



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
EXECUTIVE DIRECTOR

JANET T. MILLS
GOVERNOR

Memorandum

To: LUPC Commissioners
CC: Stacie R. Beyer, LUPC Executive Director
From: Tim Carr, Senior Planner
Jon Boynton, Senior Planner
Date: May 3, 2024
Re: Plan for the Five-Year Report on the 2019 Adjacency and Subdivision Rulemaking

Introduction

In 2019, the Commission adopted a significant rulemaking package referred to as the Adjacency and Subdivision Rulemaking. As part of the adoption, the Commission committed to periodic review of the implementation and effects of the rules. In 2020, Commission staff, in conjunction with stakeholders, developed a work plan directing this periodic review, Adjacency & Subdivision Implementation Tasks: Reporting System Workplan (2021 Workplan). The Commission approved the work plan in January 2021. Following the [2021 Workplan](#), a report reviewing relevant zoning petitions; permitting of residential subdivisions, resource-based commercial uses, and major home-based businesses; and permitting involving hillside development and wildlife passage standards has been produced annually covering the years 2020 - 2023. Known as the Annual Adjacency and Subdivision Rulemaking Report, the [report for 2023](#) was presented at the February 2024 Commission meeting. The 2021 Workplan also included a commitment to review the implementation and effects of the rulemaking in 2024, five years after rule adoption. Staff are seeking feedback from the Commission on producing the Five-Year Report following the 2021 Workplan, including feedback on questions, methods, timeline, and final report structure.

Background on the 2019 Adjacency and Subdivision Rulemaking is provided in [Attachment A](#) (2019 Adjacency and Subdivision Rulemaking – Background and Overview of Rule Changes). In addition, links to relevant resources are included throughout this memo and listed on [page 4](#).

The Five-Year Report

The data collected in the Annual Adjacency and Subdivision Rulemaking Reports will help form the basis of the Five-Year Report. However, the five-year milestone also provides the Commission the opportunity to look more broadly at the effectiveness and outcomes of the rulemaking.

Topics and Questions

Following the goals and tasks described in the 2021 Workplan, the Five-Year Report will address the following topics and questions:

Adjacency/Location of Development (Goals 2 and 4 of the 2021 Workplan)

- Are new development subdistricts being sited where there is existing development and where services can be provided efficiently?
- Is resource-based development being sited in locations that do not undermine the quality of the surrounding natural or recreational resources or create a burden on the service providers in the region?
- What are the potential long-term implications of any emerging patterns of development related to the rule change?

Subdivision (Goal 3 of the 2021 Workplan)

- Have new options for subdivision design affected lot creation through the subdivision process?

Hillside Development (Goal 4 of the 2021 Workplan)

- Do the hillside development standards effectively minimize views of development from scenic resources?

Wildlife Passage (Goal 4 of the 2021 Workplan)

- Are wildlife corridors being incorporated into the design of subdivisions and commercial development as intended?

Methods

Approaches for collecting and analyzing data used in the Five-Year Report are described below, following the 2021 Workplan. These methods fall into the following categories:

- Outreach to:
 - officials from rural hubs and other surrounding municipalities
 - stakeholders
 - applicants
 - other agencies

- Data collected from:
 - LUPC records and applications (captured in the 2020-2023 Annual Adjacency Reports)
 - municipalities (permitting data, ordinances)
 - registries of deeds (e.g, for subdivision activity)
- Comparisons of:
 - development trends between municipalities and the LUPC’s service area
 - development trends and patterns within the LUPC’s service area before and after the rule change
- Development of Case Studies to illustrate:
 - the relationship between development in primary and secondary areas and provision of services
 - the application of subdivision design standards
 - the application of wildlife passage standards
 - changes to primary and secondary locations since the rule change
 - outcomes of any zoning and permitting approvals or disapprovals that have caused concerns, such as any adverse impacts on natural or recreational resources
- Fieldwork to examine the effectiveness of the hillside development standards

Additional information on the outreach planned is provided in [Attachment B](#) (Overview of Proposed Outreach to Municipalities, Stakeholders, and Applicants). Wherever practical, methods for addressing different questions will be combined. For example, there will be one combined effort to gather information on both the location of development and subdivision from local officials in rural hubs and municipalities. The Commission’s existing webpage on the [Adjacency and Subdivision Process](#) will be revised to support the information gathering process for the Five-Year Report and to keep the public informed. A timeline for producing the report is provided in [Attachment C](#).

In considering the conclusions that may be drawn from the data and analyses listed above, there are a number of limitations and caveats to bear in mind. These are discussed on page 2 of the [2021 Workplan](#).

Report Contents and Potential Outcomes

Staff are planning a report, similar to the Annual Adjacency and Subdivision Rulemaking Reports, that presents the data gathered and questions asked; responses from participants; details about analyses and results; tables, graphs, mapping and other figures necessary for communicating results; and discussion and conclusions based on the results.

A potential outcome of the five-year review is that the Commission may consider changes to the rules. If the review finds that rule changes are needed, staff would present these at a conceptual level in the Five-Year Report for the Commission’s consideration. Another potential outcome is finding that additional guidance materials would be helpful. Staff would also present these at a conceptual level for the Commission’s consideration.

Links to Resources

- [2021 Adjacency and Subdivision Reporting Workplan \(2021 Workplan\)](#)
- [Video on the Development of the 2021 Workplan](#)
- Annual Adjacency & Subdivision Rulemaking Reports
 - [2020 Report](#)
 - [2021 Report](#)
 - [2022 Report](#)
 - [2023 Report](#)
- [Summary of Location of Development/Adjacency Rule Revisions](#)
- [Subdivision Rule Review](#)
- [Resources from the 2016-2019 Adjacency Rulemaking Process](#) (e.g., basis statement, Commission memos, public comments, meeting summaries, and other informational materials)

Attachments:

[Attachment A](#): 2019 Adjacency and Subdivision Rulemaking – Background and Overview of Rule Changes

[Attachment B](#): Overview of Proposed Outreach to Municipalities, Stakeholders, and Applicants

[Attachment C](#): Timeline

Attachment A

2019 Adjacency and Subdivision Rulemaking – Background and Overview of Rule Changes

To provide context for the goals and methods of the Five-Year Report, this attachment briefly reviews background for the 2019 Adjacency and Subdivision Rulemaking as well as the rule changes themselves. Additional information may be found on the [Location of Development/ Adjacency and Subdivision Rule Review](#) webpages.

The Adjacency Principle

Since its inception as the Land Use Regulation Commission (LURC), the Commission has sought to fulfill its statutory charge by fostering patterns of development that protect the service area's principal values. A guiding policy in this endeavor has been to encourage certain types of new development in and adjacent to existing developed areas. Due to the size and diversity of the Commission's service area, prospective zoning of development zones was not applied when LURC adopted zoning and development standards in the early to mid-1970s. Instead, a rezoning process was created along with policies to guide the location of development, including that "...most future development should take place within or adjacent to existing patterns of compatible development" (1983 CLUP, p. 82) "particularly near towns and communities" (1997 CLUP, p. 122).

Prior to 2019, the Commission generally interpreted this adjacency policy to mean that most rezoning for development should be no more than one mile by road from existing, compatible development while recognizing that a greater or lesser distance may be appropriate in some circumstances (the "one-mile rule of thumb"). However, difficulties with the adjacency policy and its application were identified as far back as the 1976 CLUP and were expanded upon in the 1983 and 1997 CLUPs. This culminated with the 2010 CLUP designating "guiding the location of development" as the Commission's highest priority issue. Following the plan and guidance provided in the 2010 CLUP, the Commission initiated a location of development rulemaking process in 2016, which became part of the Adjacency and Subdivision Rulemaking and was ultimately adopted in 2019.¹

The 2019 Adjacency and Subdivision Rulemaking

The Adjacency and Subdivision Rulemaking was based on two, multi-year, public stakeholder processes. The Subdivision rulemaking process began in 2014 and included a public survey, a workshop with invited experts on subdivision rules, and multiple public meetings. The Adjacency rulemaking process included three years of planning, public meetings, and public comment; a public survey; and a public hearing, among other aspects. In October of 2018, the Commission voted to combine the two processes into a single rulemaking package.

Overview of Rule Changes

The Adjacency/Location of Development portion of the rulemaking established locational criteria for certain development zones through revisions to section 10.08 of the Commission's rules and the addition of section 10.08-A. These rule changes included:²

- Designating 39 communities as "Rural Hubs," most of which are municipalities;

¹ For discussion of the Adjacency Policy in past CLUPS, see the following (page numbers refer to PDF file pagination): 1976 CLUP, pages 8, 24, 61, and 72; 1983 CLUP, pages 52 and 84; 1997 CLUP, pages 122-140, 148, and 154.

² The list is intended to present the rule changes at a high level and as a result involves simplifications and omissions. Consult sections 10.08 and 10.08-A of the [Commission's Chapter 10, Subchapter I](#) for the complete rules.

- Establishing a “Primary Location” as:
 - Land within seven miles of the boundary of a rural hub that also is within one mile of a public road;
 - Land within certain townships, plantations, and towns that is also within one mile of a public road; and
 - Land within 700 feet of most Management Class 3 lakes (MC 3 = lakes potentially suitable for development; see [Chapter 2](#), 122);
- Establishing a “Secondary Location” as land in a town, township, or plantation bordering a rural hub that also is within three miles of a public road and outside the primary location;
- Requiring proposed Commercial-Industrial Development (D-CI) and General Development (D-GN) subdistricts to be located in a primary location;
- Requiring proposed Low-Density Development (D-LD)³ subdistricts and most Residential Development (D-RS) subdistricts to be located in a primary or secondary location;
- Requiring demonstration of availability of emergency services, compatibility with other land uses and resources, and maintenance of the character of an area as important criteria for demonstrating consistency with the CLUP’s policies on location of development; and
- Requiring legal right of access for certain rezonings.

The rulemaking also allowed land uses that must be conducted near a natural resource to locate away from existing development by:⁴

- Establishing the Resource-Dependent Development Subdistrict (D-RD);⁵ and
- Allowing recreation-based subdivisions around Management Class 4 and 5 lakes [MC 4 = high value, developed lakes (see [Chapter 2](#), 123); MC 5 = heavily developed lakes (see [Chapter 2](#), 124)], around certain Management Class 7 lakes (MC 7 = lakes which are not in one of the other six lake Management Classes), and around certain trailheads.

The Subdivision portion of the rulemaking established new subdivision design criteria (in [Chapter 10](#), Section 10.25,Q,2 through 5), subdivision road standards (in 10.25,D), and the Low-Density Development Subdistrict (D-LD; 10.21,F). These changes were in response to stakeholder feedback that the subdivision standards needed to be clearer, more flexible, and allow more design options.

In addition, two topics that emerged in both the Adjacency and Subdivision processes were wildlife passage and hillside development. Standards for wildlife passage were implemented in section 10.25,Q of the Commission’s rules for subdivision designs and in section 10.27,S as part of Commercial Development standards. The standards require undisturbed areas connected to offsite undisturbed areas to facilitate wildlife movement through or around development and to help buffer and mitigate possible negative impacts, such as impacts to natural character and water quality. The rules adopted involve requirements for wildlife passage in subdivisions and commercial

³ The Low-Density Development Subdistrict (D-LD) was created in the 2019 Adjacency and Subdivision rulemaking.

⁴ Note that Commission rules in place prior to 2019 allowed development tied to a specific resource to locate away from existing development: for example, the Planned Development (D-PD) subdistrict.

⁵ See [Chapter 10](#), Section 10.21,K.

development, including dimensional and locational requirements and means to preserve wildlife passage into the future.

Standards for Hillside Development were implemented in section 10.25,E,2 of the Commission's rules. The goal of the standards is to protect scenic and natural character, following CLUP policies. The rulemaking defined "hillside" as "[a]n area of two or more contiguous acres having a sustained slope of 15 percent or greater" ([Chapter 2](#),101). The rules adopted for hillside development include standards for: ridgeline protection; limiting clearing of vegetation; ensuring that building design complements site topography, that construction materials and colors are not disruptive, and that linear infrastructure be located to minimize visibility of cleared corridors; and stormwater management.

Attachment B

Overview of Proposed Outreach to Municipalities, Stakeholders, and Applicants

Overview of Proposed Outreach to Municipalities, Stakeholders, and Applicants

Introduction

Staff conducted a multi-year outreach effort as part of the 2019 Adjacency and Subdivision Rulemaking process. This effort included a broadly distributed public survey, focus groups, public meetings, and other direct stakeholder engagement. As part of the Five-Year Report, staff will conduct outreach activities such as interviews with and surveys of municipal, plantation, and county officials; past applicants; property owners; real estate agents and property managers; environmental organizations; and potentially other stakeholders.

Identified Rural Hubs and Nearby Municipalities

In the 2019 Adjacency and Subdivision Rulemaking, the Commission identified 39 rural hubs providing a variety of services to the jurisdiction (see 10.08-A,B). To determine the scope and geographic distribution of outreach efforts for the Five-Year report, staff identified rural hubs near relevant development approved within the past five years. Staff also identified other rural hubs and nearby municipalities to include in outreach efforts to ensure geographic distribution. Information from these municipalities will provide an understanding of development occurring adjacent to the LUPC service area.

While staff will prioritize speaking with local officials in the ten rural hubs listed below in outreach efforts, staff will also reach out to the other 29 rural hubs through other means, such as email or direct mailing.

Rural Hubs near relevant development approved within the last five years:

Bethel	Houlton	Rangeley
Calais	Millinocket	Saint Agatha
Ellsworth	Patten	
Greenville	Princeton	

In addition to the rural hubs, staff plan to reach out to the following through a combination of calls, emails, and GovDelivery messages:

- Former applicants
- County Commissioners and Managers
- Plantation officials
- Other municipalities near the Commission's service area
- Landowners (e.g., Maine Forest Products Council, Seven Islands)
- Municipal groups (e.g., Maine Municipal Association)
- Regional development corporations and regional planning organizations (RPOs)
- Environmental or conservation organizations (e.g., Maine Audubon, NRCM)
- Real estate professionals
- State agencies (e.g., Department of Inland Fisheries and Wildlife regarding wildlife passage)

Example Questions for Rural Hubs and Municipalities:

1) General Questions

- a) Since 2019, and the Location of Development rule changes, how has your community changed?
 - i) Has there been more development?
 - ii) What kind of development - residential, commercial, industrial?
 - iii) How did the COVID-19 Pandemic affect development patterns in your community?
- b) Has the population increased, decreased, or held steady?
- c) Have you seen an increase in second home ownership?
- d) How has housing affordability changed in your region, and what has been the effect?
- e) How has development occurring in the Commission's service area affected your town/county?

2) Subdivision

- a) If your town/county has experienced subdivision development, how much has occurred and what was the effect? For example, did the type or rate of development raise any red flags?
- b) Have you experienced an increase or decrease in subdivision development over the past 5 years?
- c) If you have seen a decrease in subdivision development, what factors do you believe are impacting that outcome?
- d) Please describe a typical subdivision application in your town. For example, what is the general number and size of lots created, open space requirements, etc.?

3) Open Space, Hillsides, and Wildlife Corridors

- a) Does your community have any requirements for blending in new structures situated on hillsides, open space requirements, or provisions allowing for wildlife passage around development?

Attachment C

Timeline

Adjacency/Subdivision Five-Year Report: Timeline

Mar. 2024	Apr. 2024	May 2024	June 2024	July 2024	Aug. 2024	Sept. 2024	Oct. 2023	Nov. 2024
Project Planning		Commission Feedback	Conduct Outreach, Analyses, Fieldwork		Share Outreach Results w/ Participants	Report Writing and Review Draft Any Conceptual Rule Change Proposals		Report to Commission