meet the definition of a subdivision require a permit from the Commission, there is currently no requirement for property owners to notify the Commission when a division does not meet the definition of a subdivision.

Action: Clarified when to conduct buildout analysis for residential subdivisions under GOAL 1, Strategy a. This analysis would be completed after five years, or if triggered by one of the other criteria in the rulemaking basis statement.

8. Track the number, and miles, of new roads over time, and analyze the degree of fragmentation created by new roads in regard to changes in size of “large unfragmented blocks” of forest land.

Commenters:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: The Commission issues permits for new roads for a variety of different reasons, including long driveways, roads serving residential or commercial development, and new public roads. Not all roads permitted by the Commission are related to evaluation of the new Location of Development rules, but when conducting a buildout analysis of new development subdistricts associated with the new rules, then it would be appropriate to consider related road development and associated impacts.

Regarding large, unfragmented blocks of habitat, LUPC staff are currently working with the Maine Department of Inland Fisheries and Wildlife (IF&W) to review existing data and consider how it could be used for planning and development reviews in the Commission’s service area. Data maintained by the Beginning with Habitat Program (BWH) at IF&W is useful for land use planning at the municipal scale. However, LUPC staff are concerned about its relevance at the regional scale in sparsely developed or undeveloped areas served by the Commission.

Action: No change to the workplan. However, LUPC staff have re-initiated separate discussions with IF&W regarding use of BWH or other data that can be applied to meaningfully identify and consider unfragmented blocks of habitat in the UT.

9. When synthesizing collected data, the Commission should give special consideration to: the location and types of resource-based, or recreation-based, commercial development (e.g., recreation supply facilities); development trends on management class 3 and 7 lakes; and location, size, and distance from public roads of General Management Subdivisions.

Commenters:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: *The draft workplan already proposes tracking resource-based and recreation-based permitting activity – including the type and location of development. Development trends on Management Class 3 and 7 lakes will also be tracked as proposals are submitted, particularly regarding suitability for recreation-based residential subdivisions. For example, when recreation-based subdivisions are proposed on MC 7 lakes, the Location of Development rules require that existing development along the shoreline of the lake be of a certain density.*

M-GN subdivisions are required by rule to be in a primary location and within ½ mile of a public road [10.25,Q,3,a,(2)]. The workplan already proposes tracking and reporting where all subdivisions are permitted, including M-GN Subdivisions.

Action: *No action*

10. Track the availability and extent of emergency services available within each rural hub, as well as actual distances by road from new development to the most developed portion, or “center” of each rural hub.

Commenters:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization

C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: Evaluating the adequacy of emergency services provided to the UT is beyond the scope of the Commission's land use planning and zoning responsibilities. The draft workplan already calls for the Commission to communicate periodically with Rural Hub towns (see list of towns in Chapter 10, Section 10.08-A,B) to determine if providing services in the UT is creating any problems for the town. Additionally, in a rezoning process the Commission always requires applicants to obtain a letter from relevant providers indicating that services can be extended to new development in the proposed zone.

Measuring travel distances from the "center" of a rural hub to a new zone for development may be possible and the Commission will look into completing this analysis and including it in the report. In certain settings, it could prove challenging to identify a "center" in each rural hub town. This information would potentially be useful, in combination with feedback from service providers and rural hub towns, when analyzing the operation of primary and secondary locations. However, the reality of rural emergency response is less about a single rural hub providing services to a distinct set of UTs. Rather, there are regional networks and mutual aid agreements among emergency response providers that define volunteer-based (for fire departments), or fee-based (for ambulance services) systems. These highly distributed and overlapping systems are not necessarily or consistently measurable in terms of travel distances, centers of activity, or even staffing. The reality on the ground therefore does not lend itself to the kind of spatial and fiscal impact analysis discussed in the comment.

Action: Added to GOAL 1, Strategy b. in the workplan to include analysis of travel distances, when applicable and if practicable, between new development zones and the center of the nearest rural hub or from the point of origin of emergency services. This analysis would be completed on an annual basis.

11. An important focus of the workplan should be on whether the new rules are preventing sprawl in the Commission's service area. Toward that end, the Commission should track total acres developed and new lots created since the rule revisions, including the location of new lots and proximity to a town.

Commenter:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon

J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: The draft workplan already proposes tracking the size and location of new subdistricts for development, and it would be possible to report on their proximity to nearby towns (see topic 10). The draft workplan also proposes tracking buildout of new residential and commercial development subdistricts, and the number of lots in each new residential subdivision.

Action: Clarified in the workplan that buildout analysis of new development subdistricts would be undertaken at the five-year mark, or if a review is triggered by one of the other criteria in the rulemaking basis statement.

12. Commenters had a number of suggestions about tracking how development occurs within a primary or secondary location, including: identifying areas where development is concentrated vs. dispersed and its proximity to the boundary of a rural hub as well as the center of town; and whether development is occurring in secondary locations vs. primary locations and why. Commenters also asked how the termination or expiration of lake concept plans should influence the location of primary and secondary locations over time and what is the role of regional planning in the new system for application of the adjacency principle.

Commenter:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: During a review, the Commission will analyze patterns of development occurring in primary or secondary locations, including identification of areas where there has been intensive development activity, and analysis of proximity to both the boundary of the nearest rural hub town², as well the more developed part, or center, of the rural hub. Whether development has

² Some primary locations are not based on proximity to Rural Hubs, but rather are in plantations or towns, or are places where the Commission proactively established primary locations because of the existing development pattern. For more information, see Chapter 10, Section 10.08-A,C.

occurred in a primary or secondary location is possible to track, but determining why is more difficult and beyond the scope of this process. Locational decisions can be based on many factors, including the individual owner's long-term goals for their property, fluctuations in real estate markets, and others.

If a concept plan is large and encompasses a region, then its termination or expiration may be a good reason for the Commission, or other stakeholders, to initiate regional planning. This kind of planning process could focus on a variety of different goals/outcomes, depending on what the local community wants. Refining the primary and secondary locations in the region would be one possible goal/outcome. The expiration or termination of smaller concept plans may not result in regional planning. In that case, the Location of Development rules would apply in the area formerly included in a concept plan, regardless of the development that may have occurred during the life of the plan. Unlike the prior adjacency system, which used the one-mile rule of thumb to place new zones for development close to existing development no matter where it is located, the new system relies on proximity to public roads and towns that provide emergency services. Where existing development is located, and how it got there, will not affect where future rezonings can occur.

Action: Clarified Goal 1, Strategy b, that annually staff will measure the distance from newly established development subdistricts to both the boundary of the nearest rural hub, and to the center of the nearest rural hub, if practicable.

13. Track which subdivision types are being used the most by applicants (and information that may indicate why), and track where wildlife corridors are being integrated into subdivision plans with the idea of evaluating whether they are operating as originally envisioned.

Commenter:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: The draft workplan already would track which designs are used for each permitted subdivision. However, determining why applicants chose one layout over another, while an interesting topic for future study, is beyond the current scope of evaluating the effectiveness of the new Location of Development rules.

Also, the Commission agrees with commenters that it will be important to track implementation of the new standard requiring wildlife corridors for residential subdivision designs, and also for commercial development to make sure the corridors are being designed as intended.

Action: Added to the draft workplan under GOAL 1, Strategy b. to track data on wildlife corridor requirements annually

14. Commenters also requested that the Commission periodically assess development patterns in neighboring municipalities, the influence of local and statewide tax policy on development patterns, and the effectiveness of mutual-aid and other contracts between service providers and counties or towns.

Commenter:

M. Sturm, Natural Resources Council of Maine
E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: All of these topics are beyond the purview or expertise of the Commission and would be better addressed by a legislative study, or perhaps a graduate research project.

Action: None

15. Since the new rules have been adopted, the significance of climate change impacts and real estate interest in rural areas has heightened. LUPC should carefully consider the impacts of these factors when reviewing the adjacency rule revisions, and should also consider how the new rules square with the strategies put forth by the Maine Climate Council working groups, including recommendations related to avoiding conversion of natural areas, keeping forests as forests, and maintaining undeveloped, unfragmented natural landscapes to enhance climate change resilience, ecosystem function, and carbon storage and sequestration.

Commenter:

M. Sturm, Natural Resources Council of Maine

E. Townsend, Appalachian Mountain Club
N. Smith, GrowSmart Maine
S. Stockwell, Maine Audubon
E. Donoghue, Maine Audubon
J. Christie, Maine Wilderness Guides Organization
C. King, Moosehead Region Futures Committee
J. St. Pierre, RESTORE The North Woods

Response: The Commission believes that the new Location of Development rules are a better, more predictable, framework to locate new zones for development than the prior system. The Commission will monitor implementation by the Legislature of strategies put forth by the Maine Climate Council working groups and will consider if any related changes to its rules are necessary.

Action: None

LAND USE PLANNING COMMISSION
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

**Annual Summary of Zoning and Permitting Trends Related to the 2019
Adjacency & Subdivision Rulemaking**

January 8, 2021

Reporting Period: June 17, 2019 – January 4, 2021

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Overview, Methodology, and Summary of Results

Overview

This report addresses data collected and analyzed according to the *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN*. The purpose of the workplan – a companion document to this report – is to summarize and assess the outcomes of the 2019 Adjacency and Subdivision Rulemaking. It includes goals and strategies to evaluate the effectiveness of the new rules, and describes data collection and analysis tasks to be completed during reporting periods.

The first part of this report includes a high-level summary. Following are tables with detailed information about relevant rezoning and permitting actions. For example, tables include information about distances from new zones or development to rural hubs, and application of new standards for development on hillsides and designation of wildlife corridors. Many tables are accompanied by additional written analysis. Finally, information about the Land Use Planning Commission's (LUPC, or the Commission) data and terms used in the report are included for reference at the end of the document.

Methodology

The accompanying *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN* identifies the types of information the Commission should collect over time, and when to complete different types of analysis. The workplan was not finalized prior to publication of this first report, and so not all the analysis called for by the workplan is included. Where appropriate, staff have noted if future reports would include additional or different analysis on a given topic.

This report is based on review by Commission staff of all permitting and rezoning actions recorded during the reporting period in the Geographically Oriented Action Tracker (or GOAT) database, which is maintained by the LUPC. Staff identified relevant zoning petition, subdivision permit, development permit, or building permit records and then analyzed decision documents, application materials, correspondence, GIS data, and other available background information.

While the Commission tracks and reports on all official actions for its *Annual Report to The Joint Standing Committee on Agriculture, Conservation and Forestry*, only certain permitting or rezoning actions are relevant to measurement of the effectiveness of the 2019 Adjacency & Subdivision Rulemaking. For example, designation of new, or expansion of existing, development subdistricts for the purpose of additional new development is relevant, while designation of protection or management subdistricts for purposes other than development is not. Permits for new, or the expansion of existing residential subdivisions are relevant, but some amendments to existing subdivision permits are administrative or otherwise may not be designed to facilitate further development and therefore are not relevant. It is also important to note that this report reflects permitting or rezoning processes that reached a final disposition such as approval, or disapproval, of an application to rezone or for a permit. Applications that did not reach a final disposition were not analyzed in this first report.

Data Challenges and Limitations

Challenges and limitations to the data analyzed in this report are listed in detail in the accompanying workplan. The LUPC's permitting data represent activities that required permit approval from the LUPC

when applicants sought permit approval. Commission initiated actions, such as Commission initiated rezonings, are not included in permitting data.

Generally, approval is sought prior to commencement of an activity requiring a permit. In some instances, individuals apply for after-the-fact permits for activity previously undertaken without the required permit. All data and tables include after-the-fact permits. Additionally, some activities do not require permit approval. Permitting trends only loosely reflect development trends, in that a number of activities permitted by the LUPC either may not have been started or may not have been completed. Additionally, some activities may have been completed without a permit (illegally and without the Commission’s knowledge) where a permit was required.

High-Level Summary of Relevant Rezoning and Permitting Actions

“Relevant rezoning and permitting actions” are permits or zoning decisions authorized by the Commission, and which relate to topics covered by the 2019 Adjacency and Subdivision Rulemaking. For more information, please see the accompanying *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN*.

Action(s)	Summary	County(s)
Zoning Petition ZP # 777	Rezoning for development of a medical marijuana facility	AR
Subdivision Permit SP # 4100	7 lot, General Management Subdivision	FR
Development Permit DP # 5071	Water Ski Lessons Recreation Supply Business on Indian Pond	SO
7 Building Permits and 1 Development Permit	Proposals for development in areas that meet the definition of a hillside. (See 10.02, 97)	OX, FR, SO, and PE Counties
1 Building Permit for Major Home-based Business	Home-based business for arborist/tree removal/landscaping business	FR

Additional Takeaways & Lessons Learned

While there was not a lot of relevant data to analyze during this reporting period, the rezoning and permitting actions that were approved offer some insight about how best to collect the information needed for this report. In future reports, particularly if there is a lot of data, it may be important to provide maps showing where and how development occurs.

In addition to following the tasks prescribed by the workplan, over the next reporting period, Commission staff will focus on improving internal mechanisms and processes to collect data, including by:

1. Capturing information about applications that do not reach a final disposition;

2. Ensuring staff solicit more feedback about rezoning proposals from rural hub towns and neighboring municipalities; and
3. Maintaining data in a way that is easy to depict on a map for annual and other reports.

The COVID-19 Pandemic occurred during this reporting period. It is too early to know how the pandemic may have influenced relevant rezoning and development activity. However, the level of Building Permit activity in 2020 did increase in the LUPC service area and a significant part of that activity was entirely new construction as distinct from expansion of existing structures, reconstruction, relocation, or adding foundations. Commission staff compared Building Permit activity in 2020 compared to 2019 and observe that:

- Applications for all residential development increased by 26%,
- applications for new residential permits increased by 47%,
- applications for new, expanded, or relocated garages increased by 60%,
- applications for new, expanded, or relocated accessory structures increased by 96%, and
- the number of new actions remain more prevalent than permit amendments, and have increased by 43%

For more information about these percentage increases, please see the Commission's *2020 Annual Report to The Joint Standing Committee on Agriculture, Conservation and Forestry*. The Commission will continue to monitor this factor when reporting on development activity in its service area.

Results

A. ZONING PETITIONS:

During the reporting period there were four zoning petitions (ZP). However, only ZP #777 proposed a new zone in accordance with the new Location of Development rules adopted by the Commission on June 17, 2019. The other zoning petitions submitted in this time frame were either accepted for processing prior to adoption of the new rules or were unrelated.

Summary of ZPs with a final disposition during the reporting period, but which are not relevant to the analysis of the new rules:

- Two ZPs designating replacement zoning following termination of the Moosehead Lake Region Concept Plan; and expiration of the Whetstone Pond, Foss Pond, and Hilton Ponds Concept Plan;
- One ZP establishing zoning following deorganization of the Town of Atkinson; and
- One ZP for a legally existing, non-conforming, pre-Commission recreational lodging facility in Somerset County.

Relevant Zoning petitions: Purpose, Size, Location, Disposition

Zoning Petition	Purpose	Sub-district	Acres	MCD	County	Location Criteria (10.08 & 10.08-A)	Disposition
ZP # 777	Rezoning for cultivation and retail sale of medical marijuana (and staff housing)	D-CI	6.75 ac	TA R2 WELS Twp	AR	Primary Location	Approved

Relevant Zoning petitions: Distance Measurements

Zoning Petition	Location Criteria (10.08 and 10.08-A)	Rural Hub(s)	Distance from Public Road	Distance to Rural Hub boundary		Travel Distance to Fire Dept.	Travel Distance to Ambulance Service
				Straight Line	Travel Dist.		
ZP # 777	Primary Location	Oakfield	Located on State Route 2-A	4.2 miles	7.3 miles	3.5 miles (Linneus)	10 miles (Houlton)

Relevant Zoning Petitions: Analysis and Discussion

- Review under prior regulations: ZP # 777 likely would not have passed the adjacency screen under the one-mile rule of thumb policy, which required existing development within one mile by road that was compatible and of similar scale. While there are other non-residential uses nearby (e.g., home-based businesses and commercial development related to land management uses), the proposed location was not within one mile by road of anything similar in scale to a 7,200 square foot space for the commercial processing and selling of marijuana. However, the location is on a major state road, and in the neighboring town of Linnaeus ~3.5 miles away there are non-residential uses including the fire department/town facilities, a small gas station/retail store, and a small Department of Transportation maintenance garage.
- Fire and Ambulance Service: During the rezoning process, Aroostook County commented that it contracts with the Linnaeus Fire Department to provide services in TA R2 WELS Twp. Maine Forest Service, who maintains a base in Island Falls, also commented that they provide fire protection services in this location (including structural fire suppression when no other service is available).

Aroostook County also commented during the rezoning process that should development be built in TA R2 WELS Twp that requires additional ambulance services the county would be able to contract with the Houlton Ambulance Service, which is located approximately 10 miles away.

- Police Services: Aroostook County commented that currently the Aroostook County Sherriff's Office has the ability to respond to emergencies and calls for service in TA R2 WELS Twp. Sometimes these calls are handled exclusively by the Sheriff's Office but can also be handled in cooperation with the Maine State Police, depending on coverage area and ability at the time of need.
- Overall: ZP # 777 does not raise specific concerns for the Commission about the function of the new system for application of the Location of Development standards. However, it is important to note that in this part of the LUPC service area distances travelled by emergency services can be farther than in other regions due to the geography of Aroostook County. The Commission will closely monitor comments about service provision received during rezoning processes in this region and will follow up with county officials during the next five-year review to determine if any problems have emerged (or during a review triggered by other pre-determined factors).
- Additional analysis proposed in the workplan (finished January 2020) but not applicable, or not available, for ZP # 777:
 - The workplan requires the Commission to reach out to neighboring towns and potentially affected rural hubs during a rezoning process. During the rezoning process for ZP # 777, which occurred prior to finalization of the workplan and was the first zoning petition approved by the Commission after the new rules became effective, the applicant was in communication with the county, state agencies, and individual service providers. Practice going forward will be for LUPC staff to notify potentially affected rural hubs and neighboring municipalities, as well as the county, about all rezoning actions that would result in new development.
 - This rezoning is not near a major waterbody. If rezonings occur near waterbodies, this report would include information about the density of development along shorelines, and information about the affected resources from the Maine Wildlands Lakes Assessment (See Chapter 10, Appendix C).
 - Future reports will include information, based on interviews with LUPC staff working in each region, about proposals for rezoning that did not make it to a final disposition.
 - In addition to measuring travel distances to the boundary of rural hubs and the point of origination for services, future reports may also include distance measures from newly established development zones to the center of the nearest rural hub, if practicable.

B. RESIDENTIAL SUBDIVISIONS

During the reporting period, four residential subdivision permits (SPs) were issued. However, only one of these actions was for new development and therefore relevant to this report. The other SPs issued in this time frame were administrative or included minor revisions to existing (already platted) subdivision designs.

Summary of SPs with a final disposition, but which are not relevant for this report:

- SP # 3028: Minor change to existing subdivision in Rangeley Plantation reducing the width of an interior road from 14' to 11';
- SP # 3239: Minor change to existing subdivision in Dallas Plantation altering boundary lines between two lots;
- SP # 4097-B: Re-submission of application to transfer permit to new owner

Relevant Subdivision Permits: Purpose, Type, Size, Location, Disposition

Permit#	Purpose	Sub-district	Total Acres	Subdivision Type	MCD	County	Disposition
SP # 4100	New Subdivision	M-GN	11.5	M-GN Subdivision	Wyman Twp	Franklin	Approved

M-GN Subdivisions: Locational Information, Distance Measurements

Permit	Locational Criteria (Section 10.08; 10.08-A)	Public Road	Rural Hub	Distance to Rural Hub Boundary	Travel Distance to Services	
					Fire Dept	Ambulance
SP # 4100	Primary Location	State Route 27	Carrabassett Valley	7.3 miles	3.2 miles (Stratton)	10 miles (NorthStar)

Relevant Subdivision Permits: Design Characteristics

Permit	10.25,Q Locations	Type	Density	Layout	Lot Characteristics			Open Space	
					# of Lots	Avg Lot Size	Sell or Lease	Wildlife Corridor?	Total Open Space
SP # 4100	Inland	M-GN	High	Basic	7	1.6 acres	Sell	No; qualified as in-fill development	Not required for M-GN Subdivision w/ basic layout

Relevant Subdivision Permits: Analysis and Discussion

- Review under prior regulations: SP # 4100 for a General Management Subdivision likely would have passed the adjacency screen under the prior one-mile rule of thumb. It is surrounded by

residential development and located on a busy state road between the towns of Carrabassett Valley and Stratton-Eustis. This type of location would have qualified for rezoning for residential development. It is also in an area pre-identified as suitable for Level II Subdivisions, which were a pre-cursor, and substantially similar, to “General Management Subdivisions.”

- Wildlife Corridor: SP # 4100 qualified as in-fill development and therefore the design was not required to include a wildlife corridor [See Chapter 10, Section 10.25,Q,3,d,(3),(b)]. This subdivision proposal sought to re-develop land formerly part of a gravel mining operation. Additionally, the location is surrounded by existing residential development in Residential Development Subdistricts (D-RS). The Department of Inland Fisheries and Wildlife indicated in their comments during the rezoning process that the proposed location of the subdivision was not valuable as wildlife habitat for these reasons.
- Scenic Byways: SP # 4100 would be located on the Route 27 State-designated Scenic Byway. However, the proposal is to re-develop an existing gravel mining area. Additionally, it is located within a pattern of dense residential development, and the proposal included plans to establish and maintain a vegetated buffer (where it doesn't already exist) on an elevated berm between Route 27 and all building envelopes.
- Fire and Ambulance Services: The applicant indicated that Franklin County contracts with the town of Stratton-Eustis for fire coverage in Wyman Twp. NorthStar provides ambulance coverage from its base in Carrabassett Valley. Neither county officials nor town officials in Stratton-Eustis submitted comments on the application when asked.
- Overall: SP # 4100 does not raise specific concerns about the functionality of the new standards for residential subdivision design, or about the new Location of Development rules related to siting M-GN subdivisions.

C. RESOURCE-BASED COMMERCIAL USES

This section includes information about permits issued for non-residential development not requiring a rezoning.

During the reporting period there were 80 development permits (DPs) issued. The majority of these permits were for uses unrelated to topics addressed in the 2019 Adjacency and Subdivision rulemaking and therefore are not relevant for this report.

Examples of DPs with a final disposition, but which are not relevant for this report:

- Expansion of existing businesses in zones where the use is allowed with a permit (e.g., change of use or building a new structure);
- Development of new facilities in existing zones where use is allowed with a permit;
- Construction of new structures for existing maple sugaring facilities; and
- Small-scale solar development not requiring a rezoning.

Recreation-based Commercial Development Permits: Location, Purpose, Disposition

Permit	Use	Purpose	MCD	County	Sub-district	Disposition
DP # 5071	Recreation Supply	Mobile business providing water-skiing lessons	Lexington Twp	SO	P-GP	Approved

Recreation-based Commercial Development Permits: Resource Dependency and Distances

Permit	Resource Dependency	Affected Resource	Rural Hub (RH)	Distance to Rural Hub Boundary	Travel distance to Rural Hub Boundary
DP # 5071	Dependent on access to a pond or lake	Indian Pond, private boat launch	Kingfield	1.1 miles	1.5 miles

Recreation-based Commercial Development Permits: Analysis and Discussion

- Resource dependency: DP # 5071 was issued for a recreational supply facility proposed on land within ¼ mile of a private boat launch, which is the only access point on Indian Pond in Lexington Twp. Section 10.27,S requires recreational supply facilities to be within ¼ mile of a public boat launch, in which case development can proceed without a permit and in accordance with the other standards listed in 10.27,S. In this case, because there is no other access point on the pond, and because the proposal otherwise would not result in undue adverse impacts on existing resources or uses, the applicant exceeded the standard with a permit from the Commission.

Indian Pond is listed in the Wildlands Lakes Assessment (Chapter 10, Appendix C) as Management Class 7, Resource Class 3, and is not rated significant or outstanding for any resource characteristics.

- Outcome under prior regulations: This proposal would not have been permissible prior to the 2019 Adjacency and Subdivision rulemaking because it would have required rezoning to a development subdistrict. The proposed location likely would not have passed the adjacency screen because there is no existing compatible development of a similar scale within one mile by road. Additionally, the expense of rezoning and then permitting such a business may have been prohibitive.
- Overall: DP # 5071 does not raise specific concerns about the functionality of the new standards for recreation-based commercial development.
- Additional analysis to be included in future reports: Distance measurements from the development location to the center of the nearest Rural Hub.

D. NEW DEVELOPMENT STANDARDS

This section includes information about permits issued for residential or non-residential development where new standards created as part of the 2019 Adjacency and Subdivision Rulemaking were applied.

In addition to a revised system for locating new zones for development and updating the Commission’s standards for residential subdivisions, the 2019 rulemaking included new standards for:

- Development in areas meeting the definition of a hillside (see Chapter 10, Section 10.02,98);
- Designating wildlife corridors for non-residential development in subdistricts established after the new rules became effective; and
- Agricultural processing and ag-tourism businesses.

Permits Issued Where New Development Standards Applied

Permit	Relevant Standard	MCD	County	Use	Disposition	Near Scenic Byway?
BP # 16263	Hillside Standards	Albany Twp.	Ox	Residential (Single Family or “SF” dwelling)	Approved	No
BP # 16372	Hillside Standards	Rangeley Plt.	FR	Residential (SF dwelling)	Approved	Route 4
BP # 16378	Hillside Standards	Coplin Plt.	FR	Residential (SF dwelling)	Approved	Route 27
BP # 16423	Hillside Standards	Rangeley Plt.	FR	Residential (SF dwelling)	Approved	Route 4
DP # 4341	Hillside Standards	Rangeley Plt.	FR	Marijuana Processing & Retail	Approved	Route 17
BP # 16548	Hillside Standards	Sandy River Plt.	FR	Residential (SF dwelling)	Approved	Route 4
BP # 16552	Hillside Standards	Lexington Twp.	SO	Residential (SF dwelling)	Approved	No
BP # 16558	Hillside Standards	Lakeville	PE	Residential (SF dwelling)	Approved	No

New Development Standards: Discussion and Analysis

- In 2019-2020, all actions related to “new development standards” applied to development on hillsides. Future reports will include information on permits where other new standards apply, if applicable.

- During the reporting period there were seven building permits and one development permit issued in areas that meet the definition of a hillside. Most permits were issued in in the Western Maine Region, with five in Franklin County.
- All five permits issued in Franklin County were near national or state-designated scenic byways.
- All applicants for permits in hillside areas were required to demonstrate that the Commission’s standards for hillside development would be met.

E. PERMITS ISSUED FOR MAJOR HOME-BASED BUSINESSES:

The 2019 Adjacency and Subdivision Rulemaking revised the Commission’s rules for home-based businesses (HBB) by providing a modest increase in the amount of space within a dwelling that may be used by the business (50% of the dwelling, and up to 2,500 sf). The definition of a home-based business includes two varieties: Major HBB, which typically requires a permit from the Commission; and Minor HBB, which can be done in accordance with standards described in Chapter, 10, Section 10.27,N. All permits issued for major home-based businesses are listed in the following table.

Permits issued for Major Home-Based Businesses

Permit	Type of Business	Permitted Activities	Zone	MCD	County
BP # 13490	Home-based arborist business including tree removal, some landscaping, & snow removal	Construction of dwelling, driveway, and garage; filling and grading area for equipment storage; wetland alteration for driveway	D-RS; P-WL	Coplin Plt	FR

Permits issued for Major Home-Based Businesses: Discussion and Analysis

- Only one permit was issued for a major home-based business during the reporting period. The permit was for a new dwelling, driveway, and space for outdoor equipment storage.
- Future reports will include additional analysis relevant to home-based businesses. For example, factors the Commission could analyze include: overall % of total square footage utilized for the business, or total area for outdoor equipment storage.

Appendix I. Description of Permit Types

Land use regulations stipulate which land uses and development activities are: allowed without a permit; allowed without a permit subject to standards; allowed with a permit; allowed by special exception; and those not allowed. For those uses and activities which require permit approval, the LUPC reviews those proposals for conformance with applicable rules and issue a decision (*e.g.*, a permit). The Commission issues permits for a wide range of activities, examples include: camp additions, reconstruction of permanent docks, new garages, grid-scale wind energy facilities, restaurants, and maple sugaring operations.

Permit database naming protocols

Given the range of activities allowed within the unorganized territories, the LUPC currently or formerly utilizes a variety of action types to identify and record various permitting actions.

Each permit includes the action type and number (*e.g.*, AR 95-001, BP 123, and ZP 456) at the top of the document and a corresponding entry in the LUPC's permitting database – Geographic Oriented Action Tracker (GOAT). Amendments of previous actions are identified by the use of sequential letters (*e.g.*, BP 123; BP123-A; and BP 123-B (the first permit action, the first amendment, and the second amendment respectively)). Variations on this primary naming convention include: AR 95-10 (*i.e.*, the 10th advisory ruling issued in 1995); and SP 3206-16 (*i.e.*, a Chapter 16 subdivision). The following summarizes the various types of actions included in this report:

Type (Acronym)	Permit Type (Name)	General Description
BP	Building Permit	Permits for activities associated with residential development that requires a permit (<i>e.g.</i> , activities involving: a camp, a garage, porches, etc.).
DP	Development Permit	Permits for activities associated with non-residential development that requires a permit (<i>e.g.</i> , activities involving: a commercial sporting camp, retail store, warehouse, mill, wind turbines, campground, resort, etc.)
SLC	Site Law Certification	Certifications issued by the Commission for projects which trigger review by the Maine Department of Environmental Protection (DEP) according to Site Law. In these cases the Commission must certify i) that the use is allowed; and ii) whether or not the project conforms to its standards, which are not otherwise regulated by the DEP. Projects that typically trigger Site Law include: subdivisions, commercial development, and grid-scale wind development.
SP	Subdivision Permit	Permits to create new lots where the lot(s) do not qualify as exemptions, see Section 10.25,Q,1 of the Commission's <i>Land Use Districts and Standards</i> .
ZP	Zoning Petition	Petitions to rezone a specified land area to another subdistrict(s). See Section 10.08 of the Commission's <i>Land Use Districts and Standards</i> .

Appendix II. Description of Disposition Types

Each permit application and zoning petition received by the Maine Land Use Planning Commission is reviewed and results in a final action or disposition. Each type of disposition may be valuable to different data analyses (*e.g.*, approved and approved/disapproved in-part best illustrate authorized activities; withdrawn and returned applications may illustrate unrealized interest in development). Final action or disposition includes the following outcomes:

- *Approved* – The proposed activity meets the necessary standards; a decision (*i.e.*, permit) indicating approval is issued by staff or the Commission.
- *Approved / Disapproved in-part* – Parts of the proposed activity meet the necessary standards and are approved, and parts of the proposed activity do not meet the necessary standards and are disapproved. A decision (*i.e.*, permit) indicating the approved and disapproved components is issued by staff or the Commission.
- *Disapproved* – The proposed activity does not meet the necessary standards; a decision (*i.e.*, denial) is issued by staff or the Commission.
- *Application Withdrawn* – The applicant chooses to withdraw their application prior to final action by staff or the Commission. The application is returned, and no final action is issued by staff or the Commission.
- *Application Returned* – The application is incomplete, and the applicant has made insufficient effort to address the issue(s). The application is returned, and no final action is issued by staff or the Commission.

Adjacency and Subdivision Implementation Tasks:

REPORTING SYSTEM WORKPLAN

Written Comments Submitted During Comment Period

(September 9, 2020 – October 30, 2020)

October 30, 2020

Ben Godsoe, LUPC
18 Elkins Lane
22 State House Station
Augusta ME, 04333
Sent by email to Benjamin.Godsoe@maine.gov

Re: Draft Work Plan to Evaluate Location of Development Rules

Dear Mr. Godsoe,

Thank you for the opportunity to comment on the Land Use Planning Commission's (LUPC) draft work plan to evaluate the effects and effectiveness of the changes to the Location of Development Rules adopted by the Commission in April 2019. We appreciate your commitment to evaluate these rule changes on an ongoing basis.

At the same time, we recognize the impact of the policy changes advanced by the April 2019 rulemaking will likely take effect on the ground slowly. We encourage the LUPC to be persistent and consistent in evaluating the impacts of the rules over time. To aid in that effort, our organizations have suggestions for information to gather that we believe would make it a more comprehensive and useful evaluation.

Our primary recommendations stem from what we view as a lack of current – and by extension, future – data about land use and development in the Commission's jurisdiction. Gathering baseline data and then regularly updating that data would help the LUPC in tracking the implementation of these rules and is necessary to accurately compare and measure the effect of policy changes on the landscape over time.

We suggest that the LUPC:

- **Inventory existing structures and new structures built over time in the unorganized and deorganized territories, including their attributes such as location, size, scope, type, subdistrict, and whether the structure is part of a "2-in-5" lot split or located in a Primary or Secondary Location;**
- **Track lot divisions and subdivisions by township over time, including how many lots are approved, how many have and have not been built out, whether the division occurred as a result of a "2-in-5" split, if they are located in a Primary or Secondary Location, and the type of subdivision layout; and**
- **Track the number and miles of new roads built (excluding minor woods roads as fragmenting features), the size of the undeveloped block of habitat that existed prior to the road being built, and the expected traffic levels on these new roads and the roads feeding them.**

Current and future data gaps have implications for several aspects of the work plan and evaluation. The new Location of Development Rules have only been in effect for about 18 months, meaning there is still time to collect baseline data before significant on-the-ground changes take place, if such data doesn't exist in current data systems. We understand that agency staff are already stretched thin. In lieu of a more direct approach to collecting this data, like site visits, we recommend starting with an update of

longitudinal data that may have been collected in a previous decade, such as in the LUPC's 1994 report on the net effects of the Commission's policies¹ and the LUPC's 2006 report examining subdivision exemptions in the unorganized territories,² and extrapolating from that with available, more recent data to estimate the current condition. Current satellite data and mapping can also provide high enough resolution for the purposes of data collection without needing to go into the field. We believe baseline data collection should be a priority.

When synthesizing collected data, we recommend that careful consideration be given to:

- **Location and type of "Recreation Supply Facilities";**
- **Location of rezonings, land divisions (including subdivisions), and development in relation to what is popularly accepted as the "village or town center" or "centers" of any given "Rural Hub" and/or public road (depending on whether the development is within a Primary or Secondary Location), including the distance "as the crow flies" and via road miles;**
- **Availability and scale of emergency services in each Rural Hub, including changes to availability and scale over time;**
- **Development trends on Class 3 and Class 7 lakes;**
- **Location, size, and extent of new "Low-Density Development" subdistricts, including proximity of structures within individual subdivisions;**
- **Location, size, and extent of new "General Management Subdivisions", including their distance from public roads; and**
- **Location, size, and extent of "2-in-5" lots, especially in relation to individual and subdivision lots that fall under the new rules.**

Broadly speaking, we believe that an important part of the evaluation and work plan should be assessing whether the new rules are indeed preventing sprawl in the jurisdiction. The negative impacts of sprawl often happen as a progression over time rather than in a single year. **To attempt to measure it, we suggest keeping count of the total acres developed and new lots created since the new rules took effect, including characteristics of those new lots, such as size, location, type, and proximity to a town center.** To the extent practicable, this type of data collection lends itself well to a map and matrix that displays in an easily understandable way existing and proposed development as well as attributes of that development.

We suggest evaluating the pattern of new development proposals in light of questions such as:

- **Is the new development within the Primary Locations dispersed or concentrated within the 7-mile radius of Rural Hubs?**
- **How much of the development is taking place within the Primary Locations versus the Secondary Locations? Why?**
- **How close to the township boundary is the new development located? Is it concentrated within the first mile, first 3 miles, or first 5 miles?**
- **How might differential tax structures between the unorganized and organized territories be affecting growth in and around the Rural Hubs?**

¹ Land & Water Associates and Market Decisions, *A Summary of the Commission's Current Land Use Policies and their Net Effects After 20 Years of Development in Maine's Unorganized Areas* (August 1994).

² Land Use Regulation Commission, *An Examination of the Subdivision Exemptions of the Maine Land Use Regulation Commission Law* (March 2006).

- **Are the organized territories receiving the funding they need to provide emergency services to the unorganized territories?**
- **Which subdivision designs are the most popular, and why?**
- **Are the wildlife corridors being integrated into the final subdivision plans as originally envisioned? Why or why not?**
- **How do development trends in the LUPC's jurisdiction compare with development trends in organized territories that are in proximity to the unorganized territories?**
- **How does the termination or expiration of lake concept plans play into the new adjacency rules? Can this be addressed through regional planning or do the Primary and Secondary Areas deserve a careful review and potential adjustment under the new rules?**

Measuring the impact of LUPC policies on wildlife habitat is also important. Maine Audubon, in conjunction with the Beginning with Habitat program and other NGO partners, is engaged in a mapping exercise to identify forested areas (i.e., large forest blocks and well-connected, smaller forest blocks, etc.) throughout Maine that will be particularly important to conserve and otherwise keep unfragmented to support wildlife movement, adaptation, and resilience. We expect that this information will be available for consideration during this review and would be useful to compare against maps that indicate new development trends.

Finally, since the new rules were adopted, the significance of climate change impacts and real estate interest in rural areas has heightened. The potential impact those factors may have on development and planning in the unorganized territories is pertinent and should be carefully considered by the LUPC as it evaluates the rule changes. For example, we will be interested to see how the new rules square with strategies put forth by the Maine Climate Council working groups, including recommendations related to avoiding conversion of natural areas, keeping forests as forests, and maintaining undeveloped, unfragmented natural landscapes to enhance climate change resilience, ecosystem function, and carbon storage and sequestration.

Again, thank you for planning for the evaluation of the changes to the Location of Development Rules and offering the opportunity for public comment. Once the evaluation occurs and if results show that the new rules are causing unintended or undesirable effects, we encourage the LUPC to work with stakeholders to determine how best to respond in a manner that balances development and conservation as laid out in the Comprehensive Land Use Plan. Please let us know if we can provide more specific information on our recommendations; we would be pleased to discuss our ideas with you further in the near future.

Sincerely,

Appalachian Mountain Club
 GrowSmart Maine
 Maine Audubon
 Maine Wilderness Guides Organization
 Moosehead Region Futures Committee
 Natural Resources Council of Maine
 RESTORE: The North Woods

Godsoe, Benjamin

From: M Tupper <catalpa.girl@gmail.com>
Sent: Wednesday, September 23, 2020 7:06 PM
To: Godsoe, Benjamin
Subject: Location of Development: Draft Work Plan

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I appreciate the opportunity to read through this draft. It appears to take into account a diverse array of human activities in the Unorganized Territories. My particular interest is that of "wildlife enthusiast", so I welcome the wording that continues to allow development to occur with less impact on forests and waterways.

The diagrams were helpful. More examples of "for instance" scenarios could help me better visualize potential outcomes. But I like that, overall, this is a plan to further improve an already-good system (not to re-do it).

Thank you,
Mariana

Sent from my iPad

Written Comments Submitted Through the Land Use Planning Commission Website

1. Kaitlyn Bernard, The Nature Conservancy

"I am writing on behalf of The Nature Conservancy in Maine regarding the Land Use Planning Commission's Adjacency and Subdivision Draft Work Plan.

The Nature Conservancy is a nonprofit conservation organization dedicated to conserving the lands and waters on which all life depends. Guided by science, we create innovative, on-the-ground solutions to our world's toughest challenges so that nature and people can thrive together. Working in more than 70 countries, we use a collaborative approach that engages local communities, governments, the private sector, and other partners. The Nature Conservancy has been leading conservation in Maine for more than 60 years and is the 11th largest landowner in the state, owning and managing roughly 300,000 acres.

As an active participant in the adjacency and subdivision review process, we appreciate the opportunity to review the detailed work plan to monitor the effects of the adjacency and subdivision rule changes that took effect in 2019. The work plan appears to go above and beyond the commitments made in the basis statement by generating annual summaries on the full suite of outcomes the rule change aimed to improve. These annual summaries and updates to the Commission and the Legislative Committee on Agriculture, Conservation, and Forestry will be valuable opportunities to assess the changes. TNC also strongly supports the LUPC staff's commitment to checking in with the local communities regularly to see how this changed rule is working on the ground.

We also appreciate the focus on comparing any outcomes under the new rule to potential outcomes that would have occurred under the previous adjacency rule structure. This will help all stakeholders better understand the new framework.

Thank you for the thorough commitment to compiling this data."

2. Jim Krosschell

"I see no reason to have subdivisions in forests. There's plenty of developable space in the towns themselves."

3. Suzanne Brewer

"I do not agree with changing the adjacency rules. I believe this will put way too many acres at risk for sprawling development. We should be protecting larger tracts of wilderness and ecosystems. Development needs to be kept in check especially in Maine's where overdevelopment is becoming more of a problem. We need to keep Maine's wilderness healthy and protected."