

Proposal to revise rules related to application of the adjacency principle: Summary of written comments received from May 30, 2018 – July 31, 2018

The Commission has received many written comments about the proposed rule changes related to application of the adjacency principle. People who have commented include individuals, organizations, trade or industry groups, county officials, and people who live, work, or recreate in the Commission's service area. Comments received so far have included a variety of opinions and suggestions about how to change the current proposal to achieve better policy outcomes. For example, people who commented on a given topic may include individuals or organizations who: 1) are strongly against any change; 2) recognize that a policy change is needed and have suggestions about how to achieve it within the proposed new framework; or 3) support the proposed revisions but have suggestions about how to improve the rule language.

The public comment period will remain open until at least September 24, 2018, and the Commission anticipates receiving additional written comments before then. The following summary is organized by topic, and describes some common themes that multiple commenters touched upon in the rulemaking process so far.

Topics:

1. **Primary and secondary locations.** Opinions about the size and location of proposed primary and secondary locations were varied. Some commenters think that the primary and secondary locations are too expansive and should be reduced in size to minimize the potential for development locating far from service providers. Commenters had different ideas for how this may be accomplished, including: by changing distance measures (e.g., measuring 5 or 7 miles from a rural hub instead of 10 miles); by measuring from a modified list of rural hub towns, or from the center of town; or by changing the way distances are measured (e.g., measure by road miles, or measure from town centers instead of from boundaries). Commenters indicated that regions within the UT are unique and have diverse needs, and it may be appropriate for primary and secondary locations to be configured differently in each region.

2. **Recreation-based residential subdivision outside of proposed primary or secondary locations.**
 - a. **Residential subdivision near lakes and ponds.** Some commenters said that exactly where moderate density subdivision could locate outside of primary or secondary locations is unclear, making it difficult to evaluate the proposal. Some commenters proposed that the Commission survey the location, type, and current development status of lakes outside of the primary or secondary locations before the proposed rule revisions are considered for adoption. Opinions varied about how the Commission should modify the eligibility criteria for recreation-based subdivision. Some commenters thought that most development should be directed to Management Class 4 and 5 lakes, which in many cases are already developed, and to a small number of Management

Class 7 lakes (if any at all). Others thought that the minimum density requirement for Management Class 7 lakes should be decreased to one dwelling per one mile of shoreline, to match up with the density limits for Management Class 2 lakes. Some commenters thought that consideration of land owner equity should be made in situations where a portion of a lake's shoreline is in conservation. Additionally, some commenters thought that lakes with traditional sporting camps on them should receive special consideration in the rezoning process, and should not be places where the Commission encourages additional development.

- b. Residential subdivision near permanent trails.** Some comments indicated that locating residential development near recreational trails could negatively affect recreational experiences for trail users who may not expect to encounter development (e.g., the Appalachian Trail, Allagash Wilderness Waterway, Baxter State Park, etc.). Permanent trails associated with resorts, or which are managed for multiple use, may be more suitable for this type of development. Commenters also noted that trailheads, or access points, for permanent trails may be places where additional development could locate but generally it would not be appropriate to encourage subdivisions near the trail itself.
- 3. Resource or recreation-based commercial outside of primary or secondary locations**

Some commenters thought that the definition of "resource-dependent" development is unclear and should be improved. Commercial development should be sited carefully when near sensitive recreational resources like waterbodies or trails. For example, the proposed Resource Dependent Development Subdistrict (D-RD) should be set back farther than ½ mile from lakes, ponds, and trails to prevent potential conflicts with other uses or environmental impacts resulting from operations. Recreation supply businesses should not be allowed within ½ mile of a Management Class 6 lake because it could negatively affect recreational experiences on remote ponds.

More specific criteria are needed to determine what types of trailheads may be suitable for commercial development. Like residential subdivision, commercial development can be disruptive if located near certain types of trails where users do not expect to encounter it. One suggestion was to allow such development only in places that have adequate infrastructure to support additional use (e.g., trailheads with enough parking or those located within, or close to, rural hubs).

While some commenters questioned the appropriateness of recreational facilities that support day use or natural resource processing operations outside of primary locations, others noted that some level of commercial development is likely in these places in the future. For example, forest products companies are considering locating facilities closer to wood supplies to increase efficiencies.

4. Potential impacts to municipalities near the UT

Many commenters talked about the potential for this proposal to negatively affect municipalities near the unorganized territories and noted that these small towns already face significant challenges, including aging populations and shrinking tax bases. Some commenters said that establishing primary and secondary locations nearby may incentivize development to “choose” to locate in places with lower tax burdens, and that providing services to new development beyond municipal boundaries may be burdensome and costly to municipalities. Towns like Millinocket are working hard to revitalize their downtowns and incentivize redevelopment of former manufacturing and industrial sites, and some commenters are concerned that the proposed rule changes would potentially take away from these and similar efforts in other towns, especially given the difference in tax rates between municipalities and the neighboring UT. However, other commenters thought that larger-scale commercial or industrial development would be more likely to locate in places with existing infrastructure and services because it would be cheaper than creating these conditions from scratch. Some commenters thought that for the most part, development should be focused in rural hub towns. However, they went on to say that development that is compatible with other nearby existing uses can potentially enhance economic viability in some places by encouraging a critical mass of similar uses and activities that support each other.

5. Low density subdivisions

Some commenters encouraged the Commission not to allow development of low density subdivisions, due to the potential risk for habitat fragmentation, loss of public access for recreation, and inefficient use of land. Many noted that the legislature already decided to ban large lot subdivision exemptions in the UT for these same reasons. Other commenters thought that low density subdivisions should be allowed in the Commission’s service area, and that the proposed provision that requires low density subdivisions to be located at least ½ mile from a waterbody may be too restrictive because of the prevalence and distribution of lakes and ponds in the unorganized territories.

6. State Heritage Fish Waters

Several commenters discussed State Heritage Fish Waters, which are waterbodies that have been identified and designated by the Department of Inland Fisheries and Wildlife as native brook trout and arctic char habitat. Commenters urged the Commission to protect listed lakes and ponds and their tributaries by making them ineligible for rezoning for the purpose of development.

7. Rezoning process

Some commenters thought that development should be encouraged in primary and secondary locations, and that more certainty is needed to ensure that proposals would be approved if they meet the rezoning criteria. Therefore, commenters said that the Commission should consider either rezoning areas for development outright, or restructure the rule language to include a

rebuttable presumption that a rezoning would be approved if it meets the applicable criteria. Other commenters said that the rezoning process is valuable because it allows the Commission to assess potential locations, and gives the public an opportunity to provide feedback about individual development proposals.

8. Legal road access

Some commenters are concerned about provisions that would require a petitioner to have legal right of access from a public road. There are a wide variety of forest roads in the Commission's service area that are owned and managed by multiple entities and were developed for different purposes, and commenters are concerned that meeting a legal road access requirement will not be achievable in most places.

9. Citizen petitions:

- a. **Lexington Township petition.** So far, the Commission has received 128 petitions from residents of Lexington Twp requesting that the township be excluded from the proposed Primary and Secondary locations. Petitioners commented: Lexington has a similar rural character to other townships along the Long Falls Dam Road, which the Commission has already removed from the proposed primary and secondary locations; Lexington is distant from service providers (ambulance is 20+ miles away); the types of development allowed in primary locations are more appropriate in nearby municipalities; and that the township would more appropriately be designated as a resource-dependent location.
- b. **Hancock County petition.** The Hancock County Commissioners submitted as a comment a petition they received that is signed by 57 residents of the county. In their letter, the County Commissioners expressed concern about protecting water quality, wildlife habitat, and forests from development. The letter requests that the LUPC make water quality protection a top priority.

10. Potential impacts to natural resources, remoteness, and rural character

Many commenters expressed general concern about the potential for development activities to impact natural resources, remoteness, and rural character. Some of the specific things that commenters mentioned included: visual impacts along designated scenic byways; increased impacts to designated state heritage waters; disruption of natural views from mountain tops and the Appalachian Trail; degradation of water quality; fragmentation of wildlife habitat and working forests; loss of undeveloped areas along roadways and the shores of lakes and ponds; and the potential for cumulative impacts to visual resources and rural character.

11. Why change application of the adjacency principle

Several commenters wondered why the Commission is proposing to refine application of the adjacency principle when it appears that the policy has been effective up until this point. Instead of modifying adjacency, they thought that the Commission should use existing tools such as

Community Guided Planning and Zoning and concept plans to guide the location of development. Other commenters thought that more flexibility is needed for locating recreation, residential, and commercial development in areas served by the Commission, and that the proposal would be more protective of remote undeveloped lakes than the current application of the adjacency principle. Additionally, commenters pointed out that the current application of the adjacency principle inappropriately treats recreation day use businesses and resource processing activities the same as a gas station or a factory, and providing more flexibility for these types of uses while maintaining core protections for natural resources is essential.

12. Scale of the proposal

Some commenters expressed concern that the proposal would open up large areas for residential subdivision and commercial development right away, and result in impacts to sensitive natural resources. There was also some concern that the proposal may serve to inflate land values for property within primary or secondary locations. Commenters said that the scope of the proposal is too large and the Commission should consider incremental changes, or testing out policy concepts in limited geographic areas. Some commenters said that the public survey conducted early in the process indicated that people who live, work, or recreate in the UT do not want additional development, and that the Commission should give more weight to the survey when restructuring the proposal.

13. Comments about the process

Many commenters talked about the process and there were a variety of opinions about what the Commission should do next.

- a. **Public input and overall pace of the process.** The process feels rushed to some commenters – there is not enough time for public review given the scope and complexity of the proposal. These commenters suggest that the Commission extend the rulemaking timeline and allow for additional time for the public to fully understand and comment on all proposed changes, including concepts that have not yet been turned into rule language. Other commenters complimented the Commission on running a robust process that consulted stakeholders and the public regularly over the course of several years.
- b. **Recommendations about what the Commission should do next.** Commenters suggested a variety of actions that the Commission could take next, ranging from stopping the process and retaining the status quo, to specific recommendations about how to get more targeted feedback needed to improve the proposal. Some people suggested that more information was needed and the Commission should consider completing a land use survey of the service area, including assessment of natural resources and other tourism assets, before making big policy changes. Some other ideas included: completing build-out scenarios to compare the proposed system with the existing system; hiring a 3rd party to assess effectiveness of the current system; engage

in regional planning processes, including in the Katahdin area; establish a mechanism to review changes to the adjacency principle after 5 or 10 years; and provide additional notice to property owners and municipal officials.

14. General comments

Many comments discussed the unique ecological and recreational value of the service area to residents and visitors. Some of the things that people talked about included: high quality of life in the UT; scarcity of remoteness and dark skies in other parts of the country; the importance of undeveloped areas to water quality; negative effects of sprawl that are evident in other states and could happen in the UT (e.g., NJ, CT, OH, TX, etc.); the ecological and economic value of large undeveloped forests; it is increasingly difficult for Maine people to live or work in the Commission's service area because of economic conditions; and the general importance of rural character to the people who live in the UT.