

Land Use Planning Commission
Application of the Adjacency Principle
Staff Proposal – Part Two 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.

This is the second part of a two-part proposal. Part One¹ proposed a new overlay system that would concentrate most types of residential, commercial, and industrial development near services and public roads. Part Two proposes an impacts-based system to locate some types of development that are dependent on proximity to natural resources for raw materials for production, or to facilitate certain recreational experiences. The concepts proposed in part two are a starting point for discussion, and could benefit from further input from the public.

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*

¹ To access materials, please visit: www.maine.gov/dacf/lupc/projects/adjacency/adjacency.html.

- *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

- A. Applicability:** The combined part 1 and part 2 proposals would replace the one mile rule of thumb for all 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. Continuation from February:** This is part two of two of the proposal, dealing with uses that are resource dependent. Adjacency proposals for non-resource dependent uses were discussed at the February Commission meeting. The concepts in part two are less refined than those in February, and are a starting point for discussion. Due to the nature of the uses in the UT, some provision for commercial activity and limited residential subdivision activity outside of the primary and secondary locations identified in part one is appropriate. However, the risks of excessive or poorly planned development in remote areas is significant. Any system for locating development beyond the primary and secondary areas should be carefully considered.
- 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:

1. Uses: Except for home-based businesses, the uses that are considered in this part of the proposal are all resource dependent. Being resource dependent means the proposed development depends on proximity to natural resources to produce, refine, or otherwise process goods or services, or to provide certain recreational experiences for residents, property owners, or visitors. The specific kinds of uses considered here are:
 - (a) *Resource dependent residential*, which is described by density:
 - i. *Moderate density residential* might average around 3-acre lots (with some larger and some smaller)
 - (b) *Resource dependent commercial/industrial* consists of certain commercial and industrial uses. Categories that are further described in this proposal are:
 - i. *Small-scale recreation supply*: permanent or temporary (and sometimes mobile), businesses that provide support to recreational users on a resource like a water body or permanent trail (e.g., equipment rental, or mobile food service). This includes gear rental, outfitting, and sale of pre-prepared food, but does not include restaurants, lodging, fuel sales, or other intensive activities.
 - ii. *Recreation day-use facilities*: businesses that facilitate recreational activities that are primarily natural-resource based, depend on the presence of terrain features or waterbodies (e.g., trail centers for mountain biking or nordic skiing), and are not related to recreational lodging.
 - iii. *Natural resource processing or retail on farms*: activities associated with changing an agricultural crop from its natural raw state into a product to be marketed either on, or off, site, as well as other commercial activities on farms beyond agricultural production (e.g., retail, agri-tourism, etc.).
 - iv. *Natural resource processing to reduce bulk of raw materials for transportation*: activities associated with reducing forest or other natural resources through chipping or other means to facilitate efficient and cost-effective transportation to manufacturers or other buyers.
 - v. *Resource extraction* includes activities associated with extraction and transportation of raw materials for further processing or manufacturing off-site (e.g., bottled water extraction wellhead, gravel mining).
 - (c) *Home-based business* is currently called home occupation, and consists of commercial activity that is secondary to the use of the premises as a residence.
2. Locational factors: The following factors are used to describe the potential rezoning areas
 - (a) *Natural or recreational resource*. Some types of development depend on proximity to natural resources such as waterbodies, forest or farm resources, or other resources naturally occurring in the Commission's service area. The reason for this

can be to reduce the cost of transporting raw materials or agricultural products for manufacturing or further processing at another location, or to provide a recreational experience based on the presence of a waterbody, permanent trail, or certain terrain.

- (b) *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 the development can be served by fire and ambulance service. If it is unrealistic to expect services in resource-based locations, then existing and prospective lot owners should be made aware.
 - (c) *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 lots. This can become important as land changes hands and new owners of the land between the development 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.
 - (d) *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.
3. General criteria: As discussed in February, 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 recreation day-use facility that relies on certain topographical and locational factors to be successful. Concepts proposed to be incorporated into criteria are:
- (a) 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 development at that location would not result in undue adverse impacts on existing uses or resources.
 - (b) 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.

- (c) New development subdistricts shall be located to separate uses that may be in conflict and to co-locate compatible uses.
- (d) 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.
- (e) 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 to identify four types of locations in which rezoning for development could occur that would satisfy the adjacency principle. This proposed framework would replace the one mile rule of thumb in all rezoning decisions. The three that were addressed for the February meeting were *primary locations*, *secondary locations*, and *three phase power locations*. In March, we will discuss the fourth category, *resource dependent use locations*. Each type of location could be rezoned for certain types of uses, as indicated below.

1. Resource Dependent locations

- (a) Criterion for determining resource dependency: the proposed development is dependent on a specific resource for raw materials or recreational experiences.
 - i. Resource-*dependent* commercial development is intended to extract, or physically change, raw materials to reduce the cost of transportation of forest products, agricultural goods, or other natural resources; or
 - ii. Recreation-related commercial development is intended to primarily support day-use *recreational* experiences dependent on access to water, permanent trails, or certain types of terrain;

(b) Different types of resource dependent uses and where they could locate:

- i. *Resource-dependent residential uses:*

Moderate density residential subdivision with rezoning to D-RS or D-GN must be located near and integrated with permanent trails, existing access points to rivers, or certain lakes as described below. Subdivisions would not be allowed in connection with resources that are presently zoned P-RR. Eligible lakes are as follows:

- Management Class 4, 5 or 7;
- Minimum density of existing development: least one existing dwelling unit per half mile of shoreline, at least one existing dwelling unit per 50 acres of lake surface area, and a minimum of 5 existing dwellings; and

- Maximum density of existing and proposed development: generally does not exceed one existing or proposed dwelling unit per 400 feet of shoreline, or one existing or proposed dwelling unit per ten acres of lake surface area. If a proposal would exceed the maximum density for a lake, then a cluster or flex design that includes considerations for open space would be required at the permitting stage to ensure water quality and provide adequate space for wildlife movement. Landowner equity in assigning development potential around the lake will be considered.
 - Optional: Should all resource-based subdivision rezoning have to demonstrate legal right of access from a public road and availability of emergency services? Might such a provision not be practical in some resource-dependent situations? The Commission has identified access an important topic for discussion.
- ii. *Resource-dependent recreation.* All resource-dependent recreation uses would be located near water access points on Management Class 4, 5, or 7 lakes, water access points on rivers, or permanent trails. If co-locating with a trailhead or water access point, proposed development must not undermine, or conflict with, recreational use of the resource. In addition, day-use facilities would be allowed in areas when terrain features are necessary to support the day use facility. (*e.g.*, compact patterns of trail construction that require a certain type of hilly terrain). No resource-dependent commercial recreation uses would be allowed in the P-RR subdistrict. Traffic, lighting, or noise generated by the facility must be appropriate for existing roads, and otherwise not have a negative effect on the character of the area.
- Small-scale recreation supply would be allowed with a rezoning to a new resource-dependent subdistrict. Small-scale, temporary recreation supply facilities may be located in the M-GN subdistrict with a permit, so long as the site meets current dimensional requirements, and issues surrounding sanitation, parking, and traffic can be addressed.
 - Recreation day-use facilities would be allowed with a rezoning to a new resource-dependent subdistrict.
 - Optional for Commission consideration: All rezoned areas must have a legal right of access from a public road (either temporary or permanent depending on the nature of the use), and available emergency services.
- iii. *Natural resource processing, manufacturing, and extraction:* All natural resource processing uses must be in locations at least ½ mile from dense patterns of residential development (as defined in the D-RS subdistrict description), and at least ½ mile from management class 1,2 or 6 lakes. Traffic from the proposed use must be consistent with existing patterns in the area when considering the type (*e.g.*, trucks or passenger vehicles), and hours of operation. Any requirements for legal right of access could be satisfied by

temporary agreements if the nature of the use is temporary, which may often be the case for this type of use.

- Processing to reduce bulk of raw materials for transportation would be allowed with rezoning to a new development subdistrict. Some small-scale, or temporary, facilities would be allowed in the M-GN with a permit and in accordance with standards.
- Natural resource extraction would be allowed with a rezoning to a new resource dependent subdistrict.
- On-farm processing, retail, and manufacturing would be allowed with rezoning to a new resource dependent subdistrict when a facility gets bigger and more intensive than a home-based business. To reduce traffic, more than 50% of raw materials for processing, sale on-site, or production of goods for sale, should come from the same farm or the immediate area. Structural development on farms related to processing would be limited in scale, and some of that area could also be used for retail. Facilities that process poultry would be limited to 20,000 or fewer birds annually.

iv. *Home-based businesses*

- *Most home-based businesses* would be allowed either in accordance with standards, with a permit, or by special exception in most subdistricts. Home based-businesses that exceed the current standards could petition to rezone to a development subdistrict if located within the Primary Locations. If not located in a Primary Location, the business owner could apply for a special exception to expand up to a total of 2,500 square feet of space for a major home occupation, provided: the expansion would not change the character of the area (*e.g.*, warehouse building or noisy commercial operation in a neighborhood); the use would not generate traffic more intensive than current patterns in the area; and nuisance impacts could be adequately buffered from nearby existing uses.
- *Farm-stands* would be permissible as home occupations in the M-GN so long as they are located at least 30 feet from a public road, primarily sell agricultural produce or products, and do not exceed 200 square feet in size. (Current clearing standards would not be reduced, so farms located on a public road which do not have existing roadside clearings would need to place any structures at least 50' from the road.)

- (c) 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. Staff are scheduling a time to consult with the Aroostook County Commissioners and CGPZ group 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.

- (d) Discussion: Some types of development depend on proximity to natural resources to reduce transportation costs, or to provide a certain recreational experience. However, sometimes being located near a natural resource may result in development that is more distant from public roads and services like fire and ambulance, and that may be close to sensitive habitat, high water quality lakes, or recreational resources. Due to the nature of the uses in the UT, some provision for commercial activity and limited residential subdivision activity outside of the primary and secondary locations (see part one proposal for a description of primary and secondary areas) is appropriate. However, the risks of excessive or poorly planned development in remote areas is significant. Any system for locating development beyond the primary and secondary areas should be carefully considered. This proposal includes concepts to minimize potential impacts to resources from commercial development, and to guide new residential development to suitable locations that are already developed and receive some services.

Residential development along lake shores in the Commission's service area provides a certain type of recreational experience desirable to some property owners, or prospective owners. In the UT, some lakes are distant from public roads and services, but have a certain level of existing residential development, and may not be identified by the lake management classification system as particularly significant in terms of fisheries, scenic character, ecological or other recreational values. Part Two of the staff proposal would allow for some additional residential subdivision outside of the Primary and Secondary Locations on MC 4, MC 5 or MC 7 lakes that meet minimum and maximum density requirements. These density limits are based on general guidelines in the CLUP and information obtained during the adjacency review process, and are intended to guide residential development to lakes that are already developed, and to reasonably limit the overall level of development for these waterbodies.

Some recreation supply, or recreation day use, businesses rely on a specific natural resource or certain terrain. Recreational supply or recreation day use facilities that depend on proximity to a specific resource may be located outside of the Primary Locations with a rezoning, or in some cases with a permit, and would be evaluated based on their potential to affect the expectations of recreational users of the resource. For example, a busy food truck located in a parking lot next to a boat launch may be fine on developed lakes, but the same business would change the character of a lake that has little development.

Some resource-dependent uses could generate significant traffic impacts, such as trucks used to move raw materials from an extraction site to a manufacturing site. It is important to ensure that this type of traffic is minimized near neighborhoods and recreational resources, and that existing roads and other infrastructure can accommodate potentially heavy loads.

Home-based businesses that grow beyond the current limitations in the standards could result in nuisance impacts and generate traffic that creates problems for residential neighborhoods or near recreational resources. If a home-based business is in a Primary Location, and expansion would not result in undue adverse impacts, the owner could petition to rezone the property to a development subdistrict. If not located in a primary area, staff propose that some expansion should still be possible so long as noise, odors, and outdoor storage can be adequately buffered from other uses nearby, and if traffic generated is consistent with existing patterns in the area (*e.g.*, type of traffic is the same, and the overall volume is similar).

Farm stands would be permissible as home occupations. If a farm-based retail operation grew beyond the limits proposed for farm stands, a facility would have to rezone to a development subdistrict and meet all the locational criteria that apply.

F. Potential Problems and Solutions

1. *Residential subdivision in remote locations:* This proposal would result in residential subdivision on certain waterbodies in locations distant from a public road or retail hub, and which are accessed by traveling long distances on private roads that may be built and maintained for other purposes (*e.g.*, commercial forestry). This could make it difficult for lot owners to maintain permanent, reliable, access to their property. For the same reasons, it may be difficult for fire trucks or ambulances to reach residential development in these types of locations. Development in resource-based locations may also undermine certain recreational experiences dependent on remoteness. To address these issues, the proposal could require: 1) that resource-based residential subdivision include a legal right of access from a public road for each lot owner; 2) a disclaimer notifying potential buyers that their property does not come with a guarantee of emergency services; and 3) by guiding residential subdivision to certain lakes that are already developed.
2. *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 MC 4, MC 5 and MC 7, lakes that meet minimum density requirements. 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, and some MC 4, MC 5 and MC 7 lakes outside of these locations, may become more heavily developed, shorelines in other parts of the UT that are farther from retail hubs 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.

3. *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. Rezoning and permits for resource-dependent uses will still be reviewed for “no undue adverse impact” to existing resources, including habitat.
4. *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.

III. NEXT STEPS

- A. Discussion with property owners, public and stakeholders:** Staff recommend that the Commission take comments at the April meeting. Staff are already scheduling informal work sessions with property owners, stakeholders and the public to answer more detailed questions and work through any issues that arise.
- B. 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.
- C. Formal rulemaking:** Staff anticipate asking the Commissioners to post the adjacency rule to public comment at the June Commission meeting.
- D. Schedule:** A more detailed schedule is attached at the end of the packet.