



Land Use Planning Commission
Department of Agriculture, Conservation and Forestry
22 State House Station
18 Elkins Lane
Augusta, ME 04333

January 10, 2019

Dear Commission:

Thank you for the opportunity to submit comments on the proposed rule revisions related to the application of the adjacency principle and subdivision standards. Maine Audubon has followed the progression of this rule making from its very beginning in 2014, from taking part in an earlier stakeholder process regarding the subdivision rules, to meeting regularly with Land Use Planning Commission (LUPC) staff as changes to the adjacency principle evolved from concept to proposed rule. While we greatly appreciate the time and attention the Commission and staff has given to this important matter, and the improvements that have been made since the last version, we feel strongly that more work must be done before the Commission approves final rules. As such, we oppose the proposed rule revisions dated December 12, 2018.

Broadly speaking, we are most concerned by the scope, scale and pace of the proposed changes. While it is clear that the staff aim to steer new development to areas that are close to existing development or hubs of activity, and away from high value natural resources, we believe the proposal should be adjusted to better meet these and other smart growth goals, the adjacency principle outlined in the Commission's Comprehensive Land Use Plan (CLUP), and in proposed rules stated "Purpose" (see *Proposed Section 10.08-A,A*). The "Purpose" states: "Locating most new subdistricts for commercial activities and residential subdivisions close to existing development and public services reduces public costs; improves the economic health of existing communities, protects important habitat; and minimizes interference with natural resource based activities such as forestry, agriculture, and recreation."

Our specific points of concern, as well as other comments regarding positive changes, are enumerated below.

What's at Stake

Maine's unorganized territories (UT) are the heart and soul of the Northern Appalachian/Acadian Forest—the largest intact temperate forest in North America and perhaps the world. The forest contains ecosystems across a climate gradient as diverse as all of Europe. That diversity include plants, from hardwood forests full of sugar maples and yellow birch, boreal spruce-fir forests, fens and bogs, freshwater marshes, and floodplain forests, to alpine tundra. This landscape and plant diversity creates a mosaic of habitats for many species of wildlife, from the largest moose population in the lower 48 states,

the nation's largest population of Canada Lynx, and a Common Loon population second only to Minnesota. In the spring and summer, the UT is a veritable "baby bird factory" for many of our resident and migratory songbirds, making it the largest globally significant Important Bird Area in the continental United States.

The UT boasts such diversity for a number of reasons, including the fact that the UT is largely undeveloped or fragmented. Individual Black Bears, for example, have a home range of about 19,000 forested acres—bobcats 6,000 acres. Even smaller mammals like River Otters typically use 15 to 30 linear miles of waterways to search for their prey. Wildlife need these large areas, uninterrupted by human disturbance, to not only find prey but to maintain enough genetic diversity to maintain strong populations.

New development, including roads and other human activity, not only destroys habitat, but can alter when, where, and how animals move between habitats. Fragmented habitat limits natural dispersal of young animals, isolates populations, reduces genetic exchange, and lowers population levels over time. Roads and roadside areas are often avoided by wildlife, create barriers to movement, and can be fatal for many species as they attempt to cross. Undersized and poorly functioning culverts located where they cross streams and other waterways can restrict movement of aquatic and semi-aquatic species. Chemical runoff and sedimentation from roads and yards pollutes waterways. These chemicals can accumulate in both aquatic and terrestrial species to a point where the chemicals compromise species health or alter their behavior, and can create algal blooms toxic to fish and other aquatic life. Building roads, houses, commercial developments, and utility corridors often introduces invasive species into a region, which can have devastating impacts on native species. More people in relative remote areas means more access to and disturbance of all types of wildlife.

The many impacts on water quality, wildlife, and habitat from fragmentation often happen slowly, accumulating over time, and leads to degradation of ecosystems and loss of biological diversity. We encourage you to read the recent article titled *The Unique Nature of Maine's North Woods* in Maine Audubon's Winter 2018 issue of Habitat (attached) for an overview of this topic and *The Environmental Consequences of Forest Fragmentation in the Western Maine Mountains* from the Maine Mountain Collaborative for a more in-depth discussion on the topic.

This is the backdrop against which we review the proposed rules before you.

Specific Comments and Concerns

- (1) *Proposed Section 10.02*, definition for "Home-based Business". We support this proposed change, because it provides more opportunity for business activity in the jurisdiction without incurring more development.
- (2) *Proposed Section 10.02*, definition for "Recreation Supply Facility". We are concerned that under the proposed rules "Recreation Supply Facilities" would be allowed across the landscape (not just in the primary and secondary locations), which could undermine businesses in local communities and compete with existing sporting camps. We recommend further limiting where these facilities can occur across the landscape or alternatively, promoting such facilities in or near to existing communities.

- (3) *Note in Section 10.08,A*. The proposed rules contain a note, not to be included in the final rule language, that states: “It is the intent of the Commission to review the effectiveness of the rulemaking, and any potentially unforeseen impacts that occur as a result of these changes. The Commission will conduct the review in each county within its service area when either five rezoning petitions have been approved in a county, or after five years from the effective date of the adopted rule.” While we appreciate the Commission’s intention to reflect on the effectiveness of this rule, if adopted, we are concerned that once the development opportunities are granted through the proposed primary and secondary locations and other areas, it would be challenging to scale back or remove development rights altogether. We recommend that the Commission modify the note to make more clear that the rules will be reviewed and modified based on results on the ground.
- (4) *Proposed Section 10.08,B,2,e*, “Access to Development”. We support the proposed requirement that land within a proposed subdistrict be accessible from a public road by legal right of access.
- (5) *Proposed Section 10.08-A,C*, “Primary and Secondary Locations”. Maine Audubon feels strongly that the primary and secondary locations—the areas where a great deal of development would be encouraged under this proposal—are both too broad and not nuanced enough to adeptly respond to the location of important natural resources and existing development already on the ground. We applaud the staff for trying to move most development closer to existing communities, but feel the current extent of the primary and secondary locations are too expansive and not specific enough to fully accomplish this. Specifically:
- We feel very strongly that the seven-mile distance by air from the boundary of the proposed towns, plantations, and rural hubs is too far. Unlike the current adjacency policy that allows similar types of development within one mile of existing, compatible development, but not necessarily along the entire mile-long area, the proposed rule would immediately open up the entire seven-mile stretch to development. We recommend that, should the Commission continue to pursue this measured-distance strategy, that the distance be reduced to 2 miles. Existing development outside of this distance could be “grandfathered” and should not be used to determine the extent of the primary and secondary areas.
 - We remain skeptical that the secondary locations are necessary, at the very least for residential development. We feel particularly strong that residential development should occur near to communities in order to limit public costs, improve the economic health of existing communities, protect important habitat, and minimize interference with natural resource based activities such as forestry, agriculture, and recreation. The proposed secondary locations, to be located up to five miles from a public road, are not consistent with the Commission’s goal of encouraging concentrated development and could unduly compete with existing communities. Elliotsville Township, described in detail below, is a good example of this concern.
 - Finally, we have identified a number of places we believe should be removed from either the primary or secondary locations, for a variety of reasons, and that are examples of how challenging it is to effectively apply this distance-based approach. Our list is not exhaustive, however; we are confident other examples exist that demonstrate that locating development based on a set measurement from towns, plantations, rural hubs, and public roads is not as

nuanced as locating new development should be.

- Elliottsville Township. Portions of this township fall within the proposed primary location because of its proximity to Greenville and the existence of public roads. The public roads that would be used to access this location do not directly connect to Greenville and are not widely used. This is contrary to the Commission's intent to locate new development in a manner that efficiently uses public services and makes emergency services reasonably available. Furthermore, increased traffic leads to increased wildlife mortality. The township contains a number of high value natural resources, including a cluster of Heritage Fish ponds, the Appalachian Trail corridor, and Borestone Mountain Sanctuary. These resources would be adversely affected by additional development. Finally, the secondary location within Elliottsville Township could unduly draw residential development from Greenville, an existing established community.
- Madrid Township. Portions of this township fall within the proposed primary location because of the township's proximity to Kingfield to its east. However, there is no direct way to drive from Kingfield to Madrid. Madrid is most readily accessible from Rangeley to the northwest, or from Phillips to the southeast, either one requiring extra traffic miles for emergency services or residents.
- Herseytown Twp. A small sliver of the north portion of this township is proposed to be a part of the primary location because of the township's proximity to Patten and the presence of a single public road. This pattern of development is not consistent with smart growth principles.
- Township 4 Range 7 WELS and Township 3 Range 7 WELS. The primary location within T4 R7 WELS and T3 R7 WLES is adjacent to the Sebois River. The Sebois is in a Beginning with Habitat Focus Area—a natural area of statewide ecological significance that contains unusually rich concentrations of at-risk and high value species and habitats. These areas have been identified by biologists from the Maine Natural Areas Program, Maine Department of Inland Fisheries and Wildlife, Maine Department of Marine Resources, U.S. Fish and Wildlife Service, The Nature Conservancy, Maine Audubon, and Maine Coast Heritage Trust. These areas support rare plants, animals, and natural communities; high quality common natural communities; significant wildlife habitats; and their intersections with large blocks of undeveloped habitat. This is a prime example of an on-the-ground natural resource at risk because of a proposed rulemaking scheme that is not nuanced enough.
- Fish River Chain of Lakes Area. In June 2018, Irving Woodlands, LLC proposed a Concept Plan for their land holdings in the Fish River Chain of Lakes area. That Concept Plan would allow for more residential and commercial development in that area, including directing additional development to areas that are most suitable for development, as long as that development is offset by conservation. The Concept Plan has yet to be approved. By contrast, the proposed primary and secondary locations in this area would encourage development in areas not as suitable for development, and

without requiring any concurrent conservation offset. If the Concept Plan is not approved, then development could occur in this area without taking into consideration the area's natural resource values, current character, and impacts to water quality and fisheries. We understand if the Concept Plan is approved, it will supersede these proposed primary and secondary locations, however we bring this issue up as an example of how some existing location of development tools, such as Concept Plans, are already working to direct development to the most appropriate areas, perhaps more effectively than these proposed rules.

- Albany Township. We believe that this township is not a good choice for the primary location all together, as it would encourage additional development near the White Mountain National Forest, even though there seems to be ample room for additional development in neighboring organized towns. This region's economic future is intimately tied to the outdoor recreational opportunities in the area, including the White Mountain National Forest. We believe additional development in Albany Township would detract from those opportunities and undermine local economic and community vitality.
- Plantations. Under this proposal, primary locations include areas within one mile of a public road in all plantations. In our experience, not all plantations have existing clusters of development suitable for additional development. Including all plantations has led, under this proposal, to a wide swath of primary location east of Medway that is anathema to smart, concentrated development. Furthermore, not all public roads within plantations are otherwise created equal. For example, Baring Plantation's public roads run right through Moosehorn National Wildlife Refuge, which is not a good location for more development. Each are examples of the nuance that is lost when using this "one size fits all" approach.
- Management Class 3 Lakes. Not all Management Class 3 lakes are suitable for the additional development that would be allowed under these new rules. Based on an initial evaluation of Google Earth images, the location of existing development on the shoreline or nearby, and a review of known aquatic and terrestrial natural resource values, we believe lands around the following Management Class 3 lakes should not be included in the primary location: Clayton Lake (T12 R8 WELS), Horseshoe Pond (Coburn Gore), Pocumsus Lake (T5 ND BPP), Bowlin Pond (T5 R8 WELS), Caribou Lake (T2 R12 WELS), Endless lake (T3 R9 NWP), Fish River Lake (T13 R8 WELS), Grand Lake West (T6 ND BPP), Jo-Mary Lake Middle (T4 Indian Purchase), and Onowa Lake (Elliottsville TWP).

(6) *Proposed Section 10.21, F, "Low-Density Development Subdistrict (D-LD)"*. Allowing for low density subdivisions is an inefficient use of land and would represent a dramatic departure from current Commission policy. Between 1999 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. The proposed subdivision rules attempt to lessen the impact of these large lots by clustering houses

somewhat together rather than being randomly scattered, however they can still occur in areas far removed from the center of existing activity or communities, which in our view is inconsistent with the intent of the proposed rules – i.e. to guide development close to existing communities.

- (7) *Proposed Section 10.21,M*, “Residential Development Subdistrict (D-RS)”. We appreciate the evolution of this concept, including narrowing the type of trailhead near which residential development may occur. However, we remain concerned that allowing this will in some cases result in development that is inconsistent with smart growth principles (i.e. development located far from community centers) and could adversely impact natural resources (in particular, lake shorelines). Points of entry to permanent trailheads (an area where this type of development could occur under the proposed rules, see Section 10.08-A,D,2,c) are sometimes located in more remote areas of the jurisdiction and thus are more susceptible to negative development impacts.
- (8) *Proposed Section 10.25,E,1*, “Scenic Resources.” We appreciate the changes made since the last draft rulemaking to protect scenic byways.
- (9) *Proposed Section 10.25,Q,3,a,2*, “General Management Subdivisions”. Under the proposed rules, 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 proposed rule revisions, these new General Management subdivisions would be allowed in the M-GN subdistrict within all primary areas, as long as they are within a ½ mile of a public road. 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 subdivisions.
- (10) *Proposed Table 10.25,Q-1*, “Location and Layout Overview”. Residential subdivisions in the UT should be designed to minimize the extent and sprawl of new development and associated infrastructure as a means to better protect natural resources, maintain large unfragmented forest and habitat blocks, and to facilitate efficient movement of both people and wildlife.

The proposed “FlexDesign” is by far the best subdivision layout in most situations. FlexDesign requires the developer to work proactively with Commission staff early in the design stage to identify the unbuildable areas, as well as the high value natural resources and connected natural landscapes that should be avoided, and to minimize the extent and sprawl of building lots, roads, septic systems, etc. that become part of the permanent built landscape. FlexDesign is similar, but different, from the proposed Clustered Design in that they both would require a portion of the development to be protected as open space, but the placement and quality of that open space could vary markedly: The proposed FlexDesign is more tailored to the resources on the ground, whereas Clustered Design just requires that the lots be close together on a parcel with the rest of the land set aside as open space, regardless of its value.

The proposed Basic Design is the least desirable, as it is the least efficient in terms of land use and infrastructure needs, though we recognize it could be appropriate along some shorelines, on which shorefront lot owners tend to desire their own access and/or viewshed of the lake.

While we appreciate the staff's interest in providing developers with options, based on experiences in organized towns, the proposed FlexDesign subdivisions (often called conservation subdivisions) have been most successfully used when they are required (at least in the rural portions of the town), rather than being offered as one of several options – particularly when both Clustered and FlexDesign are options.

Consequently, we recommend changing Table 10.25,Q-1 to allow only the proposed FlexDesign layouts at “Inland” (both Residential and General Management) and “Shoreland with Heavy Development” sites, and only Clustered and FlexDesign at “Shoreland” (Management Class 4 Lakes).

- (11) *Proposed Section 10.25,Q,4,a,2,a,i.* The proposed rules would allow a waiver of open space requirements if the subdivision is located within a quarter mile of permanently conserved land. We are concerned that this would drive some development adjacent to conserved land, because developers are motivated to avoid open space requirements. In these cases, there should be at least a 1000' undeveloped separation between the conserved land and the developed land (500' wildlife travel corridor plus 500' buffer from impacts from human activity).

Specifically, we recommend changing the wording as follows: “In cases where the subdivision abuts permanently conserved land, all building envelopes shall be at least 100' but preferably 500-1000' from the boundary line of the conserved parcel.”

This change reflects the following, from “Conserving Wildlife in Maine’s Developing Landscape”:
“In urban/suburban areas, a study by Matlack (1993) found that human activity could extend up to 270 feet into natural areas on the edge of human development. These activities can reduce the value of the edge habitat for wildlife. Dumps, litter, pruned and hacked trees, cleared understory vegetation, established campsites and extensive firewood gathering, can all reduce the vegetation birds use to nest and cause general disturbance which may keep animals out of the area. In addition, habitat adjacent to residential housing often has elevated numbers of gray squirrels (due to supplemental feeding at bird feeders) and house cats, both of which are effective predators on nesting birds.¹”

Other studies have shown that impacts from roads can extend beyond human development between 330' to more than 3300', depending on the species and habitat. Five hundred feet is a reasonable compromise and is consistent with other recommendations in the proposed rule.

- (12) *Proposed Section 10.25,Q 4,b,2,c and 4,d,4,e.* Subsurface wastewater disposal systems should be considered part of the infrastructure needed to support the subdivision and should not be allowed in the open space portions of the subdivision unless there are extenuating circumstances. The subdivision design should include adequate area and conditions for a fully functioning system or systems. The open space should be reserved for uses as described in Comment 13.

¹ Matlack,G.E. (1993). "Environmental Auditing - Sociological Edge Effects: Spatial Distribution of Human Impacts in suburban Forest Fragments." Environmental Management 17(6): 829-835.

(13) *Proposed Section 10.25,S,3*, “Uses of Common Open Space”. We suggest that the proposed rules be modified to be more specific about what can and cannot be allowed in Common Open Space. We have drafted one possibility below, which was modified from an Environmental Protection Agency statement on what constitutes open space:

Open space is undeveloped land that conserves woods, water, and wildlife, and is open and accessible to the public for passive recreation. In these subdivisions, open space may include vegetated green space (land predominantly covered with vegetation), community gardens, nonmotorized trails, and small playgrounds. It does not include ballfields or other semi-developed recreational facilities.

We remain uncertain how to address the motorized and nonmotorized trails part of this proposed modification. The Commission may need to include both or to simply say “trails”, though we believe highly trafficked trails such as ITS snowmobile trails or multipurpose railroad-bed type trails are inappropriate uses in these open spaces.

Should the Commission continue with the general approach of the proposed rulemaking, we strongly recommend that the Commission significantly scale back the locations available for development, including, but not limited to: (1) Reduce the straight-line distance used to calculate primary locations from 7 miles to 2 miles; (2) Eliminate particularly problematic townships; (3) not include all plantations in the development locations; (4) strongly consider removing the secondary locations all together; (5) significantly limit or eliminate the proposed General Management Subdivisions; (6) not allow development on the suggested Management Class 3 lakes; and (7) eliminate the proposed Low-Density Development Subdistrict. We strongly believe that the Commission should start small and review and modify the rules as needed based on on-the-ground results over time.

Alternative Recommendation

As an alternative to this proposed rule, we recommend that the Commission do the following to achieve its laudable goal of directing new development near to existing communities:

- (1) Complete a land use inventory of the jurisdiction.** It is difficult to assess the merits of this proposal as compared to existing policy because no one knows precisely what development is “on the ground” in the jurisdiction. We recommend that the Commission invest in a land use inventory so that staff and the public can clearly assess the benefits and risks of the current proposal. For example, a land use inventory would allow the Commission and stakeholders to understand the scale of this and future proposals as compared to development that could occur under the existing adjacency policy.
- (2) Engage in regional planning and zoning.** We believe that this proposal, in its effort to draft simple, accessible, jurisdiction-wide rules, overlooks important natural resources and does not yet meet the smart growth and adjacency principles outlined in the CLUP. We believe that regional planning would be a more effective way to achieve the Commission’s goals. We recognize that regional planning has been challenging in the past and not always produced the hoped-for results, and would require significant staff time to do well, but taking a pro-active approach with input from both local communities and professional planners and economists has

the potential to better meet the Commission's goals and support existing communities than the current complicated proposed rule. As such, we recommend that the Commission commit additional staff or consultant capacity to help communities and regions engage in community guided planning and zoning or prospective zoning as a way to directly respond to community needs and achieve Commission goals.

Conclusion

Overall, we are concerned that the cumulative impacts from development in the proposed rule – including the proposed primary and secondary locations, large lot subdivisions, general management subdivisions, and lakeshore developments, combined with the continuance of the “2 in 5 rule” – will substantially fragment and degrade the nature of the north woods and does not adequately meet the Commission's goal to shift development from more remote areas to areas near existing communities while still protecting the jurisdiction's natural resources and natural-resource based industries. We urge the Commission to instead consider engaging in proactive regional planning, which we believe will better achieve the Commission's goals and be more responsive to the current and future location of the jurisdiction's natural resources, land uses, recreational activity, and development.

Signed,

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

Eliza Donoghue, Esq.
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