

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

**REVISED APPLICATION OF THE ADJACENCY PRINCIPLE &
SUBDIVISION STANDARDS**

Draft - March 25, 2019

STATUTORY AUTHORITY: *12 M.R.S.A. §685-A(1), (3) and (7-A)*

EFFECTIVE DATE OF THE RULE AMENDMENT:

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FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

The Maine Land Use Planning Commission adopts rule changes that guide the location of zoning subdistricts for new development, including through refinement of the adjacency principle, and that update the standards for how subdivisions may be developed. This rulemaking is intended to improve economic opportunity, encourage the health of service providing communities and the surrounding region, and protect the environmental quality and habitat and the unique character of lands in the area served by the Commission, an area that comprises nearly half of the State of Maine.

1. Purpose and Objectives of the Adjacency Principle

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). This long-standing policy guides new zones for 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 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 2010 Comprehensive Land Use Plan (CLUP) describes the adjacency principle and how it should be applied (CLUP, pg. 62), along with its deficiencies (CLUP, pg. 120).

The Commission has used the adjacency principle as a tool to guide new zones for development to locations that satisfy the sound planning and zoning principles articulated in the Statute and in the CLUP. These principles can be thought of as objectives that need to be achieved when locating a new zone for development.

Objectives:

- Encourage appropriate residential, recreational, commercial and industrial uses
- Encourage well-planned and managed multiple uses, while discouraging intermixing of incompatible uses
- Support and encourage Maine’s natural resource-based economy and strong environmental protections
- Promote economic health of development centers, and encourage and facilitate regional economic viability
- Ensure that the provision of public services matches the new development, or that any needed additional service capacity may be added efficiently and economically over time
- Minimize development near productive natural resource based activities

- Protect resources and values of the jurisdiction
- Ensure that the anticipated future development is in keeping with the character of the area
- Ensure orderly growth by pacing development
- Allow for incremental assessment of impacts from development (the resources and values of the jurisdiction may be better supported, and development may be better planned, by providing an opportunity for interim assessments of impacts because future phases of development can then consider those impact assessments).

In the past, the Commission has interpreted the adjacency principle to mean that areas to be rezoned for development must be within one road mile of existing, compatible development (CLUP, pg. 62). However, the CLUP recognizes that this application of the policy has significant flaws and calls for it to be further refined (CLUP, pg. 120, 128).

The adopted rule revisions represent a more nuanced approach to applying the adjacency principle than the one-mile rule of thumb to better meet the policy objectives described above.

2. Why Make Changes?

a. The Adjacency Principle

Prior to adoption of these new rules, a petitioner had to demonstrate that new zones for commercial development and residential subdivisions would be located within one road mile of existing compatible development to satisfy the adjacency screen and begin the rezoning process. This was called the one-mile rule of thumb. This application of the adjacency principle tied the location of new development to existing, scattered development patterns, and was too limiting for commercial development that requires proximity to a natural or recreational resource.

Residential Development

Homes and camps are common in the Commission's service area, especially around lakes, and tend to be scattered across the landscape (like freckles). The policy that has been in place since the 1980s says that new zones for residential subdivisions should be within a mile of an existing group of homes or camps, no matter where they are located. This is referred to as the "one-mile rule of thumb."

Because of the historical pattern of development, the one-mile rule of thumb, over time, leads to more development in scattered locations, which can be hard to serve for fire and ambulance providers, and can result in habitat fragmentation and loss of productive forest or farmland. Existing, dispersed development also provides a springboard for new development to occur in remote areas or on undeveloped lake shores. This leapfrogging development can affect the cost of providing public services (e.g., fire protection, ambulance) and impact forestry operations, wildlife habitat and the character of the UT.

The change adopted by the Commission address the deficiencies of the one-mile rule of thumb approach that supported perpetuation of a dispersed development pattern and leapfrogging.

Lack of Flexibility to Locate Commercial Development

The one-mile rule of thumb is not a nuanced enough tool to effectively locate new types of commercial uses, particularly those that need to be farther from town and closer to natural or recreational resources. In some cases, the one-mile rule of thumb prevents rezoning for business in locations that would meet the Commission’s policy objectives, but which aren’t within a mile of other businesses. The Commission’s past application of the adjacency principle also did not distinguish between different types of commercial uses, which led to difficulty in applying adjacency in a rational and predictable manner.

b. Subdivision Layout and Design Standards

Prior LUPC layout and design standards focused on a community centered design concept as a way to ensure subdivisions fit harmoniously into the natural environment by avoiding linear placement of lots along roadways and shorelines, and offered little flexibility for the wide variety of settings that exist in the Commission’s service area. Applicants, as well as staff, were often frustrated that the standards could not be easily adapted for different circumstances. Some stakeholders expressed concern that the standards needed significant improvement. In a February 2013 review of the work before the Commission, Commissioners indicated that a review of the Commission’s subdivision standards was a priority, and expressed interest in gathering stakeholders and soliciting their input. During facilitated stakeholder meetings held in 2014 and 2015, participants agreed that the LUPC subdivision layout and design standards were a high priority for review and possible revision, and indicated the standards did not fit the unorganized territories. One of the overarching themes from stakeholder discussions, as described in the *Report of Stakeholder Meeting #2*, prepared by the facilitator, was:

“There was a broad sense that there is something of a mismatch between what the rules require and encourage and what the market for lots in the Unorganized Territory is looking for. There were a number of comments about buyers wanting larger lots with privacy while the rules require or encourage subdivisions with small lots and shared and/or community facilities.”

The stakeholder high priority policy issues relating to subdivision layout and design¹ were:

- The appropriateness of the standards for the area served by the Commission,
- Making the standards clearer while incorporating more flexibility,
- Allowing more design options for different areas/different regions of the UT,
- Determining where community-centered design or the grouping of lots should be required,
- Provisions for the creation of large lot subdivisions to meet market demand, and

¹ *Report of Stakeholder Meeting #1*, prepared by Planning Decisions, November 4, 2014, Page 5.

- Deciding when back lots or shared water frontage should be encouraged or required.

In response to stakeholder input, the primary objectives for the changes to the Commission’s subdivision layout and design standards were to improve the suitability of those standards for the area served by the Commission, incorporate more flexibility, and allow more design options for different areas/ regions of the unorganized territories.

3. Adjacency and Subdivision Review Process

The Commission began work on review of the subdivision standards in 2014, and has worked on refining application of the adjacency principle since 2016. The process has included many opportunities for stakeholders and members of the public to participate and provide feedback. The Commission conducted surveys, focus groups, dozens of public meetings with stakeholders, municipal officials, and interested individuals, as well as two formal public hearings – one in June 2018, and one in January 2019.

For a detailed description of the process, public comment opportunities, and outreach efforts, please see *Appendix A: Summary of Outreach and Opportunity for Public Input Adjacency and Subdivision rule review*.

4. Adjacency Principle Policy Development

The adjacency principle is, and has been, a central policy for locating new development in the Commission’s service area. Past versions of the CLUP have included references to this important policy, as well as recommendations that the Commission come up with a better way to apply adjacency than the one-mile rule of thumb.

The one-mile rule of thumb is a blunt instrument and does not recognize differences between uses and site characteristics, and ties future zoning subdistrict to existing development, even though much of the existing development is scattered and unplanned. Because it is inflexible, the Commission has created a series of work-arounds and patchwork fixes in recent years to guide the location of different types of uses that are a natural fit in the UT, but may not meet the one-mile rule of thumb. Some examples include creation of eligible areas for rural businesses in Aroostook and Washington counties, zones for grid-scale solar farms and gravel pits, and new zones for recreational lodging facilities. The repeated need for patchwork underscored the value of looking at refinement of the Commission’s approach to adjacency more comprehensively.

a. Improving Adjacency: Comprehensive Approach

During the subdivision rule review, participants in the process indicated that an important issue for the Commission to work on was where residential subdivisions could locate. Rather than create another patch that focuses on a single use – residential subdivision, the Commission took a comprehensive look at location issues for all types of development. The idea was to avoid ending up with a system that is internally inconsistent and driven by the needs of specific uses and instead focus on the overall goals of the policy.

In 2016, the Commission slowed review of the subdivision standards while it worked to refine the adjacency principle. Review and update of the standards for subdivisions picked up again

later in the process and the revised subdivision standards are an important part of the overall rule package. Where development can locate is strongly linked to review of potential impacts to nearby resources, and how development would occur. Both concepts are addressed in the land use standards that are adopted here.

b. A New Planning Framework

Based on information from a wide cross-section of stakeholders, particularly people who live, work, own property or recreate in the UT, the Commission created a new planning framework for applying the adjacency principle. The new system is fundamentally different from the one-mile rule of thumb, and is designed to better accomplish the objectives of the policy.

In developing the new planning framework, the Commission considered factors that influence where development locates, such as public roads, emergency services, retail, electricity, workforce, and broadband, among others. It makes sense for uses that depend on proximity to these factors to locate closer to town. However, there are other uses in the UT that require access to specific recreational or natural resources and, as a result, may need to locate farther from town.

With these factors in mind, the Commission set about creating a new system that would:

- Guide most development near town where services can be provided efficiently;
- Limit new development farther from town, while recognizing the changing economy and the need to increase flexibility for resource-based commercial activities;
- Continue to protect the environment and natural resources; and
- Improve predictability of rezoning for property owners and the public.

The goal of locating most development near towns, townships and plantations with more substantial economic activity is to provide services in a cost-effective manner and avoid the negative effects of development in distant areas. The negative effects of distant development include increased costs for services such as fire, ambulance, sheriff, solid waste, education, and roads; disruption in land needed for timber, agriculture and recreation economies; impacts to wildlife habitat; uncertain future private road access; and reduced viability of local communities that need a “critical mass” of people in the area to support hospitals, schools and other community services. Finally, the new system is designed to be predictable for petitioners, the public, and the Commission, by being based on factors that are easily measured without expert assistance, and reducing the amount of discretion required.

The Commission anticipates that this new approach will encourage greater collaboration between the Commission and service-providing municipalities, and will give local service providers a strong voice in the rezoning process. In some regions or townships, a more tailored plan may be warranted based on local needs and circumstances. The Commission encourages interested local stakeholders to work with the Commission to initiate a discussion about the potential for regional planning processes and pursue any changes to the zoning and regulatory system that are needed for their area.

c. New Regulatory Tools to Implement the Planning Framework

The new system for applying the adjacency principle consists of **(1) a set of general criteria in rule to guide the adjacency policy system and (2) more specific policies and regulations for certain types of uses.** It emphasizes using proximity to public roads and communities that provide services to locate most types of residential subdivision and commercial activities.

1) General Criteria Apply to All Types of Development

The general criteria serve two purposes. The first is to summarize in rule the locational objectives that the adjacency principle is meant to achieve. The second purpose is to serve as a set of decision criteria for the location of rezoning for uses that require access to three phase power. Commercial and industrial uses that rely on three phase power are developed infrequently in the UT. However, they may be an important part of the UT's economic future. Proposals to rezone for this type of use would be considered on a case-by-case basis using the general criteria.

The general criteria require that proposed zoning subdistricts for new development:

- Be in a place where emergency services can be provided;
- Be compatible and not result in conflicts with other nearby uses;
- Not unreasonably alter the character of the area;
- Be located in the primary or secondary locations in most cases; and
- Include a legal right of access to property for lot owners.

When a new development zone must be in the primary or secondary locations as a result of 10.08,B,2,d, the other general criteria still apply to ensure the provision of emergency services, a good fit for the area, and legal right of access. The evaluation of compatibility and effects on character at this stage of review is meant to be high-level, as the particulars of a development will be reviewed in increasing detail: 1) in the “no undue adverse impact” prong of the rezoning review; and 2) at the permit review stage. The application of compatibility and character analyses as part of the adjacency review in 10.08,B,2,b and c is intended to capture the proposed zone's effect on the broader community and surrounding area, rather than be a detailed analyses of permitting-level details.

2) Specific Regulations to Guide Location of Uses

Specific regulations to guide the location of uses includes two basic approaches: the overlay approach for uses that can locate near town; and the impacts-based approach for uses that are farther from town.

i. Overlay approach: Primary and Secondary Locations

The overlay approach proactively directs most zoning subdistricts for development toward existing communities, instead of reactively requiring that it be near existing compatible development, which can be located anywhere. These rules establish “rural hubs” and “primary

locations” and “secondary locations” in certain places. Rural hub is a designation for a community that provides services, such as fire and ambulance, to nearby UT areas. The rural hub designation does not create any new responsibilities for that community, it is simply a way for the Commission to understand where services are most likely available, and where there is some existing population and activity. Primary and secondary locations are a new tool that identifies areas eligible for rezoning for residential subdivisions and commercial businesses. They are not zones, but rather a series of measurements and criteria that define where someone could apply for a new development subdistrict.

Primary locations are within 7 miles of the boundary of a rural hub and within one mile of a public road; within a town or plantation and within one mile of a public road; or within 700 feet of a management class 3 lake. Primary locations allow for rezoning applications for residential subdivision and commercial activity, as well as subdivisions by permit in select locations. Secondary locations are within 3 miles of a public road and in a town, township or plantation that touches a rural hub. Secondary locations allow rezoning applications for residential subdivision. Primary and secondary locations are adjusted in the rule for local circumstances by adding or removing whole towns, townships or plantations.

The Commission produced maps that approximately illustrate the numeric portions of the primary and secondary locations criteria, however, the rule text determines the actual extent of those locations. The maps are illustrative to assist the public in understanding where primary and secondary locations could be established, based on the data available today.

Primary and secondary locations:

- Establish greater flexibility in where the Commission will consider petitions to rezone for development, but only in certain places near communities that provide services to communities in the UT;
- Include areas near public roads and hub towns where emergency services can be provided efficiently;
- Provide a predictable set of metrics that anyone can use to determine when a property is in an area where rezoning may be pursued;
- Match up well with the existing pattern of development in the Commission’s service area;
- Exclude areas where road access is limited by barriers such as waterbodies, Interstate 95, existing road networks, or topography, which may require first responders to travel long distances around to get to emergencies.

Primary and secondary locations incentivize new development in areas close to rural hub communities that provide services and where it is less likely to cause problems with disrupting large areas for forestry, agriculture, recreation, and habitat. Distance measures from rural hubs and public roads were chosen based on feedback from public officials about realistic emergency services distances and cost-effective public service provisions. Through the rulemaking process the initial measures were refined further in response to feedback from stakeholders and comments. (See Section 9, pg. 32)

The primary and secondary locations incorporate far more land area than will be needed for development in the foreseeable future. This is not a flaw in the system – rather, it provides general guidance about suitable locations, while leaving the specifics of exactly where a particular development might locate to be worked out based on the circumstances at the time of application. For example, in the Aroostook County Community Guided Planning and Zoning process which concluded in 2016, the regional stakeholders identified over 290,000 acres to include as eligible for rural business zoning (the D-RB subdistrict). Since that time, only 2 of those acres have actually been rezoned to D-RB. Broad frameworks such as adjacency or the D-RB serve as a screen, but do not create new demand for development, and subsequent steps in the review process for rezoning petitions and permits go well beyond that broad screen and look closely at the circumstances of each potential development location.

The rule revisions also allow for consideration of rezoning for “low density” residential subdivisions that have lots in the 11-25 acre range in the primary or secondary locations. In this rule, low density subdivisions have their own zone, and that zone is only allowed in certain places that will minimize fragmentation. Low density subdivision zones must be in primary or secondary locations, but they must also be away from waterbodies and areas adjacent to rural hubs, which may be better suited to denser residential development.

In addition to limits on the location of new zones for low density residential subdivisions, the rules adopted by the Commission have detailed permitting standards for this type of residential development that, for example, control the location of building envelopes and minimize road length. Standards like these provide for retention of large contiguous undeveloped areas within the subdivision.

The provision made for low density subdivision in the rulemaking is in stark contrast to statutory large lot exemptions (e.g., 40-acres lot exemption) of the past. Previously allowed exempt large lot divisions could occur in any location (there was no zoning review) and could be laid out in any manner (there was not subdivision permit review). In the absence of any review, large lot divisions were uncontrolled, and in some cases poorly designed. The adopted rule imposes strong standards to ensure that type of fragmentation and sprawl are not repeated. The Commission concludes low density subdivisions can be beneficial because they provide an opportunity for traditional development patterns that would support small woodlots and family farms. Allowing for this type of development through subdivision provides the Commission an opportunity to review design characteristics of the development, rather than the haphazard creation of large lots through the “2-in-5” land division process.

ii. Impacts-based approach: areas away from town

The new planning framework recognizes that some forms of commercial or residential development may need to locate near natural or recreational resources in order to be successful. This may necessitate locating outside the primary and secondary locations. These uses are addressed in the rule through an impacts-based approach. The impacts-based approach is tooled differently for residential and commercial development, and includes specific standards and locational requirements for each type of use. Home-based businesses, agritourism, and on-farm processing activities are also regulated through an impacts-based approach.

Impacts-based residential: Camps are common on lakes in the Commission’s service area. This type of development provides a recreational experience that is desirable to some property owners. The rule revisions seek to continue to allow camp subdivisions outside of the primary and secondary locations, but proactively direct it toward lakes that are already developed and away from undeveloped lakes.

Guiding development to waterbodies that already have development, and to trailheads where users are expecting a developed experience, is preferable to use of the one-mile rule of thumb which can allow “leapfrogging” onto undeveloped lakes. That prior policy considered proximity to existing compatible development, but not overall suitability of location, and had the potential to lead subdivision development into undeveloped areas and away from services.

The new system limits rezoning for residential subdivision outside of the primary or secondary locations to:

- Lakes that are already developed, or lakes that have been identified for development in the Commission’s Lakes Management Program; and
- Trailheads for permanent trails that serve vehicular or equestrian users.

See the lakes policy section of this document for more information.

Impacts-based commercial: Not all commercial uses can locate “near town” in a primary or secondary location, and the Commission’s regulations must accommodate reasonable uses in a thoughtful manner to support Maine’s changing economy. Some important commercial uses are resource dependent. Examples include temporary or permanent facilities that process forest products to reduce bulk and make them cost-effective to transport; extraction of natural resources such as water and gravel; the rental of gear on-site for recreation in areas that are distant from town; and trail centers that need certain kinds of terrain and a lot of open space to operate. The Commission recognizes that these types of uses may need to locate away from town, but seeks to guide them to places where they do not undermine the quality of the surrounding natural or recreational resources, or create a burden for service providers.

The rule identifies types of locations for each use and establishes criteria. For example, businesses that supply recreational day users with gear or food could locate near busy multi-use trail heads or boat launches, so long as there is enough space for parking and activities would not create a problem for neighboring uses or resources. The rule also excludes recreation supply businesses from certain locations to protect remote lakes and existing recreational lodging facilities.

Home or Farm-based Commercial: The rule revisions also allow for a modest expansion of the area in one’s home that can be dedicated to a home-based business, and for additional opportunities to pursue processing and agritourism activities on a working farm in places where activities will not result in land use conflicts. Under the one-mile rule of thumb, agritourism or other commercial activities, which fit well on a farm but may not traditionally be associated with “farming,” were limited to places within one mile of existing compatible development. This revised rule allows for agritourism and processing on all farms with appropriate permit requirements, depending on the scale of the activity.

3) Lakes Policy

The Commission adopted a lake classification system in 1990, which identifies management goals for the lakes in the Commission's service area. This policy has been a cornerstone of the Commission's regulations, and the rule adopted today is consistent with the lakes management system, which is included in the CLUP and the Commission's Chapter 10 rules. The lake classification system describes seven classifications, and assigns each lake to one of the classifications. Lake classes 1, 2 and 6 include approximately 240 lakes that are remote, high value and inaccessible, or have exceptional cold water fisheries. The Commission's Chapter 10 rules and the classification system prevent or significantly limit most development near these lakes. The adopted rule does not alter the protection of these lakes. Lake classes 3, 4 and 5 include approximately 100 lakes that are already developed (classes 4 and 5) or are identified as potentially suitable for development (class 3). Prior to the present rulemaking, the Chapter 10 rules and the classification system encouraged or allowed development near these lakes. For example, class 3 lakes had an adjacency waiver and were exempt from the one-mile rule of thumb.

Over 1,100 lakes are identified as class 7. The Commission's rules and the lake management classification system neither encourage nor discourage development on these lakes. Instead the Commission relies on the circumstances at the time of application for making a determination associated with the development proposals on these lakes. The adjacency principle has historically been a significant factor in which class 7 lakes are eligible for rezoning.

Under the one-mile rule of thumb, new zones for subdivisions could be up to a mile away from existing groups of homes. If a class 7 lake was developed with a cluster of camps, this cluster could support rezoning to allow subdivision. Residential subdivision development also could "leapfrog" a mile at a time and spread to undeveloped or lightly developed Class 7 lakes and ponds that are distant from infrastructure. Depending on the pattern of existing development, a single, one-mile jump may be all that is needed for an undeveloped class 7 lake to become the site of subdivision. Over time and with more jumps, more lake can be subdivided. This fragmenting development pattern, as it plays out over time, would affect waterbodies that are valued for recreation and habitat purposes. Although subdivision development in the UT is relatively slow, we have seen this situation happen. This pattern of development has the potential to negatively affect undeveloped lakes in different parts of the UT.

The Commission recognizes that there is a tradition of camp development in Maine and that there may be places that are not in the primary and secondary locations that are appropriate for residential subdivision. However, to protect lakes that are undeveloped or lightly developed and distant from services, the adopted rule selects only certain lakes as eligible for initiating rezoning for subdivision. New zones for waterfront subdivisions may only be initiated either 1) on a lake or pond that is within the primary and secondary locations, or 2) on a lake or pond that is already developed or is in a management class that encourages development. This would eliminate the potential for new subdivisions on remote, undeveloped class 7 lakes and ponds. If a rezoning is initiated, it will be reviewed carefully for environmental issues such as impacts to fisheries or water quality, or potential use conflicts, such as impacts on recreation.

The Commission has evaluated how many lakes might be eligible for rezoning under the new system. Of the approximately 1,500 lakes in the UT that are listed in Appendix C of the

Commission’s Chapter 10 rules, fewer than two hundred of these lakes are wholly or partly within the proposed primary and secondary locations, and either a class 3, 4, 5 or 7 lake. (Class 1, 2 and 6 lakes are not eligible for rezoning under the new system.) These lakes are relatively near public services. The shoreline of some of these lakes is protected by conservation and not eligible for rezoning; shoreline outside of conservation could be considered.

Outside of the primary and secondary locations, there are about 65 lakes that are identified as potentially available for rezoning because they are class 3, 4, or 5. In addition, there are approximately 1,000 class 7 lakes. Based on Commission analysis, only a handful of these lakes would be eligible.

The criteria in the rule establish that a class 7 lake would be developed enough to be considered for rezoning for subdivision if the lake meets all three of the following²:

- 1) Already developed with at least 5 dwellings near the shoreline;
- 2) Already developed with at least 1 dwelling per ½ mile of shoreline; and
- 3) Already developed with at least 1 dwelling per 50 acres of lake surface area.

If a lake does not meet any one of those criteria, rezoning for a subdivision would not be allowed. The end result is that, outside of the primary and secondary areas, rezoning for development is directed to lakes and ponds that already have development. [Analysis](#) conducted by the Commission in the summer of 2018 indicated approximately 2% of the class 7 lakes outside the primary and secondary locations satisfy these criteria. This analysis evaluated class 7 lakes outside the primary and secondary locations at the time the Commission was considering primary and secondary locations larger than ultimately adopted. Nevertheless, this study shows that only a tiny fraction of class 7 lakes outside these locations would be eligible for rezoning consideration under the adopted rule.

By making this change to the application of the adjacency principle, the Commission is implementing a more refined approach that both protects remote, undeveloped lakes and provides for reasonable opportunity for limited shorefront development.

4) Protection of Specific Resources

i. Hillside Standards

In this rule, the Commission adopts its first standards specific to hillside development. The Commission’s service area has many places where hillside development can have an impact on the visual character of the area, affect the public’s views, and impact tourism. In addition, ensuring adequate construction standards will prevent erosion and improve safety. The hillside standards do not prevent hillside development, but instead ensure development on hillsides is designed and constructed so that it fits well with the surroundings. Early drafts of the *Conceptual Subdivision Layouts and Standards* had only a few conceptual standards relating to hillside development, including provisions for stormwater runoff, exterior colors of structures, and screening for sensitive scenic resources. Several stakeholders commented on the value of

² The lakes management classification system sets a goal to keep development on most lakes under 1 dwelling per 400 feet of shorefront and one dwelling per 10 acres of lake surface area. Consistent with that policy, the Commission adopted a similar set of metrics based on number of dwellings per length of shorefront and lake surface area to set a lower limit for existing density on class 7 lakes before rezoning may be considered.

hillsides and the need for more specific hillside development standards. The adopted rule also includes standards for hillside development regarding vegetative clearing, structural development, construction, and infrastructure standards.

ii. Scenic Byways

Designation of certain segments of road as scenic byway can be an important branding and economic development tool for nearby communities that rely on tourism. There are a number of scenic byways in the Commission's service area, many of which were mentioned specifically by commenters, such as The Old Canada Road Scenic Byway or the Katahdin Woods and Waters Scenic Byway. Scenic byways exist in many parts of the Commission's service area and feature views of different kinds of landscapes. The scenic byways program was not developed as a regulatory tool. It is not appropriate for the Commission to turn the program into such a tool and ban development outright along roads in the scenic byway program. Many of these public roads already have a fair amount of development, including homes, farms, businesses, and even entire communities, the presence of which adds to the overall landscape experienced by travelers on the road. However, where and how development occurs along scenic byways is an important consideration. Some of the Commission's existing standards address required vegetative buffering between development and the road and general scenic character standards. Standards adopted here, such as standards for hillside developments; a requirement to minimize the number of road entrances to a subdivision; and specific identification of scenic byways in the scenic character standard, will provide additional protection. The express recognition given scenic byways is new for the Commission's rules. The Commission will give special consideration to development near scenic byways, and will work with applicants to reduce potential visual impacts to these scenic resources.

5. Key Changes to the Subdivision Layout and Design Standards

Rule revisions related to subdivision development include changes to Sections 10.02, Definitions; 10.17, Expiration of Permit; and several parts of Section 10.25, Development Standards, including:

- 10.25,D. Vehicular Circulation, Access and Parking,
- 10.25,E. Scenic Character, Natural and Historic Features,
- 10.25,P. Protected Natural Resources,
- 10.25,Q. Subdivision and Lot Creation,
- 10.25,R. Clustered Development, and
- 10.25,S. Open Space

Changes relating to subdivision access management, traffic movement, and roads were included in Section 10.25,D to keep all of those standards together, by adding a subsection for additional subdivision road standards. As suggested by Commissioners, new standards for hillside development were included in Section 10.25,E and were written to apply to all development, not solely to subdivision proposals. Most of the standards related to layout and design of

subdivisions were incorporated in Section 10.25,Q. Given that one of the subdivision layout types included in the revised standards is a clustered layout and to keep all of the layout specific standards together, language relating to clustered development was relocated to and expanded in Section 10.25,Q; Section 10.25,R (which previously contained the clustered development standards) was repealed and reserved for future use. Lastly, changes to update the open space standards were included in Section 10.25,S, and the name for Section 10.25,S was changed to Common Open Space to help distinguish the common open space standards associated with subdivisions and land use activities from the tax provisions for open space on individual properties.

Key changes relating to subdivision layout and design include:

- *Expiration of Permit.* Addition of specific standards clarifying when permits expire for subdivision and multi-phased developments.
- *Access Management.* Addition of access management standards that minimize new entrances onto existing roadways, plan for future access to back lands, and provide for emergency egress.
- *Layouts.* New subdivision layout options, increasing flexibility for subdivision design and replacing the existing community center model.
- *General Management Subdivisions.* Replacement of Level II subdivisions with General Management subdivisions, and simplifying the layout and design standards for these small-scale subdivisions, which are located near roads and service communities, and away from major water bodies.
- *Common Open Space.* Requirements for common open space across all subdivisions, tailored based on the location of the subdivision and proposed layout, with a focus on protecting rural character and natural resources.
- *Wildlife Passage.* Requirements for most developments to include a minimum 500-foot corridor to facilitate movement of wildlife between waterbodies and other habitat features, and across roads.
- *Building Envelopes.* Standards to ensure building envelopes are sited and sized to minimize direct and indirect impacts to natural resources, including wildlife habitat, and to fit with the overall character of the area.
- *Shared Driveways.* Removal of the shared driveway requirement; experience has shown this requirement caused conflict and did not work well in the Commission’s service area.
- *Back Lots.* Creation of a new option, as part of the “Basic” subdivision layout, for identifying and incorporating land reserved for the creation of future back lots (i.e., non-waterfront lots) into the subdivision design, as an alternative to creating back lots today, if a market for the lots does not exist.
- *Legal Right of Access.* New provisions to ensure that subdivision lot owners have an enforceable right of access to their lots, following through on Section 10.08-A, E

requirements for rezoning, and to ensure legal right of access if a lease lot subdivision is converted to fee ownership.

- Recreational Access. Establishment of standards to minimize informal trail building across abutting property, and to ensure lot owners in recreation-based subdivisions have reasonable access to the recreational opportunities without overburdening existing public resources.
- Sketch Plan Review. Provisions for preliminary, sketch plan reviews to help property owners with the siting and design of subdivisions, encourage designs that are a good fit for the land and the community, and minimize up-front technical costs.

6. Commitment to Performance Review

After years of consultations with stakeholders and experts, as well as Commission study and analysis, the Commission adopts this rule with the full expectation that it will improve outcomes for environmental protection, natural character, and regional economic health. As with any substantial change, careful review of the results in a timely manner, and on an ongoing basis, is important. In addition to collecting data about rezoning and permit approvals as part of the normal course of work, the Commission will initiate a review of the effectiveness of the application of the adjacency policy:

- Five years after the adoption of the rules;
- Upon the approval of five petitions for rezoning to create new, or expand existing, development subdistricts in any single county; or
- Upon the approval of 100 residential subdivision lots outside of concept plans, whichever comes first.

These milestones are early enough to allow the Commission to make adjustments, if needed, to ensure the intended results.

PUBLIC NOTICE OF RULEMAKING

At a meeting held on November 14, 2018, the staff presented to the Commission the draft rule revisions and requested to post the revisions to public comment, and to hold a public hearing. The Commission voted to post the revisions to public comment and to hold a public hearing on January 8, 2019, with a snow cancellation date of January 10, 2019.

Notice of the rulemaking was provided in the Secretary of State's consolidated rulemaking notice on December 19, 2018. 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 was also provided to approximately 1,643 individuals. These included the Commission's mailing list of persons wishing to be contacted regarding public hearings, agency rulemaking activity, the adjacency rule review, and the subdivision rule review, as well as persons who participated in the process, tribal representatives, and county officials. The notice of the rulemaking and the proposed revisions were also posted on the Commission's web site.

The public hearing was held on January 10, 2019, with 42 people providing testimony. The record remained open until January 22, 2019 to allow interested persons to file written statements with the Commission, and for an additional 7 days until January 29, 2019 to allow interested persons to file written statements in rebuttal of statements filed up to January 22, 2019.

Four timely filed comments were posted on the website on January 25, 2019. One additional comment, which was delayed in transmission, was added on January 28, 2019. Additional time for rebuttal, up until February 1, 2019, was provided for these last five comments.

COMMENTS AND RESPONSES:

The Commission received comments during the public comment period for the December 12, 2018 version of the draft rule. Those comments are specifically addressed in the following section. The Commission also benefitted from information and comments provided in earlier stages of the process, and that learning is incorporated into the overall proposal. The record of the June 20 hearing regarding an earlier version of the proposal, as well as key stakeholder feedback from the Commission's work on the development of the adjacency and subdivision rules are included in the public hearing record.

1. Changing How the Commission Applies the Adjacency Principle

a. Summary of Comments

The Commission received a number of comments regarding both the need for updating its adjacency policy and questions on why the policy should change:

Adjacency Update Needed

- The Commission's adjacency policy should be updated to respond to changes in the rural economy and allow more flexibility for resource-based, and recreation-based businesses.
- The adjacency principle should be updated to provide more flexibility to account for good locations for businesses that happen to be beyond 1 mile from existing compatible development (even if only by a nominal amount), and to account for site limitations.
- The adjacency principle should be updated to allow for more population and economic development in the UT, particularly near small towns that need more people to survive.
- The proposed changes will provide locations for permanent worker housing needed for the forest products industry.
- The goal to focus development near other existing development and keep most of the North Woods undeveloped is laudable.
- Requiring legal right of access for lot owners, and that development be allowed only if emergency services can be provided acknowledges realistic expectations of the developer and property owners.

- The adjacency policy should be revised. The current policy allows for leapfrogging and does not account for the changing economy. The proposed revisions would direct development to areas most appropriate for development, address workforce housing needs, reduce strip development, reduce costs, and remove millions of acres from eligibility for development protecting the core of the Commission’s service area.
- Rule changes will provide more predictability for landowners.

Why Change Application of the Adjacency Principle

- The existing one-mile rule of thumb policy has worked for a long time.
- There is little evidence to support to support changing the policy. Information obtained during the planning process indicates low demand overall for new development; little support from residents for more development to occur in their area – several commenters referred to results of the Commission’s survey of people of who live, work, and recreate in the UT; and no evidence of “leapfrogging.”
- Some commenters questioned whether the proposal was consistent with the discussion about the adjacency principle in the 2010 CLUP, the purpose and scope section of the Commission’s Statute, and with the public survey results.
- The variability of the landscapes and communities in the Commission’s service area makes it too difficult to come up with a simple, effective policy for locating development that works everywhere.
- Why does the Commission seek to change adjacency now, and who, or what interests, are prompting this change?
- Some commenters thought that concept plans already provide a way for development to occur in places near recreational resources, and the proposed rule changes would undermine the value of this regulatory tool. Others thought that a simplified, streamlined, concept planning process should be created for small ownerships, as the current regulatory tool is unwieldy and too expensive.
- Revising application of the adjacency principle will harm the environment, economy, and character of the North Woods, and will result in outcomes contrary to the goals of the rulemaking. Examples of impacts include: light pollution in dark skies, loss of recreational access, degradation of water or air quality, fragmentation of wildlife habitat for various species (e.g., direct loss of habitat, as well as loss of connectivity between habitats), introduction of invasive species, potential strip development along scenic byways and public roads, or increased opposition to local forest management and other traditional Maine activities.

b. Commenters

A. Blakesley, A. Cadot, Friends of Katahdin Woods and Waters, Friends of Baxter State Park, A. Michka, 86 signatories to a petition regarding Argyle Twp., A. Walsh, A. Winchester, B. Burger, B. Carpenter, B. Carter, B. Haynes, B. McClure, B. Wells, C. Blount, C. Boothroyd, C. Chun, C.

Diebold, C. Eliot, C. Jean, Natural Resources Council of Maine, Houlton Band of Maliseets, C. Wildes, D. Bridges, D. Colihan, D. Gillaspie, D. Gold, D. Hanson, D. Holmes, Maine Professional Guides Association, D. Woolsey, Maine Audubon, E. Ecker, E. Johns, E. Leland, Land Vest, E. Purdy, F. Todd, F. Weld, G. Moser, G. Mott, H. Brogunier, H. Griffin, H. Koch, H. McGhee, Seven Islands Land Co., J. Bassett, J. Baumann, J. Crosen, J. Day, J. Diangelo, J. Doyle, J. Funkhouser, J. Gaudian, J. Greenman, J. Harrison, Prentiss and Carlisle, J. Kinnealy, J. Lebrun, J. Lesko, J. Luoma, J. Nicholas, J. Ordway, J. Pidot, Trout Unlimited, J. Reel-W. Lewis, J. Richards, J. Riefler, J. Robbins, J. Smith, J. Spear, J. Thompson, J. Vroom, J. Webber, J. Willard, J. Winchester, J. Whitney-R. Hero, Appalachian Mountain Club, K. Cline, K. Cote, K. Greenman, K. Letsch, K. Macdonald, K. Nordstrom, Family Forestry, K. Spitfire, K. Taylor, L. Graceffa, L. Gray, L. Heft, L. Knowlton, L. Leaf, Weyerhauser, L. Moceus, L. Quimby, L. Stearns, L. Woods, M. Albert, M. Block, Maine Wilderness Guides Organization, M. Dellenbaugh, M. Hunter, M. Fernald, M. Laing, M. Norton, M. Pedresci, M. Polak, M. Sohl, M. Theriault, M. Tupper, M. Wilson, New England Forestry Foundation, N. Gallagher, N. Hathaway, N. Robson, GrowSmart Maine, P. Coelho, P. Crockett, P. Kalajian, P. Provost, P. Shankle, P. Sheridan, Huber Resources, Hancock County, R. Byam, R. Cyr, R. Fritsch, R. Gregor, R. Hayes, R. Hero, R. Hill, R. Ivens, R. Jones, R. Linn, R. Merchant, R. Montillo, R. Moore, Aroostook County, Maine Forest Products Council, R. Smith, R. Tomlin, R. Tripp, S. Beckman, S. Borko, S. Brewer, S. Brown, S. Calabi, S. Chappell, S. Farrand, S. Hampton, S. LeClaire, Seven Islands Land Co., S. Ruch, S. Smyth, S. Wright, The Nature Conservancy, T. Demarco, T. Owens, W. Johnston, W. Leavenworth, W. McCullough.

c. Response

The adjacency principle is an initial screen for where new zones for development of a residential subdivision or business can be created. This high-level screen is just the first step – the rezoning process still applies and permits would still be required for most uses. The adjacency principle guides most new 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.

Since the 1980's, the LUPC's comprehensive plans have said that the policy should be updated. Maine's changing economy makes that need more urgent. Prior to this change, the Commission's rules were too limiting for farms, recreation businesses, and woods-related businesses. The rules also tied future zones for subdivision and business development to a historic pattern of scattered homes and businesses rather than concentrating them near services. This leads to more scattered development, which has a fragmenting effect and is inefficient for provision of public services. Now is the time to update the policy because planning ahead will increase economic opportunity and improve protections for remote areas. The Commission adopts this update to the policy as a better tool to achieve the goals that are expressed in the Commission's Comprehensive Land Use Plan (CLUP). In fact, the 2010 CLUP anticipates that the Commission will improve the policy, consistent with the goals. An updated application of the policy, such as this one, is consistent with the CLUP.

The Commission already has some tools for locating new zones for development in places farther than a mile away from existing similar, compatible development. Concept plans, planned development zones, zones for solar farms and gravel, and recreational lodging zones are examples. However, these are specialty tools and not meant to address the bulk of the development that occurs in the UT, nor are they well-suited to that purpose. These tools were,

in some ways, created to solve particular problems with the one-mile rule of thumb. As the specialized solutions started adding up, the result was more and more like band-aids that didn't really address the problem. The rule that the Commission adopts today creates a comprehensive solution rather than continue to apply band-aids.

Concept plans and resource plans will continue to have a role in the Commission's rezoning process. They are tools that allow for thoughtful planning over a large area, and are both more targeted and more flexible than the adjacency policy in either the one-mile rule of thumb form or the form adjacency takes in the current rule. In the case of concept plans, an illustration of this continuing relevance is that the pattern of adjacency in the Fish River Lakes area is not substantially different under either system, and so a concept plan in that area would continue to be possible. There are other locations in which there is a mix of adjacent and non-adjacent areas proximate to lakes where concept plans may be pursued in the future.

In developing this rule, the Commission spent three years looking specifically at the adjacency policy and conducted surveys, focus groups, community meetings, meetings with stakeholders and meetings with town select boards and town councils. It has been an exhaustive process. The rule is also shaped by prior regional planning work conducted in Aroostook, Washington, Somerset and Franklin Counties. This place is clearly of great importance to many people – in fact, it is a unique asset for the State of Maine and local communities. All of that information, taken together and extensively analyzed, has led the Commission to this rule.

Even with the extensive analysis, however, the adjacency principle was intended to be, and is, a broad initial screen. In some places, more detailed planning may be warranted. The Commission is ready to work together with local residents, property owners, officials, and stakeholders to plan in more detail for places where there is substantial growth or where there are regional patterns of development that should be taken into account. As rural regions in Maine take the initiative to reimagine their economies, the Commission can adjust the land use regulations to work in concert with those efforts. This rule does not preclude those actions in any way, and instead serves as a framework to make more detailed changes possible.

d. Action

No action taken.

2. Climate Change

a. Summary of Comments

The Commission received comments relating to climate change:

- Forests and undeveloped areas need to be maintained to slow down carbonization and reduce carbon output on the planet.

b. Commenters

B. McClure, C. Krolick, D. Gold, E. Ecker, E. Tselikis, H. McGhee, J. Spear, K. Greenman, L. Moceus, L. Quimby, M. Fernald, P. Coelho, P. Taylor, R. Hill, R. Tripp.

c. Response

Maine is fortunate to have abundant forests, which are important in sequestering carbon and providing carbon-neutral fuels as part of the long-term efforts to address climate change. Some other important factors in climate change are vehicle travel distances to services and the development of renewable energy sources. With low development pressure and the shift of subdivision development potential closer to services, we do not expect an appreciable change in carbon export from future residential activities. With regard to non-residential uses, one of the goals of the rule is to incentivize the continued use of forested areas for modest levels of recreation and resource processing activities that produce enough value to justify continued forestland ownership, rather than conversion of these areas to non-forested uses. Finally, solar energy facilities will have the option to locate either in certain locations near points of transmission interconnect, or in primary areas, which, in most cases, will offer more flexibility than under the present adjacency interpretation. Relatedly, the Commission chose not to move forward on proposed changes that would have removed solar energy generating facilities as an allowed use by special exception in D-CI subdistricts to maintain consistency with current policy on solar facilities and flexibility for locating these facilities, by special exception, in existing D-CI subdistricts that could contain prime farmland soils.

d. Action

No action taken.

3. Rule Complexity

a. Summary of Comments

Regarding rule complexity, commenters felt:

- The process should be slowed down and the proposed rules revised, because the changes are complicated, difficult for experts and the public to understand, and may lead to unintended consequences.

b. Commenters

A. Blakesley, B. Carter, C. Eliot, Natural Resources Council of Maine, E. Johns, E. Parsons, J. Crosen, J. Luoma, J. Pidot, J. Sideris, J. Whitney, R. Hero, K. Cline, K. Cote, K. Spitfire, L. Williams, P. Shankle, P. Sheridan, R. Fritsch, R. Gregor, S. Farrand, W. Johnston.

c. Response

Indeed, this rule package is complex. It is necessarily so for two reasons: it addresses many topics at one time for the purpose of improving consistency, and it takes a vague policy that is subject to interpretation and creates specificity and predictability for applicants and the public. The Commission's goal is to finish with a product that can be interpreted consistently, is clear, and achieves the stated policy objectives. Most applicants will not wish to understand the entire system at one time; it is more helpful that for any given activity they may wish to pursue, when they review the regulations or ask the staff, the "yes" or "no" answer is clear. It is more important for the rule in total to be understandable to people who do wish to understand the

broad implications of the system. Staff have spent considerable time walking through the rule with groups and individuals who have expressed an interest. As those conversations occurred, the overarching structure became clearer and comments on the details of the proposal were forthcoming, which is very helpful and which the Commission appreciates. Once the final rule is in operation, the Commission believes that it will be understandable and lead to more predictable outcomes.

After the initial stages of an extensive public input process, the Commission concluded that dealing with the location of residential subdivision, the design of those subdivisions, the location of commercial activity, the need to allow for resource-dependent commercial activity in more places, consideration of service burdens on nearby towns, habitat protection, and other issues would be worked on as a single, integrated system, instead of tackling one at a time and risking significant disconnects and piece-meal solutions. LUPC regulations, particularly the use listings, are unique because of the Commission's responsibility for a blend of municipal- and state-level planning and regulatory functions. The combination of the breadth of the rule and the uniqueness of the Commission's regulatory role means there is a lot to review, but in the end, a comprehensive product is clearer than a series of disconnected rulemaking packages over many years.

The current application of the adjacency policy is contained in the Commission's Comprehensive Land Use Plan and is not reflected directly in rule. The policy in the CLUP is vague enough to be difficult to administer consistently, particularly for non-residential development. A footnote in the 2010 CLUP states, in reference to the one-mile rule of thumb, that "The Commission recognizes that there are certain instances in which a greater or lesser distance may be appropriate in measuring distances to existing developments." This expression of the policy does not provide applicants or the public with much certainty as to what, exactly, the Commission might decide in a given matter, or what the basis for that decision may be. In crafting a policy that is more specific and predictable, but still meets the core goals of the CLUP regarding location of development, the Commission required more precise, and more tailored descriptions of where a rezoning process may be begun. The resulting rule has more words and more provisions than the current policy, but is clearer and more predictable.

Finally, the Commission reviewed the adjacency principle over a 3-year period and its subdivision rules over a 5-year period. Both were comprehensive and involved considerable public outreach and opportunity for public input. The Commission does not believe this multi-year process needs to be, or would benefit from being, slowed.

d. Action

No action taken.

4. Scope of Proposal/Pace of Change

a. Summary of Comments

Commenters had varying opinions that related to the scope of the proposal and the pace of change including:

- In total, the proposal represents too much change, and opens too much area for rezoning for development. Also, there was concern that the LUPC has insufficient staff to manage the proposal.
- The scope of the proposal is out of step with the overall level of demand in the UT. For example, when the Commission created new development subdistricts in the Rangeley area the size of each was much smaller than the proposed primary and secondary locations.
- It may be difficult to backtrack once primary and secondary locations have been established and land owners incorporate new development potential into planning for land uses on their property. The proposed eligible areas for rezoning should be reduced and then expanded later if needed.
- There is no pacing mechanism in the current proposal, and areas eligible for rezoning would be opened right away, rather than slowly over time as development occurs.
- Some commenters supported periodic review of the rule revisions, and recommended the Commission commit to mandatory periodic assessments of re-zonings resulting from the rule revisions with a process for measuring outcomes and tracking data. Others thought such a periodic review would be ineffective because the damage would have already been done. Commenters suggested different approaches for a periodic review including recommendations that the review be based on development occurring in regions not counties, that it be well advertised so people can participate, and that it be accompanied by a moratorium on petitions to rezone.
- The current proposal doesn't go far enough, and is too restrictive regarding where rezoning for development may be considered.

b. Commenters

A. Blakesley, Friends of Katahdin Woods and Waters, Friends of Baxter State Park, A. Michka, A. Walsh, B. Carter, C. Eliot, Natural Resources Council of Maine, D. Cassel, D. Holmes, Maine Audubon, E. Ecker, E. Johns, E. Mechler, G. Mott, H. Koch, H. McGhee, J. Crosen, J. Day, J. Kinnealy, J. Luoma, J. Pidot, Trout Unlimited, J. Robbins, J. Sideris, J. Vroom, J. Willard, Appalachian Mountain Club, K. Cline, K. Cote, K. Michka, M. Fernald, M. Ignatiadis, New England Forestry Foundation, N. Grohoski, GrowSmart Maine, P. Crockett, P. Sheridan, R. Ek, R. Fritsch, R. Gregor, R. Hero, R. Hill, R. Linn, R. Merchant, S. Brewer, S. Calabi, S. Farrand, W. Johnston, W. McCullough, W. Turner.

c. Response

As some of the commenters have noted, planning is not the sort of endeavor in which it is easy to walk back a faulty policy. Once related development occurs it typically cannot be “undone.” Also, the results of land use policies play out over long periods of time. Therefore, it is proper that we are careful about how we make changes to something as consequential as the application of the adjacency principle and that we carefully monitor results. After studying the issue for several years and having extensive discussions with knowledgeable stakeholders and members of the public, we conclude that a system that ties development zones to service-

providing communities and public roads is more likely to meet the objectives of the adjacency principle than one that ties future development zones to historical, scattered patterns of development, as is currently the case.

Improved standards for availability of emergency services and legal right of access will further serve to guide future development zones to places where they can be served efficiently, and will give service providers a voice so that growth does not outstrip or strain service capacity. Improved environmental standards will ensure that new development does not cut off wildlife habitats or cause unsightly strips of subdivision or commercial development along roads and shorelines. With these provisions, and with low demand for development, there are enough safeguards in place to prevent harm from an increased pace in a few locations. This approach requires the entire suite of regulatory changes mentioned above to succeed, which is one of the reasons this rulemaking package is comprehensive.

The history of development in the UT is one of slow, scattered growth. We expect that due to economic conditions and distance from population centers, any increase in demand will be gradual, and that only a tiny fraction of the primary and secondary areas will ever be rezoned. In the Aroostook and Washington County Community Guided Planning and Zoning process, approximately 320,000 acres were designated as eligible for development zoning, and only 2 acres have yet been rezoned. The point is not that the entire area, or even any significant portion of it will ever be rezoned. The point is that the primary and secondary areas are a guide to encourage better, more thoughtful location of development if and when someone wants to move forward with a rezoning.

This is substantially different from the Rangeley rezoning context, because in that planning process the rezoning was completed – new subdistricts were actually approved in specific locations, and the landowner could move forward to apply for a subdivision permit. In this rulemaking, adjacency only serves as an initial screen to *start* the rezoning process. We expect that, similar to the Rangeley area, much smaller areas will actually be rezoned.

The Commission considered whether to initiate only part of the primary and secondary areas to start with or use pilot locations as a way to start slowly and evaluate the effects before enlarging the available areas. However, this system is a trade-off that moves rezoning potential from interior areas and undeveloped lakes to other places closer to services or onto already developed lakes. It also provides additional opportunity for certain resource-dependent commercial uses. To advance only certain pieces of the package and not others would substantially disadvantage some interests and potentially cause an imbalance in the system, which could create its own sets of problems.

The extent of the primary and secondary areas has been vetted through multiple rounds of feedback, and been carefully revised to include areas with existing patterns of concentrated development and to exclude areas that are broadly difficult to serve. This is only a first screen, and any rezoning must also be reviewed for the circumstances of the particular location that is proposed. The Commission is confident that there are adequate safeguards in place to appropriately handle the anticipated level of development.

However, it is important to monitor what happens following adoption. The Commission will monitor the location and pace of new development as part of its normal work, but it will also

initiate a more detailed review when certain milestones are reached. The milestones of five years and five rezonings are similar to those put forward in the Aroostook and Washington County CGPZ processes. In addition, a milestone for the total number of approved subdivision lots is also warranted to capture development happening in general management subdivisions that do not require a rezoning. In looking at lot creation data for the last decade, it would be reasonable to think that around one hundred subdivision lots may be created outside of concept plans in five years. Using that figure as an additional trigger for review will ensure that all subdivision activity will be part of the evaluation.

d. Action

The Commission is committed to monitoring the effects of this policy change. In addition to collecting data about rezoning and permit approvals as part of the normal course of work, the Commission will initiate a review of the effectiveness of the application of the adjacency policy: five years after the adoption of the rules; upon the approval of five petitions for rezoning to create new, or expand existing, development subdistricts in any single county; or upon the approval of 100 residential subdivision lots outside of concept plans, whichever comes first.

5. Increased Regional and Local Planning

a. Summary of Comments

There was general support for the Commission to engage in regional and local planning:

- The Land Use Planning Commission should continue with regional planning initiatives, including Community Guided Planning and Zoning, to identify suitable areas for development in the unorganized territories, especially in areas where there is a demand for growth and in the Katahdin Region.
- The Commission should engage in regional planning with towns that border the UT to guide development into those towns that want it, and work with service-providing communities to ensure they have the resources they need to negotiate emergency service agreements that accurately reflect the true cost of service delivery.
- The Commission should conduct planning at a local scale for towns, plantations, and deorganized towns in the Commission's service area, and there should be a requirement for residents in townships, towns, and plantations to give approval of any zone changes in their community.

b. Commenters

Friends of Katahdin Woods and Waters, A. Blakesley, A. Michka, Natural Resources Council of Maine, Maine Audubon, E. Spencer, G. Fanjoy, G. Mott, J. Doyle, J. Greenman, J. Luoma, Trout Unlimited, J. Robbins, J. Riefler, J. Sideris, K. Cote, K. Michka, K. Spitfire, K. Taylor, L. Leaf, L. Williams, New England Forestry Foundation, N. Grohoski, P. Sheridan, P. Taylor, S. Borko, S. Hampton, The Nature Conservancy.

c. Response

The Commission is encouraged by the success of regional planning initiatives so far, and is impressed by the efforts of rural Maine citizens who are working together to build a vibrant community and economic future in their regions. This is particularly prominent in the Katahdin and Moosehead areas, although there are impressive efforts in other regions as well. In this context, reworking the adjacency principle and participating in regional planning are not mutually exclusive. The Commission needs a broad policy to cover most areas of the UT (previously the one-mile rule of thumb and these changes that refine the Commission's application of the adjacency principle) and can also build more tailored zoning for areas that need a close look, such as was done in the Rangeley area. If residents, property owners, or a regional collaborative wish to work with the Commission to develop customized zoning that replaces or supersedes the typical application of the adjacency policy, such a targeted planning/rezoning effort is legally and logistically possible. What will be needed is community engagement and effort that is sufficient to really dive down into the details of what's happening in that geographic area and what the local vision is for that place. It seems that may be on the horizon for one or more regions, which is an exciting prospect. The inclusion of nearby municipalities in these efforts is important to make the outcomes more durable and to create synergy in the regional economy.

The legislature defines the Commission's duties and powers. While the Commission certainly may collaborate with municipalities that manage their own planning and zoning, the Commission's primary responsibilities lie within the unorganized and deorganized areas of the state. By definition in Title 12, the unorganized and deorganized areas include townships, as well as towns and plantations that have not adopted their own land use regulation system. Within those areas, the Commission must, by law, make planning, zoning and permitting decisions. Towns and plantations presently served by the Commission may take over their own land use regulation, as described in statute. Until they do so, there is no legal pathway to require that any changes to land use zones in those areas be ratified by Town or Plantation government. Put simply, the buck has to stop somewhere, and statute directs the Commission to make those decisions. The Commission considers carefully any information or position presented by a Town or Plantation government, as well as all public input— including comments from residents, and seeks to balance all of the interests that are described in its charge from the legislature.

One of the primary motivations for revision of the application of the adjacency principle is to be responsive to a changing rural economy. The Commission looks forward to strengthening communication with regional and municipal groups to carry out that mission in a collaborative way. The Commission wishes to align its zoning system to current needs so that regional entities have the best chance to create a vibrant economy, based on healthy municipal service centers and abundant natural resources, while also recognizing the needs and rights of people who live, work, own property, or recreate in the Commission's service area.

d. Action

The Commission intends to engage with regional planning processes and to continue to foster a dialog with municipalities that border the UT or provide services there.

6. Landowner Equity

a. Summary of Comments

Several commenters submitted concerns relating to the elimination of the “1-mile rule of thumb” and landowner equity:

- Elimination of the "1-mile rule of thumb" for the interior of the Commission's service area removes millions of acres from consideration for development, placing further limits on landowners and stripping land value from areas that currently have potential eligibility for new development. The rule should be retained for the interior, or not be eliminated without some mechanism for subdivision development in the interior of the service area, especially for un-eased areas reserved for development under the “1-mile rule of thumb.”

b. Commenters

Land Vest, Seven Islands Land Co., Prentiss and Carlisle, Family Forestry, Huber Resources, Maine Forest Products Council, Seven Islands Land Co.

c. Rebuttal Comments

- One organization rebutted comments that requested certain reserved Pingree land parcels have a grandfather exemption from the proposed new application of the agency principle. The commenter concluded that the Pingree lands not subject to a conservation easement should be treated like any other lands in the Commission’s service area that are not subject to conservation easements.
- In addition, the rebuttal commenter objected to assertions that the rule revisions “would prohibit development on most undeveloped lakes” or “take millions of acres out of consideration for subdivision” as inaccurate.

d. Rebuttal Commenters:

Natural Resources Council of Maine

e. Response

The Commission agrees that the rule change reduces the prospects for zoning for subdivisions and commercial activity in some locations, and increases it in others. However, landowners in the interior still have the option to do single-lot residential development as well as new opportunities for resource-based processing and recreation businesses in certain appropriate locations. In addition, concept plans and planned development subdistricts are still available outside the primary and secondary areas. This overall balancing represents a reasonable exercise of the Commission’s planning mandate, with the purpose of allowing development in locations that will enhance the overall economy and environmental conditions in the region. Property owners will not have all options in all locations, but the rule change provides for reasonable uses.

f. **Action**

No action taken.

7. **Impacts on Municipalities**

a. **Summary of Comments**

The Commission received comments with varying perspectives regarding the potential impacts of the rule revisions on municipalities including both that the changes will adversely impact towns and the changes will benefit towns, as well as comments relating to communication with organized municipalities:

Changes Will Adversely Impact Towns

- The proposed changes to adjacency will adversely impact the economy of rural hubs such as Millinocket and Patten, and other neighboring communities by encouraging development to locate outside of those towns, requiring services from but not supporting the tax base of the town, and damaging the natural resources upon which the local economy may depend.
- The Commission should work with stakeholders to create incentives for locating development in organized municipalities, and work with the Legislature to create additional tax benefits for rural hubs.

Changes will Benefit Towns

- Keeping residential and commercial development near towns and rural hubs, such as Greenville, will provide for needed growth in the region and help towns remain viable. The reduction in the number of rural hubs helps to encourage growth and development in the service center communities.

Communication with Towns

- The LUPC did not visit enough rural hubs and provided insufficient notice to rural hub residents.
- The LUPC has heard from municipalities, and considered and incorporated their concerns into the proposal.

b. **Commenters**

A. Blakesley, Friends of Katahdin Woods and Waters, Friends of Baxter State Park, A. Walsh, A. Winschester, B. Hartford, B. Haynes, C. Eliot, Natural Resources Council of Maine, Houlton Band of Maliseets, C. Stout, Maine Professional Guides Association, E. Johns, E. Mechler, F. Todd, F. Weld, G. Fanjoy, H. Brogunier, J. Crosen, J. Diangelo, J. Harrison, J. Luoma, Trout Unlimited, J. Robbins, J. Sideris, J. Smith, J. Vroom, Appalachian Mountain Club, K. Cote, K. Letsch, K. Taylor, L. Gray, Weyerhaeuser, L. Williams, Maine Wilderness Guides Organization, M. Fernald, M. Ignatiadis, M. Moody, M. Norton, M. Theriault, N. Grohoski, Huber Resources, R. Fritsch, Maine

Municipal Association, R. Gregor, R. Linn, Maine Forest Products Council, S. Beckman, S. Farrand, Seven Islands Land Co., The Nature Conservancy.

c. Rebuttal Comments

- In rebuttal, one organization responded that written comments suggesting that the concerns raised by municipal officials and residents from “rural hubs” have been resolved are not accurate.

d. Rebuttal Commenters

Natural Resources Council of Maine

e. Response

The Commission’s charge from the legislature is to plan for the unorganized and deorganized areas of the state. There are many components to that charge, as found in the Commission’s purpose and scope (12 MRS §681), including “...facilitate regional economic viability.” Consideration of municipalities is important in this particular component of the Commission’s purpose. In many places, residential, recreational and commercial uses flow back and forth across the boundary between municipalities and the UT. This dynamic is long-standing and is embedded in the culture and economy of many of Maine’s most rural places.

The Commission held public meetings in towns like Bingham, Millinocket, East Millinocket, Greenville, Jackman, and others. One of the frequent comments we heard is that the UT area serves as an extension of the places that people who live in town frequent. It is often where people may recreate, work, or own a camp. It is often thought of as “their place,” even though it isn’t in town. But towns are also concerned about taxes and high mil rates, and wish to have taxable development in town. Some communities have solved this problem through favorable contracting arrangements for services they provide to outlying areas, and value the presence of additional people and activity in the UTs to supplement the population using their schools, hospital, and other services. Some people still have concerns about potential negatives from nearby UT development. During the comment period, the Commission heard many different views from individuals, and Commission staff met with or talked with many town officials, boards and councils. However, during the comment period, none of the town boards or councils chose to take an official position on this rule proposal.³

The Commission has two primary goals with regard to development in areas around municipalities. The first is to concentrate most development close to services, and pay attention to local service capacity, so that any new development may be served efficiently and the towns can be compensated fairly. The second is that, if a business can’t effectively locate near town because it is dependent on a resource that exists at a distance, it may be allowed in appropriate locations farther away so that the regional economy may benefit without damaging the quality of the natural resources in the area.

³ The Jackman select board submitted a letter of support, however it was submitted after the close of comments. Therefore, the Commission did not rely on that information in this rulemaking.

These two goals can, in large part, be achieved through the current proposal. However, the Commission cannot, and should not, try to resolve potential issues associated with different tax rates in municipalities and the UT. Taxation issues are important, have persisted for many years, and have potential state-level implication, however, these issues are outside the scope of the Commission's authority. Issues associated with relative tax rates, including between municipalities and the UT is something the legislature may elect to explore. The Commission would be happy to provide information that may be helpful in such an effort. In the meantime, the Commission remains aware of these tax differences and has worked to fulfil its planning responsibilities with this understanding.

The goal to concentrate most development near town is achieved by this proposal because it ties the location of future subdivision and commercial zoning to public service location and capacity, rather than to a historic pattern of scattered development. Put simply, it moves future development zones closer to ambulances and fire departments. The potential for UT development to occur outside of towns exists today – that is nothing new. Low demand means that development has not been extensive, and that demand is not expected to pick up substantially. The difference in this proposal is that if and when there is demand for new zones for development, these zones and the associated development will be guided to the locations that are the most appropriate instead of simply near existing, scattered development that may or may not be in desirable locations.

The goal to accommodate resource-dependent businesses in locations farther from town is targeted to the types of activities that cannot locate in town. These changes could accommodate the growth of existing businesses seeking to provide services in satellite locations, as well as new businesses. If an existing business wishes to provide a gear rental location close to a resource, there is currently no opportunity to do so unless the site happens to be within a mile by road of another commercial use – which is not often the case out in the woods. Having this opportunity would accrue equally to existing businesses as to new ones. Similarly, locating a small resource-dependent facility for mobile production of wood pellets or other in-woods processing activities is, by definition, happening farther out because of prohibitive transportation costs to get the material to a facility in town. It is not taking an activity away from areas near town, it is adding new opportunity.

The Commission has dedicated enormous amounts of time and staff resources to this three-year stakeholder process, and is pleased that it has resulted in closer communication with many municipalities and the Maine Municipal Association. It intends to continue to strengthen those relationships, and welcomes proposals for custom zoning projects for regions that feel that a more tailored approach is warranted. Ultimately, if local people in a region have the energy and interest to drive a prospective zoning project, it can produce results that are preferable to the general system the Commission must necessarily apply to all places that have not undertaken local prospective zoning. The Commission is committed to encouraging local and regional efforts to plan for robust economies that protect the character and natural resources of rural Maine. The present rule changes do not interfere with any such local or regional efforts and are a positive step forward, improving the Commission's overall approach to planning and zoning for new development.

f. Action

The Commission will continue to build on the relationships with municipalities formed during this process, and will coordinate with the Maine Municipal Association on communication.

8. Comments Related to the Rulemaking Process

a. Summary of Comments

The Commission received comments regarding the adequacy of the public notice for the rulemaking, as well as differing comments relating to public outreach:

- Residents have not had sufficient notice of the rule change process and have not had sufficient time or convenient opportunities to voice their concerns about the proposed changes.
- LUPC should slow down the process, gather and assess more data, engage in additional outreach around the state to ensure more people understand the content of this proposal, and make additional changes, as needed.
- Commenters expressed appreciation for the time, attention, and thoughtfulness that LUPC staff have given to the lengthy and involved process. In addition, they indicated appreciation for the open, honest dialog, and willingness to seek and consider feedback from stakeholders and user groups across the region, including municipalities, community organizations, sportsmen, recreational groups, business leaders, and many others.

b. Commenters

C. Eliot, Natural Resources Council of Maine, Appalachian Trail Conservancy, Maine Audubon, E. Mechler, Appalachian Mountain Club, K. Taylor, M. Ignatiadis, N. Grohoski, Huber Resources, P. Shankle, S. Calabi, The Nature Conservancy.

c. Response

The Commission reviewed the adjacency principle over a 3-year period and its subdivision rules over a 5-year period. Both were comprehensive, and involved considerable public outreach and opportunity for public input. Collectively, both projects have included dozens of stakeholder meetings; several surveys; formal and informal comment opportunities; and two public hearings to identify issues and possible solutions, and to solicit public input. (See Appendix A for a detailed summary.) Notice provisions for the two public hearings met the public notice requirements in the Commission’s Chapter 5, Rules for the Conduct of Public Hearings and the Administrative Procedures Act.

The Commission does not believe this multi-year process needs to be, or would benefit from being, slowed. Further, as indicated previously, the Commission has set milestones that will signal the need for evaluation of the effectiveness of the revisions. Additional changes can be made, as necessary, based on that evaluation.

d. Action

No action taken.

9. Primary and Secondary Locations

a. Summary of Comments

Regarding primary and secondary locations, the Commission received comments relating to the size of these locations, how distances should be measured, rural hubs and plantations, management class 3 lakes, and removal of primary or secondary locations in specific towns, townships, or plantations:

Size of the Primary or Secondary Locations

There were a variety of comments about the primary and secondary locations that focused on distances from rural hubs and public roads, and the size and scope of the primary and secondary locations. Specific comments included:

- The primary locations are too extensive and too broad-brush, and the distance from rural hubs, or from public roads, should be reduced. Commenters recommended reducing distances to: 1, 2, 3, or 5 miles from a rural hub, and reducing distances from public roads from 1 mile to ½ mile; or basing primary and secondary locations on site conditions and development patterns rather than a distance measurement.
- The secondary locations are too extensive and should be reduced, eliminated, or put on hold for the first five years.
- The primary locations are the right size, or not big enough; and the distance should either remain at 7 miles from the boundary of a rural hub, or change back to 10 miles from the boundary of a rural hub.
- The scope of proposed primary and secondary locations will not result in extensive development, because development will not occur in all locations. Unsuitable land and easements already limit expansion of development. Also, other zoning criteria will apply.
- The areas excluded from the primary and secondary locations are appropriate. Removing these locations provides better protection for rural character and less strain on services.

Measuring Distances

- Some commenters thought that distances should be measured by road miles, not in a straight line, and from the center of a rural hub, not from its boundary which could be several miles from town.
- One commenter suggested use of GIS tools such as network analysis to more accurately show road miles.

- Some commenters thought that the “Measuring Distance” provision in 10.08,A,C,3 was confusing and should be clarified. Others thought that it should remain as it is.

Rural Hub Towns and Plantations

- Some commenters thought that primary or secondary locations should not be arbitrarily placed in all plantations unless other factors suggest these are appropriate places for development. Others recommended that the Commission re-examine the list of rural hub towns and thought that some are too small and should be removed from the list. Rural hubs should be determined based on growth.
- One commenter recommended adding primary or secondary locations near the town of Danforth which provides some services to surrounding communities in the UT.

Management Class (MC) 3 Lakes

- Commenters recommended that primary locations be removed from the shoreline around certain or all MC 3 Lakes, and that the extent of primary locations around MC 3 lakes be reduced from 700 feet to 250 feet.

Removal of Primary or Secondary Locations in Specific Towns, Townships, or Plantations

- Some commenters thought that primary or secondary locations should be removed in certain townships, regions, or near scenic byways. Others recommended that the Commission reconsider the list of places where primary or secondary locations were added proactively and are not based on proximity to a rural hub. Comments that referred to specific townships or regions discussed the following places, which are organized by county:
 - *Aroostook County*: The Fish River Chain of Lakes area; and the southern portion of Aroostook County (area east of Medway)
 - *Franklin County*: Madrid Twp.; Mount Abram Twp. (including the Perham Stream area); Freeman Twp.; and the region around Rangeley and Carrabassett Valley;
 - *Hancock County*: T7 SD and T10 SD (Tunk Lake/ Donnell Pond area); and Osborn
 - *Oxford County*: Albany Twp.; and Riley Twp.;
 - *Penobscot County*: Argyle Twp.; Herseytown Twp.; T3 R7 Twp.; T4 R7 Twp.; and the gateway route to the Katahdin Woods and Waters National Monument and Baxter State Park (e.g., T1 R9 Twp.; T1 R8 Twp.; T3 Indian Purchase Twp.; TA R7 Twp.; T1 R6 Twp.; Soldiertown Twp.; Herseytown Twp.; Grindstone Twp.; Mt. Chase; T5 R7 Twp.; T6 R6 Twp.; and T6 R7 Twp.)
 - *Piscataquis County*: Elliotsville Twp.; Tomhegan Twp.; and the Greenville area
 - *Somerset County*: Sandy Bay Twp.; Bald Mountain Twp. (T4 R3 WELS); and the area between Jackman, Rockwood Strip, and Greenville

- *Washington County*: the area between Danforth, Sherman, and Springfield; T18 MD BPP, and Centerville Twp.;

b. Commenters

A. Blakesley, Friends of Katahdin Woods and Waters, A. Michka, 86 signatories to a petition regarding Argyle Twp., B. Carter, C. Eliot, C. Jean, Natural Resources Council of Maine, Appalachian Trail Conservancy, C. Stout, D. Colihan, Maine Audubon, E. Mechler, G. Moser, G. Mott, J. Banks, J. Crosen, Prentiss and Carlisle, J. Luoma, J. Sideris, J. Pidot, Trout Unlimited, J. Riefler, J. Spear, J. Vroom, Appalachian Mountain Club, K. Cote, K. Michka, M. Fernald, M. Moody, M. Polak, N. Grohoski, GrowSmart Maine, R. Fritsch, R. Gregor, R. Mercant, Maine Forest Products Council, Seven Islands Land Co., S. Coughlin, The Nature Conservancy, W. Johnston, W. Mugdan.

c. Response

Purpose of Primary and Secondary Locations

The adjacency principle is a policy used by the Commission as an initial, high-level screen to help determine where someone can start the rezoning process. Once a petition to rezone is filed, the Commission considers the specific area and the potential for undue adverse impacts to existing uses and resources associated with the proposed rezoning and potential related development. If the petition is approved and a new zone created, most uses still must apply for a permit before development occurs. Potential impacts of a proposal are evaluated during the permitting process. A permit applicant must demonstrate that the proposal will satisfy all of the permitting standards.

The new system for applying the adjacency principle includes several different regulatory tools the Commission will use to help direct new zones for development to suitable locations. The primary and secondary locations are one of these new tools and identify areas eligible for rezoning for most residential subdivisions and commercial businesses. Primary and secondary locations are not zones, but rather are a series of measurements that define where someone could apply for a new development subdistrict.

The existing pattern of development in proximity to rural hubs matches up well with the proposed primary locations. This tells us there is considerable overlap between the areas available historically for rezoning that are proximate to service providing communities and the areas now available under the new adjacency system. Based on the Commission's permitting and zoning history, and on information obtained through the adjacency review process, the Commission anticipates that only a small fraction of primary and secondary locations will be developed. Development pressure is low and not expected to rise substantially. Many areas have potential site constraints such as wetlands or steep slopes, and other limitations such as the presence of sensitive wildlife habitat. Also, the property owner may just prefer to keep their property undeveloped.

In creating the primary and secondary locations, the Commission seeks to establish greater flexibility in where rezonings can be initiated in places that are close to town and where services can be provided efficiently. Simultaneously, the new adjacency system limits rezoning for residential and commercial development outside of the primary and secondary locations to only

uses that need to be near natural or recreational resources or subdivision on certain, already developed lakes. The result is a system that proactively directs most development toward existing communities where it is concentrated today, instead of reactively requiring that it be near existing compatible development, which can be located anywhere.

Size of Primary and Secondary Locations

Originally, the Commission proposed that primary locations include the area within ten miles of a rural hub and two miles from a public road; secondary locations were proposed to include the area within minor civil divisions (MCDs) that border a rural hub that was within five miles of a public road. The original proposal also included, in primary locations, areas that were in a town or plantation that the Commission serves and within two miles of a public road. This combination of measures resulted in a map that included most existing development centers – places where the Commission knows there are existing communities or dense development patterns for the UT.

Primary Locations

In response to comments that the size of the primary and secondary locations was too big, and that they sometimes included inappropriate places because of issues related to access by emergency services, the Commission further analyzed the options. The goal was to find a measure that best included established areas of dense development and excluded areas that are lightly developed and hard to serve, with the fewest number of adjustments needed. Following that analysis, the Commission concluded that for the primary areas, the distance from rural hubs should be reduced to seven miles, and the distance from public roads should be reduced to one mile. The Commission further refined the system by eliminating a number of rural hub towns that do not provide both fire and ambulance services. Because of the reduced distances, adjustments were needed in some areas. The Commission added primary locations in certain MCDs that have substantial existing development, but were not otherwise included. One example of such an addition is Kingman Twp., where there is an existing community with an elementary school. The Commission also removed primary and secondary locations in some places that were difficult to serve because of the road network or other considerations.

Secondary Locations

[Items shown in gray shading reflect alternatives the Commission likely will consider at the April 2, 2019 Commission Meeting. The Commission may select one of these alternatives or elect to make other modifications in response to the comments on the draft rule language]:

Secondary locations allow for additional opportunity for residential development near rural hub communities. However, some commenters have expressed concern about the overall size and scope of the secondary locations. **[Alternative A:** After considering these concerns, the Commission concluded the originally proposed method for identifying secondary locations, which measures five miles from a public road, strikes the appropriate balance – providing opportunity for residential subdivision development while helping consolidate new zones for residential development near rural hubs in an effort to promote efficient provision of service and minimize the potential for fragmentation of forests and habitat. **Alternative B:** The Commission considered these comments and the intended purpose of secondary locations, and reduced the amount of area within the secondary locations by changing the measure of five

miles from a public road to three miles from a public road. This change still allows for additional residential subdivision opportunity near rural hub communities, while reducing the scale of secondary locations and tailoring them to better resemble the existing development pattern in some areas.]

Measuring Distances

Commenters suggested that the Commission measure distances by road, and that distances should not be measured from rural hub town boundaries because sometimes this can be several miles from the developed part of town. One commenter suggested use of a GIS network analysis of public road systems in the UT to base primary or secondary locations on road miles from features like the boundary of a rural hub town, or from the edge of the “dense development zone,” which could be identified using aerial imagery. Other commenters discussed the provision in 10.08-A,C,3 that describes how measurements from public roads and the boundary of rural hub towns are made. Some thought the provision was confusing and others thought it should remain as written.

The adjacency principle is a high-level screen; development that is subject to adjacency review will go through additional review steps that will look more closely at the issues of location and service provision. For the purpose of this initial screening process, it is important to have a predictable system that can be understood and used by property owners and the public. Measuring “as the crow flies” from public roads and town lines is simple to do with commonly available tools, and uses features that rarely change.

Running a network analysis would result in a more accurate depiction of travel distance for emergency services, but it would be based on information that changes frequently or is difficult to identify, such as the location of rights of travel over private roads, or the exact boundary of a town’s developed area. The map of primary and secondary locations has been a helpful discussion tool in the public review process, and could be made more detailed if an analysis of current travel routes were performed. However, it is important to note that while the map is a helpful illustration of the rule, it will not determine whether a property is within the primary or secondary locations. To pass the adjacency screen for most new zones, a petitioner must demonstrate that: (i) the location is within a certain distance of a public road and rural hub (within a primary or secondary location); (ii) ambulance and fire services could be provided (by providing a letter from the service providers); (iii) legal right of access to the development from a public road exists; (iv) the land uses will be compatible with the area; and (v) the land uses will not unreasonable alter the character of the area. This set of criteria will flex with changes in travel routes and service capacity over time, while also providing a predictable rule for the public and property owners.

The rule revisions include a set of directions for how to measure distances from public roads and the boundaries of rural hub towns (Section 10.08-A,C,3). Some commenters thought these directions were useful as written, but others found them confusing. While measurements to establish primary or secondary locations are made “as-the-crow flies,” sometimes a straight-line measurement from a road or boundary passes over a waterbody, river, or Interstate I-95. These features can be barriers to meaningful access to an area, even if it is within one mile of a public road and within seven miles of a rural hub town. The purpose of this provision is to limit primary and secondary locations to places that have road access, or where there is a reasonable

expectation that access could be extended to the area, and to prevent situations where emergency services would potentially have to travel around a waterbody, river, or the highway to reach a new development on the far side. The directions include two exceptions to this limit on straight-line measurements: (i) if there is a bridge or other direct road connection that crosses the feature; or (ii) if the area is contiguous with another respective primary or secondary location.

In practice, to demonstrate a proposed development is in the primary or secondary locations petitioners must consider the surrounding area. Also, other issues related to access must be examined during the rezoning process, including legal road access for future lot owners, and provision of emergency services. The Commission concludes that the language in Section 10.08-A,C,3 about how to measure distances is clearly written now, but will consider how this new system works in practice when reviewing the overall adjacency and subdivision rule changes.

Rural Hubs, Towns, and Plantations

The list of rural hub towns was originally based on the Commission's regulatory system for recreational lodging facilities, which incentivizes certain recreational lodging facilities to locate near public roads and certain towns. In the recreational lodging rule development process, the towns were selected based on overall levels of retail sales, with attention to recreation-related sales data, and the Commission's knowledge of its service area. This approach was built upon, during the Aroostook County and Washington County Community Guided Planning and Zoning Processes, which established eligible areas for a new Rural Business Development Subdistrict near roads and certain towns.

During the adjacency and subdivision rulemaking process, the list of towns originally used for locating certain recreational lodging operations was refined, and some towns were removed from the list based on feedback from county officials about provision of emergency services in the UT. The Commission received a specific comment about adding the Town of Danforth as a rural hub town, but ultimately did not do so. The Commission analyzed the suggestion and concluded that adding Danforth to the list would result in new primary and secondary locations in some places with existing population, but would also include new areas with minimal existing development. Many of the places near Danforth that would be included if it were added as a rural hub are plantations (e.g., Webster Plt. or Carroll Plt.), or already have primary locations in the proposal (e.g., Kingman Twp. and Prentiss Twp.). Some of the places that would become primary area, such as Forest City, were the subject of much discussion during the Washington County CGPZ process. Those townships near Danforth were not chosen for prospective zoning by the regional planning group for a combination of reasons, including the preference of residents who participated in the process to not encourage further development.

Based on the comments received, and as a result of the changes to the map, two rural hub towns should be removed from the list: Anson and Orono. Neither town provides the sole basis for primary or secondary locations after changing the distance measures from public roads and from the boundary of rural hub towns, and it is not necessary to include them in the list. With those two removals, the Commission concluded that the list of rural hub towns accurately reflects the places most important in serving the UT.

Some commenters indicated it was inappropriate to include all plantations in the primary areas. The Commission provides zoning and permitting services to plantations and some towns, in addition to townships. Plantations and towns have local government and can provide some of their own services like road maintenance. Not all are alike, but many have established communities, networks of public roads, and are some of the most populated areas in the Commission's service area. Because they tend to be substantially developed, it is reasonable to include them in the primary area. During a rezoning process it has been, and will continue to be, the Commission's goal to consult with plantation or town officials if there are likely to be impacts to their community from a proposed development.

Management Class 3 Lakes

The new system for applying the adjacency principle is intended to carry forward the Commission's existing policy for development around lakes in the UT. In the Lakes Management Program, Management Class 3 (MC 3) Lakes are designated as potentially suitable for development and have had an adjacency waiver. Considering land around MC 3 lakes to be in the primary locations carries forward this policy. Additionally, the rule changes do not affect the other guidance in the CLUP for rezonings around MC 3 Lakes, such as the requirement that these areas have adequate soils and that development not result in potential water quality issues. These factors would still be considered during the rezoning process.

The Commission removed Elliotsville Township from the primary and secondary locations due to emergency service access issues. However, Elliotsville contains an MC 3 lake. To stay consistent with the Commission's lake management policy, which has been in place since 1990 and is expressly intended to remain consistent over time, the Commission has revised the rule language to make clear that area around MC 3 lakes is within the primary locations regardless of the status of the surrounding area.

Currently, the adjacency waiver for MC 3 lakes extends to lands within 250 feet of the shore. The Commission concluded that allowing rezoning for the purpose of residential subdivision up to 700 feet from an MC 3 lake will lead to better development outcomes by allowing enough room for clustering or flexible subdivision designs that could better fit site characteristics. Limiting subdivisions to areas within 250 feet of the high-water mark is too limiting and may result in designs with linear lot layouts in situations where a clustered design would result in better outcomes for wildlife, recreational access, or the character of the shoreline. This change is consistent with the policy intent for MC 3 lakes.

Comments About Places That Resulted in Specific Changes to the Primary or Secondary Locations

Based on comments and further analysis, the Commission made the following changes to the rule *[Items shown in gray shading reflect potential options for consideration at the April 2, 2019 Commission Meeting]*:

- Changed the measurement for secondary locations to include areas within three miles of a public road in minor civil divisions (MCDs) that share a boundary with a rural hub to reduce the total size of the secondary locations and better reflect the pattern of development that exists in the Commission's service area.

- Removed Anson and Orono from the list of rural hub towns because neither provide the sole basis for any primary or secondary locations.
- Removed primary or secondary locations in specific places to reduce the total size of the primary and secondary locations, and to better reflect the pattern of development that exists in the Commission’s service area. Removal of primary and secondary locations in certain townships are shown below, organized by county:
 - Aroostook County: T1 R5 Twp.; Upper Molunkus Twp.; North Yarmouth Academy Grant Twp.: These three townships are located in a block in the southern portion of Aroostook County (east of the town of Medway). All three have public roads but a low level of existing development.
 - Franklin County: Both Mount Abram Twp. and Redington Twp. have secondary locations based on proximity to Carrabassett Valley or Kingfield, but neither have a direct road connection or any segment of public road, and both have mountainous topography making them relatively inaccessible.
 - Hancock County: While Route One passes through a corner of the township, T7 SD BPP has limited public roads and existing development.
 - Penobscot County: T1 R6 WELS, T3 R7 WELS, T4 R7 WELS, and Argyle Twp. T1 R6 WELS has a low level of existing development and no public roads. Secondary locations in T1 R6 WELS are based on proximity to the Grindstone Road in Grindstone Twp. T3 R7 WELS and T4 R7 WELS share a border with Patten and Stacyville, but there is little existing development in either township, and no public roads. Additionally, some of the secondary locations in both townships overlap areas in the Katahdin Woods and Waters National Monument that are managed for low-impact recreational uses. Residents in Argyle Twp. submitted a letter to the Commission signed by 86 people that requests the township be exempted from the new system for applying the adjacency principle. In addition, the Penobscot Indian Nation commented in support of the residents’ request because their Trust lands in Argyle are zoned as “Wildlife Management” and are some of the tribe’s most important traditional hunting grounds.
 - Piscataquis County: Elliottsville Twp. has primary and secondary locations based on the presence of public roads and its proximity to Greenville, but ambulance services from Greenville or Dover-Foxcroft must travel through Willimantic to get there (20 miles from either location.) Onawa Lake is a MC 3 lake, and areas within 700 feet of the shoreline will remain in the primary locations, even though the rest of the township is ineligible for primary or secondary locations, to ensure consistency with the Commission’s lakes management program.

Comments About Places that did not Result in Specific Changes to the Primary or Secondary Locations

The Commission analyzed specific places mentioned by commenters and in some cases decided not to remove primary or secondary locations. Commenters discussed different regions or types of locations when recommending changes to the map, including: contiguous regional patterns in

various parts of the state; places with established communities; townships that only include the end of a pattern of primary locations; the area surrounding Millinocket; and certain townships in Washington and Hancock County.

- Contiguous regional patterns:

The Rangeley and Carrabassett Valley region; the Jackman, Rockwood Strip, and Greenville area; the Millinocket area; and the area east of Medway in southern Aroostook County and northern Washington County.

The regions discussed by commenters include major transportation corridors and some of the most developed portions of the Commission’s service area. While it would not be appropriate to remove primary and secondary locations in these areas, the Commission concluded that, overall, the reduction of the size of secondary locations, in addition to removal of primary and secondary locations in specific places will help reshape regional patterns of primary and secondary locations that some commenters thought would result in negative impacts on wildlife habitat, public access, and scenic character. Many places mentioned by commenters are also in conservation, which may limit or prohibit some or all types of development, and will further reduce contiguous patterns of primary and secondary locations in some regions.

- Towns or townships with established communities or development centers:

Madrid Twp.; Freeman Twp.; Riley Twp.; Albany Twp.; Baring Plt.; Tomhegan Twp.; Mt Chase; and Osborn

Several of the MCDs suggested for removal by commenters have existing patterns of commercial or residential development that are relatively intensive, have existing networks of public roads, receive services from providers in nearby towns, and some are towns or plantations with their own local government. The Commission believes that guiding new development subdistricts to places in, or near, established development centers is consistent with the objectives of the adjacency principle.

- Townships that include the end of a pattern of primary locations:

Sandy Bay Twp.; Bald Mountain Twp. (T4 R3); T6 R7 WELS; T6 R6 WELS; T5 R7 WELS; Soldiertown Twp. (T2 R7 WELS); and Herseytown Twp.

Commenters recommended removal of townships that included only the end of a pattern of primary locations. For example, Sandy Bay and Bald Mountain townships have short sections of primary locations based on proximity to the northern boundary of the town of Jackman. These areas are still within seven miles of a rural hub town and within one mile of a public road. Removing these “ends” of the pattern would not accomplish specific objectives other than reducing the overall size of the primary locations, which is better achieved by other recommended changes described in this section.

- Townships in the Millinocket Area:

Grindstone Twp.; TA R7 WELS; T1 R9 WELS; T1 R8 WELS; TA R7 WELS; and T3 Indian Purchase Twp.

Grindstone Twp. and TA R7 WELS are next to three towns: Millinocket, East Millinocket, and Medway. Primary locations in each township are similar to the pattern of development that exists along public roads today. T1 R9 WELS, T1 R8 WELS, and T3 Indian Purchase Twp. are all relatively close to Millinocket, which provides services, and all have existing residential development, particularly in areas near waterbodies, and commercial development in some areas.

- Certain townships in Washington and Hancock County:

T18 MD BPP; Centerville Twp.; and T10 SD.

T18 MD BPP and Centerville Twp. include primary locations that follow the existing pattern of development. T10 SD, which includes the Donnell Pond and Tunk Lake areas, has a major public road running through it and is near Milbridge, which is a state designated service center. Primary locations in T10 SD include existing residential development in development subdistricts on the shores of Tunk Lake and Spring River Lake.

d. Action

- Change the distance measurement from public roads for secondary locations in Section 10.08-A,C,2:

2. Secondary Location. The following area within the unorganized and deorganized areas of the State is within the secondary location:

- a. Land in a rural hub, or in a town, township, or plantation bordering a rural hub, that also is within ~~five~~three miles of a public road and outside the primary location;

- Remove two towns from the list of Rural Hubs in Section 10.08-A,B:

B. RURAL HUBS

The following minor civil divisions are rural hubs: ~~Anson~~, Ashland, Bethel, Bingham, Calais, Caribou, Carrabassett Valley, Dover-Foxcroft, Eastport, Ellsworth, Farmington, Fort Kent, Gouldsboro, Greenville, Guilford, Houlton, Island Falls, Jackman, Jonesport, Kingfield, Lincoln, Lubec, Machias, Madawaska, Medway, Milbridge, Millinocket, Milo, Oakfield, Old Town, ~~Orono~~, Patten, Presque Isle, Princeton, Rangeley, Rockwood Strip T1 R1 NBKP, Rumford, Saint Agatha, Unity, Van Buren, and Waterford.

- Remove primary and secondary locations in additional minor civil divisions in Sections 10.08-A,C,4 and 5:

4. **Area Within Primary Location.** Land within one mile of a public road within the following townships is within the primary location: Benedicta Twp., Blanchard Twp., E Twp., East Moxie Twp., Greenfield Twp., Kingman Twp., Madrid Twp., Marion Twp., Moxie Gore Twp., ~~North Yarmouth Academy Grant Twp.~~, Oxbow North Twp., Prentiss Twp., Silver Ridge Twp., ~~T1 R5 WELS Twp.~~, T9 R5 WELS Twp., and T9 SD BPP TWP, and Upper Molunkus Twp.

5. **Area Outside Primary and Secondary Locations.** Notwithstanding any provision to the contrary, land within the Prospective Zoning Plan for the Rangeley Lakes Region shall not be eligible for inclusion in the primary or secondary locations. Additionally, land within the following townships shall not be eligible for inclusion within the primary or secondary location under Section 10.08-A,C,1,a or 2,a, except that land around a Management Class 3 lake is included pursuant to Section 10.08-A,C,1,c: Argyle Twp., Andover West Surplus Twp., Carrying Place Town Twp., Dead River Twp., Elliottsville Twp., Johnson Mountain Twp., Lexington Twp., Mount Abram Twp., North Yarmouth Academy Grant Twp., Pierce Pond Twp., Redington Twp., T1 R5 WELS, T1 R6 WELS, T3 R3 WELS ~~Twp.~~, ~~and T3 R4 BKP WKR Twp.~~, T3 R7 WELS, T4 R7 WELS, T7 SD BPP, and Upper Molunkus Twp.
 - During review of the overall adjacency and subdivision rule revisions, specifically review the implementation of provisions in Section 10.08-A,C,3: “Measuring Distance” to determine whether language clarifications or potential adjustments to the rule are needed based on the Commission’s experience administering the new rules.

10. Rezoning Criteria

a. Summary of Comments

The Commission received the following comments on the proposed re-zoning criteria:

- Commenters recommended changes to the General Criteria to add specificity to certain provisions, such as Section 10.08,B,2,c, which addresses character of the area.
- Some commenters thought requiring legal right of access for property owners in a subdivision was a positive change. Also, there were commenters that felt lease lots should not be exempted from legal right of access, because they function the same as fee lots.
- There were commenters that also felt requiring that a developer demonstrate that emergency services can be provided was positive.
- There were varying thoughts on the ability to waive the emergency services provision for recreation-based subdivisions. Some commenters thought that the ability to waive the emergency services provision should be removed, because notice of absence of emergency services would not stop lot owners from requesting services. Others thought the waiver was a needed change and that notice to lot owners of the absence of services would adequately inform lot owners of the lack of services. Still other commenters thought that access to services provided by Life Flight should be considered adequate.

- Some commenters pointed out that rezoning would still be required before development occurs, and that the adjacency principle only determines where someone may apply for a rezoning.
- Others thought that rezoning should not be required for residential subdivision in more locations, that a third location addressing eligibility for large lot subdivisions located away from services should be included, and that the Commission should function more like a municipality.
- Several people commented that the proposed changes in the re-zoning criteria would provide a more predictable process.

b. Commenters

A. Michka, C. Eliot, C. Jean, Maine Audubon, G. Mott, J. Pidot, Trout Unlimited, K. Michka, GrowSmart Maine, P. Sheridan, Maine Forest Products Council, Seven Islands Land Co., The Nature Conservancy, W. Johnston.

c. Response

Subdivisions for Which Zoning Is or Is Not Required

The locations in which the Commission can be relatively sure of the appropriateness of subdivision without going through a rezoning process are limited, and the rule reflects that by requiring rezoning in most instances. Because the Commission's service area is large, detailed on-the-ground zoning is confined to certain areas, such as the Rangeley region. In other areas, the Commission uses the combination of the adjacency screen and the rezoning process to evaluate suitability of location on a case-by-case basis. Low density subdivisions, in particular, will be evaluated for appropriateness of location in this way. This evaluation is important to ensure that low density subdivisions do not fragment habitat or interfere with a community's natural growth patterns.

Legal Right of Access

Historically, no demonstration of legal right of access has been required for residential subdivision rezoning. This rule requires a demonstration of legal right of access in most circumstances for the first time. The Commission received comments supporting requirements for legal right of access for subdivisions. Also, some commenters asserted that lease lots in lease lot subdivisions should not be exempted from legal right of access, because they function the same as fee lots. The Commission believes that developers of most subdivisions with lots sold in fee must provide legal right of access to protect future lot owners in situations like the ownership of the access road changing hands or the road needing significant repair. One stakeholder, in commenting on a pre-rulemaking draft of the rule revisions, requested that the Commission make a distinction between fee lots and lease lots, and allow lease lot subdivisions without the requirement for legal right of access. The Commission agreed that the request was reasonable. Lease lot subdivisions are a traditional use in the Commission's service area and are typically associated with a higher ownership risk. Lease agreements often state that road access is not a guarantee, and there is a long-standing understanding by lease lot holders that there

may be times when road access will be difficult, or not available. Additionally, a lease may be terminated or not renewed, consistent with the terms of the lease and governing State law.

Recreation-based Subdivisions and Emergency Services

Under the one-mile rule of thumb, undeveloped lakes and ponds that are far from services could be considered for residential subdivision if there happened to be an existing cluster of camps down the road, or on a nearby lake. This is not a good planning outcome, as is recognized in the CLUP. To improve the situation, the Commission considered whether recreation-based subdivisions (those outside of primary and secondary locations) should be allowed at all, and if so, where. The Commission considered the tradition of camp development in rural Maine and historic patterns of development in its service area, including places where camps and residences have been built along the shores of lakes, sometimes in remote locations. While subdivisions would not be appropriate on a significant majority of the lakes that fall outside of the primary and secondary locations, it is reasonable to consider new residential subdivision development on certain lakes that are already developed and are not otherwise classified as protected. The rules promote this outcome; the adjacency screen may be satisfied and an individual may pursue rezoning to accommodate a recreation based subdivision on a limited number of already developed lakes. These proposals must still go through the rezoning review process, as well as subdivision permitting: rezoning and permitting review consider issues at the local scale, so any environmental issues or use conflicts would be addressed at that time. Not all proposals would be approved, even if they pass the adjacency screen.

Some of these lakes that may satisfy the adjacency screen are in locations distant from a public road or rural hub, and are accessed by traveling long distances on private roads that may be built and maintained for other purposes (e.g. commercial forestry). As noted above, a legal right of access to property proposed for rezoning to a residential subdistrict is required for the first time by these rules. Even with this access, it may be difficult, or even impossible, for fire trucks or ambulances to reach some residential development in these types of locations. Therefore, the Commission concluded that it would be appropriate to include a waiver of emergency services for recreation-based subdivisions, provided that the standards require a disclaimer notifying potential buyers that their property does not come with a guarantee of emergency services. This approach does a better job than the system that has been in place for decades, which allows subdivisions in areas distant from services with no notice to the lot purchasers about that situation. (Additionally, within the primary and secondary locations, a demonstration that emergency services can be provided is a required component of rezoning.)

Life Flight

The Commission does not consider Life Flight to be the provision of emergency services for subdivision purposes because it is meant for unusual circumstances and is very costly. Regardless that the service quality may be very good, it is not an efficient way to provide emergency services to new development, and its inclusion would defeat the goal of encouraging most new development near existing services, and where the development is farther away, setting expectations with the prospective lot owners about the lack of services.

General Criteria - Character of the Area

The commenter’s suggestion was to add specific examples of what may be considered in an evaluation of impacts on character of the area. The commenter’s examples are very concrete, such as “traffic, scenery, noise, lighting, odors, or other natural qualities or features.” The Commission may wish to consider broader kinds of character as well, including the overall pattern of land uses in the area. Although the proposed list is not exclusive, it may lead the reader to conclude that only very concrete impacts are part of the evaluation, when it is the Commission’s intent to allow for judgment about what may impact character for a given area. The Commission has left that criterion general, recognizing that it cannot anticipate every potential scenario and so that it may have the flexibility to consider many different circumstances over the years and apply appropriate judgment.

d. Action

No action taken.

11. Resource-based Locations

a. Summary of Comments

The Commission received comments relating to resource-based locations, including comments on recreation-based subdivisions, recreation-based commercial development, and resource-based commercial development:

Recreation-based subdivision

- Commenters had a range of opinions about whether or not to include options in the rules to allow for recreation-based residential subdivision outside of the primary and secondary locations. Some commenters thought that the concept would promote a dispersed development pattern on lakes and near trails and would alter the character of the Commission’s service area. Others commented that Maine has a tradition of camp development around lakes and including provisions that allow this to happen in certain places is appropriate.
- Some commenters thought that the criteria to identify MC 7 lakes suitable for residential subdivision are inappropriate. Others thought the criteria adequately guide development to waterbodies that already have development. Some commenters thought that more information is needed about which lakes would potentially be eligible for recreation-based subdivision.
- Other Commenters thought that some Management Class 4 or 5 lakes would become overcrowded, and that the management classifications for certain waterbodies should be revisited.

Recreation-based commercial development

- There were a variety of opinions about whether to allow residential or commercial development near access points to recreational resources (e.g., trailheads or boat launches). Some commenters thought that it would undermine the experience most

trail users are looking for when they recreate, while others approved of additional flexibility for recreation-related economic development near trails.

- Several commenters urged the Commission to clarify the terms “trailhead” and “permanent trail,” and suggested specific revisions that better capture: trails that are land-based; trails that serve motorized, mechanized, or equestrian users; trails owned and managed for public access; and trails that have developed or well-used areas where users access the system.
- Some commenters were concerned that commercial development in the Commission’s service area near recreational resources would compete with businesses located in nearby towns that may provide the same services. Others thought that the rule revisions would provide needed flexibility for recreation businesses and was a positive change.

Resource-based commercial development

- There were comments that the proposed Resource-Based Development (D-RD) subdistrict would lead to far-flung commercial development away from existing development and infrastructure, commercializing the North Woods and competing with existing sporting camps. There were other comments that resource-based development would support the State’s evolving natural resource-based economy, providing more flexibility, and minimizing conflicts with existing uses without substantially increasing demand for services. Several commenters supported the reversion clause for the D-RD subdistrict.
- One commenter thought that resource extraction operations should be required to be at least ½ mile from permanent trails so as not to degrade the experience of trail users or result in potential public safety issues. Others felt resource extraction should be significantly limited, because it is unsustainable and can cause permanent resource damage.

b. Commenters

A. Blakesley, Friends of Baxter State Park, A. Winchester, B. Carter, C. Eliot, Natural Resources Council of Maine, C. Krolick, Appalachian Trail Conservancy, C. Stout, Maine Professional Guides Association, Maine Audubon, E. Mechler, F. Todd, H. Brogunier, H. Koch, Seven Islands Land Co., J. Crosen, J. Diangelo, J. Luoma, J. Pidot, Trout Unlimited, J. Sideris, Appalachian Mountain Club, K. Cote, K. Michka, Weyerhaeuser, J. Willard, M. Fernald, M. Ignatiadis, New England Forestry Foundation, GrowSmart Maine, Huber Resources, P. Sheridan, R. Gregor, Maine Forest Products Council, Seven Islands Land Co., The Nature Conservancy.

c. Response

Recreation-based Residential Subdivision

The historic pattern of development in the Commission’s service area includes places where camps and residences have been built along the shores of lakes, sometimes in remote locations. The one-mile rule of thumb allowed petitions to rezone for a residential subdivision within one

mile of any cluster of camps, regardless of location. While this application of the adjacency principle ensured that subdivisions were tied to places within one mile of other existing residential development, it did not prevent leapfrogging or situations where development along the shore of one lake, or along a road, forms the basis for additional development nearby on an undeveloped lake. The new system limits rezoning for residential subdivision outside of the primary or secondary locations to certain lakes that are already developed, or lakes that have been deemed suitable for development in the Commission's Lakes Management Program (e.g., MC 3, MC 4, MC 5, or MC 7 lakes that meet certain density requirements), and to trailheads for permanent trails that serve vehicular or equestrian users. Information from the process indicates that guiding development to developed waterbodies, and to trailheads where users are not expecting a remote experience, is preferable to use of the one-mile rule of thumb, which considers proximity to existing compatible development, but not overall suitability of location.

Based on analysis of how many lakes located outside of the primary or secondary locations would be eligible for recreation-based residential subdivision, and based on analysis of the development patterns around those lakes randomly selected for examination, the Commission concludes the criteria for MC 7 lakes sets appropriate thresholds that reflect the goals of the lakes management program and that identify when the pattern of development around a lake becomes more consistent with developed landscapes than a natural undeveloped setting.

There is no dataset currently available that identifies where all existing development is located throughout the Commission's service area. Gathering this type of information about all of the UT would be a large undertaking that would yield a "snapshot in time" of development conditions on the ground. Given the resources and time that a land use survey would entail, and the limited utility of a "snapshot in time," the Commission does not agree that a land use survey is required for the purposes of measuring adjacency, which is the first screen that determines whether an applicant can even begin the rezoning process. (Notably, no such inventory existed when the 1-mile rule of thumb was developed and the refined approach to application of the adjacency principle embodied in these rules provides more certainty about the location of future rezonings than the prior system.)

The lakes management program describes MC 4 and MC 5 lakes as *high value and developed*, and *heavily developed*. The rule revisions require cluster or flex subdivision designs on MC4 lakes, MC 5 lakes, or on any other lake that has more than one dwelling per 400 feet of shoreline, or more than one dwelling per ten acres of lake surface area. The reason to require clustering or flex designs on these types of waterbodies is to conserve limited shoreline on lakes that are already developed, provide wildlife and people access to the water, and to minimize potential water quality issues.

The Lakes Management Program is meant to be a comprehensive approach to regulating development on lakes in the UT, and is based on an assessment of conditions on each lake at the time the program was created in 1990. This assessment forms a baseline of information for each lake, against which development proposals can be measured. Changing management classifications or resource ratings for a lake for reasons other than to correct an error in the original assessment could lead to reduced protections for lakes because incremental development would lead to "downgraded" classifications, which could then allow more development, and the cycle would continue. At the time this system was created, the Commission stated that the classifications were intended to be unchanged in the future except

to correct errors. Someday, the system may need to be re-examined broadly, but until that time the Commission is following the policy.

Recreation and Resource-based Commercial Development

Based on information obtained in the adjacency review process, and on the Commission's history permitting development in the UT, the Commission concludes that the one-mile rule of thumb was too limiting for businesses that rely on being near natural resources – particularly those that facilitate day-use recreation or on-site resource processing to reduce the bulk of products before transportation. Commercial uses such as mountain bike trail centers, mobile canoe or kayak rentals, or processing of forest products are complimentary to traditional land management and recreation pursuits in many places, and are likely to occur in the UT as the economy continues to evolve. Creation of additional opportunities for recreation day-use commercial activities only near certain management class lakes and certain types of trails will limit the potential for new commercial activity to erode the natural character of high-value lakes and other resources. Allowing the establishment of commercial activities like gear rental makes expansion of the range of services offered by recreational lodging facilities or recreation businesses in nearby towns possible.

Given the changes in the Maine woods economy, and that the adjacency principle is the initial screen for where someone could apply for a new zone for development, the Commission concludes that certain commercial uses should be able to locate near natural resources in limited circumstances, and that a case-by-case determination through the rezoning and permitting process will ensure that development does not result in undue adverse impacts to existing uses or resources. Certain resource extraction, resource processing, or recreation facilities are required to rezone to the new Resource Dependent Development (D-RD) subdistrict before applying for a permit. During the rezoning and permitting process, the Commission would consider potential impacts to nearby natural or recreational resources. The D-RD is a reverting zone – meaning that once the use for which a D-RD subdistrict was established is finished, the development subdistrict reverts to the prior zoning. This mechanism eliminates the potential for new unanticipated commercial uses to occur in a new development zone established in a location suitable for one type of resource-dependent use, but not for all commercial uses.

Several commenters recommended clarification about what types of trailheads and permanent trails would be eligible for residential development, or development of recreation supply businesses. The Commission agrees with the commenters' suggested language changes, and has identified places in the rule where clarification has been added (see below).

The Commission does not agree that resource extraction uses should be located at least ½ mile from permanent trails, or that locations for these activities should be further limited by rule. Most resource extraction uses are allowed only in the new D-RD subdistrict and the Commission concludes the rezoning and permitting process will allow for consideration of impacts to nearby trails and other resources. Gravel pits under five acres can be developed in other subdistricts in accordance with standards or by permit. Some of the standards for these types of pits already include enhanced setbacks from property lines and the presence of a vegetative buffer between the gravel mining activity and facilities intended for public use.

d. **Action**

- In response to comments, the Commission has made the following changes related to trailheads in Section 10.02:

##. Trailhead.

An outdoor space:

- a. Designated by an entity responsible for administering or maintaining a permanent trail and that is developed to serve as an access point to the trail;
- b. That is publicly accessible, and which provides adequate parking in an off-road lot for the use of the trail; and
- c. That is not just the junction of two or more trails or the undeveloped junction of a trail and a road.

- The term Trailhead was inserted into the rule in three places:

Section 10.08-A,D,2,c:

- c. ~~Points of entry to Trailheads serving~~ permanent trails that ~~are publicly accessible and accommodate support~~ motorized vehicles, non-motorized vehicles, or equestrian use, and have an appropriately-sized parking area and sufficient additional user capacity to serve users from the proposed residential use.

Section 10.21,K,2,a,(3)

- (3) Recreation supply facilities within one-quarter mile of a water access point that is publicly accessible on a Management Class, 4, 5, or 7 lake or within one-quarter mile of ~~the point of entry to trailheads serving~~ permanent trails that ~~are publicly accessible and~~ support motorized vehicles, nonmotorized vehicles, or equestrian use. Recreation supply facilities must not be located within one-quarter mile of a Management Class 1 or Management Class 2 lake, and not within one-half mile of a Management Class 6 lake. The proposed commercial development must have adequate parking that is separate from designated parking for trail use when existing space cannot accommodate both trail users and all activity as a result of the proposed development.

Section 10.27,S,5,b

- b. **Proximity to Resource.** Facilities must be located within one-quarter mile of ~~publicly accessible points of access to trailheads serving~~ permanent trails that support motorized vehicle, nonmotorized vehicle, or equestrian use; or within one-quarter mile of publicly accessible points of access to a body of

standing water greater than ten acres in size, and not within one-quarter mile of Management Class 1, or Management Class 2 lakes, and not within one-half mile of Management Class 6 lakes.

- The definition of permanent trail was clarified:

##. Permanent Trail:

A trail that is land-based, owned in fee, and managed, and maintained by one or more organizations or public entities for the purpose of allowing public access,
~~and~~ the location of a permanent trail which may vary slightly, but generally remains in the same physical location within a designated corridor. A trail that is established by lease, license, or informal agreement with a landowner who is not maintaining the trail is not a permanent trail.

12. Low Density Subdivision

a. Summary of Comments

General comments relating to low density subdivisions and “kingdom lots” included the following:

- Some commenters said the proposed rule revisions that would establish a subdistrict and standards for low-density subdivisions are similar to, or as damaging as, the statutory subdivision exemption for large lot divisions prior to 2001. They raised concerns about forest fragmentation, damage to natural resources, interference with traditional uses, and efficiency in land use.
- Some people commented that large “kingdom lots” should not be allowed.
- Other commenters indicated that there is a strong market for large lots, particularly greater than 50 acres in size, in the unorganized territories, and that landowners needed to create lots to serve that market. The latter commenters asserted the proposed rules force the creation of smaller lots that are less marketable. One other felt that demand is not high enough to lead to “a rash of so-called Kingdom lots,” but that there should be an option for a large lot subdivision greater than 25 acres. That person offered that there are people who want to own a woodlot of 40 or 75 acres and have a camp on it, and there isn’t anything wrong with that.

Comments with specific questions or requests for changes to the proposal included:

- In the purpose section of the D-LD, what is meant by exceptional recreational resources?
- Timber harvesting and land management roads should be allowed without a permit subject to standards in the D-LD subdistrict.

b. Commenters

A. Blakesley, Friends of Baxter State Park, A. Walsh, B. Carter, C. Eliot, Natural Resources Council of Maine, C. Stout, Maine Audubon, E. Ecker, E. Mechler, F. Todd, G. Fanjoy, G. Moser, H. Koch, J. Crosen, J. Sideris, J. Pidot, Trout Unlimited, J. Sideris, Appalachian Mountain Club, K. Cline, K. Cote, Family Forestry, L. Gray, Maine Wilderness Guides Organization, M. Moody, M. Polak, P. Sheridan, R. Fritsch, R. Gregor, Maine Forest Products Council, S. Beckman, Seven Islands Land Co.

c. Response

The intent of allowing low-density development in appropriate places within the Commission’s service area is to provide opportunity for traditional development patterns that would support small woodlots and family farms. Small woodlots and family farms can benefit Maine families, support the local economy, and meet local food and fiber needs. Allowing a limited amount of low-density development that meets specific design standards strikes a better balance than either allowing by exemption unlimited large lot divisions, or not providing this type of opportunity for landowners at all. Given that there is a demand for low-density development in the unorganized territories, presently the demand is being addressed with exempt 2 in 5 lot divisions. Using the 2 in 5 lot exemption results in a slower pace of large lot divisions; however, the possible downsides of that approach are the creation of lots in less suitable places, haphazard lot layout, greater risk of habitat fragmentation, and substandard road systems, among others.

The proposed lot sizes for the low-density subdivision layout are based on two key factors, 1) ensuring that there will be sufficient land area within each lot to support the intended uses, and 2) minimizing the potential for inefficient land uses such as overly large “kingdom” lots.

Persons interested in more self-sufficient living require more space than most homeowners. The following is one example of the possible land area needed for that lifestyle.

Building envelope-	1 acre
Fire wood-	16 acres
Hayfield (1 cow or 6 sheep)-	1 acre
<u>Pasture -</u>	<u>4 acres</u>
Total	22 acres

Additional area may also be needed for vegetable gardens, fruit trees, berries production, buffers, roads, and ponds. Also, hunting may play a key role in self-sufficient living, and an any-deer permit would be helpful in that case. In Maine, you need at least 25 acres to participate in the landowner drawing for an any-deer permit.

In addition, the market research conducted by the Commission showed the market for low density lots existed with working class Mainers, especially in the Millinocket-Lincoln region. With no waterfront, these would not be expensive lots and would not be lots that trophy home builders would seek. The low-density subdivision option, with a maximum lot size of 25 acres,

will provide for the needs of these Mainers, without, as already stated, allowing for excessively large “kingdom lots” as part of a subdivision.

Regarding the specific questions and recommendations, the Commission reviewed the purpose and use listings of the D-LD subdistrict. The term “exceptional recreational resources” is meant to provide the Commission, in fulfilling its responsibility as the zoning authority for the unorganized territories, a particular opportunity to weigh the value of recreational resources in the area, when deciding if a proposed location is suitable for rezoning to a D-LD subdistrict. Given the diversity of recreational resources in the Commission’s service area, defining the term, beyond the conventional definition of exceptional, would likely be too limiting to serve the Commission’s purpose. Adding timber harvesting and land management roads as uses allowed without a permit subject to standards in the D-LD subdistrict, without limitation, raised some concern for the Commission. If a timber harvest is conducted prior to receiving a subdivision permit, it is possible that buffers needed for water quality, wildlife habitat protection, or scenic character may be removed, making it much more difficult for the subdivision development to meet the Commission’s development standards. However, it is not the Commission’s intent to add burden to a lot owner, when the aim of the D-LD subdistrict is to provide space for small-scale land management activities. Allowing a timber harvest without a permit, provided that it is compliant with the terms and conditions of a valid subdivision permit, is reasonable.

d. Action

- The Commission changed Section 10.21,F,3,b and c in response to the comments on the D-LD subdistrict use listings:

b. Uses Allowed Without a Permit Subject to Standards

...

- (6) Home-based businesses: Minor home-based businesses;
- (7) [Land management roads that are in conformance with all applicable terms and conditions of a valid subdivision permit;](#)
- (78) Mineral exploration activities: Level A mineral exploration activities, excluding associated access ways;
- (89) Road projects: Level A road projects;
- (910) Service drops;
- (110) Signs;
- (12) [Timber harvesting that is in conformance with all applicable terms and conditions of a valid subdivision permit;](#)

...

[Renumber all remaining use listings in this section]

...

c. Uses Requiring a Permit

...

- (10) Land management roads [that are not in conformance with the standards of Section 10.21,F,3,b;](#)

...

- (17) Timber harvesting [that is not in conformance with the standards of Section 10.21,F,3,b;](#)

...

13. Scenic Character, Hillside Standards, and Scenic Byways

a. Summary of Comments

Scenic Character and Hillside Resources

The Commission received diverging comments on the revised standards for scenic and hillside resources:

- Some commenters supported the revised standards for scenic and hillside resources, and indicated they are a significant and timely improvement. Others felt they are over-reaching, too prescriptive, expensive, and difficult to enforce; and should be written as recommended design standards, not mandatory. There was significant concern the rule revisions placed an emphasis on the scenic character of mostly private land in the unorganized territories.

Specific comments and recommendations included:

- The requirement to screen views with no-cut buffers will have unintended consequences by potentially limiting currently approved activities.
- The definition of hillside should be revised to increase the 2-acre size criterion, and the definition of ridgeline should include the word “significant.”
- All new viewpoints should be removed.
- The section title “Scenic Resources” should be changed back to “Scenic Character.”
- There should be a defined area for determining viewpoints that need to be considered.

Scenic Byways

There were differing opinions expressed relating to proposed revisions and scenic byways:

- Some commenters felt that the rule revisions will encourage strip development that could severely degrade or eliminate the value of scenic byways including the Katahdin Woods and Waters, Old Canada Road, Schoodic, and Moosehead Scenic Byways.
- Although some commenters thought there may be portions of these roads suitable for new development, particularly in primary locations closer to town, they felt identification of those areas and design standards for development should be accomplished in a regional planning process.
- Changes to the Scenic Resources section of the draft rule will help to protect scenic byways.

b. Commenters

A. Blakesley, Friends of Katahdin Woods and Waters, Friends of Baxter State Park, A. Michka, B. Hartford, B. Haynes, C. Eliot, Natural Resources Council of Maine, Appalachian Trail Conservancy, Maine Audubon, E. Ecker, Land Vest, G. Fanjoy, G. Moser, G. Mott, Seven Islands Land Co., J. Luoma, Trout Unlimited, Appalachian Mountain Club, K. Cote, Family Forestry, L. Williams, Maine Forest Products Council Maine Wilderness Guides Organization, M. Ignatiadis, M. Moody, M. Polak, GrowSmart Maine, R. Gregor, Maine Forest Products Council, Seven Islands Land Co., Staff_LUPC, The Nature Conservancy.

c. Summary of Rebuttal Comments

- Rebuttal comments state that the proposed scenic resources and hillside resources standards appropriately add major water bodies, coastal wetlands, permanent trails, and public property to the list of areas from which the visual impacts of proposed development should be considered, based on their high public values and benefits to the State's economy, natural character, quality of life, and water quality.

d. Rebuttal Commenters

Natural Resources Council of Maine (CJohnson_NRCM)

e. Response

Scenic Character and Hillside Resources

Regarding scenic character, the CLUP Site Review goal for ensuring that development fits harmoniously into the natural environment includes policy provisions for requiring the use of buffers, building setbacks, height restrictions, design and material standards, lighting standards, and landscaping to maintain the scenic quality of shorelines, hillsides, ridgelines, and roadways. (CLUP, pg. 7.) The Recreational Resources goal for conserving the natural resources needed to maintain the recreational environment in the service area includes a policy provision to protect values providing residents and visitors with a unique array of recreational experiences, noting high-value natural resources and remoteness where they exist. (CLUP, pg. 17.) In considering those goals and policies, in conjunction with changes to the adjacency principle (i.e., changes to eligible locations for new development), the Commission concludes protecting scenic character, and particularly hillside resources, is a key issue, and agrees with stakeholder feedback that more detailed standards were needed to achieve the CLUP goals and policies. The Commission does not agree the performance-based approach to minimizing the visual impact of hillside development is overly prescriptive or will significantly increase the cost of construction. Using many different tools, including standard conditions for hillside development, specific deed restrictions, review of building permit applications, and landowner education, the Commission will work with landowners to ensure substantial compliance with the performance standards.

There were several specific comments and recommendations relating to scenic character and hillside resource standards. One commenter, referring to the hillside standards, stated that no-cut buffers will have unintended consequences by potentially limiting currently approved activities. This appears to be a misunderstanding of the rules and performance standards. First, the proposed changes will not impact existing development. The revised standards will only

apply to the design of and materials used for expanded or new development proposals. Second, the performance standards do not establish a prescriptive “no-cut buffer.” The vegetative clearing standards for hillside resources require submission of a vegetative management plan to minimize impacts of the development, which may include provisions for cleared openings and limited clearing for views. Each vegetative management plan will be tailored to site specific conditions.

Another commenter suggested that the definition of hillside should be revised to increase the 2-acre size criterion, and the definition of ridgeline should include the word “significant.” The 2-acre size criterion for the hillside definition was based on one of the long-standing criteria for establishment of resource protection districts in the Department of Environmental Protection’s *Chapter 1000 Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 CMR 1000, which uses areas of two or more contiguous acres of sustained slopes. In terms of ridgelines, the Commission considered the following: the CLUP Site Review goal includes a policy provision for maintaining the scenic quality of all ridgelines, the Commission’s current standards for scenic character include a requirement for preserving the natural character of all ridgelines, and the Commission is not aware of any criteria that would define one ridgeline as more significant than another. Based on the above, the Commission decided not to make changes to the hillside or ridgeline definitions.

Several commenters raised concerns about the addition of viewpoints to the standards for Scenic Resources and the consistent list of viewpoints included in the Hillside Resources standards. In Section 10.25,E,1, most of the viewpoints that appear to be added to the specific list of viewpoints are only clarifications of the existing standards. The viewpoints “major water bodies” and “coastal wetlands” were added to clarify the existing term “shorelines.” The viewpoint “public property” was added to Section 10.25,E,1,a for consistency. That viewpoint was already included in Section 10.25,E,1,b. The only new viewpoint specifically listed in Section 10.25,E is “permanent trails.” However, the Commission has historically considered potential visual impacts to trails under the general provisions of the Scenic Character standards which require that the design of proposed development take into account the scenic character of and to minimize their visual impact on the surrounding area. The specific list of viewpoints in Section 10.25,E,1 was carried forward into the new Hillside standards in Section 10.25,E,2 for consistency. The Commission has concluded that protection of all the listed viewpoints is consistent with the CLUP.

In response to the remaining two specific comments, the Commission determined changes should be made to the rule revisions. One recommendation to keep the previous title for Section 10.25,E,1, as “Scenic Character” instead of changing it to “Scenic Resources” is consistent with the Criteria for Approval in the Commission’s statute, 12 §685-B,4,C, which references “no undue adverse effect on existing uses, scenic character, and natural and historic resources...” Also, the Commission heard and understood the concerns about using unlimited distances for determining applicability of the hillside standards, and agreed that some additional consideration was warranted regarding how close viewpoints should be for determining applicability. There may be times when the Commission will need to consider farther distances, such as for very large projects or highly sensitive resources; however, in most cases, a 3-mile area of potential impact would be reasonable, based on previous LUPC development reviews.

Scenic Byways

Designation of certain segments of road as scenic byways can be an important branding and economic development tool for nearby communities that rely on tourism. There are a number of scenic byways in the Commission's service area, many of which were mentioned specifically by commenters, such as The Old Canada Road Scenic Byway or the Katahdin Woods and Waters Scenic Byway. Designation of a road, or segment of road, as a scenic byway and the development of related infrastructure like overlooks, pullouts, and signage can provide economic benefits to nearby communities. Visitors seek out these unique travel corridors, and residents enjoy views from scenic byways on a regular basis, adding to their quality of life.

Scenic byways exist in many parts of the Commission's service area and feature views of different kinds of landscapes. The Commission does not think it would be appropriate to ban development outright along scenic byways. Many of these public roads already have a fair amount of development, including homes, farms, businesses, and even entire communities, the presence of which adds to the overall landscape experienced by travelers on the road. However, the Commission agrees that where and how development occurs along scenic byways should be considered carefully to ensure it fits harmoniously within the larger landscape. Some of the commission's existing or proposed standards that protect scenic byways are required vegetative buffering between development and the road, visual standards for hillside developments, a requirement to minimize the number of road entrances to a subdivision, and scenic character standards. The Commission will give special consideration to development near scenic byways, and will work with applicants to reduce potential visual impacts to these scenic resources.

Because scenic byways vary from region to region and can have different characteristics, the Commission agrees with commenters that a more nuanced approach to regulating development along scenic byways could be developed in partnership with local and regional stakeholders.

f. Action

- The Commission rejected the change to the Section 10.25,E,1 title so that it remains:
Section 1. Scenic Character.
- The Commission changed Section 10.25,E,1,a and b, as follows:
 - a. The design of proposed development shall take into account the scenic character of the surrounding area. Structures shall be located, designed and landscaped to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways, with attention to designated scenic byways; major water bodies; coastal wetlands; permanent trails; or public property.
 - b. To the extent practicable, proposed structures and other visually intrusive development shall be placed in locations least likely to block or interrupt scenic views as seen from existing roadways, with attention to designated scenic byways; major water bodies; coastal wetlands; permanent trails; or public property.

The Commission recognizes the economic and quality-of-life values that designation of roads as scenic byways brings to local communities, and that scenic byways have different characteristics in different parts of the state. The Commission will look for opportunities to consider the design and location of development near scenic byways within the context of ongoing and future local and regional planning efforts.

- The Commission also changed Section 10.25,E,2,a,(2), as follows:
 - (2) A development or portions of a development that will not be visible from existing roadways, major water bodies, coastal wetlands, permanent trails, or public property [located within three miles of the project boundary](#). Where views of the development are blocked by natural conditions or features, such as existing vegetation, to qualify for this exception, the applicant shall demonstrate that these obstructing features or conditions will not be materially altered in the future by any uses allowed with or without a permit. [In cases where the Commission determines the development will be visually intrusive or where there is a particularly sensitive resource more than three miles away, the Commission may increase the distance for determining applicability of the hillside standards.](#)

14. Subdivision Standards and Definitions

a. Summary of Comments

The Commission received many comments with varying perspectives relating to the proposed revisions to the subdivision rules. There were comments concerning the subdivision standards, types, and layouts; common open space; and proposed definitions:

Subdivision Standards, Types, and Layouts

- Several commenters felt the proposed subdivision standards were overly prescriptive and costly, and that the Commission’s review of subdivisions should be more like municipalities.
- Some commenters recommended reducing or eliminating areas where general management subdivisions are allowed, but another recommended expanding the area to within 1 mile of a public road.
- One commenter felt the FlexDesign layout should be the only type of layout allowed in inland locations and on shorelines with heavy development. That commenter also felt that only FlexDesign and Clustered layouts should be allowed in other shoreland locations.
- Regarding legal right of access, one commenter had specific suggestions on revising the lease lot exception, particularly to address statutory provisions and current practice on notice provisions, and raised concern about the enforceability of the “fair market value consideration” in the exception.
- LUPC staff recommended adding or revising language to clarify that references to lot owner(s) throughout Chapter 10 also included lessee(s) of legally existing lots unless

otherwise noted, and revising the references to the term “lot owners association” to be more inclusive of lease lot subdivision.

Open Space

- One commenter stated that open space provisions should not create islands of isolated, unmanaged, open land.
- Some commenters felt that open space should not be required when a subdivision is adjacent to undeveloped forest, especially if the forest land is in tree growth or another use tax program. Others felt that waiving open space requirements for subdivisions next to conserved land would incentivize development near sensitive resources. One commenter recommended increasing the buffer for conserved land to a preferred width of 1000 feet.
- Regarding access to existing trails, there were questions on whether requiring legal right of access to existing trails would have unintentional consequences, on what is meant by “any existing recreational resource,” and on whether recreational trail incentives would “obligate neighboring landowners”.

Specific recommendations on allowed uses in common open space included:

- Allowed uses in the open space standard should be more specific.
- Intense trail use should not be allowed.
- Septic systems should not be allowed unless there are extenuating circumstances.
- Timber harvesting should be an allowed use.

There were comments relating to proposed requirements for wildlife passage through or around subdivision developments including:

- A comment that the provisions strike the right balance.
- Other comments recommended reducing the width of areas reserved for wildlife passage.
- Some commenters questioned how the wildlife passage standard was developed.
- One felt the standard was too much of a “cookie cutter” design, that open spaces between lots should fit the land and wildlife patterns, and there should be options for creative planning to meet the needs of wildlife.
- Another commented that the Department of Inland Fisheries and Wildlife should be consulted during the permitting process.

Other specific comments included:

- The word “common” should be removed from the term “common open space.”

- Common open space should not have to be a separate lot of record.
- Open space should not have to be withdrawn from tree growth/ tax incentive programs.
- Allowing ownership of common open space by a single landowner is appropriate.

Definitions

There were several comments relating to proposed definitions.

- One commenter requested that the maximum and average lot size requirements be removed from the definitions of subdivision density.
- Also, there was a request to revise the definition of net developable shorefront to reduce the size of the required buildable area, and one to add a definition for heavily developed shoreline.

b. Commenters

B. Carter, Natural Resources Council of Maine, Appalachian Trail Conservancy, Maine Audubon, Land Vest, Seven Islands Land Co., Prentiss and Carlisle, Trout Unlimited, J. Reel, J. Sideris, Appalachian Mountain Club, Family Forestry, K. Michka, P. Sheridan, R. Fritsch, R. Gregor, R. Hero, Maine Forest Products Council, Seven Islands Land Co., Staff_LUPC, The Nature Conservancy.

c. Response

Subdivision Standards, Types, and Layouts

The subdivision standards were drafted after review of feedback received during the facilitated stakeholder process, additional stakeholder outreach, and an analysis of both the possible impacts of subdivision development and the design practices to minimize these impacts. Two high priority policy issues identified in meetings with stakeholders were:

1. Making the subdivision standards clearer while incorporating more flexibility, and
2. Allowing more design options for different areas/different regions of the UT.

The Commission's intent was to address those policy issues in the revised standards. Four different layout options were developed. Three of the four layouts are more prescriptive, including specific design standards to provide clear and predictable guidance to landowners that choose to use one of those options. The fourth layout, FlexDesign, is intended to provide a less prescriptive, custom design option. The FlexDesign layout will have somewhat less predictability, but significantly more flexibility in how a subdivision is designed for a site. As part of the implementation phase of these rules, the Commission will consider its application submission requirements and review process, and will work towards simplifying the process, where possible. It is important to note that the Commission's purpose, mission, governing statute, and service area differ significantly from municipalities, and it is not always possible to be consistent with municipal requirements and processes. There also is a wide range of approaches to subdivision review among municipalities.

One commenter felt the layout options in the subdivision rules should be limited to FlexDesign and Clustered layouts. The Commission considered the comment and concluded that the result would be too limiting for the diverse area that it serves. During the facilitated stakeholder meetings for the subdivision rule review process, stakeholders recommended having both specific layout standards and a custom option. Of all the layouts included in the rules, the Commission believes that the Clustered layout is the least likely to be used in the Commission's service area, because that layout encourages very small lots, which typically do not meet market demand in the area. Although Clustered is still included as an optional layout, the design choices will most often be between the Basic subdivision layout and the FlexDesign layout. It is important to consider that the Basic layout has open space requirements, depending on location, with a 30% open space requirement in the primary and secondary locations, and 40% in the recreation-based locations, that will minimize impacts and allow for protection of any sensitive on-site features. The ability to customize a subdivision design will be a driving factor to incentivize the preferred, FlexDesign layout. Although the FlexDesign layout is best suited for fitting the subdivision design to the land, it is the Commission's intent that the sketch plan review process, required for all subdivisions, will provide opportunity to consider site-specific conditions and how the proposed design fits those conditions for all subdivisions early in the design process.

In this rulemaking, the Commission revised the previous standards for Level II subdivisions, now called General Management subdivisions, to be consistent with the refined application of the adjacency principle. However, the intent for these subdivisions is the same as when the Level II subdivisions were first adopted. This type of subdivision was intended to be a small-scale development, located in certain pre-identified areas, with standards that are integrated with elements of the Commission's statutory rezoning criteria, to provide for but also limit the extent of subdivision development allowed without rezoning. In particular, the original intent was for these subdivisions to be restricted to areas located along public roadways to minimize fragmentation of undeveloped back-country areas. The Commission has concluded that the standards for General Management subdivisions, as proposed, are appropriate and meet that intent. Allowing a greater distance from a public road, without assessment of all the rezoning criteria, increases the risk that a subdivision may be located in an unsuitable area.

The Commission agrees with the comment that the lease lot exception for legal right of access should be consistent with state statute and made changes to address the concern. Regarding the enforceability of the "fair market value consideration" in the exception, the Commission does not intend to require appraisals as a matter of course to demonstrate compliance. The Commission believes that developers of most subdivisions with lots sold in fee must provide legal right of access to protect future lot owners in situations like the ownership of the access road changing hands or the road needing significant repair. One stakeholder requested that the Commission allow lease lot subdivisions without the requirement for legal right of access. These types of subdivisions are a traditional use in the Commission's service area and are typically associated with a higher ownership risk. In providing the lease lot exception, the Commission included the "fair market value consideration" qualification to make sure that only those truly using the leased lot model would qualify for the exception. The Commission does not want the lease lot subdivision model to be used to circumvent the requirement for legal right of access. The only time that an appraisal may be warranted is if the leased value of the lots gives rise to a

serious question of whether the conveyance was structured with the intent to avoid the legal right of access standard.

LUPC staff were concerned that the term “lot owner(s)” in the rule revisions would not be inclusive of lessees in lease lot subdivisions. The Commission considered adding a reference to clarify that all use of the term “lot owner(s)” in Chapter 10 included lessees unless otherwise noted. However, given the number of times “lot owner(s)” is used throughout the chapter, and the frequency of using both “lot owner(s)” and “lessee(s)” together in the chapter, the Commission decided to add “and lessee(s)” to all references to “lot owner(s)” instead. The Commission also changed the term “lot owners association” to “homeowners association” in Section 10.25.S.

Open Space

In reviewing possible impacts of subdivision development, the Commission considered issues such as loss of natural character, habitat loss and fragmentation, decreases in water quality, and reduced access to recreational resources. One tool that can help to mitigate all these potential impacts in a valuable way is the preservation of open space on-site or near the development. One person commented that open space should not create islands of isolated, unmanaged, open land. Although isolated areas of undisturbed forests may not support habitat connectivity for wildlife, most open space can buffer and mitigate other possible impacts of development, such as impacts to natural character and decreases in water quality. Recognizing the greater benefits of connectivity, the Commission’s subdivision standards do require open space configurations in large, contiguous blocks that connect with off-site undeveloped land, unless a different configuration makes more sense for a specific site.

Although the Commission understands the area it serves is rural and largely forested, with large tracts of undeveloped land providing open space, there are no guarantees that undeveloped land within or near a new development will remain that way, unless it is protected through easements or deed restrictions. Land in tree-growth or another current use tax program can be removed from the program, if the landowner decides to develop the property. That being said, the Commission also recognizes that there are large tracts of conserved land located throughout its service area, and agrees that burdening a landowner with an open space requirement, when their property is located next to permanently conserved land, doesn’t make sense. As an example, there are communities, such as Grand Lake Stream, that are completely surrounded by conserved land. To meet the goals that Grand Lake Stream has for growth, especially in low income and senior housing, they need to use the remaining buildable land as efficiently as possible. In their case, requiring open space would be a high burden. Some commenters were concerned that waiving the open space requirement for subdivision proposals near conserved land would incentivize development in those locations. The Commission has weighed that concern and concluded deciding whether a parcel proposed for subdivision is a suitable place for that use is best addressed during the rezoning phase, prior to the application of the subdivision standards. If a parcel near conserved land meets all the rezoning criteria, the subdivision standards, subsequently applied during the permitting phase, include requirements for no undue adverse impacts on existing uses and resources, and buffer provisions to specifically minimize impacts on conserved lands. Requiring open space could, but would not necessarily, add additional protection for conserved land. Considering all these points, the Commission concluded that the proposed rule revisions were reasonable and struck the right balance

between protection of resources and minimizing landowner burden. In terms of the recommendation to expand the buffer width for conserved lands, the Commission determined that 1000 feet was excessive, and would place a high burden on landowners. Given that conserved lands vary in terms of the sensitivity of the resources they protect, starting with a minimum 100-foot setback for building windows is reasonable. If the abutting conserved land has a highly sensitive resource near a proposed subdivision boundary, the Commission can address potential impacts to the resource in the rezoning phase and in the permitting phase under the no undue adverse impact standard. In addition, depending on the property, it may make sense to locate the wildlife passage on the boundary shared with the conserved land, which, in that case, would provide a total of 500 feet of buffer.

One commenter raised questions about the proposed provision for legal right of access to existing, near-by trails. The intent of the standard in Section 10.25,Q,3,d was to address specific stakeholder concerns about impacts from informal trail building. After consideration of the comments, the Commission agreed that the language could be problematic and revised the language to more directly address the concern of informal trail building and minimize possible unintended consequences, particularly in terms of legal access across intervening private lands. The Commission also revised the language in Section 10.25,Q,3,d to provide more clarity on what types of recreational resources would be considered under that standard. The commenter also questioned whether the recreational trail incentive in Section 10.25,Q,4,a,(2),(c) would obligate neighboring landowners, presumably, in some way, forcing neighbors to keep their trails open and in the same location, to maintain the trail connections, limiting the neighbors' ability to close or move their trails, if needed, in the future. The Commission concluded that the incentive would not obligate neighboring landowners. The rule revisions apply to permittees, but not abutting landowners.

The Commission received a comment that the allowed uses in common open space should be more specific and other comments on what specific uses should and should not be allowed. Given that there is a lot of variety in types of property and surrounding uses in the Commission's service area, it is difficult to list all uses that may be allowable in common open space. That level of review is more appropriate on a site-by-site basis. The standard for uses of open space in Section 10.25,S,3 was written to provide guidance to applicants on what types of uses would be allowed in all common open space, such as low-intensity, non-commercial recreation; and guidance on what types of uses would not be allowed in any open space, such as residential, commercial, or industrial structures. Any other proposed use, including timber harvesting and trail construction, would be reviewed during the permitting phase for the project. A few minor changes were made to the Uses of Open Space paragraph to clarify that intent. Regarding the allowance for septic systems in open space, the Commission concluded it was reasonable to limit that use to when no other practicable alternative exists and made changes to reflect that.

A number of comments were received on the proposed requirements for wildlife passage through and around new developments. The Commission developed the wildlife passage standard after consultation with several wildlife biologists, including those working for the federal government, state government, the University of Maine, and non-profit organizations. The general consensus was that 500 feet would provide a sufficient width for most wildlife species in Maine, considering the potential indirect impacts from human activity and the edge

effect⁴. Reducing the width of wildlife passages would likely make them less useful for certain, more sensitive, wildlife species. One person recommended more flexibility for fitting the wildlife passage to the land and wildlife patterns, and creative planning to meet the needs of wildlife. Most of the subdivision layout options allow some flexibility as to where wildlife passages should be located, providing an order of preference, depending on certain features of the site. However, the fourth layout option, FlexDesign, specifically addresses the commenter’s recommendation. If a landowner chooses to collect site-specific data, the FlexDesign option would allow for fitting open space to the land and creative planning around existing wildlife patterns. As a matter of course, LUPC consults with the Department of Inland Fisheries and Wildlife for development and subdivision permit application reviews.

The Commission also considered the other specific comments relating to open space that were submitted during the comment period. One commenter recommended removing the word “common” from the term “common open space.” The word “common” was specifically added to address concerns raised by Commissioners that the term “open space” was confusing, and should be differentiated from the “open space” in the open space current use tax program. Another comment suggested that common open space should not be a separate lot of record. That provision has been in Chapter 10 since at least 2000. The intent has been to clearly distinguish between common open space, common infrastructure, and individual residential lots. Another commented that open space should not have to be withdrawn from tree growth/ tax incentive programs. Determining whether land in the unorganized territories qualifies for the tree growth program or other tax incentive programs is under the authority of the Maine Revenue Service. Based on the Commission’s learning from conversations with the Maine Forest Service and the Maine Revenue Service, common open space that meets all the requirements of the tree growth program should not have to be withdrawn from the program. A key factor, however, is whether the common open space would still be managed and harvested for commercial forest products, which will depend on ownership of the common open space and the owner’s intent. Consultation with the Commission and the Maine Revenue Service would be needed in this case. Both the Maine Revenue Service and the Maine Forest Service felt the open space tax incentive program would likely be a better fit. No changes were made in response to the list of other specific comments on common open space.

Definitions

There were several comments relating to proposed definitions associated with the subdivision standards. There were requests to remove the maximum and average lot size requirements from the definitions of subdivision density. The Commission included minimum, maximum, and average lot sizes in the subdivision density definition for several reasons that are still applicable, including being able to differentiate between different densities to ensure a proposed subdivision fits with the existing character of the proposed location, to promote efficient land use, and to encourage a range of lot sizes for variety on the landscape and in the market. One person recommending reduction of the required buildable area in the definition of net developable shorefront. The Commission recognizes that it may be difficult to find 40,000 square feet along a Maine shoreline that does not contain sensitive areas (e.g., wetlands), and

⁴ In this context, “edge” relates to the boundary between areas of human activity such as lawns and roads, and undeveloped natural areas, such as meadows and forests. Where an edge exists along a natural area, native wildlife species can be adversely affected for a distance from the edge, often called “the edge effect.”

considered several options to address this concern. Instead of changing 40,000 square feet to 20,000 square feet as recommended, the Commission decided to allow in the net developable area inclusions of sensitive areas up to a limit of 20%, which is consistent with how a similar issue was addressed in the Commission's standards for General Management subdivisions. The Commission agreed with the recommendation to add a definition for heavily developed shoreline, and made that change in Section 10.02. The definition of "Shoreland with Heavy Development" incorporates the CLUP density guidelines as noted in Table 10.25,Q-1. In addition, the definition clarifies that development units within 700 feet of the lake are counted for the purpose of determining the lake density status. The 700-foot figure is based on staff experience conducting the lake analysis for Class 7 lakes where they found the 700-foot distance reasonable for capturing lake associated development.

d. Action

- The Commission added "and lessee" or "and lessees" to all references to the term "lot owner" or "lot owners" respectively in Sections 10.02; 10.08-A; 10.25,D; and 10.25,Q.
- Section 10.02 was changed as follows:

##. Net Developable Shorefront: For the purposes of this section, "Net developable shorefront" is land that:

- a. Meets the minimum water body setback requirements of Section 10.26,D and is within 250 feet of a non-tidal water body or coastal wetland;
- b. Does not have a low or very low soil potential rating; and
- c. Contains or is part of a land area at least 40,000 contiguous square feet in size ~~that is of which no not comprised of~~ more than 20 percent is comprised of sensitive areas including, but not limited to, slopes exceeding 20 percent, non-tidal water bodies, or wetlands.

Regarding soil suitability, the Commission may determine the shorefront is developable if the plan for the development satisfies the provisions of Section 10.25,G,2 for low or very low soil potential ratings.

...

##. Subdivision, Recreation-based:

A recreation-based subdivision is a moderate-density, residential subdivision designed to be integrated with a recreational resource, such as a lake or publicly accessible point of access to a permanent trail. Recreation-based subdivisions have sufficient connection to the recreational resource to facilitate its use, and include provisions for safe enforceable right of access to the resource by lot owners or lessees in the subdivision.

...

##. Shoreland with Heavy Development:

Shoreland of lakes that have more than one development unit per 10 acres of lake surface area, or more than one development unit per 400 feet of shore frontage, taken as an average around the entire lake shore. For this purpose, development

units within 700 feet of the normal high-water mark of the lake are counted in determining whether the density status has been met.

- The following changes were made to Section 10.08,B,2,e:
 - e. **Access to Development.** The land within the proposed subdistrict shall be accessible from a public road by a legal right of access in accordance with Section 10.08-A,E. This criterion does not apply to proposed D-RS subdistricts intended to accommodate the creation of residential lots to be leased on an annual basis for fair market value consideration, and ~~at the time of annual renewal~~ where both the lessor and lessee have the legal right to not renew the lease, subject to applicable statutory notice requirements, regardless of cause.
- Similar changes were made to Section 10.25,Q,3,f,(3):
 - (3) Leased Lot Exception. The legal right of access requirement for subdivision lots contained in Section 10.25,Q,3,f does not apply to subdivision lots leased on an annual basis for fair market value consideration, and ~~at the time of annual renewal,~~ where both the lessor and lessee have the legal right to not renew the lease, subject to applicable statutory notice requirements, regardless of cause. However, as part of the sale of any such leased lot in a subdivision created after [Insert effective date of rule change], the seller shall grant the buyer a legal right of access that satisfies Section 10.25,Q,3,f,(1) or (2).
- Section 10.25,D,4,d,(4),b was changed as follows:
 - (b) If an ~~lot owners'~~ association is proposed for maintenance of roads and common infrastructure, documents necessary for establishing the association must be drafted and implemented. The documents must provide for mandatory lot owner or lessee membership, lot owner or lessee rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover operating costs, and the subdivision developer's responsibilities until development sufficient to support the association has taken place. Responsibilities of the association must include the maintenance of common property, infrastructure, or facilities; assessing annual charges to all owners or lessees to cover expenses; and the power to place liens on property of members who fail to pay assessments.
- Section 10.25,Q,3,d, relating to open space for all subdivision layouts, was changed as follows:
 - d. **Common Open Space.**
 - ...
 - (4) In cases where an existing recreational resource managed for public access, such as a motorized or non-motorized trail, ~~or boat launch~~ ~~managed for public access~~, is located in or within 1000 feet of the project boundary, the subdivision design ~~shall~~ must include provisions to ensure ~~for all~~ lot owners or lessees in the subdivision will not cause undue adverse impacts to intervening landowners from informal trail building. ~~A~~ ~~if legal~~ access to the

recreational resource is provided for lot owners or lessees ~~to a recreational resource that crosses private land~~ that access must be legally enforceable by the lot owners or lessees.

- The following changes were made to Section 10.25,Q,4:

4. Layout Specific Standards.

...

- b. Clustered Subdivisions.** Clustered subdivisions must meet all general standards in Section 10.25,Q,3, except as provided in Sections 10.25,Q,4,b,(1) through (3) below:

...

- (2) Common Open Space

...

- c) The Commission may allow ~~S~~subsurface wastewater disposal systems ~~may be allowed~~ in designated common open space, provided there is no other practicable alternative, appropriate legal provisions are made for maintenance, access, and replacement; and the systems will not be located in areas designated for wildlife passage or habitat protection.

...

- d. FlexDesign Subdivisions.** The FlexDesign subdivision is a customized approach to subdivision layout and design. The only general standards in Section 10.25,Q,3 that apply to FlexDesign subdivisions are Sections 10.25,Q,3,a,c, and f; the standards of Section 10.25,Q,4,d apply.

...

- (4) Common Open Space.

...

- (e) The Commission may allow ~~S~~subsurface wastewater disposal systems ~~may be allowed~~ in common open space, provided there is no other practicable alternative, legal provisions are made for maintenance, access, and replacement; and the systems are not located in areas designated for wildlife passage or habitat protection.

- The following changes were made to Section 10.25,S:

- 1. Preservation and Maintenance of Common Open Space.** Common open space must be owned, preserved and maintained as required by this section, by any of the following mechanisms or combinations thereof, listed in order of preference, upon approval by the Commission:

...

- b. Dedication of development rights of common open space to a qualified holder, as defined under Section 10.25,S,2 with ownership and maintenance remaining with the property owner or a ~~home~~lot owners association.

- c. Common ownership of open space by a ~~lot-~~homeowners association which prevents future structural development and subsequent subdivision of the common open space, and assumes full responsibility for its maintenance.

...

3. **Uses of Common Open Space.** Common open space may be usable for low-intensity non-commercial recreation, ~~or~~ for purposes intended to conserve land, ~~and or to~~ preserve important natural ~~or cultural~~ features of the site. Uses within the common open space may be limited or controlled by the Commission at the time of approval, as necessary, to protect natural resources and adjacent land uses. Specifically, common open space lots are subject to subdivision and other permit conditions prohibiting residential, commercial, ~~and~~ industrial ~~structures and uses; or and~~ other structures and uses not specifically authorized by the subdivision permit.
4. **Home~~Lot~~ Owners Association By-laws.** If any or all of the common open space is to be reserved for common ownership by the residents of the subdivision, documents necessary for establishing the association shall be drafted and implemented. The documents shall provide for mandatory lot owner or lessee membership, lot owner or lessee rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover any initial operating costs, and the subdivision developer's responsibilities, if any; and shall prohibit all residential, commercial, ~~and~~ industrial structures and uses within the designated common open space; or and prohibit other structures and uses within the designated common open that space that have not specifically been authorized by the subdivision permit.

15. Lighting and Noise Standards

a. Summary of Comments

Comments that the Commission received on the lighting and noise standards included:

- The Commission's lighting standards are vague, outdated, and rudimentary, in particular how they relate to hillside development standards. Updated standards addressing current technology and protecting dark skies should be included in this rulemaking.
- The Commission's noise standards are also out of date and do not address quiet areas. Updated standards should be included in this rulemaking.

b. Commenters

A. Michka, K. Michka, N. Hathaway.

c. Response

It is true that since the Commission's lighting standards were last revised, technology has changed substantially, and an update would be beneficial. However, the current standards are still more protective than many rural municipalities, especially with regard to requiring full cutoff or motion sensing lighting. The Commission sees the benefit of a future update to the

lighting standards, but concludes it can be effectively accomplished in a separate rulemaking without undue negative consequences in the interim.

Noise standards are complex to design and administer, and can be difficult for the regulated public to understand if they become too detailed. At this time, the current standards appear to be adequate for the situation in the Commission's service area, based on experience to date. If future noise complaints lead the Commission to conclude that a change is needed, it has the authority to initiate a rule change at any time.

d. Action

No action taken.

16. Road Standards

a. Summary of Comments

Commenters raised concerns relating to three topics addressed in Section 10.25,D, Vehicular Circulation, Access, and Parking; specifically on emergency access, subdivision road maintenance, and road design:

- They commented that emergency egress is an unnecessary burden, causes excess road construction, conflicts with the requirement for only 2 new entrances on an existing road, and is not consistent with municipal ordinances; that the use of a motorized trail for emergency egress only gets residents to a main road, which has limited value; and that, if emergency egress is needed, the trigger should be at least increased to 1 mile.
- The commenters argued that the requirements for long-term road maintenance plans, including inspection tasks and schedules for work, and for road association documents are unnecessarily detailed and onerous.
- In terms of road design, the commenters suggested that limiting the overall length of roads is unnecessary and confusing, runs counter to fitting the road into the natural topography, and is already addressed by the need to minimize the amount of ditching.

b. Commenters

Maine Forest Products Council, Seven Islands Land Co.

c. Response

Emergency egress for rural residents and camp owners is becoming a more significant concern, given the increasing intensity of storm events and the recent example of people being trapped after flooding washed out a network of private roads in Somerset County. Adding a standard to ensure new development proposals include two ways of egress is a reasonable way to respond to the growing concern, giving more weight to public safety than possible adverse impacts from additional road construction and inconsistency with municipal standards. The Commission has not found where requiring emergency egress conflicts with the limit of 2 new roadway entrances onto an existing road. Also, the Commission does not agree that use of a motorized trail for egress has limited value. If lot owners can get to a main road, they are more likely to get

help and reach safety. The Commission researched the appropriate road length trigger for when emergency egress should be required. In Residential Streets, Third Edition, of which the Commission takes official notice, the Urban Land Institute, National Association of Home Builders, American Society of Civil Engineers, and Institute of Traffic Engineers recommend a dead-end street accommodate a maximum of 25 houses. Using the Commission’s minimum road frontage, that would equate to a road length of 1200 feet (12 houses on each side). Considering that recommendation, and the Commission’s longstanding view that one-quarter mile (1320 feet) is generally walkable for most people, the Commission concluded that a one-quarter mile length standard for when to require emergency egress is appropriate.

The detailed road and infrastructure maintenance standards were added in response to the recommendation of a Maine licensed professional engineer during the review process for the Subdivision Conceptual Layouts and Standards. The engineer recommended use of the DEP’s Stormwater Management rules, 06-096 CMR 500, language on the maintenance of drainage structures, including the need for a written plan, responsible party, and schedule. A clear and enforceable maintenance plan ensures that roads will remain safe into the future, and will minimize the potential for short and long-term water quality impacts. The Commission does not concur that the standards are unnecessarily detailed or onerous.

In the standard for subdivision roadway design, the Commission intended an overall balancing of several factors to minimize the impacts of road construction. The Commission does not agree that minimizing road ditching addresses road length, because roads can and often should be designed to use sheet flow, directing runoff from roadways into adjacent buffers, instead of using ditches to concentrate flow. However, the Commission agrees that fitting a road to the natural topography, a preferred method of minimizing impacts from road construction, can increase the length of a road built otherwise. In response to comment, the subdivision road design standard was revised to clarify the intent.

d. Action

The Commission revised Section 10.25,D,4,c,(1) as follows:

Where ~~To the fullest extent~~ practicable, roadways ~~must~~~~shall~~ be designed to ~~first~~~~minimize the use of ditching~~, fit the natural topography of the land such that cuts and fills are minimized, ~~and then to~~ minimize overall length, minimize the use of ditching, and protect scenic vistas while preserving the scenic qualities of surrounding lands.

17. State Heritage Fish Waters and Other Natural Resource Protections

a. Summary of Comments

Comments relating to State Heritage Fish Waters and protections for other natural resources were:

- For any rezoning proposals involving State Heritage Fish Waters, a method should be included to assess whether there would be any impacts on native brook trout lakes.

- The Commission’s rules need development standards to protect prime agricultural soils, deer yards, and motorized and non-motorized recreational trails that could be incompatible with development.

b. Commenters

G. Mott, Trout Unlimited, J. Robbins.

c. Response

State Heritage Fish Waters are important resources for our state and deserve attention in the rezoning and permitting process. After consulting with the Department of Inland Fisheries and Wildlife, Fisheries Division, and LUPC permitting staff, the Commission concludes that the existing consultation and review process for rezoning and permitting matters is the appropriate venue for protection of these resources. Each State Heritage Fish Water and each rezoning or development proposal needs to be evaluated based on the nature and scope of the proposal and the potential impacts. This is most effectively done through review of rezoning and development proposals, rather than at a broad-brush adjacency screen.

When Commission permitting staff receive an application for a rezoning or permit, they check a GIS database to look for any natural or cultural resources that should receive special attention in the review process. The Commission will add a data layer for State Heritage Fish Waters to that GIS system. This is in addition to the routine practice of asking the DIFW for a written review of most rezonings and development projects. The Commission will also communicate with the DIFW to find out if there is a way to automatically receive any changes to the data layer as the list of State Fish Heritage Waters is updated over time.

The Commission has development standards to protect natural or cultural resources. Some of them are very specific, such as vegetative clearing around water bodies for water quality and visual screening. Others are more general, or fall into the overall “no undue adverse impact” criterion for zoning and permitting actions. The resources specifically mentioned by one commenter fall into a middle category. Prime agricultural soils are sometimes protected explicitly, such as in the solar siting standards, but sometimes are not evaluated, such as in a single-lot residential development application. Deer yards are protected through zoning, however, the zoning system for deer yards tends to fall out of date, and a more nimble system would be desirable, as deer yards move over time. And protection of impacts on trails is evaluated when undue adverse impacts on existing uses and resources are considered, but few of the Commission’s standards are explicit about protecting trails. This is, in part, because many trails exist at the landowner’s discretion and there is a balancing to be done in deciding whether to restrict development activity near trails, and potentially creating a disincentive for landowners to allow trails in the first instance. In this rulemaking package, the Commission is advancing a hillside standard that protects views from a subset of trails that are permanent in nature.

The context for this comment about resource protection appears to be the superior ability for a locally-driven and more detailed planning process to address these types of resources. The Commission agrees, and as is described in the section on regional and local planning, encourages localities and regions that are interested in such planning to initiate that process

with the Commission. Locally-driven planning, when done thoughtfully, will inevitably produce more tailored results than can be had from a broad-brush tool such as adjacency. However, only portions of the Commission’s service area have enough activity or local interest to justify an intense, locally-driven planning effort. A broad tool is still needed in the meantime and for the areas that will not receive more intense planning attention.

d. Action

Add a State Heritage Fish Water data layer to the Commission’s GIS database and use it in the review of incoming applications.

18. Home-based Business

a. Summary of Comments

Several comments were received regarding home-based businesses:

- Changes to the definition for “Home-based Business” provides more opportunity for business activity without incurring more development. Minor home-based businesses should be allowed without a permit subject to standards and major home-based businesses should require a permit regardless of subdistrict.
- The aggregate storage of four tractor trucks *and* four semitrailer units is a lot of unsightly vehicle storage for a major home-based business.
- The 500-square foot size limitation for minor home-based businesses should be increased to 1000 square feet.

b. Commenters

Maine Audubon, K. Michka, Seven Islands Land Company.

c. Response

The Commission agrees that the changes related to home-based businesses provide more opportunity for business activity without incurring more development. Currently, minor home-based businesses are allowed without a permit subject to standards in most subdistricts, and major home-based businesses generally require a permit in subdistricts where they are allowed. Regarding the comment that the aggregate storage of four tractor trucks and four semitrailer units would be too unsightly for major home-based businesses, that language has been in the LUPC Chapter 10 rules for some time and was not proposed for revision in this rulemaking. The intent of the language is to allow up to four semi-trailer trucks (the combination of a tractor unit and a semi-trailer). The Commission is not aware of any significant impacts to existing uses or resources from semi-trailer truck use or storage at major home-based businesses. If future complaints relating to the use or storage of semi-trailer trucks at major home-based businesses lead the Commission to conclude a change is needed, it has the authority to initiate a rule change at any time. The comment relating to the size limitation for minor home-based businesses may have been based on a misreading of the redline in the draft rule. The previous

size limitation for minor home-based businesses was 1000 feet, the proposed and adopted rule language increases the size limitation for these businesses to 1500 feet.

d. Action

No action taken.

19. Resource-based Commercial Development

a. Summary of Comments

The Commission received a number of comments relating to activity specific standards for commercial businesses, natural resource processing facilities with and without structures, the D-RD subdistrict, definitions relating to resource-processing facilities, and recreational supply businesses:

Commercial Business

- Regarding the standards for all commercial businesses, commenters indicated that the provisions for wildlife passage are excessive and should allow for more flexibility.

Natural Resource Processing Facilities

- The Commission received comments that the standards for natural resource processing facilities made good planning sense. However, several commenters submitted questions on the appropriateness of the resource dependency criteria for natural resource processing facilities, including how the distance limitation would be measured. Those commenters felt that it would be more effective to allow processing of raw materials from the parcel and any abutting parcels of land, than to use a distance measurement for raw material sources. One person suggested that, to prevent undesirable levels of traffic, some limitation could be placed on how far the materials could be transported over public roads.
- There was also one question regarding how sites containing natural resource processing facilities with structural development could be restored to the fullest extent practicable during the decommissioning process.

Natural Resource Processing without Structural Development

- Commenters indicated that the acreage limitation for natural resource processing facilities without structural development should be increased to 3 acres to allow for trucks turning, pile-down of materials, and other similar activities.
- There were comments that the noise criteria seemed inadequate for higher noise ranges and nighttime activities, as well as the possible need for lighting standards for these facilities.
- In addition, there were comments that the traffic standards for these facilities should not dictate the design standards for private roads.

Natural Resource Processing with Structural Development and the D-RD Subdistrict

- Comments on the scale of natural resource processing facilities with structural development recommended increasing the size limitation on buildings to 20,000 square feet and the total acreage to 10 acres, particularly in the D-RD subdistrict.
- Commenters recommended that the description for the D-RD subdistrict exempt gravel extraction from the requirement that natural resource extraction be located more than ½ mile from major water bodies, because, given its nature, gravel is commonly located near these water bodies.
- The Commission also received comments that timber harvesting and land management road construction should be allowed without a permit subject to standards in the D-RD subdistrict.

Definitions

There were three specific comments requesting changes to the definitions of “natural resource processing facility” and “natural resource extraction:”

- The phrase “temporary worker housing” in the definition of natural resource processing facility should be clarified as to what is meant by temporary.
- In the definition of “natural resource processing facility,” clarify what is meant by “close to the source of the raw materials.”
- An exception for forest products should be added to the definition of natural resource extraction.

Recreational Supply Facilities

- Two topics relating to recreational supply facilities were addressed in comments. One commenter requested the definitions of “recreational day use” and “recreational supply” be clarified, particularly regarding whether an outdoor shooting range would be allowed as a recreational day use, and what is meant by “pre-prepared food.” Also, commenters recommended that the lighting standards for recreational supply businesses without structures should include all of the requirements related to lighting in Section 10.25,F, Noise and Lighting.

b. Commenters

A. Michka, C. Eliot, Seven Islands Land Co., K. Michka, Maine Forest Products Council, The Nature Conservancy.

c. Response

Commercial Business

Commenters raised concerns about the requirement for commercial businesses to provide for wildlife passage. In developing the revised application of the adjacency principle, which

generally encourages development to locate in certain specific areas close to public roads, the Commission recognized the concern for potential strip development. While unlikely that strip development would occur given the limited development pressure in the UT, as a matter of sound planning the Commission determined it is important to address that concern. One of the ways the Commission chose to address that concern was through the requirement for wildlife passage, spaces between development for wildlife to use in making habitat connections. These spaces will also help to maintain natural character along roadways. Based on discussions with wildlife biologists, covered in more detail in the response to comments on the subdivision standards, the minimum width of 500 feet is needed to accommodate most wildlife species in Maine. To provide flexibility for landowners, the Commission included a waiver for “in-fill” development, a provision for development of common wildlife passages, and the use of site-specific assessments to address the wildlife passage goal. There were no changes made to the wildlife passage requirement in response to comment. The requirements included in the final public comment draft, which previously did not exist in Chapter 10, address concerns about strip development.

Natural Resource Processing Facilities

Commenters raised concerns about the general standards for natural resource processing facilities related to the resource dependency and decommissioning standards. The Commission considered the comments on the resource dependency standard for these facilities and agreed with commenters that the ¼ mile distance factor was too limiting. In response, changes to the criterion were made to limit sources of raw materials to sources onsite or from directly abutting parcels, provided that raw materials are delivered without being transported over a public road. Regarding decommissioning of these facilities, Section 10.27,S,2,c includes specific decommissioning standards including a requirement that the site must be restored to pre-development conditions to the extent practicable. That includes removal of all processing facility structures unless the applicant demonstrates to the Commission that it is not practicable.

Natural Resource Processing Facilities Without Structural Development

The Commission received specific comments recommending changes to or questioning the standards for natural resource processing facilities without structural development. The comments related to scale, noise, lighting, and traffic. On scale, the Commission agreed that additional space was needed to maneuver trucks and equipment, and stockpile raw materials, and therefore increased the size limitation for processing facilities without structures to 3 acres. Commenters questioned the adequacy of the noise standard and the need for a lighting standard for these facilities. In allowing uses without a permit subject to standards, the Commission applies activity specific standards intended to be customized for that use to meet the general criterion of no adverse impact on existing uses and resources. The Commission’s intent in development the specific noise standards for natural resource processing facilities was for them to be simplified, but essentially equivalent to the standards of Chapter 10, Section 10.25,F. In further review, the Commission agrees that the table in Section 10.27,S,3,b did not adequately address possible nighttime operations. The distances in the table were adjusted to account for nighttime hours. In addition, the Commission changed the setback requirement to a vegetated buffer, further ensuring that abutting uses will be adequately protected. Considering that processing facilities without structures are intended to be relatively low-intensity, temporary, and mobile operations; and considering the buffer requirements in the activity

specific standards, lighting impacts are not expected to be a significant concern for mobile, in-woods processing operations. Regarding the concerns raised about the traffic standards, the Commission agrees that the proposed wording for that standard went too far, in that the standard could be applied to the onsite network of land management roads used to transport raw materials. That was not the intent. Therefore, the Commission revised the standard such that it only applies to offsite networks of roads used to transport processed product.

Natural Resource Processing Facilities with Structural Development and the D-RD Subdistrict

For natural resource processing with structural development and D-RD subdistricts, the Commission received comments on scale for these facilities, the description of the D-RD subdistrict, and use listings for the D-RD. In considering the comments on scale, the Commission determined that it made sense for facilities that have gone through a rezoning process to a development zone, to be allowed higher gross floor area limitations and over-all size limitations than facilities located in the M-GN subdistrict. Therefore, the scale of processing facilities allowed in the D-RD subdistrict was increased to 20,000 square feet of gross floor area and 10 acres in size. Other comments the Commission received regarding the D-RD subdistrict recommended excluding gravel extraction from the requirement that limits these subdistricts to locations more than ½ mile from major water bodies. Comments also recommended adding timber harvesting and land management roads as allowed uses subject to standards in D-RD subdistricts. The Commission agreed with these recommendations and made changes accordingly. The Commission also excluded gravel extraction from the requirement in the D-RD subdistrict that limited the subdistrict to locations more than ½ mile from areas of concentrated development, in keeping with the comment regarding water bodies, because gravel extraction is wholly dependent on where the gravel resource is located.

Definitions

In response to the specific comments on definitions, the Commission:

- Changed the definition of “natural resource processing facility,” to clarify the reference to temporary worker housing, by incorporating similar language from the definition of “maple sugar processing operations.”
- Did not change the portions of the “natural resource processing facility” definition relating to the phrase “close to the source of the raw materials” because that phrase is further clarified in the activity specific standards for processing facilities.
- Added an exception for timber harvesting activities in the definition of “natural resource extraction,” as recommended.

Recreation Supply Facilities

One commenter asked about the meaning of “pre-prepared food” relative to the proposed definition of recreation supply businesses. The Miriam Webster Dictionary definition of the term “pre-prepared” is prepared in advance. Pre-prepared food is cooked or otherwise prepared off-site, and provided to customers in a ready-to-eat form. Examples of pre-prepared food include but are not limited to sandwiches or packaged lunches, snacks, and drinks. In limiting recreation supply businesses to pre-prepared food, the Commission’s goal is to ensure a

good fit between recreation activities and the businesses that may locate near them. More intense activities such as a more substantial mobile kitchen or food truck should be reviewed more carefully as part of a rezoning process, and so are not included in the definition of recreation supply facilities.

Outdoor shooting ranges would not be considered a recreation day use facility because they do not depend on proximity to a “...topographic feature or natural resource that generally is not found in all locations, and on which the facility depends” [Section 10.21,K,2,a,(2)]. Shooting ranges are currently allowed as part of a recreational lodging facility, and that remains unchanged as a result of this rulemaking. Under the new adjacency system, petitioners could seek approval for a zone change for a shooting range in the primary locations only, which the Commission believes to be an improvement over the one-mile rule of thumb that required shooting ranges to be within one mile by road of existing compatible development.

Recreation supply facilities that do not have structures may have lighting if they operate at night. The Commission agrees with commenters that it is appropriate to require these facilities to have full cut-off lighting. There is value in having customized standards for mobile or temporary recreation supply businesses that will not require permits because all of the applicable standards for such businesses will be easily accessible in one part of the rules, rather than having to check many different sections. This is also likely to improve compliance with the standards for businesses that do not require a permit. A comparison between the proposed language and 10.25,F,2 reveals that the requirement for full cut-off fixtures and the wattage requirements of 10.25,F,2,a are not represented in the proposed activity specific standard. It is reasonable and appropriate that recreation supply businesses without structures meet the requirements to use full cut-off lighting fixtures and 10.27,S,6,d will be changed to reflect this. Wattage requirements, however, have become less meaningful due to technological advances in lighting and therefore will not be included.

d. Action

- Section 10.02 was revised as follows:

##. Natural Resource Extraction: The commercial development or removal of natural resources including, but not limited to, mineral deposits and water, but excluding Level A and Level B mineral exploration activities, metallic mineral mining, wind energy development, and solar energy development. [Natural resource extraction also does not include timber harvesting.](#)

##. Natural Resource Processing Facility: A facility or operation, and associated site improvements or buildings, that processes forest products to reduce bulk or otherwise enable efficient transportation for sale or further processing. Natural resource processing facilities may include temporary or permanent structures, or mobile processing equipment, and ~~may include bunkhouses or similar facilities for temporary worker housing~~ [may include transient accommodations for a reasonable number of employees, but shall not include other types of accommodations, dwelling units, or residential use.](#) Natural resource processing facilities do not include forest management activities, permanent worker housing,

or further processing beyond what is necessary to do close to the source of the raw materials.

...

- Section 10.21,K was revised as follows:

...

2. Description

The D-RD subdistrict shall include:

- a. Areas the Commission determines meet the applicable criteria for redistricting to this subdistrict in Section 10.08, are generally suitable for the proposed development activities, and are proposed for one of the following land uses meeting the following locational requirements:

- (1) Natural resource extraction or natural resource processing, except that no area shall be designated a D-RD subdistrict for any of these uses, other than gravel extraction, if the area is less than one-half mile from: (i) the normal high-water mark of any major water body or (ii) four or more dwellings within a 500-foot radius.

...

3. Land Uses

...

b. Uses Allowed Without a Permit Subject to Standards

(XX) Land management roads;

(XX) Timber harvesting;

[Inserted in alphabetical order and renumbered all use listings]

c. Uses Requiring a Permit

...

- (8) Land management roads which are not in conformance with the standards of Section 10.21,K,3,b;

...

- (20) Timber harvesting which is not in conformance with the standards of Section 10.21,K,3,b;

...

- Section 10.27, S was revised as follows:

...

2. Standards for All Natural Resource Processing Facilities.

- a. **Resource Dependency.** A natural resource processing facility must be located on the same parcel of land as ~~or within ½ mile of~~ the raw materials

that will be used for processing activities, or located on a parcel directly abutting the parcel of land sourcing the raw materials.

...

3. Natural Resource Processing without Structural Development.

a. Scale.

- (1) Equipment used for the processing activity must be mobile, and must not include structures as defined in Section 10.02. The facility and all appurtenant components must not be on site for more than 10 months of the year. Mobile means that a vehicle or trailer must be ready for highway use, and must be fully licensed unless intended to travel ~~exclusibly~~ exclusively on private roads.
- (2) The site used for processing activities must be less than ~~one~~ three acres in size.

b. Noise. All processing equipment must be separated by a forested buffer strip at least ~~located more than~~ 95 ~~00~~ feet in width from all property lines shared with abutting residential uses, other non-commercial uses, or commercial facilities providing overnight accommodations, unless there is demonstrable data available on the noise generated by the equipment and the ~~setback distances~~ forested buffer widths of Table 10.27,S-1 are met:

dB(A) at the source	Setback <u>Forested buffer width</u> (feet) to applicable property line
0-65	250 <u>100</u>
66-75	400 <u>200</u>
76-85	500 <u>400</u>
86-95	650 <u>600</u>
>95	950 <u>900</u>

Table 10.27,S-1.

...

f. Traffic.

...

- (2) If ~~materials and~~ processed goods will be transported by trucks exceeding US truck classification, Class 4 commercial truck, the off-site network of roads used to transport ~~materials and~~ those goods must at least meet the Class 3 roadway standards of Sections 10.25,D,4,e and f.

...

4. Natural Resource Processing with Structural Development.

a. Scale.

- (1) Permanent structures associated with processing activities must be limited to 4,000 square feet of gross floor area [in M-GN subdistricts and limited to 20,000 square feet of gross floor area in D-RD subdistricts](#); and
- (2) The site used for processing activities must be less than three acres in size [in M-GN subdistricts, and less than 10 acres in size in D-RD subdistricts](#).

...

6. Standards for Recreation Supply Businesses without Structures.

...

d. Noise and Lighting.

- (1) Noise. Facilities must meet the standards for noise included in Section 10.25,F,1.
- (2) Lighting. All exterior lighting ~~shall must~~ be **full cut-off and** designed, located, installed and directed in such a manner as to illuminate only the target area, to the extent practicable. No activity shall produce a strong, dazzling light or reflection of that light beyond lot lines onto neighboring properties, or onto any roadway so as to impair the vision of the driver of any vehicles upon that roadway or to create nuisance conditions. Additionally, all non-essential lighting shall be turned off after business hours, leaving the minimum necessary for site security.

20. Agricultural Activities

a. Summary of Comments:

Comments received, relating to agricultural activities, included comments on definitions, agricultural processing, and agritourism:

- The definition of “Farm Product” should be broadened to include *products* of all plants and animals to include those items that need to be processed in order to be utilized, and expanded to include fiber, manure, and compost production.

Agricultural Processing

- The definition of “Agricultural Processing Facility” should be broadened to include value-added processing activities for economic and marketability reasons. The term “Raw Agricultural Products” should be changed to “Raw Farm Products” because “Farm Product” is defined.
- Permanent worker housing should be included in the definition. Farms can include room and board as part of a compensation package.

- The term “temporary” relating to temporary worker housing in the definition of agricultural processing facility should be defined.
- Agricultural processing facilities in the general management subdistrict should not allow for raw agricultural products to be sourced from off-site. Such facilities are only appropriate in development subdistricts.

Agritourism

- If the term “Agritourism Business” is meant to refer to a class of activities instead of a separate entity, it would make more sense to use a different term than “business.”
- Farm stands and CSAs are not typically thought of as agritourism activities. One potential way to address this issue is to include an educational/recreational/social event element as a necessary component of all agritourism activities.
- In the definition of agritourism the term “items” should be changed to “sales” unless the Commission intends to count every potato.
- The employee requirements should be removed from the definitions of “small-scale agritourism business” and “medium-scale agritourism business” as farms employ a variety of different staffing structures for agritourism activities that are not necessarily reflective of the size of the operation.
- Do large-scale agritourism businesses need a permit? There should be an upper limit on the size of those activities.
- In the activity specific standards for small agritourism businesses, the lighting standards should include all of the requirements related to lighting in Section 10.25,F, Noise and Lighting.
- The proposed rule revisions appropriately provide more opportunity for agriculture and agritourism.

b. Commenters:

A. Michka, Maine Farmland Trust, K. Michka, GrowSmart Maine, Seven Islands Land Company.

c. Response:

The Commission intends the definition of “Farm Product” to be as broad as necessary to encompass everything a farm produces. One commenter suggested changes to the definition to clarify that “Farm Product” includes the products of all plants and animals as well as fiber, manure and compost. For example, honey and beeswax are bee products and should be included as “Farm Products”. Broadening and clarifying this definition is appropriate.

A commenter suggested that the definition of “Agricultural Processing Facility” encompass the processing of farm products in ways that make them more economically valuable, not only processing intended to reduce bulk or enable efficient transportation. The Commission agrees that this is appropriate. The primary purpose for processing to reduce bulk is to reduce transportation costs, thereby making the product more valuable. Other types of processing which make the product more economically valuable should also be allowed on-site so that the farmer – rather than another party – can capture that additional revenue. The Commission has revised the definition to allow for value-added processing. The Commission agrees with the commenter that it makes sense to refer to “raw farm products” in place of “raw agricultural products” in the definition of “Agricultural Processing Facility” because “Farm Product” is a defined term.

The Commission intends for worker housing to be allowed as part of an Agricultural Processing Facility. Agricultural workers may be needed only for certain seasons or for varied work throughout the year. The Commission agrees with the commenter that agricultural workers should be allowed to live in worker housing on a longer-term basis. Exactly how long workers reside in worker housing does not have a large effect on the impact of that housing, as long as lodging is restricted to agricultural workers and their families. Because worker housing associated with an Agricultural Processing Facility would be located on a working farm, it is unlikely that such housing would become a de facto residential neighborhood in a remote area. In contrast, worker housing for Maple Sugar Processing Operations is often located in remote areas and workers are only needed there for a few months out of the year, therefore such operations may only include temporary housing. The Commission changed the definition of Agricultural Processing Facility to allow for worker housing without restricting the length of time workers may live there. Since the reference to “permanent” or “temporary” worker housing was removed from this section, a definition of “temporary” was no longer needed.

The Commission intends for Agricultural Processing Facilities to be located on a farm and used by the farmer to process their farm products. It is common that a farmer will produce farm products on more than one parcel of land, some of which may be leased rather than owned by the farmer. It makes sense in terms of efficiency and land use for a farm operator to process the agricultural products grown on all their parcels at a single Agricultural Processing Facility. Therefore, the definition of Agricultural Processing Facility treats products grown onsite similarly to products grown on lands owned or leased by the farm operator. It is appropriate to categorize such facilities as an agricultural use, rather than a commercial use because they 1) must be located on farmland and 2) all (small-scale) or most (large-scale) of the products processed must be grown on lands owned or leased by the farm operator. If a processing facility was not located on farmland or processed mostly farm products not produced on lands owned or leased by the facility operator, then that would constitute a commercial land use. The Commission designed the definition of Agricultural Processing Facilities to ensure they would be an agricultural land use and as such they are appropriate in the general management subdistrict.

A commenter pointed out that often agritourism is one of many activities that make up a farm business rather than its own stand-alone business separate from the farm. Because of this, the commenter suggested the Commission find another term other than “business” to describe these agritourism activities. In response, the Commission decided to simply call such activities “agritourism” rather than “agritourism businesses.”

While farm stands and community supported agriculture may not be considered “agritourism” by other groups, the Commission has decided to include them in its definition of agritourism. Farm stands and community supported agriculture draw people to the farm for the purchase of farm products and for the experience of visiting the farm. Shopping at a farm stand or visiting a farm to pick up a farm share can be recreational, educational and social experiences for many people. How many people visit the farm is the most important indicator of how much impact the agritourism activity will have on nearby areas and people. Whether visitors are coming to the farm to buy things from a farm stand, pick up their farm share, or to take part in educational, recreational or social events does not change the impact of the additional visitors on the nearby area. For these reasons the Commission decided to group the on-site sale of farm products in with other agritourism activities.

The definition of agritourism includes the requirement that the majority of items for sale be from products that are principally produced on the farm. The Commission’s intent is that a visitor should feel like they are in a ‘farm store,’ different from other retail establishments because farm products are the most prominent thing on display. Commission Staff will not be counting every potato sold at a farm stand, rather they will look around at the different categories of things for sale and determine if the majority are principally produced on the farm. Basing the definition on sales figures might not accomplish the same goal. Additionally, requiring a farm to submit its financial information to the Commission could be perceived by many as invasive and unnecessary.

In its research on the impacts of agritourism activities, the Commission found that the number of visitors to a farm was the major indicator of how much impact the activity would have on nearby residents. However, it would be impractical to require that farms record and report on the total number of agritourism visitors. Instead the Commission looked for a more easily available and practical proxy for visitation. A 2010 study from the University of Missouri Extension that surveyed agritourism operations was helpful (Barbieri, C. and Tew, C., *Agritourism in Missouri: A Profile of Farms by Visitor Numbers*, Missouri Department of Agriculture, 2010). This study found that visitation numbers were well correlated with the number of employees primarily working in the agritourism side of the business. The number of employees working primarily in agritourism is a much easier metric for farm operators to record and report. The Commission believes that it is the best metric to use to achieve its goal of appropriately planning for the impacts of small and medium scale agritourism activities.

This rulemaking categorizes large-scale agritourism as an allowed use by special exception in the general management subdistrict. This means that large-scale agritourism would not only require a permit, but the applicant would also have to show that the project meets additional requirements, specifically:

(a) the use can be buffered from those other uses within the subdistrict with which it is incompatible; (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan; (c) that there is sufficient infrastructure to accommodate the additional traffic and activity generated by the facility; and (d) that surrounding resources and uses that may be sensitive to such increased traffic and activity are adequately protected.

These special exception criteria have been effectively used in the general management subdistrict for the permitting of larger recreational lodging facilities. Recreational lodging and agritourism share many of the same potential impacts because they both attract visitors. The Commission concludes surrounding resources and uses that may be impacted by a large-scale agritourism operation would be effectively protected through the special exception criteria permit process. Setting a strict upper limit on the scale of large-scale agritourism is not necessary and could end up prohibiting a large-scale agritourism activity that might be appropriate in a particular location.

The lighting standards in section 10.27,A,2 apply to small-scale agritourism activities that do not require a permit in the general management subdistrict. The Commission has worked to keep the activity specific standards relating to small-scale agritourism as concise as possible so that farm operators can more easily determine whether their agritourism activities require a permit. The Commission’s intent is to consolidate the portions of 10.25,F,2 that would be applicable to agritourism activities into a single paragraph. A comparison between the proposed language and 10.25,F,2 reveals that the requirement for full cut-off fixtures and the wattage requirements of 10.25,F,2,a are not represented in the proposed activity specific standard. It is reasonable and appropriate that small-scale agritourism operations use full cut-off fixtures and 10.27,A,2 will be changed to reflect this. Wattage requirements, however, have become less meaningful due to technological advances in lighting and therefore will not be included. For additional comments and responses relating to lighting, see the Lighting and Noise Standards section.

The Commission agrees with the commenters that the proposed rule revisions appropriately allow for more opportunity for agriculture and agritourism.

d. Action:

The Commission revised Section 10.22,A, and Section 10.27,A,2 by replacing “agritourism business” with “agritourism” throughout.

- The Commission revised Section 10.02, as follows:

##. Agricultural Processing Facility:

A facility or operation, and associated site improvements or buildings, that is located on land where farm products are produced, and that processes raw farm products to increase their value, to reduce bulk, or to enable efficient transportation for sale or further processing. Agricultural processing facilities may include temporary or permanent structures, and may include ~~bunkhouses or similar facilities for temporary~~ worker housing. Agricultural processing facilities do not include agricultural management activities, ~~or permanent worker housing~~. The term is further defined as small-scale and large-scale agricultural processing facilities as follows:

Small-scale agricultural processing facility: An agricultural processing facility where all the raw ~~agricultural-farm~~ products used in the processing are grown onsite or on lands owned or leased by the operator, and that utilizes no more than 2,500 square feet of gross floor area.

Large-scale agricultural processing facility: An agricultural processing facility where a majority of the raw ~~agricultural-farm~~ products used in the processing are grown onsite or on lands owned or leased by the operator, and that utilizes up to 5,000 square feet of gross floor area.

...

Agritourism-Business:

~~A business~~An activity that:

- a. Draws people to a working farm for one or both of the following:
 - (1) The purchase of farm products, provided that the majority of items for sale are from products that are principally produced on the farm where the business is located; or
 - (2) Educational, recreational, or social events that feature agricultural activities or farm products;
- b. Is clearly secondary to the principal use of the property for agricultural management activities; and
- c. Is operated by the farm owner or lessee.

The term is further defined as small-scale, medium-scale and large-scale:

Small-scale agritourism-business: ~~An Agritourism business~~ that utilizes no more than 2,500 square feet of floor area at any given time in all principal and accessory buildings and employs no more than 2 people who work primarily in ~~the~~ agritourism ~~business~~.

Medium-scale agritourism-business: ~~An Agritourism business~~ that utilizes no more than 5,000 square feet of floor area at any given time in all principal and accessory buildings and employs no more than 5 people who work primarily in ~~the~~ agritourism ~~business~~.

Large-scale agritourism-business: ~~An Agritourism business~~ that does not meet the definition of small- or medium-scale agritourism ~~business~~. Also, ~~any~~ agritourism ~~business~~ that draws more than 100 people (including visitors and support staff) to more than three distinct events per year.

...

##. Farm product:

"Farm product" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy and dairy products, poultry and poultry products, bees and bee products, livestock and livestock products, manure and compost, fish and fish products, and fruits, berries, vegetables, flowers, seeds, grasses, Christmas trees, and other similar products or any other plant, animal, or plant or animal product that supply humans with food, feed, fiber, or fur. ~~7 M.R.S. §52(3-A).~~

- The Commission revised Section 10.27,A,2,b as follows:
 - b. **Lighting.** All exterior lighting ~~fixtures shall~~ must be full cut-off and designed, located, installed and directed in such a manner as to illuminate only the target

area, to the extent practicable. No activity shall produce a strong, dazzling light or reflection of that light beyond lot lines onto neighboring properties, or onto any roadway so as to impair the vision of the driver of any vehicles upon that roadway or to create nuisance conditions. Additionally, all non-essential lighting shall be turned off after business hours, leaving the minimum necessary for site security.

APPENDIX A

Summary of Outreach and Opportunity for Public Input

Adjacency and Subdivision Review

Summary of Outreach and Opportunity for Public Input Adjacency and Subdivision Review

In April 2014, the Commission began a review of its subdivision rules, and in February 2016, the Commission initiated review of its adjacency principle. Both review processes progressed separately until late 2018. To make sure that stakeholders could see how proposed rule revisions for adjacency and subdivisions would work together, the two rulemaking proceedings were joined for the Commission meeting in October of 2018. The following is a summary of some of the public outreach and discussion the Commission has engaged in over this time as it has sought to gather public input and improve its application of the adjacency principle and subdivision rules.

Commission Meeting Discussion

Since the Commission began its policy reviews, discussions of its adjacency principle and subdivision rules have been a common agenda item for the Commission. The Commission meets most months and all of its meetings are open to the public with the agenda available in advance of each meeting. Through January of 2019, the Commission has discussed its subdivision rules during at least 12 meetings and adjacency at 15 meetings:

Subdivision

- i. 2014 – July and October
- ii. 2015 – May, June, August, and October
- iii. 2016 – February
- iv. 2018 – June, August, October, and November
- v. 2019 – January

Adjacency

- i. 2016 – March, April, and September
- ii. 2017 – February, May, August, and December
- iii. 2018 – February, April, May, June, August, October, and November
- iv. 2019 – January

Facilitated Stakeholder Meetings

At the start of the subdivision rule review process, the Commission hosted four facilitated discussions with interested stakeholders to develop a list of issues with the subdivision rules and develop options to address those issues. As many as 25 stakeholders representing the regulated community and statewide organizations, as well as several LUPC Commissioners and LUPC staff, attended the meetings. These meetings were held on October 29, 2014, January 5, 2015, February 25, 2015, and April 1, 2015.

Local, Regional, and County Meetings

Commission staff have attended public meetings on revisions to the adjacency principle, making a presentation at each, hosted by local governments, county governments, and regional planning organizations, including:

- i. Greenville Select Board (August 2018)
- ii. Jackman Select Board (December 2018)
- iii. Millinocket Town Council (July and December 2018)
- iv. Aroostook County Commissioners (September 2018)
- v. Hancock County Commissioners (June 2018)
- vi. Penobscot County – attended a public meeting requested by county commissioners and coordinated and noticed by the county for the purpose of discussing adjacency review (September 2018)
- vii. East Millinocket – attended a regional meeting with interested members of the public and individuals engaged in economic development planning in the region (organized with partner Our Katahdin) (September 2018)
- viii. Greenville – attended regional meeting with interested members of the public and individuals engaged in economic development planning in the region (organized with partners Maine Municipal Association and Piscataquis County Economic Development Corporation) (August 2018)

Outreach

- i. **Tribal consultation** – Commission staff sent letters, both for the adjacency review and the subdivision rule review, to the Houlton Band of Maliseets, Penobscot Indian Nation, Aroostook Band of Micmacs, the Passamaquoddy Tribe at Sipayik, and the Passamaquoddy Tribe at Motahkmikuk and invited consultation; followed up with phone calls (August 2018); met with representatives of the Penobscot Indian Nation (October 2018)
- ii. **Subdivision written stakeholder and online public surveys** – noticed through the GovDelivery email distribution lists and the Commission’s website (April 9, 2014 and September 22, 2014)
- iii. **Adjacency public survey** – notice mailed to all identified property tax payers in the UT (21,740 different addresses) and provided to individuals on the Commission’s email distribution lists (September 2016-March 2017)
- iv. **Subdivision stakeholder focus group meetings** - discussion of subdivision objectives and design tools (December 2015-January 2016)
- v. **Adjacency stakeholder focus group meetings** - discussion of economic development, issues important to property owners, conservation and wildlife, and provision of public services (June-July 2017)
- vi. **Interviews with design professionals** - relating to subdivision layout and design options (August-December 2015)
- vii. **Interviews with wildlife biologists** – relating to the creation of wildlife passage through or around subdivision development (February-May 2018)

- viii. **Bingham public information meeting** – Commission staff hosted a meeting where interested members of the public could learn about the Commission’s ongoing review of adjacency and proposed conceptual changes, and offer input before the Commission began preparing draft rule language (April 2018)
- ix. **Millinocket public information meeting** – a meeting similar to the one in Bingham was hosted in Millinocket, as well (April 2018)
- x. **Maine Municipal Association** – coordinated with MMA so the organization could contact interested members about the Commission’s ongoing review of the adjacency principle, including providing notice to municipalities identified as “rural hubs” in the Commission’s proposal (July – December 2018)
- xi. **Commission website** – the Commission has maintained websites devoted to its review of the [adjacency principle](#) and [subdivision rules](#), and provided regular email notice to interested members of the public about the ongoing projects

Public Hearings and Comment Opportunities

In addition to the opportunity for public input at many of the meetings noted above and the Commission’s active solicitation of comment since April 2014 (subdivision rule) and February 2016 (adjacency), the Commission designated five separate, formal comment opportunities:

- i. August 2017 public comment period – the Commission received oral comment at a noticed meeting on the proposed new planning framework for adjacency and overall direction of the policy review; a written comment period followed
- ii. June 2018 public comment period - the Commission received oral comments during two scheduled conference calls and written comments on the Conceptual Subdivision Layouts and Standards
- iii. April 2018 public comment period – the Commission received oral public comment at a noticed meeting on proposed adjacency rule concepts published by the Commission; a written comment period followed
- iv. June 2018 public hearing – the Commission held a public hearing on proposed rule changes for adjacency, with a written comment period and written rebuttal comment period
- v. January 2019 public hearing – the Commission held a public hearing on a revised proposal for rule changes incorporating both revisions related to adjacency and to its subdivision rules, with a written comment period and written rebuttal comment period

Meetings with Organizations and Interested Individuals

In the years the Commission has been reviewing the adjacency principle and its subdivision rules, Commission staff have participated in numerous meetings with numerous individuals and organizations. In individual or group meetings, staff have met with representatives of the following:

American Forest Management
Androscoggin Valley Council of Governments
Appalachian Mountain Club

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Appalachian Trail Conservancy
Axiom
Backcountry Hunters and Anglers, Maine Chapter
Design Labs
Downeast Lakes Land Trust
Family Forestry LLC
Freeman Ridge Bike Park
Friends of Baxter State Park
Gardner Companies
GrowSmart Maine
HC Haynes Inc.
Huber Resources Corp
Island Institute
Katahdin Region Chamber of Commerce
LandVest Inc.
Lexington Township property owners
Mahoosuc Land Trust
Maine Appalachian Trail Club
Maine Appalachian Trail Land Trust
Maine Audubon
Maine Bureau of Parks and Public Lands Off-road Vehicle Division
Maine Coast Heritage Trust
Maine Department of Inland Fisheries and Wildlife
Maine Department of Transportation
Maine Forest Products Council
Maine Huts and Trails
Maine Municipal Association
Maine Office of Tourism
Maine Professional Guides Association
Maine Wilderness Guides
Maine Woodland Owners
McPherson Timberlands
Natural Resources Council of Maine
Next Phase Energy
North Maine Woods
North Woods Real Estate
Northern Forest Center
Piscataquis Economic Development Council
Prentiss & Carlisle
Rangeley Region Guides and Sportsmen's Association
Red River Camps
Seven Islands
Sportsman's Alliance of Maine
Sunrise County Economic Development Commission
Trout Unlimited
The Nature Conservancy
Wagner Forest Management
Weyerhaeuser

Commission staff also have met with interested individual members of the public, including individuals with professional planning experience, wildlife experience, small business experience, and state and local government experience, as well as former Commission members.

In addition to the individuals and organizations Commission staff have met with, staff have communicated with other individuals from other government bodies and organizations to discuss and answer questions about the ongoing review of the adjacency principle and subdivision rules, including:

- Agriculture Council of Maine
- Beaver Cove Select Board, member
- Dover-Foxcroft Planning Board, member
- Forest Society of Maine
- Maine DACF, Bureau of Agriculture, Food and Rural Resources
- Maine Farmland Trust
- Mapleton, Castle Hill and Chapman Town Manager
- Mars Hill Town Manager
- Medway Select Board, chair
- Northern Maine Development Commission
- Old Canada Road Scenic Byway Committee
- Sherman Town Manager
- University of Maine, Orono
- U.S. Fish and Wildlife Service
- U.S. Geological Survey, New York Cooperative Fish and Wildlife Research Unit
- Washington County Council of Government
- Weston Town Manager
- Western Maine Community Guided Planning and Zoning group members