



July 5, 2018

Ben Godsoe
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

Re: Proposed Revisions to Application of the Adjacency Principle

Dear Mr. Godsoe:

Thank you for the opportunity to submit comments on the proposed revisions to the application of the adjacency principle. Maine Audubon remains grateful to the Land Use Planning Commission (LUPC) staff for the time and creative thinking they have devoted to the question of how to locate future development in the unorganized territories. We are confident that the LUPC desires to achieve an outcome that appropriately balances development and the unorganized territories unique natural resources. We recognize progress toward that goal in this draft rule, especially the idea of concentrating development near existing areas of development.

However, we remain very concerned about the size and scope of the proposal, the real possibility of unintended consequences, and the pace at which this rule revision process is taking place. This is the most significant proposed policy change in the history of both the LUPC and the Land Use Regulation Commission. We urge the Commission to proceed carefully and conservatively. Landowners in the jurisdiction will undoubtedly perceive any changes as a right to develop, therefore there will be little to no opportunity to renege. In our estimation, these changes would be permanent. As such, they must be given adequate time and attention so as to not unreasonably impact the jurisdiction's outstanding natural resource values. Our comments below include specific recommendations for modifications and general comments we believe should be taken into consideration as the rules develop, including thoughts regarding time and process. We thank you in advance for your careful consideration of our comments.

A lot is at stake. Maine's North Woods, comprised nearly solely of unorganized territories, is the largest unfragmented forest east of the Mississippi, and one of the largest remaining temperate forests in the world. Maine is the crossroads of an extensive wildlife habitat network, spanning from upstate New York to Nova Scotia, where wide-ranging mammals like black bear, moose, bobcat, and fisher can move between core habitat areas to meet their daily, seasonal, and life needs. Maine is also home to 97% of the wild brook trout waters in the Eastern United States. Brook trout can only thrive in cold, inter-connected

waters, characteristics that are threatened in the absence of smart development. Maintaining the core values of the North Woods allows these species to move around and breed as habitats change due to climate change and also preserve genetic diversity within populations. It is also a globally recognized Important Bird Area because of its significance as breeding grounds for dozens of songbirds, many of which are in steep decline. Development in the North Woods should minimize habitat fragmentation by maintaining large habitat blocks, establish wildlife corridors between those blocks, and sustain resources and refuge for common and rare plants and animals across the jurisdiction. This is what guides Maine Audubon's assessment of the proposed rules and this effort on the whole. We implore the Commission to also consider these unique values as they continue to develop modifications to the application of the adjacency principle.

Specific Recommendations

(I) Expand opportunities for public engagement and continue community outreach. We're continuously impressed by the Commission's efforts to engage communities and stakeholders in this process. However, due to the enormity of this policy change and the direct impacts the change would have across the jurisdiction, including in communities near to the jurisdiction, we feel strongly that there needs to be more opportunity for local communities, local decision-makers, and the public to weigh in. Not only will this potentially lead to public "buy-in", but the Commission will benefit from incorporating knowledge unique to those that live and work in the jurisdiction into their final product. We offer the following recommendations:

- a. Hold public information sessions across the jurisdiction.** Maine Audubon was particularly impressed by the public information sessions held in Bingham and Millinocket, where we understand that LUPC staff received invaluable feedback, including gathering information that is uniquely held by members of those communities. For example, staff removed T2 R9 WELS from the primary locations based on feedback that the community members desired to concentrate development in Millinocket and Medway. This is information that can only be gleaned through targeted outreach. We encourage the Commission to hold additional meetings, such as in the Kingfield/Carrabassett Valley area, in the Bethel/Newry area, in Lincoln, in Lubec, and in Ashland to gather similar information. We recommend sharing with those communities how these changes would operate on the ground, including on lakes in their area. It is important for communities to understand the opportunity and risks associated with these changes, as well as for them to have an opportunity to understand the changes and give their feedback.
- b. Alert landowners and residents of the proposed changes by mail.** Maine Audubon understands that the Commission successfully engaged with landowners and residents via mail during the survey phase of this process. We encourage the Commission to send another mailing to landowners and residents, urging them to

review the proposed changes and send their feedback. At the survey phase, staff did not have anything concrete for residents and landowners to react to. We suspect that, particularly if the Commission includes the proposed map in their next mailing, engagement will significantly increase. To save on cost, we recommend including this information with resident and landowner's tax bills. Alternatively, the Commission could send a simple postcard with links to the information online, encouraging people to visit and peruse the information online or at their local library or State office, where a packet of information would be made available.

c. Brief the Agriculture, Conservation, and Forestry Committee. The Committee of jurisdiction for the LUPC should be briefed on the effort as a whole, as well as the proposed rules. Committee members may share what they learned with their constituents and offer insights that reflect the desires and concerns of their constituents with the Commission. We recommend the Commission invite all legislators with unorganized territories in their district to this meeting.

d. Reach out to organized communities in proximity to the jurisdiction. There is no question that the proposed rule changes will impact organized towns near to the jurisdiction. The proposed changes will incentivize more development in the jurisdiction that will draw upon municipal resources, such as emergency services. We encourage the Commission to work with organizations such as GrowSmart Maine and the Maine Municipal Association to engage organized communities in the rulemaking process.

e. Hold a second public hearing. We recommend that the Commission hold a second public hearing when a draft rule is available for each element of the "adjacency package", including the subdivision rules, the activity specific standards, and the "next draft" of the proposed adjacency rules. Though rough concepts of these items are presently available, the detailed rule must be considered holistically in order for the Commission to receive meaningful feedback. We recommend that the Commission offer ample opportunity for the public to review the proposed rules prior to the public hearing. In our experience, a month is sufficient to review rules in their totality prior to a public hearing.

(2) Reduce the size of the development areas. Wildlife depends on large blocks of unfragmented habitat in order to thrive. While we support the concept of locating the majority of development in proximity to retail hubs and public roads, we feel very strongly that the proposed rules unnecessarily encroach on the core of the North Woods. We recommend reducing the size of the primary and secondary areas. Below are several ideas as to how to reduce the size of the "development areas". Note that we do not suggest that any one of these ideas operate alone. Instead, we recommend employing a combination.

- a. Remove primary and secondary areas that are proximate to areas with multiple, well-established retail hubs.** We have heard from colleagues whose work is centered in economic and community development a concern that increased development in the unorganized territories will draw new development away from established development patterns, draining municipal resources, and stymieing efforts to create centralized “destinations” for visitors. Removing such areas would address their concerns, as well as make strides towards resolving Maine Audubon’s concerns about encroaching development on some core habitats. The primary area and secondary areas adjacent to Newry and Bethel are an example of an area that we would recommend removing altogether, due to the pattern (i.e. contiguous) of retail hubs (Newry, Bethel, and Rumford), and the concerted efforts of those communities to establish themselves as outdoor recreation destinations. Because of the areas’ proximity to the White Mountain National Forest, removing that area would support habitat connectivity and both economic development and conservation goals of the local communities. The areas adjacent to Carrabassett Valley and Kingfield are another example of areas that could potentially be removed altogether.
- b. Reduce the primary areas to 1-2 miles from a retail hub and 0.5 miles from a public road.** Maine Audubon has run mapping scenarios using three miles from a retail hub and 1 mile from a public road and found that it addresses some, but not all, of our concerns. For instance, it reduces extensive strip development, which negatively impacts not only habitat connectivity, but also our scenic byways. The proposed rules could result in strip development spanning 10 miles, spanning multiple townships. This is a significant departure from the current interpretation of the adjacency principle. Under the “three mile by 1 mile” model, we saw a positive change in Dennistown Plantation and Sandy Bay Township, for example, as well as Chain of Ponds Township. We also saw that reducing the primary areas resolves the problem of particularly dense areas of development where there are lots of public roads, such as east of Medway and Lincoln where Routes 2 and 2A, and Route 170 and 171, respectively, converge. Dense areas of development reduce resources that sustain wildlife. Reducing the primary areas to 1-2 miles from a retail hub and 0.5 miles from a public road is altogether a more reasonable expansion of development opportunity, while avoiding some potential unintended consequences such as strip development.
- c. Utilize “service centers” instead of “retail hubs”.** Maine Audubon recommends that the LUPC locate development proximate to service centers, as opposed to both service centers and retail hubs. This recommendation reflects our concern that tax data (it is our understanding that retail hubs are determined based on tax data) alone is not a reliable indicator of a community/development center or community’s ability to, for example, support emergency services. A stand-alone gas

station, for example, could have major tax implications, but may not be accompanied by a fire station.

- d. Remove the secondary areas entirely.** Secondary areas are reserved exclusively for residential development. It's our understanding, based on the outcome of the Community Guided Planning and Zoning efforts, as well as the adjacency surveys, that there is little demand for residential subdivisions in the unorganized territories. As such, we recommend removing the secondary areas entirely.
- e. Significantly limit, or eliminate, General Management subdivisions.** General Management subdivisions are subdivisions that are allowed without a rezoning. Currently, such subdivisions are allowed in the General Management (M-GN) subdistrict within 1,000 feet of a public road in certain townships. Under the forth-coming proposed subdivision rule revisions, these new General Management subdivisions would be allowed in the M-GN subdistrict within primary areas, as long as they are within a ½ mile of a public road. Once the proposed subdivision demonstrates that the design meets some basic standards (to be detailed in the forth-coming subdivision rules), the proposed subdivision would only require a permit. This represents a significant expansion of potential development area all at once, without rigorous oversight or ability to assess incremental impacts. A rezoning petition typically provides the opportunity for the Commission to assess incremental impacts. General Management subdivisions do not require a rezoning. We recommend significantly limiting, or eliminating, the General Management subdistrict as one way to limit areas where new development could occur in the jurisdiction. For example, this would occur automatically if the primary area shrinks and the secondary areas are eliminated.
- f. Measure the distance from service centers by road mile, not as the crow flies.** We appreciate the simplicity of measuring “as the crow flies”, but does not square with the fact that people in the jurisdiction generally travel via roads. We believe that measuring distances by road helps the Commission achieve their stated goal of locating new development nearer to emergency services, which travel by road. Alternatively, if this proves too difficult to measure and map, then substantially reduce the distance measured from the township boundary to avoid new development areas that, by road, are in reality 10 miles plus another 4-6 miles away from service centers and emergency services.
- g. Plan for evaluation of the changes in 5 to 10 years.** The possibility for unintended consequences is immense at this scale. It is also difficult to predict market pressures. We recommend designating only a very small area for testing this new approach at this time and evaluating the successes and challenges of the changes in 5 to 10 years. If there is increased development pressure, for example, the area could be expanded. If the Commission discovers unintended consequences, they

could also be addressed at that time, and the new rules could be modified before being applied across the entire jurisdiction. The Commission must bear in mind that once they grant landowners the potential for development, they will be significantly challenged to “take it away”. As such, the Commission must act conservatively.

- (3) Include an explanation of what defines rural hubs, as well as areas within and outside primary and secondary locations.** See 108-A,B and 108-A,C,4-5. Maine Audubon has benefited from an explanation from Commission staff as to what constitutes a rural hub and why some areas have been included or excluded from the primary and secondary areas. We recommend that such an explanation be included in the basis statement for the rule changes, as well as in a place that is more easily accessible to the public, such as on the Commission’s website. On its face, these decisions appear arbitrary and could leave the Commission vulnerable to criticism.
- (4) Narrow the definition of “permanent trail”.** We’re concerned that the definition, as drafted, will drive development to areas where the expectation of the trail user is peace, solitude, and an otherwise “wilderness” experience. We encourage the Commission to work closely with groups such as the Appalachian Mountain Club, the Maine Appalachian Trail Conservancy, the Mahoosucs Pathways, and others to develop a definition that does not encourage development in areas of the jurisdiction where residents and visitors expect to enjoy a remote outdoor experience. Such areas often coincide with high quality wildlife habitat, which would be degraded by increased development.
- (5) Do not include an emergency services waiver.** As proposed, the Commission would require petitioners to demonstrate that the county, municipality, or other service provider is willing and able to provide emergency services. However, that requirement may be waived “provided the petitioner demonstrates notice of the absence of emergency services will be provided to all subsequent owners of property within the area proposed for rezoning.” See 10.08,B,2,a. We recommend that this waiver be removed, because we do not think it is enforceable and because we think it is unrealistic to expect all future developers and/or homeowners in the unorganized territories to appreciate the area’s limited public services.
- (6) Do not allow recreation day-use or supply facilities within ½ mile of Management Class 6 lakes.** See 10.21,K. The proposed rules would allow recreation day-use and recreation supply facilities within a ¼ mile of Class 6 lakes. The current standard for development is ½ mile. We recommend maintaining the current standard so as to protect the natural resources of Management Class 6 lakes, also known as remote ponds. Allowing recreational facilities within ¼ mile conflicts with the very essence of what constitutes “remote.” In addition, many of these remote ponds hold populations of wild brook trout, that would become more vulnerable to increased angling pressure and/or introduction of nonnatives.

(7) Further define “close connection to a recreational resource”. See 10.21,M. Maine Audubon is very concerned that the purpose statement for the Residential Development Subdistrict (D-RS) is not narrowly-tailored enough and as a result, will invite residential development in dispersed areas. Dispersed development can lead to greater fragmentation of habitat compared to concentrated development. This is because dispersed development requires greater road construction across a larger area, which in turn brings greater risk of wildlife roadkill, introduction of non-native species, and avenues for the spread of raccoons, skunks, and other animals associated with human habitation into the area. These species can have a devastating effect on local wildlife by preying on nests and competing for other resources. The incursion of dispersed development into a greater proportion of an area has a greater effect, acre for acre, than the same number of developed lots within a concentrated area. In addition, disturbance from human activity can extend over 3300’ beyond the roadway, ranging from phosphorous and other sediment run-off (160-3300’), to invasion by roadside species and increased human access affecting wildlife and sensitive habitats (>3300’).

(8) Complete a land use inventory and/or “build out scenario”. Much of this proposal is difficult to assess because no one knows precisely what is currently “on the ground” in the jurisdiction. While the Commission has a record of permits, it does not have a record of which of those permits have been built out, begging the question of how much “new” development this proposal represents. A land use inventory could be added to over time, as permits are issued and rezonings are approved, meaning that the inventory would remain up-to-date.

Additionally, we recommend completing “build out” scenarios of the current one-mile rule and the proposed rule changes, as this will help facilitate understanding of the impacts of the proposal. Even with limited development data, the Commission could complete a build-out scenario of the maximum number and locations of new subdivisions and/or homes, businesses, and recreational supply facilities that could be permitted under the new proposed rule compared with the current rule (starting with the assumption that all permits issued have been fully built out).

General Concerns

(1) The pace of the rule change process. We encourage the Commission to take their time modifying the application of the adjacency principle. While we appreciate that the Commission has spent several months exploring general concepts related to the principle, we’ve found that putting those concepts “to paper” is very difficult. Each time that Maine Audubon reads or considers the proposed rule draft, we uncover a possible unintended consequence. We recommend extending the timeline into 2019, to leave ample time for additional public engagement, as well as time to carefully vet the proposed rules.

(2) Unduly competing with existing communities. We're very concerned that the proposed rules will draw development away from existing communities in rural Maine that are in many cases struggling to maintain their population and vitality. For example, we're concerned by the increased development potential outside of Lubec. Lubec, like many other rural communities, is working hard to retain its character. Part of that character is being the development hub that is proximate to Moosehorn National Wildlife Refuge and the Cutler Coast Public Reserved Land Unit. If development is drawn away from that hub, it will not only mar the character of these incredible conserved lands, but the character of the town of Lubec.

(3) The proposed rules are very difficult to follow. Having followed the discussion surrounding the modification of the adjacency principle very closely, including reading the rule "concept draft", Maine Audubon has a good understanding of what Commission staff aimed to achieve in this proposed rule draft. However, we have had and are continuing to have a difficult time following how these concepts are translated into rule. Particularly, we are having a hard time understanding what subdistricts and activities are allowed in and out of primary and secondary areas. We recommend that the Commission carefully revise the proposed rules for clarity, particularly where subdistricts and activities may be located, as well as how to distinguish whether a subdistrict or type of activity guides the determination of location of development.

(4) Development on lakes. Under the proposed rules, significantly more Management Class 3 lakes and Management Class 7 lakes would be open for development. We are incredibly concerned about this aspect of the proposal, as increased development could negatively impact water quality, aquatic species habitat quality, riparian habitat, stream habitat, and both aquatic and terrestrial connectivity, plus homeowner and recreationist experiences. There are approximately 1,100 Class 7 lakes in the jurisdiction and it is unclear precisely how many could be available for future development or how many new homes could be built on each lake. While the actual number of lakes open for new development may be smaller than the total number of lakes in the Management Class due to the "screening criteria" included in the proposed rules, there still appears to be a significant expansion of lakeshore development beyond what is currently available.

While the management classification system will help to balance the amount of development on these lakes, it cannot adequately address the pace or placement of development, as all listed lakes that meet the rules' criteria would immediately become available for development. Management Class 7 lakes are particularly vulnerable. Enough about these lakes was known at the time the lake classification system was developed to not classify them as high value (Management Class 1 or 2), but often not enough about these lakes was known to afford them protections more stringent than those assessed on more developed, lower quality lakes. New data is available for many of these lakes (such as Heritage Water designation) and that should be taken in to consideration.

(5) Low density subdivisions. Allowing for low density subdivisions is an inefficient use of land and would represent a dramatic departure from current Commission policy. Between 1989 and 2001, the Legislature passed multiple bills to limit this type of development, which it deemed inconsistent with the CLUP. “Large lot” subdivisions, even with the proposed low density subdivision guidelines, can still result in house lots that are no longer available for commercial forest management or public recreation, and that reduce and fragment wildlife habitat—uses that should be supported by the Commission under the CLUP. Furthermore, the proposed 25-acre upper limit for low-density subdivision parcels, based on the ability of a landowner to secure an any-deer permit to hunt on their land, is not in keeping with Maine’s tradition of allowing hunters on any land unless it is posted. We’re concerned that the proposed rule change would begin moving us towards the European system of private ownership rights for hunting, which is not something Maine Audubon supports. Furthermore, allowing these subdivisions in both primary and secondary areas creates extensive new opportunities for development in areas far beyond existing centers of development and economic activity.

(6) Inflated land values. We anticipate that opening up hundreds of thousands of acres to potential development—even if not officially rezoned—will inflate land values and make it much more difficult for future landowners, whether they be private forest landowners, investors, or conservation buyers, to purchase land, particularly those areas zoned as primary areas adjacent to roads. We believe this is a significant unintended consequence that merits more review.

(7) Instead of modifying the application of the adjacency principle, utilize existing LUPC tools. It remains unclear why Community Guided Planning and Zoning, Prospective Zoning, and Lake Concept Plans could not be utilized in additional regions of the jurisdiction instead of moving forward with this wholesale new approach. The Aroostook County and Washington County Community Guided Planning and Zoning efforts and the Rangeley Lakes Region Prospective Zoning plan appear to have been successful efforts. Utilizing these existing “LUPC tools” could be a good way to avoid overlooking area and region specific concerns. Specific issues related to home businesses, recreational amenities, and Level II subdivisions could be addressed through more targeted changes to existing rules and policies.

(8) Do not eliminate the need to rezone. We have heard conversations about the possibility of the Commission rezoning the proposed primary and secondary areas to development zones. We strongly urge the Commission to reject this proposal. Rezoning petitions provide the opportunity for the Commission to take a “birds eye view” of development in the jurisdiction and to assess incremental impacts. While site-specific concerns are largely addressed in the permitting process, in our estimation there is no substitute for the rezoning process, including the public review that it affords.

Conclusion

We cannot under emphasize the importance of affording this process adequate time and attention. It bears continued repetition that a lot is at stake and that any changes could be legally and politically irreversible. We strongly urge the Commission to (1) take ample time to consult and gather feedback from all stakeholders, including nearby municipalities; (2) invest in resources to help the Commission and the public understand the impacts of any proposed changes, such as a land use inventory and build-out scenarios; and (3) significantly reduce the scale and scope of the current proposal to minimize impacts to the forest products and agricultural industries, nationally and internationally significant aquatic and terrestrial wildlife and habitat, and varied recreational opportunities. The Comprehensive Land Use Plan (CLUP) calls on the Commission to “substantially strengthen” adjacency. See CLUP pg. 128. Maine Audubon believes this proposal does not yet meet that goal and that much more work needs to be done.

Thank you for the opportunity to provide comments on the proposed rules. We look forward to a continued dialogue with the Commission on this topic and are committed to sharing our expertise on wildlife and habitat issues to achieve the best result.

Respectfully submitted,

A handwritten signature in cursive script that reads "Eliza Donoghue".

Eliza Donoghue, Esq.
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