



Natural Resources Council of Maine

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Ben Godsoe
Land Use Planning Commission

By email: Benjamin.Godsoe@maine.gov

Dear Ben,

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to provide written comments on the proposed changes to the adjacency policy and related changes to the subdivision rules. These written comments are intended to supplement, not supersede, the comments I made at the public hearing on Jan. 10.

NRCM has over 20,000 members and supporters including people who reside in each of Maine's sixteen counties. NRCM members care passionately about Maine's North Woods – both the natural resources and the communities that border the unorganized townships (UT).

NRCM staff have spent, literally, hundreds of hours reviewing the proposed rules to try to understand the proposed changes and the likely impact of those changes on the North Woods. Despite this extensive review, rarely a day goes by that we don't come upon yet another issue or answered question. These rules are extremely complicated and difficult to understand. Understanding what activities can happen where requires looking at multiple sections of the rules. Members of the public who do not deal with the rules on a daily basis would find them virtually impossible to decipher.

The stakes for the North Woods could not be higher. Unintended consequences could completely destroy the forests, waters, wildlife, and character that make Maine's North Woods, nationally, even globally, significant. We urge you to review Janet McMahon's recent report, [The Environmental Consequences of FOREST FRAGMENTATION in the Western Maine Mountains](#). It can be found at <https://mainemountaincollaborative.org/resources/>. The report concludes: "the Land Use Planning Commission's proposed changes to the adjacency rule...have the potential to profoundly change the ecology of the region."

We urge LUPC not to proceed with these rules at this time.

NRCM shares LUPC's goal of guiding development to areas near existing development and public services. NRCM also supports the goal of protecting the vast majority of the North Woods in its relatively undeveloped condition. The undeveloped forests, lakes, and rivers support Maine's forest products industry and outdoor recreation economy, protect our fisheries and wildlife, and provide Maine residents and visitors places for recreation and respite from our busy world.

Unfortunately, we have concluded that most of the provisions in the proposed rule related to the adjacency principle would harm, rather than lead towards, those goals.

Primary and Secondary Development Areas.

1. The primary and secondary development areas encompass far too much area.

After subtracting areas that have any sort of conservation protection, the primary development areas include over 824,000 acres and the secondary development areas include over 540,000 acres, bringing the total area that would be available for residential subdivisions to more than 1,364,000 acres, or over 13% of the UT. Given that the total acres currently in development zones after 40 years of LUPC's existence is less than 1% of the LUPC jurisdiction, this is clearly providing dramatically more potentially developable land than is needed for the development likely to occur in the next 40 years. Providing far too much acreage as potential developable land will lead to scattered development and sprawl.

There is currently no evidence that more land for residential development is needed in the jurisdiction. The Moosehead Lake Concept Plan provides the opportunity for thousands of new house lots, none of which have been developed. None of the three CGPZ efforts that have occurred in the last eight years have identified the lack of opportunity for new residential development as a significant issue. Anecdotal evidence suggests that there currently exist many unsold and undeveloped residential lots in the jurisdiction (as well as in the communities that border the UT). Until there is credible data that there is an insufficient supply of developable lots, an expansion of this size is not justified.

2. The amount of land that would be available for commercial development would allow the commercialization of the North Woods.

The primary development areas would make 824,000 acres available for commercial development. There are currently relatively few nodes of commercial development in the UT, so the current adjacency rules do not allow for scattered commercial development. While there may be a need to provide some additional opportunities for commercial development given the relatively limited number of locations that would permit commercial development under the existing adjacency rules, 824,000 acres of primary development area would simply encourage commercial sprawl, rather than guiding commercial development into compact commercial centers.

Beyond the primary development area, the additional commercial development that would be allowed in the proposed D-RD subdistrict would allow commercialization of the entire North Woods. It is unclear why the natural resource extraction and processing uses that would be permitted by this section could not be accommodated in the existing D-CI or D-PD subdistricts (with perhaps some limited amendments).

In addition, under this proposal, recreation supply facilities could be scattered across the North Woods near the public access points of the vast majority of lakes (Class 4, 5, and 7) and all around Class 3 lakes, fragmenting wildlife habitat and commercializing access to these lakes long after visitors think they have left commercial, built-up areas behind. This would have a dramatically negative impact on the character of the North Woods.

Allowing recreation supply businesses scattered throughout the North Woods would also undercut the economic viability of businesses in town, many of who are already struggling financially. The recreation supply facilities can and should be located in the bordering organized towns.

The potential for proliferation of commercial activity across the entire jurisdiction is perhaps the most dramatic of the negative changes these rules propose.

3. The primary development areas should not be based on a 7 mile mathematical calculation from a town boundary, which does not represent the location of existing development.

The location of primary and secondary development areas should be based on the natural resources that exist on the ground and existing development and infrastructure. Basing the location of development zones on mathematical calculations does not achieve the goal of guiding development to areas near existing development and public services.

A town boundary line is not a useful proxy for existing development. Some town boundaries may be near the existing development; others could be up to 6 miles as the crow flies and much further by road from existing development. This method of calculation will lead to development in inappropriate areas, not near existing development.

4. Using an "as the crow flies" method of calculation would allow development many miles by road from existing development.

Existing development might be within 1 or 3 or 5 or 7 miles of existing development "as the crow flies" but could be a dozen or more miles away by road. This dramatically affects the ability to provide public services and the efficiency of delivery of those services. The proposed development area might, as a practical matter, actually have no relationship whatsoever to the rural hub that is within 7 miles "as the crow flies." The long-standing application of the adjacency policy that the proposed development must be within one mile by road was based in this reality and should be retained.

5. Long stretches of scenic byways should not be targeted as primary development areas.

While scenic byway designation is not a regulatory designation, the scenic byways do represent the hopes and aspirations of residents in the region and the goal of the state and/or federal government representing the public to protect the scenic character of the road for its economic, historic, and

natural resource values. Targeting scenic byways, particularly the long stretches of undeveloped forest land between existing villages, as primary development areas is exactly contrary to the purpose of the scenic byways. This is particularly a problem with the Old Canada Road, Moosehead, and Katahdin Woods and Waters scenic byways. While there may be some portions of scenic byways that are appropriate for new development, this is the type of determination that should take place during a regional planning process, based on the circumstances on the ground, not during a huge statewide policy change or an individual permit application review.

6. Primary development areas stretching 7 miles along public roads outside organized towns would harm those communities.

Designating 7 mile primary development areas on every public road leading out of a rural hub would dramatically harm the economic viability of those communities. The tax rates of organized towns and the UT are significantly different. While different parts of the UT have different tax rates, they are generally in the range of 6 – 8 mills. The rates in the organized towns that border the UT are generally in the range of 15 – 25 mills, although some towns are as high as 34 mills. Opening up these huge areas outside towns, particularly for commercial development, would drive development out of town and into the UT. The towns would lose the tax revenue and vibrancy that new businesses can bring to a struggling downtown. This is particularly a problem for those towns that have empty storefronts, and industrial parks, in addition to unoccupied housing.

In addition, those towns would have the added burden and cost of providing public services to development that would be much further away. While additional funds could help solve that problem, it would not solve the problem of providing ongoing personnel to staff the fire, emergency and other services that are primarily staffed by volunteers in many of these communities.

We commend the LUPC staff for reaching out to some of the organized towns that border the UT. However, we are aware that significant concerns have been raised at several of those meetings and that the proposed rules do not address the concerns that have been raised. It is also our understanding that the LUPC staff has only had the opportunity to visit a very small number of the 41 proposed rural hubs and that there has not always been adequate notice to residents of those communities so that they could attend the meetings and ask questions or raise concerns.

7. Large-lot, low-density subdivisions have previously been eliminated because they fragment large blocks of forest, harming forestry activities, wildlife habitat, and recreation opportunities.

After multiple attempts between 1989 and 2001 to limit the negative impacts of large-lot residential subdivisions, the Legislature finally abolished the opportunity to create large-lot residential subdivisions in the UT because of the negative impacts they have on all of the important UT values.

Among the solutions that the Legislature tried in that twelve year period included limiting the shape of the lots, disallowing them on lakes, and limiting them to a total of ten such lots per parcel. None of these changes succeeded in limiting the negative impacts of this type of development, so in 2001,

the Legislature adopted a provision limiting the use of lots these lots to “forest management, agricultural management or conservation of natural resources.” This change in law has successfully limited this type of needlessly damaging development.

While the current proposal is for 25 acre lots, not 40 acre lots, the impacts would be similar. Once again allowing large-lot residential subdivisions would be a giant step backwards in land use planning in the UT. The negative impacts on the natural resources, the character of the North Woods, and traditional forestry, agriculture, and recreational uses of the UT would be significant.

8. Some examples of where the flaws with the designation of primary and secondary areas lead to the designation of areas which are entirely inappropriate for commercial and residential development include:

- a. Elliottsville Plantation
- b. Herseytown
- c. Tomhegan
- d. Sandy Bay
- e. Bald Mountain
- f. Riley
- g. Freeman
- h. Madrid
- i. T3 R7 WELS
- j. T4 R7 WELS
- k. Albany
- l. Katahdin Woods and Waters Scenic Byway

This list is simply a partial list. There are undoubtedly other areas where the proposed development areas are inconsistent with the goals of locating development near existing development. Many other areas have been mentioned by others in oral or written comments.

Class 7 lakes

1. Class 7 lakes within the primary and secondary development areas would be vulnerable to development whether they currently have any development or not.

Within the primary and secondary development areas there are 194 class 7 lakes. These include lakes as small as Wheelock Lake at 116 acres and lakes as large as Moosehead at 74,890 acres. How many of these lakes are currently undeveloped is unknown. However, all of those lakes, even those lakes that are entirely undeveloped, would be vulnerable to development under this proposal because they are within the primary or secondary development areas.

2. There is no way to determine how many class 7 lakes outside the primary and secondary areas would be vulnerable to development.

There are 978 class 7 lakes outside of the primary and secondary development areas. The rules propose allowing “recreation-based subdivisions” within ½ mile of these class 7 lakes if they meet three specified criteria. However, there is no publicly available data that can be used to determine how many and which of the 978 lakes would meet the three criteria and therefore be vulnerable to development. These class 7 lakes include some of the most remote lakes in the state. This provision would allow development across the entire North Woods on lakes where Maine people hunt, fish, hike and camp.

3. The criteria for recreation-based subdivisions on class 7 lakes would not ensure that the proposed subdivision is of a similar scale and intensity as any existing development.

The criterion that requires “five existing dwelling units” is entirely insufficient to ensure that a future subdivision is appropriate. The five dwelling units could be seasonal camps with no power or running water, yet would satisfy this criterion for a 100 lot four-season subdivision with power and pressurized water. Unlike the existing adjacency requirements, the proposed criteria have no provisions to ensure that any future development would be of a similar “occupancy, scale and intensity.”

4. The proposed “recreation-based subdivision” provisions undermine the existing concept planning process (P-RP) and fail to provide compensating conservation protection.

It is unclear why there is any need for a new “recreation-based subdivision” provision given the existence of the concept planning process. Concept plans allow residential subdivisions in places that do not meet the adjacency provision. However, in concept plans, the waiver of adjacency must be matched by comparable conservation measures.

The proposed rules would undercut this requirement in the P-RP subdistrict. If these rules were to be adopted, it is highly unlikely that any residential subdivision developer would ever again engage in concept planning. This would result in scattered residential subdivisions with no compensating conservation measures.

Class 3 lakes

Many Class 3 lakes are not appropriate for the proposed expansion of development opportunities.

The state has 42 Class 3 lakes that were designated “potentially suitable for development.” Some of these lakes have existing development; others remain entirely undeveloped or have significant undeveloped sections of shorelines. This proposal would more than triple the area around these lakes that could be developed from 250 feet from the shoreline to 700 feet from the shoreline.

This dramatic expansion of development opportunities on these lakes is contrary to the lakes management plan which specifically stated that development on the shore of these lakes should not be used to justify further development in the area.

Some of these lakes that are completely undeveloped or have significant undeveloped shorelines and are unsuitable for the significant expansion of development opportunities include Pocumcus Lake, Bowlin Pond, Caribou Lake, Endless Lake, Fish River Lake, West Grand Lake, Horseshoe Pond, Middle Jo-Mary Lake, Onawa Lake, Pemadumcook Chain Lake, Big Lake, Brassua Lake, Indian Pond, Glazier Lake and Rocky Pond.

Subdivision Standards

1. General management subdivisions with limited environmental review would be allowed on hundreds of thousands of acres.

Under the proposed rules, general management subdivisions could be located in the general management subdistrict and would, therefore, not require a rezoning. By not requiring rezoning, these subdivisions would not be subject the environmental criteria normally reviewed during the rezoning process.

It is impossible from the information provided to determine exactly how many acres could be subject to this type of development. However, by allowing general management subdivisions in the primary areas within ½ mile of a public road (but not within ½ mile of a major water body), it is likely that the area includes hundreds of thousands of acres, in the range of 400,000 of the 824,000 acres of primary development areas.

This appears to be a vast expansion of the areas that are currently designated for “Level 2 subdivisions” (that are evaluated according to similar criteria.) There is no apparent reason why the opportunity for this type of residential development should be so greatly expanded. Due to the lessened environmental review, the large expansion of this type of subdivisions runs a significant risk of adverse impacts on Maine’s natural resources and the character of the UT.

2. Subdivision standards allowing developers to avoid the requirement to provide common open space if they locate near permanently conserved lands would attract development to those lands.

It is puzzling why the rules deem it desirable to attract recreation-based subdivisions to permanently conserved lands. Locating development on the doorstep of lands that have been deemed so important that they have been permanently protected would only serve to degrade the protected character of the conserved lands. It would result in more development and less conservation in locations of demonstrated conservation importance. This would be the opposite of the desired outcome for the UT.

Five year review

The proposal to review the draft rules in five years or after five rezonings in a county would be highly unlikely to be effective in allowing revisions to the proposed rules when adverse effects occur.

Once landowners have booked the increased value that would result from their lands being determined to be in a primary or secondary development area, there would be significant legal and political opposition and challenges to any decrease in those development opportunities. It would be much more appropriate for the LUPC to proceed with limited changes and add additional changes after a five year review if needed, rather than adopt major changes and attempt to roll them back when there are adverse effects.

In addition, the trigger of five rezonings per county fails to recognize that the county lines in the jurisdiction do not have any relationship to development patterns on the ground. Perhaps the best example of this is the Moosehead region where one side of the lake is in one county and the other side in a different county, yet the entire lake functions as one development region.

The Katahdin region is likewise split between Penobscot and Aroostook Counties. The region is currently engaged in a regional visioning/land use process that includes towns from both counties.

Response to the Maine Forest Products Council

Adopting the proposed rules while retaining the development opportunities provided by the existing adjacency rules would maximize the negative impacts of both the existing and the proposed rules.

The Maine Forest Products Council and some of its members argue that they should be able to retain the development opportunities they have under the current adjacency policy while supporting the additional development opportunities these rules would provide. This is a brazen attempt to simply maximize the development value of their lands with no concern for the impact of development on the natural resources, the forest-based economy, and the character of the UT. It would achieve none of the goals set forth for this rulemaking process and would, in fact, be entirely contrary to the goals set forth.

The path forward

We strongly urge the Commission to step back from these rules and consider other approaches to achieve the worthy goals of guiding development to existing developed areas with public services adequate to handle additional development and to protect the natural resources and character of the UT. To that end we recommend that the Commission engage in regional planning in those areas where

development pressures are likely to increase in the near future. The Katahdin region is the highest priority.

We also encourage the Commission to engage directly with those towns that border the jurisdiction, starting with the state designated service centers. Where those towns would welcome additional development within their borders, we encourage the Commission to adopt policies that will guide development into those towns. If the Commission believes it does not have the authority to engage in regional planning or to adopt policies that will guide development into the towns, we encourage the Commission to seek that authority from the Legislature. NRCM would be happy to work with the LUPC on those initiatives.

We also encourage the Commission to take the time to gather the data necessary to determine the impact of any proposed changes. Good land use planning is based on good data. Given the lack of significant development pressure, there is no apparent need to rush the rulemaking process. If the LUPC lacks sufficient funds or staff to gather necessary data, NRCM would be happy to help raise the needed funds.

In the meantime, **NRCM strongly encourages the Commission to maintain the one-mile-by-road interpretation of the adjacency principle.** While not perfect, it has worked well for many decades. It has succeeded in maintaining the natural resources and character of the North Woods that Maine people love. The existing policy has allowed Maine's North Woods to be one of the most globally significant, unfragmented blocks of temperate forest remaining in the world today.

Thank you for the opportunity to comment.



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