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Memorandum

To: LUPC Commissioners

From: Samantha Horn-Olsen, Planning Manager
Ben Godsoe, Senior Planner

Date: 8/2/2017

Re: Adjacency

I. Introduction

The Commission is currently reviewing the adjacency principle, which is a policy that guides where new zones for development can be created. The purpose of the review is to find out if there are better ways to account for different situations when deciding where to encourage new development.

At the Commission Meeting in August staff will provide an update about the ongoing review of the adjacency principle – including feedback from stakeholders in several focus groups held over the months of June and July. The Commission will be asked to consider some policy options for moving forward with adjacency, and will have an opportunity to hear directly from stakeholders. This memo includes a summary of the process to date and what we have learned so far, and describes some potential strategies for moving forward.

II. Purpose of the Adjacency Principle

The adjacency principle is one of the fundamental elements of the Commission's planning for development in the unorganized or deorganized areas of Maine (the UT). The Purpose and Scope section of the Commission's statute states that "it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State..." and goes on to describe some broad concepts that reflect these sound planning principles. The

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Comprehensive Land Use Plan (CLUP) describes the adjacency principle and how it should be applied (2010 CLUP, pg. 62).

The Commission has used the adjacency principle as a tool to guide new zones for development to locations that satisfy the sound planning and zoning principles articulated in the Statute and in the CLUP. These principles can be thought of as objectives that need to be achieved when locating a new zone for development.

Objectives:

- *Encourage appropriate residential, recreational, commercial and industrial uses*
- *Encourage well-planned and managed multiple uses, while discouraging intermixing of incompatible uses*
- *Support and encourage Maine's natural resource-based economy and strong environmental protections*
- *Promote economic health of development centers, and encourage and facilitate regional economic viability*
- *Ensure that the provision of public services matches the new development, or that any needed additional service capacity may be added efficiently and economically over time*
- *Minimize development near productive natural resource based activities*
- *Protect resources and values of the jurisdiction*
- *Ensure that the anticipated future development is in keeping with the character of the area*
- *Ensure orderly growth by pacing development*
- *Allow for incremental assessment of impacts from development (the resources and values of the jurisdiction may be better supported, and development may be better planned, by providing an opportunity for interim assessments of impacts because future phases of development can then consider those impact assessments).*

The Commission has interpreted the adjacency principle to mean that areas to be rezoned for development be within 1 road mile of existing, compatible development (2010 CLUP, pg. 62). However, the CLUP recognizes that refining the adjacency principle to account for different situations is desirable.

III. Process Summary

- a. In February 2016, in response to feedback from participants in the subdivision rule revision process, **the Commission decided to postpone work on the subdivision rules in order to review the adjacency principle**, which directly affects where new zones for subdivisions can locate. Because the adjacency principle affects more than just residential development, and because the UT includes so many regions and places that are different from each other, the Commission decided to look comprehensively at the location of all types of development.

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- b. **Through background research and interviews, staff developed a better understanding of how the adjacency principle has been applied in the past.** This work included identifying some objectives the adjacency principle seeks to achieve, as well as situations where adjacency did not do a good job of guiding development to the best possible location.
- c. A **public survey** was available on the web, or in paper form by request, from 9/30/2016 – 3/27/2017, to anyone who wanted to comment about Adjacency. The survey asked respondents in general terms what type of development they would like to see in their area in the future and where it should go. The survey was distributed through the Commission’s interested parties list, through organizations that shared the survey link with their members, and by a direct mailing to property owners of record in the UT (mailed to 21,740 addresses).
- d. Staff held **focus group meetings with stakeholders** who have special knowledge of certain topics related to the location of new development. Focus groups were organized by topic: economic development; private landowners; regional planning and county government; and environmental considerations.

IV. Summary: Public Survey and Stakeholder Focus Groups

a. Public Survey

The purpose of the survey was to reach the people who live, work, and recreate in the UT. The rights and participation of property owners is important to the Commission and it is recognized that many of these individuals may not be able to attend Commission meetings. The survey, and the accompanying mailed notification, was intended to help capture the thoughts and desires of these individuals and give them a voice in the Commission’s planning process.

The Commission received 2005 survey responses. Some information about the respondents is included below:

1. Overall, 1335 respondents (67%) said that they own or manage property in areas served by the Commission.
2. More than a third of respondents indicated that they live or work in the service area (38%), while about three quarters said that they recreate in the UT (74%). The group of respondents who recreate includes some people who own property, houses, or camps in the UT.

Much more information about the survey results is included in the [Location of Development Survey Report](#).

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b. Stakeholder Focus Groups

Staff held 8 focus group meetings to discuss adjacency with people knowledgeable about economic development, conservation and environmental issues, considerations for the landowner community, and regional planning and the provision of public services in the areas served by the Commission. Each focus group covered similar topics but discussion varied significantly.

Participants identified many different concepts and ideas that the Commission should consider as it moves forward and continues to review where new development occurs in the UT. A list of some of these concepts is included on the next page.

Concepts and Ideas to Pay Attention to:

- There is a limited supply of some resources such as waterfront and suitable hillsides
- Available waterfront property often is limited in municipalities
- Still demand for waterfront leases and lots
- Commission policy should be coordinated with regional economic development and destination tourism plans being developed in several places
- Major road corridors may be a first place to expand development opportunity
- Municipal/UT interface raises issues of taxes, services, health of municipal economies, and fairness to UT landowners, that can be different in each place
- Unfragmented blocks of land are important for wildlife, efficient resource harvesting, long-distance recreation, character, and dark skies
- Consideration of density and careful placement of infrastructure and building envelopes in subdivisions can lessen impact on wildlife
- Concentrated growth patterns are desirable in some cases
- Broadband helps drive development
- Road infrastructure helps drive development
- Growth of home business is happening, especially in the entrepreneurial economy
- Service availability may not be necessary if buyers are warned in advance
- Some services are often requested regardless of warnings (EMS, fire)
- Emergency services are decreasing due to declining population to support paid ambulance services and fewer volunteers
- 3 phase power drives where larger scale industry or manufacturing can locate
- Residences and small businesses are increasingly able to be independent of the electrical grid
- Rapid market shifts are happening today and are likely to continue
- Entrepreneurial change is driving differences, diversity in uses and location: impact-based system for commercial uses may be more relevant now
- Energy markets drive renewable energy development locations
- Aging boomers and Gen X may want to age in place at what is initially a second home
- Millennials are less likely to own properties and want to be closer to services, especially broadband
- Vacation Rental By Owner (VRBO) may increase the intensity of use at seasonal residences
- There is no longer a consistent difference between camps and homes
- More demand for “soft” recreation experiences and amenities
- New permanent trails are unlikely
- Pressure to get through downturn in timber markets
- Critical mass/synergy between businesses located near each other
- Incentivize redevelopment to help struggling communities
- Are there ways to increase rezoning predictability?
- Regional recreational planning is headed toward concentrating development in focus areas called “rural destination areas” – other recreational planning is focused on public lands (e.g., new national monument)

Concepts List (continued)

- Conundrum of flexibility along roads but not creating sprawl and barriers to crossing wildlife, similar to discussion in CGPZ in Aroostook, Washington counties
- Patterns of development on public roads should look like beads on a string, not a line: linear patterns of development on public roads can cause drainage and access management issues
- Amount of conservation in Maine is much greater than when the Commission was created, and it affects development patterns
- Roads to some key recreational resources (and residential development) are privately owned and there is no guarantee of public access in the future
- The pattern of development in the UT can be affected by existing development in Canada, and by infrastructure along the border itself

V. What we learned:

In the course of our research, we have some overall lessons that we learned. They have substantially shaped our thinking in putting together the information and proposals that appear later in this document.

- a. There are a lot of different opinions on this topic!
- b. Times have changed, and the pace of change is accelerating. Some uses of the UT have gotten less popular and others are more popular. Some are entirely new. We must adjust how we describe uses in our zoning system. Based on what we heard, we made a list of **uses and activities**; this list is in the next section (Section VII). The list could be the basis for rethinking how to describe the development we are guiding.
- c. Some **“factors”** affecting where to locate new development came up repeatedly from multiple sources. These factors seem important to recognize when refining and revising the adjacency system. We have listed these factors in a table in the next section.
- d. Broadband, cell service, new natural resource harvesting and processing technologies, demographic shifts, patterns of land conservation and ownership, and changes in the demands of recreation consumers are driving changes in location of development that will be difficult to predict going forward.
- e. We should probably rethink our whole adjacency approach, instead of tweaking around the margins. Tweaking the existing zoning system is unlikely to produce a rational, simple system that satisfies the CLUP principles.
- f. Not all uses are a good fit in all locations, but by focusing on the impacts of a use instead of what it is called, we may be able to provide flexibility in areas farther from town. We are calling this an **impacts-based approach**.
- g. Some uses that are locating near towns or villages are probably best located using a very predictable, more traditional zoning system. We are calling this an **overlay approach**.
- h. A combination of an overlay approach and an impacts-based approach is worth considering. This is described later in the document.

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VI. Uses and Factors

Example uses that will be helpful in discussing a new adjacency system

Uses and Activities	Description/examples
Agricultural processing & slaughter	Transforming wild game, domesticated animals, and raw food into products
Agricultural tourism	Tourism activities on a farm
Backcountry recreation spaces	Remote areas/resources for paddling, hiking, hunting, fishing and other similar activities
Boutique or small-scale manufacturing	Manufacturing that has low traffic volume, numbers of employees, solid waste generation, etc.
High density subdivisions	Residential subdivision with small lots located near each other and usually has a community center
Low density subdivisions	Residential subdivision with larger lots or cluster design with expansive open space
Moderate density subdivisions	Residential subdivision with moderate size lots – may or may not have a community center
New fiber industries	Manufacturing and industrial processing for new forest economy
Non-forest based manufacturing	Manufacturing that is not dependent on natural resources
Portable industrial processing	In-woods processing that is temporary in nature and may be mobile
Private infrastructure	Cell towers, private road projects, transmission lines, etc.
Public infrastructure	Regional airports, public roads, emergency communications towers, etc.
Recreational lodging: non-remote	Overnight facilities primarily for recreational users that do not need to be in remote areas
Recreational lodging: remote	Overnight facilities primarily for recreational users that need to be in remote areas
Resource dependent	Activities that depend on natural resources (e.g., solar, water, gravel, forest products processing to reduce bulk)
Retail & service businesses	Grocery stores, gas stations, auto repair facilities, hair salons, offices, and other services
Retail & service – recreation related	Gear rentals and sales, food and fuel, etc.
Small-scale mobile recreation support	Food trucks, canoe or kayak rental from a trailer, etc.
Soft recreation spaces	Recreation close to retail, services, and lodging, e.g., a ski area, non-remote trails or parks, visitor centers

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Factors that affect Location of Development	Explanation
Existing Residential	Refers to existing residential development like a neighborhood or grouping of houses
Retail/Basic Services	Presence of existing service development - could include grocery stores or other retail, personal services like hair salons, government offices, or auto repair
Broadband Internet	Moderate – high level of internet access
Electricity	Access to the grid for homes and businesses that do not require 3-phase power
Workforce	Access to labor for businesses that require employees
Public Roads	Roads that are publicly owned and maintained
Emergency Services	Services such as fire, police, and ambulance
3 Phase Power	A form of electrical current used in larger scale industrial or manufacturing facilities
Natural Resources	Refers to forest and farm resources, as well as commonly extracted resources such as gravel, water, and sources of renewable energy (e.g., solar and wind)
Permanent Recreation	Recreational resources that are owned/operated in such a way that they are reasonably likely to continue for the foreseeable future
Unfragmented Blocks	Large blocks of undeveloped land that provide valuable wildlife habitat, dark skies, recreation access or efficient access to harvestable resources

VII. Recommended Overall Approach

It is important to keep in mind that any proposed approach must be consistent with the goals that the adjacency principle is meant to achieve. These are listed in Section II.

We will make a presentation at the Commission meeting that includes graphics designed to better explain the material outlined here.

- a. One way to approach refining the adjacency principle would be to group uses and activities that are alike into categories.
- b. Categories of uses could be treated differently, depending on whether or not they need to be close to natural or recreational resources, or if they are tied to services and existing infrastructure.
- c. If a group of uses depends on being close to natural or recreational resources, the Commission could consider using an **impacts-based** approach, which would determine where an activity or use can locate based on the impacts generated by the facility. For example, certain types of processing facilities may be allowed closer to forest or farm resources so long as they are a good fit for the area and do not significantly impact neighboring uses (e.g., sights, smells, noise, etc.). The Commission currently uses this approach to permit recreational lodging facilities.
- d. If a group of uses depends on being close to existing services and infrastructure, the Commission could consider using an **overlay approach**, which would help locate activities or uses nearer places where there may be access to services and infrastructure. For example, the Commission could say a particular group of uses are ok in certain locations, so long as they are within so many miles of a service center or retail hub, and within so many feet from a public road. This system is currently used for the new Rural Business Development Zone in Aroostook County, where new zones for commercial development can be created within certain townships and plantations, and within 1 mile of a public road.

VIII. How would this work?

Examples of principles the Commission could use to group uses and regulatory strategies that may fit for each group:

- a. **Principle:** Some uses related to natural resource processing or extraction, or recreation, need to be near forest, farm, or recreational resources.
 1. **Groups of uses include:** Natural resource dependent processing, extraction, and manufacturing; backcountry recreational experiences; and some small-scale retail and support services near recreational resources
 2. **Regulatory strategy:** impacts-based approach

- b. **Principle:** Some uses need to be near services and infrastructure.
 1. **Groups of uses include:** New fiber industries and non-resource based manufacturing; moderate to high density residential subdivisions; many retail, service, and lodging businesses; and soft recreation spaces
 2. **Regulatory strategy:** overlay approach

- c. **Principle:** In the Commission's service areas, many people live where they work and work where they live. Home-based businesses can be in a variety of settings, so long as they do not create undue adverse impacts on neighboring uses or activities.
 1. **Regulatory strategy:** impacts based approach

- d. **Principle:** The Commission could provide some opportunities for low or moderate density subdivisions that are dependent on a natural resource so long as they do not create undue adverse impacts on neighboring uses such as land management activities, wildlife habitat, and recreational uses. Evaluating these impacts includes consideration of fragmentation of the land base.
 1. **Groups of uses could include:** low density residential subdivisions near natural resources such as forest or farmland; or moderate density subdivisions near lakes suitable for development.
 2. **Regulatory Strategy:** impacts based approach

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IX. Other specific recommendations

In addition to the recommendation for a new overall approach (above), feedback from the public survey and from stakeholders during the focus group sessions have led staff to make a few specific recommendations, which are listed below:

- a. **The Commission's rules for home-based businesses should be revised to provide more flexibility.** Home-based businesses are different from other forms of commercial development, primarily because they occur in people's homes and are generally owned and operated by entrepreneurs. As a next step, we can consult existing business owners to determine how best to meet their needs without negatively impacting other nearby uses (e.g., residential uses).
- b. **Accommodating recreational support businesses should be integrated into the current adjacency review process.** These businesses are an important component of the recreation economy, and provide goods and services to visitors and residents who recreate in the UT. As a next step, we can consult experts who know about recreation and work with them to develop specific rule revisions that the Commission could then consider implementing.
- c. **The Commission should consider allowing mobile businesses to operate in some locations.** These businesses may include: food trucks in villages, at popular trailheads, or near water access points; a guide service that rents canoes or kayaks from a trailer in a remote location; or other similar activities and locations. Currently, a temporary or mobile business could not be permitted unless located in a development subdistrict (few of which exist in the kinds of places where such a business may be successful in the UT).
- d. **Solar farms are a new use that should be accommodated in the Commission's zoning framework.** Solar farms are now commercially feasible in Maine. Currently, commercially operated solar projects would need to be in an existing development zone or require an adjacency finding to create a new zone. These locations may not be the most suitable for facilities like this.
- e. **It is not consistently possible to distinguish camps from residences.** Most commenters had trouble differentiating between camps and permanent residences. Camps are now frequently built to the same standards as houses, and are often used year-round. Many are intended to eventually serve as homes. The use of a residence may shift from seasonal to full time over time. Vacation Rental by Owner services also increase the impacts of seasonal properties that may previously have only been used occasionally.

X. What the Commission will be asked to do at the August Meeting

- a. Consider feedback from the public survey, targeted stakeholder focus groups, and background research pulled together by the staff.
- b. Consider comments by stakeholders at the meeting.
- c. Give general feedback about the overall direction of this process.