

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 permittable 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.