

Maine Land Use Planning Commission

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT AND SUMMARY OF COMMENTS

FOR AMENDMENTS TO

CHAPTER 10: LAND USE DISTRICTS AND STANDARDS REGARDING

RULE REVISIONS to REFINE THE LOCATION OF DEVELOPMENT CRITERIA AND REVISE PRIMARY AND SECONDARY LOCATIONS IN THE MOOSEHEAD LAKE REGION

December 14, 2022

STATUTORY AUTHORITY:

12 M.R.S. § 685-A, Subsection (1)
12 M.R.S. § 685-A, Subsection (7-A)
12 M.R.S. § 685-A, Subsection (8-A)
12 M.R.S. § 685-C, Subsection (5)(A)

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

Overview

The primary objective of this rulemaking is to implement actions stemming from the 2020-2022 Moosehead Regional Planning Process. The amendments allow for the modification of Primary and Secondary Locations, which are part of the Commission's application of the Location of Development policy (also called the adjacency principle), resulting from a balanced and comprehensive regional planning process. The proposed revisions also remove Primary and Secondary Locations in the Moosehead Region (thereby limiting the potential for rezoning for certain types of commercial and residential development) in ten minor civil divisions and in certain shorefront areas around Management Class 3 (MC-3) lakes. The amendments also reorganize and clarify the section to better distinguish the Primary and Secondary Locations designated based on application of the Location of Development policy, versus changes made as the result of a balanced and comprehensive regional planning process.

Key changes to the rules include:

- Primary and Secondary Locations. The revisions modify Section 10.08-A of Chapter 10 to allow for adjustments to the locational factors that apply to adoption or amendment of land use district boundaries through a comprehensive regional planning process. Examples of regional planning processes include prospective zoning or community guided planning and zoning as described in the Comprehensive Land Use Plan and applicable Commission guidance documents.
- Moosehead Region. The revisions remove Primary and Secondary Locations from the following minor civil divisions (MCDs) and Management Class 3 lakes in the Moosehead Region:
 - Big Moose Township (*entire MCD*)
 - Bowdoin College Grant West (*entire MCD*)
 - Lily Bay Township (*entire MCD*)
 - Long Pond Township (*entire MCD*)
 - Misery Township (*entire MCD*)
 - Misery Gore Township (*entire MCD*)
 - Rockwood T2R1 NBKP (*entire MCD*)
 - Sandwich Academy Grant (*entire MCD*)
 - Sapling Township (*entire MCD*)
 - Taunton and Raynham Academy Grant (*entire MCD excluding the Primary Location around the portion of Brassua Lake within the township*)
 - Indian Pond (*entire shoreline*)
 - Brassua Lake (*Portions of the shoreline in Brassua Township, Rockwood Strip T2 R1 NBKP, and Sandwich Academy Grant*)
 - Long Pond (*Portion of shoreline in Long Pond Township*)

This rulemaking implements the Location of Development component of the revised Moosehead Regional Planning Package proposed in September 2022. Zoning Petition 791 implements the companion prospective zoning component of the proposal and includes information and public comments related to the specific areas proposed to be rezoned for development as a result of the planning process.

Background on the Location of Development Rules

The Location of Development policy provides an initial screen for where new zones for development of a residential subdivision or commercial businesses¹ can be proposed. The policy guides most development toward existing development and away from undeveloped areas. This helps lower tax burdens, ensures land remains available for forestry, agriculture, and recreation, and promotes the health of existing communities.

The Location of Development policy changed fundamentally with the 2019 Adjacency and Subdivision Rulemaking. It shifted to a new system that:

¹ Resource dependent businesses can locate outside of Primary Locations. Examples include operations that process forest products to reduce bulk, gear rental for recreation in areas further from town, agritourism, and trail centers that need certain kinds of terrain and open space to operate.

- Pre-identifies locations (called Primary and Secondary Locations) suitable for most types of development near a town where services can be provided based on distance from rural hubs and public roads; and
- Allows for recreation-dependent or resource-dependent development to locate farther from town (and outside of Primary or Secondary Locations).

During the 2019 Adjacency and Subdivision Rulemaking process, Primary and Secondary Locations were added or removed in specific places based on local or regional input about service provision, access, and other topics. When the 2019 Location of Development rule changes were adopted, the Commission recognized that further refinement would likely be necessary in some regions, and if undertaken should be based on a community planning process.

The Moosehead Regional Planning Project has been a community-guided planning process resulting from the unexpected termination of the Moosehead Lake Region Concept Plan, which encompassed over 400,000 total acres. The Plan and accompanying permanent conservation easement were influential in economic development and other planning efforts in the region in recent years. At the time of the 2019 Adjacency rulemaking, the Concept Plan was in place. When the Concept Plan was terminated, a large amount of acreage formerly designated for future development became available for consideration in a regional planning process. Regional planning was possible because the acreage was no longer pre-determined for development, and because the landowner agreed not to submit any development proposals to allow for the Commission to complete a regional planning and zoning process.

Planning Process Summary

When the Moosehead Lake Region Concept Plan was terminated in July of 2020, the entire area subject to the Concept Plan, including identified development areas, was rezoned to the General Management Subdistrict, or to a range of protection subdistricts based on resources present such as streams, shorefront, steep slopes, wetlands, and wildlife habitat. As part of the termination process, Weyerhaeuser Company and Weyerhaeuser NR Company, the property owner, agreed to provide an opportunity for residents and stakeholders to participate in planning for future land uses in these areas. The goal was to seek input about what types of development would be suitable in certain areas and to ensure adequate protections for highly valued natural resources. LUPC staff, with stakeholder input, designed and led a regional planning process with a goal of final Commission approval of any zoning changes or rule revisions by the end of 2022.

Staff first obtained feedback from the community on the proposed regional planning process, including geographic scope, community concerns, and areas appropriate for conservation or development. This feedback was used to develop a map-based online survey to gather more in-depth information from the public and other stakeholders about locations that matter to them. The initial feedback and survey data were used to develop four Discussion Scenario Maps of future land use scenarios involving zoning changes and/or rule changes (e.g., removal of Primary or Secondary Locations). In the fall of 2021, staff sought community feedback on the Discussion Scenario Maps by posting them to the project website and hosting both in person and virtual public meetings in the Moosehead Region.

Feedback on the Discussion Scenario Maps from written comments and public meetings, combined with additional research and deliberation, were all synthesized to develop a draft

Moosehead Regional Planning Package that was presented to the Commission at its regular business meeting on May 11, 2022. With Commission input, during the summer of 2022, staff sought community feedback on the draft package through written comments, public meetings, and targeted outreach to potentially affected landowners, and then used this feedback to refine the proposals. At its regular business meeting on September 12, 2022, the Commission posted the revised Moosehead Regional Planning Package to a 30-day public comment period.

Changes to the Location of Development Policy in the Moosehead Region

Removing Primary and Secondary Locations from minor civil divisions (MCDs) in the Moosehead Region was broadly supported as a strategy through public and stakeholder comments on the Discussion Scenarios. Many commenters recommended locations in additional MCDs be removed beyond those suggested in the Scenarios. Based on this feedback, and on subsequent community outreach, the rule revisions remove Primary and Secondary Locations in ten MCDs, along with shorefront areas on several lakes in the region. The goal is to minimize the intensity and rate of future residential and commercial development in these locations.

To balance removal of Primary and Secondary Locations in the region, the Commission will simultaneously consider rezoning six locations to development subdistricts to accommodate future growth and help concentrate development near Rural Hubs as desired by stakeholders. By taking this balanced approach, the Commission is guiding development to pre-identified locations in the region, and limiting the types, intensity, and rate of development that can occur outside of those locations.

The minor civil divisions and the factors considered/basis for removal for the Moosehead Region are described in Table 1 below.

Table 1. Minor Civil Divisions Removed from Primary and Secondary Locations

Minor Civil Division	Resources Present	Factors Considered/ Basis for Removal
Big Moose Township	Moosehead Lake, Big Moose Mountain, Burnham Pond, Indian Pond, Mountain View Pond, East Outlet, Eagle Rock Trail, Big Moose Trail	<ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources • Existing and proposed development zones can accommodate growth near Greenville, and which may allow for businesses serving visitors to the ski area • Limits the intensity of any future development on portions of the back side of the mountain • Some rezoning options remain available for the ski area (e.g., expanding the D-GN or rezoning to D-PD)
Bowdoin College Grant West	Upper Wilson Pond	<ul style="list-style-type: none"> • No public road access in existing Secondary Location • Limited area available for development
Lily Bay Township	Moosehead Lake, Lily Bay State Park, Burgess Brook, North Brook, Lily Bay Brook, Tussle Lagoon	<ul style="list-style-type: none"> • Broad public support for removal • Broad support for limiting development potential in Lily Bay Township

Minor Civil Division	Resources Present	Factors Considered/ Basis for Removal
Long Pond Township	Long Pond, Moose River, Mountain Brook, Twelvemile Bog, Fogg Pond, Churchill Stream, Northern Forest Canoe Trail	<ul style="list-style-type: none"> • Support for limiting development on the southeastern portion of Long Pond • Current Primary and Secondary Locations include sensitive resources (e.g., rare plants, and an extensive complex of wetlands) • Limited area available for development
Misery Township	North Branch Stream, Misery Stream, Misery Ridge	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Misery Gore Township	West Outlet, Misery Stream, Misery Ridge	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Rockwood T2R1 NBKP ²	Brassua Lake, Demo Pond, Twelvemile Bog, Stony Brook	<ul style="list-style-type: none"> • Limited access to existing Secondary Location • Remote location • Area unavailable for development
Sandwich Academy Grant	Brassua Lake, Moose River, Long Pond Mountain	<ul style="list-style-type: none"> • Removal of Primary and Secondary Locations in adjacent townships • Limited area available for development
Sapling Township	Moosehead Lake, East Outlet, Indian Pond, West Outlet, Misery Ridge, Churchill Stream	<ul style="list-style-type: none"> • Broad public support for removal • Limited area available for development
Taunton and Raynham Academy Grant	Blue Ridge, Brassua Lake ³ , Moosehead Lake, West Outlet, Misery Stream	<ul style="list-style-type: none"> • Broad public support for removal • Current Primary and Secondary Locations include sensitive resources (Blue Ridge, West Outlet) • Development zones added to focus new development near Rockwood

This amendment to Section 10.08-A,C of Chapter 10 also removes Primary Locations around certain MC-3 lakes, or around portions of certain MC-3 lakes within designated MCDs, as a result of the formal regional planning process. The Lakes Management Program, which was adopted by the Commission in the early 1990's after extensive public input, is intended to provide comprehensive protection for lakes (2010 CLUP, pg. 288), and applies jurisdiction-wide. Part of providing comprehensive protection for lakes includes guiding development toward suitable waterbodies, and away from unsuitable waterbodies. Management classifications assigned to specific lakes were intended to be permanent and stable over time and are one of the mechanisms that implement this goal.

The establishment of Primary Locations around MC-3 lakes is a result of the 2019 Adjacency and Subdivision Rulemaking and was intended to implement the "adjacency waiver" described in the Commission's Comprehensive Land Use Plan (CLUP) for proposals to rezone for development if

² Rockwood consists of two MCDs, and the one proposed for removal is the western MCD

³ The Primary Location along the shorefront of Brassua lake remains in place in Taunton and Raynham Academy Grant.

certain criteria can be met (e.g., soils must be suitable and the proposal must not result in water quality impacts). This concept was broadly applied to all MC-3 lakes throughout the jurisdiction, including Indian Pond, Long Pond, and Brassua Lake in the Moosehead Region.

Based on the more detailed information about these waterbodies obtained during the planning process, this rulemaking removes the Primary Locations around all or portions of these MC-3 lakes and is an appropriate fine-tuning of the Location of Development policy based on a robust regional planning process. Specific information about changes for each of these lakes is presented in Table 3 below.

Table 3. Certain MC-3 Lake Shorefront Removed from Primary Locations

Lake	MCDs included	Factors Considered/ Basis for Removal
Indian Pond <i>(entire waterbody)</i>	Big Moose Township, Chase Stream Township, Indian Stream Township, Sapling Township	<ul style="list-style-type: none"> • Critically important resource for remote recreational tourism • East and West Outlets converge in northeastern end • Limited area available for development • Wildlife value and diverse riparian area
Brassua Lake <i>(portions of waterbody)</i>	Brassua Township, Rockwood Strip T2 R1 NBKP, Sandwich Academy Grant	<ul style="list-style-type: none"> • Part of undeveloped “western room” • Wildlife habitat value • Limited area available for development
Long Pond <i>(portion of waterbody in LUPC jurisdiction)</i>	Long Pond Township	<ul style="list-style-type: none"> • Remote recreation value • Current Primary Location includes sensitive resources (rare plants) • Wildlife habitat value • Limited area available for development

PUBLIC NOTICE OF RULEMAKING⁴

The Moosehead Regional Planning Project has been in progress since July 2020. During that time, eight community meetings, either in-person or virtual, have been held to gain input into the planning process. Each of these meetings was publicized through multiple methods: website postings, GovDelivery notices, printed posters, or targeted mailings. Twelve GovDelivery notices have been sent during the course of the planning process. Early in the planning process, postcards advertising an online survey and providing agency contact information were mailed to property owners in the LUPC service area in the Moosehead Region. Over 350 people responded to the online survey, offering over 550 individual comments. In addition, printed notices regarding the proposal were sent to approximately two hundred property owners in the region potentially affected by the rule changes proposed as part of the planning package. At a meeting held on September 12, 2022, the staff presented to the Commission the draft rule revisions and requested to post the revisions to public

⁴ The draft rule changes were included in the draft Moosehead Regional Planning Package that was posted for an informal public comment period. Multiple community meetings, email notices, printed mailings, and website updates occurred during this part of the planning process.

comment. The Commission voted to post the revisions for a 30-day public comment period and a 7-day rebuttal period.

Specific to this formal rulemaking process, notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on September 28, 2022. The Secretary of State's notice appeared in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Sun-Journal, and the Central Maine Morning Sentinel. E-mail notice via GovDelivery or direct e-mail was also provided to approximately 2,793 individuals. These included the Commission's mailing list of persons wishing to be contacted regarding the Moosehead Regional Planning Project. The notice of the rulemaking and the proposed revisions were also posted on the Commission's web site. Because the Moosehead Regional Planning Package includes a rezoning component, on September 28, 2022, notice was also sent by postal mail to all persons owning or leasing land within 1,000 feet of the proposed areas for rezoning, the County Commissioners of Piscataquis and Somerset Counties, the Town of Greenville, and Beaver Cove Plantation. The record remained open until October 31, 2022, to allow interested persons to file written statements with the Commission, and for an additional seven days until November, 7, 2022 to allow interested persons to file written statements in rebuttal of statements filed up to October 31, 2022.

COMMENTS AND RESPONSES⁵

1. **Topic:** Comments Regarding Additional Protections

Multiple commenters expressed a desire for more protections for fish and wildlife in the region. Commenters also noted the economic importance of keeping the northern forest intact for recreation and tourism, and the impact inappropriately located development could have on the region's dark skies.

Commenter(s): D. McCormick; M. Keady; N. Hathaway; R. Osann; S. Scholar; T. Allen; R. Bourassa; E. Emrich, D. Wheeler; G. Johnson; A. Harris; S. Neily

Response: LUPC protection subdistricts are specialized zones designed to limit impacts to specific resources such as, but not limited to, shorelines, aquifers, steep slopes, significant wildlife habitat, or wetlands. Areas included in these specialty subdistricts must meet specific criteria. Proposed development must be in compliance with LUPC standards to protect natural and cultural resources at the site level. As part of the LUPC permitting process, natural resource agencies review and comment on development permit applications to ensure that significant resources are not adversely impacted by proposed development.

Regarding the economic importance of keeping the northern forest intact and maintaining the dark night sky, staff believe the implementation of this Package will focus more intensive development as desired by creating development subdistricts near hubs and removing the potential for rezoning to more intensive development subdistricts in certain MCDs. The region also includes nearly 400,000 acres of permanently conserved lands that will effectively limit fragmentation as a result of development. In terms of lighting, the LUPC has standards for lighting in place, applied during the permitting process, to minimize impacts from development that does occur. The LUPC will be evaluating the efficacy of these standards in the near future.

Action(s): No action taken.

⁵ Comments received during the planning process and on the draft Moosehead Regional Planning Package are summarized in the September 2022 Commission memorandum.

2. **Topic:** Comments in support of the proposed rule changes

Multiple commenters expressed support for the proposed rule changes and the Moosehead Regional Planning Package as a whole.

Commenters: E. Dubois; D. McCormick; D. Smith; K. Young; M. Keady; M. Tupper; R. Osann; S. Scholar; T. Allen; R. Bourassa; D. Boxer; L. Woods; S. Gilpin; D. Wheeler; V. Lenk; L. Taylor; A. Harris; M. Sturm, NRCM; E. Townsend, AMC; G. Johnson; J. Whitney; S. Neily; S. Farrand

Response: The Commission acknowledges and appreciates the public feedback on this proposed rule change.

Action(s): No action taken.