

# Land Use Planning Commission

## Application of the Adjacency Principle

### Staff Proposal – Part One of Two

#### I. Background and Goals

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 or allow new development.

The adjacency principle is one of the fundamental elements of the Commission's planning for development in the unorganized and 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 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 one 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.

## II. Proposal Inputs

The Commission has engaged in substantial research and stakeholder consultation, which is appropriate for an issue that is of significant consequence to the residents and landowners of the Commission's service area, as well as the citizens of Maine, and is tied to the Commission's core mission. Research has included analysis of the Commission's permitting data and targeted input from key stakeholders and experts in the region's economy, natural and cultural resources, and public services. The Commission also conducted an extensive survey that was advertised to property owners through a postcard mailed to the property tax address, as well as through networks of local officials and involved citizens. The survey garnered over 2,000 responses. The information from people who generously gave their time during the process has been invaluable and has shaped the outcome.

Staff have prepared periodic summaries, analyses and suggestions for overall policy direction for Commission review. As the Commission provided direction, staff continued to refine the ideas that emerged from the research and stakeholder process. In recent months, staff considered how best to operationalize the Commissioners' overall policy direction, and now have a proposal for how to refine the adjacency principle, including mechanisms in rule and guidance to implement the concepts.

## III. Proposal

- a. **Applicability:** This proposal would replace the one mile rule of thumb for all of the Commission's service area. However, prospectively zoned areas (e.g., the Rangeley area) will not be rezoned except as described in the rules and plans specifically adopted for those areas. It is important to note that in any rezoning, there are many considerations, including consistency with the statute, consistency with the subdistricts in Chapter 10, no undue adverse impact, and consistency with the CLUP overall. This proposal addresses the issue of adjacency, which is only about the location of rezoning for development. It has frequently been a major factor in rezoning, however, it is not the only factor. The other rezoning standards in statute will continue to apply, including consistency with law and with other portions of the CLUP.
- b. **Rest of proposal in March:** This is part one of two of the proposal, dealing with uses that are not resource dependent. Adjacency proposals for resource dependent uses and home occupations will be discussed at the March Commission meeting.
- c. **Subdivision rules necessary:** This proposal also relies on revised subdivision rules and has been developed with those coming rule changes in mind. Staff are drafting revised subdivision rules and are targeting the June meeting for an initial presentation, once the adjacency proposal has received some preliminary discussion. The goals of the revised rules are to update the subdivision layout and design standards, account for lake type and existing development density when siting new subdivisions, address cumulative impacts of multiple small subdivisions and make other changes that were discussed during the stakeholder process.
- d. **Components:**
  - i. Uses: The uses that are considered in this part of the proposal are:
    1. *Residential*, which is broken out by density
      - a. *A high density residential* use would have small lots, relative to the UT expectations for lot size. They might be ½ acre to 2 acres, as an example.
      - b. *Moderate density residential* might average around 3-acre lots (with some larger and some smaller)
      - c. *Low density residential* might be in the 11 to 25-acre range.
    2. *Commercial/industrial* consists of all commercial and industrial uses, and distinguishes between those that rely on three phase power and those that do

not. An example of a use that relies on three phase power would be some manufacturing facilities.

ii. Locational factors: The following factors are used to describe the potential rezoning areas

1. *Retail hubs*. (magenta outlines on maps) These are towns, townships or plantations that have significant retail activity that serves the types of uses that are commonly found in the UT. The list of retail hubs currently exists in the recreational lodging portion of the Commission's rules. The list was determined based on sales tax data and the Commission's knowledge of the UT. Retail hubs are important because providing public services is more efficient and cost effective for the tax payer near where the services originate, and keeping development near services helps to keep lands open for the timber, agriculture and recreation economies and for wildlife habitat. The measurements of distance from retail hubs are "as the crow flies" except that the measurement is not carried over a waterbody or interstate highway unless such areas are contiguous with another primary or secondary area. This approach is intended to account for situations where development on one side of a waterbody or interstate highway is effectively separated from a town on the other side because it is such a long way around. The measurement of 10 miles from the boundary of a retail hub was chosen because of feedback from public officials about realistic emergency services distances and cost-effective public service provision.
2. *Public road*. This is any road that is owned or operated by a public entity such as towns, plantations, counties or the state. The reasons for keeping development near public roads are similar to the reasons listed under retail hubs, above.
3. *Availability of emergency services*. In some cases, if development is being proposed at a distance from a public road, it is important to determine if a residential subdivision can be served by fire and ambulance service.
4. *Right of legal access from a public road*. In some cases, if development is being proposed at a distance from a public road, it is important to determine if the future lot owners will have a legal right to access their subdivision lots. This can become important as land changes hands and new owners of the land between the subdivision and the public road may no longer want to allow access; or if expensive road improvements become necessary, for example if a bridge washes out.
5. *Great ponds and flowing waters draining at least 50 square miles*. Waterbodies attract the majority of the residential development in the UT. Being careful to make good use of those shorelines and to protect water quality and lake character is important. Some types of development are more appropriate to be situated on a lakeshore than others.
6. *Lake management classification*. The Commission's rules and the CLUP list a classification for each lake. The lake classification is an indication of the suitability for development of each lake. The classification system promotes the goal of maintaining a diversity of lake experiences – some more developed and some less so.
7. *Location of three phase power lines*. Some commercial or industrial uses must locate near three phase power. This is an important consideration in thinking about future economic development.

iii. General criteria: The Commission could use a set of general criteria, based on the objectives of the adjacency principle (see section I), to guide the Commission's decisions on location of rezoning for development. The general criteria would serve two purposes. This first purpose is to summarize in rule the locational principles that adjacency is meant to achieve. This can be used as a guide when developing rules and guidance that provide more details about rezoning decisions. The second purpose is to serve as a set of decision-making criteria for the location of rezoning for uses that are infrequent and therefore not described in detail in the rule. An example would be a manufacturing facility that requires three-phase power. The locational component of a proposed rezoning for a manufacturing facility would be reviewed based on the general criteria and the unique circumstances of the proposed facility. This is different than rezoning for residential subdivision, which would have greater specificity in rule. The general criteria would not be necessary in making decisions about individual rezoning petitions for residential subdivisions, as the specific rules will be consistent with the general criteria. Draft criteria are:

1. Proposed commercial or residential development that is dependent on proximity to natural resources to produce, refine, or otherwise process goods or services, or to provide certain recreational experiences for residents or visitors, may locate near natural resources, provided that the location does not result in undue adverse impacts on existing uses or resources.<sup>1</sup>
2. To minimize potential impacts on the values and resources of the Commission's service area, and to limit development near productive natural resources, proposed commercial or residential development not dependent on proximity to natural resources shall be located near other existing development and infrastructure.
3. New development subdistricts shall be located to separate uses that may be in conflict and to co-locate compatible uses.
4. Establishment of new development subdistricts shall not unreasonably alter the character of the area, including but not limited to, negative impacts on traffic levels, scenic resources, or historical patterns of development.
5. New development subdistricts shall be located where fire and ambulance services can be provided by the County or nearby communities without adding additional capacity, unless a petitioner can demonstrate that additional capacity to provide services to the new development could be added efficiently and economically over time. The Commission may determine that emergency services are not necessary for some resource-dependent uses.

e. **Four basic categories**: The proposal uses the factors that are listed above to create four types of locations in which rezoning for development could occur that would satisfy the adjacency principle. The proposal for these four locations would replace the one mile rule of thumb in all rezoning decisions. The three that are addressed for the February meeting are *primary locations*, *secondary locations*, and *three phase power locations*. In March, we will discuss the fourth category, *resource dependent uses*. Each type of location could be rezoned for certain types of uses, as indicated below.

- i. **Primary Locations** (Orange on diagram and maps)

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<sup>1</sup> This general criterion will be dealt with in the March part of the proposal. Many survey respondents drew a clear distinction between certain uses that should be located close to the resource versus much of the residential and commercial activity that they indicated should be close to roads and people

1. Criteria identifying primary locations:
  - a. Based on retail hubs, towns, and plantations:
    - i. Up to 10 miles from the boundary of a retail hub or in a town or plantation; and
    - ii. Up to 2 miles from a public road; or
  - b. Based on management class 3 (MC3) lakes: Within 700' of a MC3 lake, regardless of distance from retail hub or road, if water quality and soils are acceptable. (See CLUP discussion of adjacency for class 3 lakes. The distance is enlarged to 700' to allow for good subdivision design.)
2. Residential uses:
  - a. Moderate or high density residential subdivision with rezoning to D-RS or D-GN.
  - b. General management subdivisions by permit in M-GN up to 14 lots and within ½ mile of public road. These were previously called level 2 subdivisions. The proposed rules will modify the standards to reduce the clustering requirement and make other changes.
  - c. Low density residential subdivision with rezoning to new zone if at least 2 miles from retail hub and ½ mile from great ponds and certain rivers and not on an island.
3. Commercial/Industrial uses:
  - a. Any commercial or industrial use. Siting within primary locations for commercial and industrial uses is flexible, therefore the general criteria will be used to ensure that specific rezoning proposals are compatible with the uses in the area. Usually this will mean rezoning to D-GN, D-CI, or D-RB.
4. Prospectively zoned areas: This proposal does not change the rezoning requirements in the Rangeley prospective zoning area or D-RB eligibility in Washington or Aroostook Counties. In Washington County, rezoning for “rural business” uses would only be allowed in D-RB areas as established by the recent Community Guided Planning and Zoning (CGPZ) process. Other commercial and industrial uses not eligible within a D-RB would be handled on a case-by-case basis under the general criteria. This should be discussed with the Washington County CGPZ group and the County Commissioners. The Aroostook County Commissioners and CGPZ group should be consulted about how to handle their commercial zoning. The current proposal would allow for the D-RB zones, plus other commercial development, in the primary locations in Aroostook County.
5. Approximate acreage: 1.7 million acres gross land area. Not all of the land in the primary locations is available for development. For example, approximately 24% is in conservation as identified in the State’s registry (e.g., conservation easement, public reserved land, national wildlife refuge). Additionally, landowners may choose to manage their property in a way that does not involve development, without the land being in conservation, or there may be site-specific reasons why land is not developable.
6. Discussion:
 

Primary locations are in areas that are closer to services and are less likely to cause problems with disrupting large areas for forestry, agriculture, recreation and habitat. Access from subdivisions and commercial establishments to public roads is likely to be worked out if the maximum distance is 2 miles. Nearby

organized towns with public facilities are likely to see a larger “critical mass” of customers for health care, education, retail and other services from residences in this area. Locating development in the primary areas should be encouraged.

General management subdivisions would be relatively low risk in these areas, given the proximity to roads and assuming good subdivision design standards. The proposal will provide significant additional area for these subdivisions without a rezoning and will modify the design standards to make it easier to use this option.

Low density subdivisions can use up large amounts of land quickly, and therefore should be excluded from shorefront areas, areas more suitable for dense development near retail hubs, and islands which have very limited area (for example Monhegan or Matinicus). However, low density subdivisions may work well for areas between 2 and 10 miles from retail hubs if the subdivision standards take into account the natural resource and recreation considerations.

ii. **Secondary Locations** (orange hash marks on diagram and maps)

1. Criteria identifying secondary locations:
  - a. In a town, township or plantation next to the boundary of a retail hub; and
  - b. Between 2 and 5 miles from a public road
2. Criteria for each rezoning proposal within secondary locations:
  - a. Location can be served by emergency services; and
  - b. Legal right of access from public road
3. Residential uses:
  - a. Moderate or high density residential subdivision with rezoning to D-RS
  - b. Low density residential subdivision with rezoning to new zone if at least 2 miles from retail hub and ½ mile of great ponds and certain rivers and not on an island
4. Commercial/Industrial uses:
  - a. Only resource-dependent uses (will be discussed in March)
5. Prospectively zoned areas: This proposal does not change the rezoning requirements in the Rangeley prospective zoning area, and does not overlap with the D-RB in Washington or Aroostook counties
6. Approximate acreage: 0.7 million acres gross land area. Not all of the land in the secondary locations is available for development. For example, approximately 33% is in conservation as identified in the State’s registry (e.g., conservation easement, public reserved land, national wildlife refuge). Additionally, landowners may choose to manage their property in a way that does not involve development, without the land being in conservation, or there may be site-specific reasons why land is not developable.
7. Discussion:

Secondary locations are in areas that are close, “as the crow flies,” to services and are somewhat likely to be located away from large contiguous areas for forestry, agriculture, recreation and habitat. However, the distance of 2-5 miles from public roads could create difficulties with legal road access and emergency service provision. Nearby organized towns with public facilities are likely to see

a larger “critical mass” of customers for health care, education, retail and other services from residences in this area. Rezoning for development in the secondary locations areas should be allowed if the issues of road access and emergency services can be worked out for each rezoning proposal.

See the discussion of low density subdivisions in the primary location discussion, above.

iii. **Three phase power locations** (dashed line on diagram)

1. Criteria:
  - a. Near a point of interconnection with three-phase power
2. Residential uses:
  - a. None
3. Commercial/Industrial uses:
  - a. Commercial or industrial uses that are dependent on three phase power and which meet the general criteria. An example would be a manufacturing facility that uses electricity-intensive equipment. Rezoning would be to D-GN or D-CI.
4. Prospectively zoned areas: This proposal does not change the rezoning requirements in the Rangeley prospective zoning area.
5. Discussion:

Commercial and industrial uses that rely on three phase power are developed infrequently in the UT. However, they may be an important part of the UT’s economic future. Three phase power may not always be available near to a service center, and it may not always be suitable to develop such a facility near a populated area. These uses would be considered on a case-by-case basis using the general criteria.

f. **Potential Problems and Solutions**

- i. *Strip development*: One risk of the proposal is encouraging development along roads for 10 miles from the boundary of a retail hub. This could cause strip development, which has negative impacts on traffic management (public safety), character of the area and wildlife habitat. The proposed residential subdivision standards will contain provisions that address location of entrances to developments. They will also propose separation between groups of structural development and vegetation buffers along roadways to provide wildlife corridors and maintain a rural character. Similar provisions will be proposed for rezoning for commercial development.
- ii. *Loss of shoreline character and water quality*: In some places, shorelines would become available for rezoning immediately as a result of this proposal. This would be true for lakes that are within the primary and secondary locations. Subdivisions, in particular, may be proposed along a shoreline that, under the one mile rule of thumb, would have been incrementally developed over time. To avoid overdevelopment of the shoreline, the Commission can take this opportunity to plan for appropriate development of the lake as a whole. The subdivision rules will propose mechanisms to help ensure the overall level of development is suitable in terms of maintaining water quality, shoreline character and appropriate levels of recreation pressure. This would be based, in part, on the management class of the lake and the current level of development. Overall

- density of existing development, and the target density for that lake classification would be important factors. Layout standards for shorefront subdivisions will also be important in conjunction with density targets. Despite the fact that shorelines within the primary and secondary locations may become more heavily developed, there are shorelines in other parts of the UT that are further from the retail hubs that would receive less development than under the one mile rule of thumb approach to adjacency, as a result of this proposal. Providing suitable regulations and encouraging subdivision close to retail hubs is preferable to more scattered subdivision development elsewhere.
- iii. *Habitat impacts*: Habitat impacts largely stem from scattered development, strip development, and inappropriate shoreline development. By dealing with these issues, as described above, the refined approach to adjacency and revised subdivision rules will also protect habitat. This was an issue that was of high importance to survey respondents and deserves attention. When the subdivision rules are proposed, they will contain standards that are specific to development along roadways and shorelines and density of development around lakes. The issue of scattered development is being addressed by the overall proposal of encouraging development close to retail hubs.
  - iv. *Loss of control over pace*: One of the objectives of the adjacency principle is to pace development so that services, land use regulations and future development plans have time to adjust as each pulse of development takes place. The proposal removes much of the pacing mechanism inherent in the one mile rule of thumb. Because the proposal explicitly directs development to areas that are close to services, the risk of this effect is reduced; however, some amount of pacing is still desirable. This will be handled in three ways: 1) consulting closely with local government and service providers about the effects of proposed rezoning and denying any proposals that unreasonably overburden local capacity; 2) if large amounts of development are proposed in a short time frame, considering the likely effect on community character and approving only as much additional development as the community can handle within the proposed timeline; and 3) conducting regular reviews of the quantity of development rezoning and making regulatory adjustments as needed.

#### IV. Next Steps

- a. **March proposal**: The staff presentation in March will complete the proposal by describing the approach for resource-dependent commercial and residential uses and home occupations. At that point staff will answer questions about the entire proposal.
- b. **Discussion with property owners, public and stakeholders**: Once the entire proposal is available, staff recommend that the Commission take comments at the April meeting and that staff hold informal work sessions with property owners, stakeholders and the public to answer more detailed questions and work through any issues that arise.
- c. **Subdivision regulations**: Staff anticipate that a draft of the subdivision regulations will be available prior to the June meeting so that the adjacency rules and the subdivisions rules can be viewed side-by-side since they are integrally related.
- d. **Formal rulemaking**: Staff anticipate asking the Commissioners to post the adjacency rule to public comment at the June Commission meeting.
- e. **Schedule**: A more detailed schedule is attached at the end of the packet.