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Memorandum

To: LUPC Commissioners
CC: Stacie Beyer, Acting Executive Director
From: Ben Godsoe, Acting Planning Manager
Date: January 7, 2022
Re: Annual Adjacency and Subdivision Rulemaking Report

In 2019, the Land Use Planning Commission (LUPC or the Commission) adopted rule changes related to applying the adjacency principle and the permitting of residential subdivisions. This was a significant change in policy regarding where new businesses or subdivisions requiring rezoning could locate, and the Commission remains committed to tracking the outcome of the rule changes. The basis statement accompanying the rulemaking described this commitment and further noted that the LUPC would conduct a review of the rule changes after five years, five rezonings in a county, or creation of 100 subdivision lots. In 2020, the staff created a work plan to identify the types of data that should be collected and analysis that should be completed both on an annual basis, as well as at the intervals predetermined by the basis statement.

At the January 12, 2022 Commission Meeting, Staff will present the Annual Adjacency and Subdivision Rulemaking Report, which is attached to this memo along with the work plan created in 2020. The report includes a summary and analysis of rezoning and permitting actions occurring over the course of the last year that are relevant to the 2019 Adjacency and Subdivision Rulemaking.

LAND USE PLANNING COMMISSION
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

Annual Adjacency and Subdivision Rulemaking Report

January 7, 2022

Reporting Period: January 4, 2021 – January 5, 2022

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Overview, Methodology, and Summary of Results

Overview

This report addresses data collected and analyzed according to the *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN*. The purpose of the workplan, a companion document to this report, is to summarize and assess the outcomes of the 2019 Adjacency and Subdivision Rulemaking. It includes goals and strategies to evaluate the effectiveness of the new rules, and describes data collection and analysis tasks to be completed during reporting periods.

The first part of this report includes a high-level summary. Following are tables with detailed information about relevant rezoning and permitting actions. For example, tables include information about distances from new zones or development to rural hubs, and application of new standards for development on hillsides and wildlife corridors. Many tables are accompanied by additional written analysis. Finally, information about the Land Use Planning Commission's (LUPC, or the Commission) data and terms used in the report are included for reference at the end of this document.

Methodology

The accompanying *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN* identifies the types of information the Commission should collect over time, and when to complete different types of analysis. This is the second annual summary completed since adoption of the Commission's Location of Development standards, and where appropriate, staff have noted observations about the data collection process.

This report is based on review by Commission staff of all permitting and rezoning actions recorded during the reporting period in the Geographically Oriented Action Tracker (or GOAT) database, which is maintained by the LUPC. Staff identified relevant zoning petition, subdivision permit, development permit, or building permit records and then analyzed decision documents, application materials, correspondence, GIS data, and other available background information.

While the Commission tracks and reports on all official actions for its *Annual Report to The Joint Standing Committee on Agriculture, Conservation and Forestry*, only certain permitting or rezoning actions are relevant to measurement of the effectiveness of the 2019 Adjacency and Subdivision Rulemaking. For example, designation of new, or expansion of existing, development subdistricts for the purpose of new development is relevant, while designation of protection or management subdistricts for purposes other than development is not. Permits for new, or the expansion of existing residential subdivisions are relevant, but amendments to existing subdivision permits that are administrative or otherwise involve changes within the existing subdivision boundaries are not relevant. Additionally, this report does not include analysis of expansion to, or development occurring in, Planned Development Subdistricts, the designation of which were unaffected by the 2019 rulemaking. Finally, it is also important to note that this report reflects permitting or rezoning processes that reached a final disposition such as approval, or disapproval, of an application to rezone or for a permit. Applications that did not reach a final disposition were not analyzed in this report.

Data Challenges and Limitations

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Challenges and limitations to the data analyzed in this report are listed in detail in the accompanying work plan. The LUPC’s permitting data represent activities that required permit approval from the LUPC when applicants sought permit approval. Commission initiated actions, such as Commission initiated rezonings, are not included in permitting data.

Generally, approval is sought prior to commencement of an activity requiring a permit. In some instances, individuals apply for after-the-fact permits for activity previously undertaken without the required permit. All data and tables include after-the-fact permits. Additionally, some activities do not require permit approval. Permitting trends only loosely reflect development trends, in that many activities permitted by the LUPC either may not have been started or may not have been completed. Additionally, some activities may have been completed without a permit (illegally and without the Commission’s knowledge) where a permit was required.

Summary of Relevant Rezoning and Permitting Actions in 2021

“Relevant rezoning and permitting actions” are permits or zoning decisions issued by the Commission, and which relate to topics covered by the 2019 Adjacency and Subdivision Rulemaking. For more information, please see the accompanying *Adjacency & Subdivision Implementation Tasks: REPORTING SYSTEM WORKPLAN*.

Action(s)	Summary	County(s)
Zoning Petition ZP # 781	Rezoning for development of a commercial repair garage	HC
9 Building or Development Permits	Proposals for development in areas that meet the definition of a hillside (See 10.02, 97)	FR & PI
Development Permit DP # 5094	Commercial Repair Garage in Town of Osborn	HC
Development Permit DP # 5097	Large-scale agricultural processing (packing facility)	AR
Building Permit BP # 16624	Major home-based business for wood products manufacturing	FR

Additional Takeaways & Lessons Learned

While there was not a lot of relevant data to analyze during this reporting period, the rezoning and permitting actions that were approved offer some insight on how best to collect the information needed for this report. In future reports, particularly if there is a lot of data, it may be important to provide more maps showing where and how development occurs. Included in Appendix III is a map depicting relevant rezoning, subdivision, and resource-based commercial development that has occurred since the Commission adopted the Adjacency and Subdivision Rulemaking. The map illustrates in which minor civil divisions each action occurred. Future reports could include maps at different scales illustrating any patterns that emerge.

In addition to following the tasks prescribed by the work plan, over the next reporting period, Commission staff will focus on improving internal mechanisms and processes to collect data, including by:

1. Continuing to capture information about applications that do not reach a final disposition; and
2. Ensuring staff continue to solicit feedback about rezoning proposals from rural hub towns and neighboring municipalities.

The COVID-19 Pandemic occurred during both this and the preceding reporting periods. For more information about the effects of the COVID-19 pandemic on development activity, please see the Commission’s *2021 Annual Report to The Joint Standing Committee on Agriculture, Conservation and Forestry*.

Results

A. ZONING PETITIONS:

In 2021, there were five zoning petitions (ZP) that reached final dispositions. However, only ZP #781 proposed a new zone in accordance with the Location of Development standards adopted by the Commission, and therefore is relevant to this report. The other zoning petitions acted upon within this time frame were unrelated.

Summary of ZPs with a final disposition during the reporting period, but which are not relevant to the analysis of the new rules:

- One ZP was associated with the Planned Development Subdistrict encompassing the Saddleback ski resort;
- One ZP proposed a new Planned Development Subdistrict for the Pickett Mountain Metallic Mineral Mine;
- One ZP replaced zoning in areas formerly included in a resource protection subdistrict established for the First Roach Pond Concept Plan, which expired in 2021; and
- One ZP rezoned two wetland protection subdistricts to the general management subdistrict to better reflect onsite conditions.

2021 Relevant Zoning Petitions: Purpose, Size, Location, Disposition

Zoning Petition	Purpose	Sub-district	Acres	MCD	County	Location Criteria (10.08 & 10.08-A)	Disposition
ZP # 781	Rezoning for Commercial Repair Garage	D-GN	1 ac	Town of Osborn	HC	Primary Location	Approved

2021 Relevant Zoning Petitions: Distance Measurements

Zoning Petition	Location Criteria (10.08 and 10.08-A)	Rural Hub(s)	Distance from Public Road	Distance to Rural Hub Boundary		Travel Distance to Fire Dept.	Travel Distance to Ambulance Service	Travel Distance to Developed Center of Ellsworth
				Straight Line	Travel Dist.			
ZP # 781	Primary Location	Ellsworth ¹	Located on State Route 179	10.1 miles	15 miles	.7 miles (Osborn)	31 miles (Brewer)	19.8 miles

2021 Relevant Zoning Petitions: Analysis and Discussion

- Review under prior regulations: ZP # 781 likely would have passed the adjacency screen under the one-mile rule of thumb policy, which required that there be existing development within one mile by road that was compatible and of similar scale. The location is in an organized town, on State Route 179, and is .7 miles from a General Development Subdistrict that includes the town office and fire station. There are a range of uses along Route 179 in Osborn, including agricultural, forestry, home-based business, and residential uses.
- Fire and Ambulance Service: The proposed development will be served by the Osborn Fire Department (.7 miles away), as well as fire and ambulance from the Brewer Fire Department (~30 miles away).
- Rural Hub: The town of Osborn includes Primary Locations because it is an organized town and not due to proximity to a rural hub, the closest of which is the town of Ellsworth. (Chapter 10, Section 10.08-A,C,1,b.)
- Outreach to Rural Hubs and Municipalities: Commission staff met with the Town of Osborn during the rezoning process to discuss a variety of items including the proposed rezoning. Town officials did not raise any concerns with the proposal and elected not to comment during the rezoning process. Because the primary location at the proposed site is based on Osborn being an organized municipality, and services come from within Osborn or locations other than the nearest rural hub, the Commission staff focused on communications with the town of Osborn and did not reach out to officials in Ellsworth.
- Overall: ZP # 781 does not raise specific concerns for the Commission about the application of the Location of Development standards. However, it is important to note that ambulance services travel long distances to reach the Town of Osborn. The Commission will closely monitor comments about service provision received during rezoning processes in organized towns and

¹ Osborn includes primary locations because it is an organized town, and not due to its proximity to a rural hub. The closest rural hub is the town of Ellsworth. (Chapter 10, Section 10.08-A,C,1,b.)

plantations, and will follow up with local officials during the next five-year review to determine if any problems have emerged (or during a review triggered by other pre-determined factors).

- Additional analysis proposed in the work plan but not applicable, or not available, for ZP # 781:
 - This rezoning is not near a major water body. If a future rezoning occurs near a water body, this report would include information about the density of development along shorelines, and information about the affected resources from the Maine Wildlands Lakes Assessment (See Chapter 10, Appendix C).
 - Based on anecdotal information obtained through interviews with Commission staff, it appears that there were no relevant rezoning proposals that did not make it to the application stage because of incompatibility with the Location of Development standards. Commission staff intend to continue gathering this type of information as resources and time allow.

2019-2021 Summary Table of Relevant Rezoning Actions

Action	Rezoning Completed (Year)	Summary	County	Subsequent Permitting (Permit # and Year)
ZP # 781	2021	Rezone to D-GN for Commercial Repair Garage	HC	DP # 5094; issued 2021
ZP # 776	2019	Rezone to D-CI for Medical Marijuana Facility	AR	None

Please refer to Appendix III to see a map depicting the location of rezoning actions relevant to this report and authorized between 2019-2021.

B. RESIDENTIAL SUBDIVISIONS

During the reporting period, ten residential subdivision permit decisions (SPs) were issued, as well as one development permit associated with planned development at the Saddleback Ski Resort. However, none of these actions are relevant to this report. SPs issued in this time frame were administrative, re-authorized development that had already been approved for that location, or included minor revisions or reconfigurations to existing (already platted) subdivision designs.

Summary of SPs with a final disposition, but which are not relevant for this report:

- SP # 4081, Amendments A (denied) & B (approved): two actions resulting in increased dimensions of an existing building envelope to accommodate proposed development but limit potential impacts on Moosehead Lake and nearby wetlands;

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- SP # 3172, Amendment C: minor change authorizing a two-year extension to finish completion of the subdivision access road;
- SP # 1016, Amendments E, & G²: reconfiguration of subdivision design for a net reduction in the overall number of developable lots from 8 to 5, and increased conformance with the Commission’s subdivision design standards through elimination of “spaghetti lots”;
- SP # 3121, Amendment F: Division of a lot in an existing subdivision to separate two existing buildings onto separate lots;
- SP # 4098, Amendment A: transfer of portions of one lot to abutters;
- SP # 4079, Amendment A: revision of the recorded survey notes (Survey Note #8) to accommodate a proposed driveway design that better fits the site by reducing overall vegetation clearing and soil disturbance;
- SP # 380, Amendment G: reconfiguration of a design to split one lot and enlarge another lot;
- SP # 4097, Amendment D: Reauthorization of a previously approved 28-unit condominium subdivision in an existing development subdistrict;³ and
- DP # 4131, Amendment Y: authorized a 22-unit condominium development as part of the Saddleback Mountain Ski Resort, which is located within an existing Planned Development Subdistrict.

Summary of Relevant Residential Subdivision Permitting Actions: 2019-2021

Action	Year	Summary	County	Zone	# of Lots
SP # 4100	2020	Permit for General Management Subdivision	HC	M-GN	7

Please refer to Appendix III to see a map depicting the location of subdivision permits relevant to this report and issued between 2019-2021 (total of one action).

² SP 1016 Amendment F is a matter currently pending before the Commission and is related to Amendments E and G. Amendment F, if approved, would further decrease the number of developable lots in the subdivision from 5 to 4, by merging two existing lots and retaining restrictions on future development for the resulting combined lot.

³ This subdivision is also located within the Rangeley Prospective Zoning Plan area.

C. RESOURCE-BASED COMMERCIAL USES

This section includes information about permits issued for non-residential development that did not require a rezoning.

During the reporting period there were 49 development permits (DPs) issued. None of these permits were for resource-based uses related to topics addressed in the 2019 Adjacency and Subdivision Rulemaking and therefore are not relevant for this report.

Examples of DPs with a final disposition, but which are not relevant for this report:

- Expansion of existing development in zones where the use is allowed with a permit (e.g., change of use or building a new structure);
- Development of new facilities in existing development zones where the use is allowed with a permit;
- Development of various components of the Saddleback Ski Area Planned Development Subdistrict (including a solar farm, staff housing, and a mid-mountain lodge)
- Water withdrawal for agricultural irrigation;
- Re-establishment of an existing airstrip along the St. John River for limited recreational use; and
- Development of communication towers.

Summary of Relevant Resource-Based Commercial Permitting Actions: 2019-2021

Action	Year	Summary	County	Zone
DP # 5071	2020	Recreation Supply facility: mobile business providing water-skiing lessons on Indian Pond	SO	P-GP

D. NEW DEVELOPMENT STANDARDS

This section includes information about permits issued for residential or non-residential development where new standards created as part of the 2019 Adjacency and Subdivision Rulemaking were applied.

In addition to a revised system for locating new zones for development and updating the Commission's standards for residential subdivisions, the 2019 rulemaking included new standards for:

- Development in areas meeting the definition of a hillside (see Chapter 10, Section 10.02,98);
- Designating wildlife corridors for non-residential development in subdistricts established after the new rules became effective; and
- Agricultural processing and ag-tourism businesses.

Permits Issued in 2021 Where New Development Standards Applied

Permit	Relevant Standard	MCD	County	Use	Disposition	Near Scenic Byway?
BP # 16632	Hillside Standards	Sandy River Plt	FR	Residential: Single Family (SF) Dwelling	Approved	Yes
BP # 16634	Hillside Standards	Sandy River Plt	FR	Residential: SF Dwelling	Approved	Yes
BP # 15726	Hillside Standards	Madrid Twp	FR	Residential: SF Dwelling	Approved	Yes
BP # 16704	Hillside Standards	Elliotsville Twp	PI	Residential: SF Dwelling	Approved	No
BP # 4365	Hillside Standards	Sandy River Plt	FR	Residential: Storage Building	Approved	Yes
BP # 16621	Hillside Standards	Coplin Plt	FR	Residential: SF Dwelling	Approved	Yes
BP # 11337-C	Hillside Standards	Rangeley Plantation	FR	Residential: Addition to SF Dwelling	Approved	Yes
DP # 4131	Hillside Standards	Sandy River Plt	FR	Saddleback Ski Resort: Mid-Mountain Lodge	Approved	No
SLC # 14	Hillside Standards	T18 MD BPP Twp, and T24 MD BPP Twp	HC	Linear Development Associated with the Downeast Wind Project	Approved	No
DP # 5094	Wildlife Passage	Osborn	HC	Commercial Repair Garage	Approved	No
DP # 5097	Agricultural Processing	TD R2 WELS	AR	Packing Facility	Approved	No

New Development Standards: Discussion and Analysis

- In 2021, actions where “new development standards” applied, included: development on hillsides, wildlife passage for non-residential development, and on-farm agricultural processing. Future reports will include information on permits where other new standards apply, if applicable.
- Hillside Standards:

- During the reporting period there were eight building or development permits, and one certification, issued in areas that meet the definition of a hillside. Most permits were issued in the Western Maine Region, with seven located in Franklin County.
- Six of the seven permits issued in Franklin County were near national or state-designated scenic byways.
- One development permit was issued for a mid-mountain lodge at the Saddleback Mountain Ski Resort. Permitted development would potentially be visible from roadways, water bodies, permanent trails, or public properties located below (lower elevation) and above (higher elevation) the facility. The proposal included widow screening to lower glare, limited lighting, limited hours of operation, a low physical profile, a living roof (reducing visibility from higher elevations), and a vegetation management plan designed to help any necessary clearing blend in with the surrounding natural landscape. The Commission plans to continue tracking the outcome of applying the hillside standards at the Saddleback Mountain Ski Resort, as well as at other similar types of locations where development may be visible from below and above.
- One Site Law Certification was issued by the Commission for the Downeast Wind Power Project in Hancock County. In a Site Law Certification, the Commission reviews proposals for conformance with certain land use standards not otherwise applied by the Department of Environmental Protection (DEP), the permitting authority for site law projects. The Commission's hillside standards, Section 10.25,E,2,a,(1), apply to Site Law Certifications, but provide an exception for structures without floor area, such as turbines in a wind power project, (the DEP has standards addressing impacts to scenic resources that apply to turbines). Infrastructure such as roads or powerlines must meet the applicable portion of the Commission's hillside standards. For Downeast Wind, only small portions of the project area were subject to the hillside standards⁴ and in each case the Commission found that the project was consistent with the standards (e.g., due to topography and existing vegetation between the proposed development and a scenic resources).
- All applicants for permits in hillside areas were required to demonstrate that the Commission's standards for hillside development would be met.
- Wildlife Passage:
 - Development Permit DP # 5094 authorized conversion of a residential garage into a small-scale commercial repair garage in a General Development Subdistrict approved by the Commission in ZP # 781 (discussed above). Wildlife passage was not required at the site because the proposal was for infill development. In their review of the application, Inland Fisheries and Wildlife (IF&W) commented that there would be minimal impacts on wildlife habitat.

⁴ The definition of a hillside is: "An area of two or more contiguous acres having a sustained slope of 15 percent or greater." Chapter 2, Section 101.

The Commission will continue to track the application of wildlife corridor standards for non-residential development and in particularly proposals that constitute in-fill development and therefore do not require that the site design include wildlife passage. Chapter 10, Section 10.27,S,1,a,(1),(a).

- Agricultural Processing
 - DP # 5097 authorized expansion of an existing packing facility as a large-scale agricultural processing facility in the General Management Subdistrict (M-GN) in TD R2 WELS. The proposal called for 4,500 square feet of gross floor area and all raw materials used at the packing facility are grown onsite or on lands owned or leased by the applicant.
 - This proposal likely would not have been approvable prior to adoption of the Adjacency and Subdivision Rulemaking, which created a way for the Commission to permit on-farm agricultural processing without requiring rezoning to a development subdistrict. The proposed site in TD R2 WELS would have required rezoning and therefore the Commission would have applied the one-mile rule of thumb. The site is on a parcel sharing a boundary with the town of Bridgewater, but it is located farther than one mile by road from commercial development of a similar scale and type (sawmill ~2.7 miles). The developed portion of the town of Bridgewater is 3.8 miles away. Bridgewater has certain services including retail, a post office, and a volunteer fire department.

E. PERMITS ISSUED FOR MAJOR HOME-BASED BUSINESSES:

The 2019 Adjacency and Subdivision Rulemaking revised the Commission’s rules for home-based businesses (HBB) by providing a modest increase in the amount of space within a dwelling that may be used by the business (50% of the dwelling, and up to 2,500 sf). The definition of a home-based business includes two types: Major HBB, which typically requires a permit from the Commission; and Minor HBB, which is allowed without a permit subject to the standards described in Chapter, 10, Section 10.27,N. All permits issued for major home-based businesses are listed in the following table.

Summary of Major Home-Based Business Permitting Actions: 2019-2021

Permit	Type of Business	Permitted Activities	Zone	MCD	County
BP # 16624	Home-based Wood Products Manufacturing	Small-scale Manufacturing in Existing Garage	D-RS	Molunkus Twp	AR

Major Home-Based Businesses: Discussion and Analysis

- Only one permit was issued for a major home-based business during the reporting period. The permit was for expansion of a home-based business in a D-RS subdistrict. The proposed facility

will utilize space in an existing garage associated with the dwelling on the property, be 1,500 sf in size, and have two employees.

Appendix I. Description of Permit Types

Land use regulations stipulate which land uses and development activities are: allowed without a permit; allowed without a permit subject to standards; allowed with a permit; allowed by special exception; and those not allowed. For those uses and activities which require permit approval, the LUPC reviews those proposals for conformance with applicable rules and issue a decision (*e.g.*, a permit). The Commission issues permits for a wide range of activities, examples include: camp additions, reconstruction of permanent docks, new garages, grid-scale wind energy facilities, restaurants, and maple sugaring operations.

Permit database naming protocols

Given the range of activities allowed within the unorganized territories, the LUPC currently or formerly utilizes a variety of action types to identify and record various permitting actions.

Each permit includes the action type and number (*e.g.*, AR 95-001, BP 123, and ZP 456) at the top of the document and a corresponding entry in the LUPC's permitting database – Geographic Oriented Action Tracker (GOAT). Amendments of previous actions are identified by the use of sequential letters (*e.g.*, BP 123; BP123-A; and BP 123-B (the first permit action, the first amendment, and the second amendment respectively)). Variations on this primary naming convention include: AR 95-10 (*i.e.*, the 10th advisory ruling issued in 1995); and SP 3206-16 (*i.e.*, a Chapter 16 subdivision). The following summarizes the various types of actions included in this report:

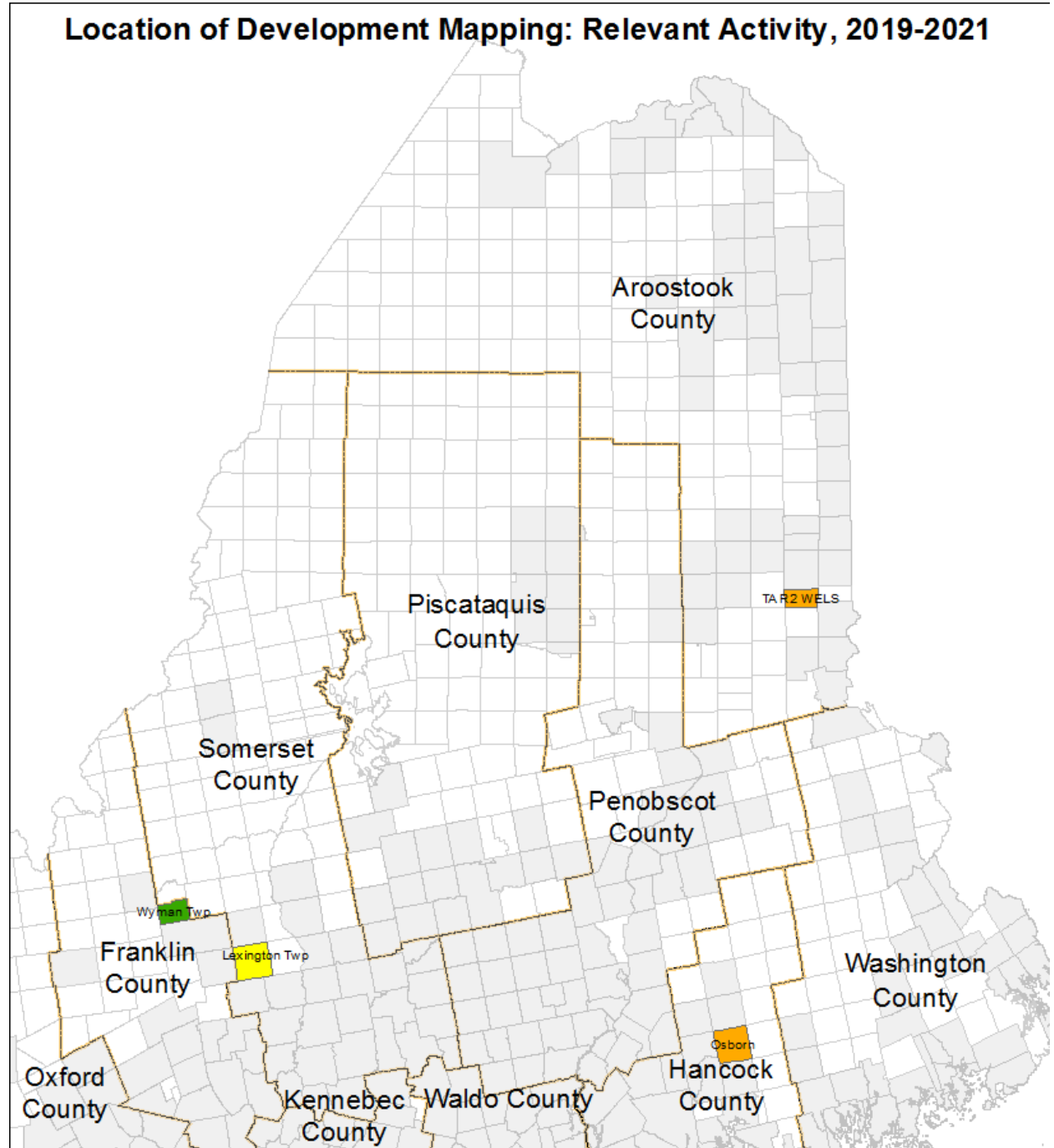
Type (Acronym)	Permit Type (Name)	General Description
BP	Building Permit	Permits for activities associated with residential development that requires a permit (<i>e.g.</i> , activities involving: a camp, a garage, porches, etc.).
DP	Development Permit	Permits for activities associated with non-residential development that requires a permit (<i>e.g.</i> , activities involving: a commercial sporting camp, retail store, warehouse, mill, wind turbines, campground, resort, etc.)
SLC	Site Law Certification	Certifications issued by the Commission for projects which trigger review by the Maine Department of Environmental Protection (DEP) according to Site Law. In these cases the Commission must certify i) that the use is allowed; and ii) whether or not the project conforms to its standards, which are not otherwise regulated by the DEP. Projects that typically trigger Site Law include: subdivisions, commercial development, and grid-scale wind development.
SP	Subdivision Permit	Permits to create new lots where the lot(s) do not qualify as exemptions, see Section 10.25,Q,1 of the Commission's <i>Land Use Districts and Standards</i> .
ZP	Zoning Petition	Petitions to rezone a specified land area to another subdistrict(s). See Section 10.08 of the Commission's <i>Land Use Districts and Standards</i> .

Appendix II. Description of Disposition Types

Each permit application and zoning petition received by the Maine Land Use Planning Commission is reviewed and results in a final action or disposition. Each type of disposition may be valuable to different data analyses (*e.g.*, approved and approved/disapproved in-part best illustrate authorized activities; withdrawn and returned applications may illustrate unrealized interest in development). Final action or disposition includes the following outcomes:

- *Approved* – The proposed activity meets the necessary standards; a decision (*i.e.*, permit) indicating approval is issued by staff or the Commission.
- *Approved / Disapproved in-part* – Parts of the proposed activity meet the necessary standards and are approved, and parts of the proposed activity do not meet the necessary standards and are disapproved. A decision (*i.e.*, permit) indicating the approved and disapproved components is issued by staff or the Commission.
- *Disapproved* – The proposed activity does not meet the necessary standards; a decision (*i.e.*, denial) is issued by staff or the Commission.
- *Application Withdrawn* – The applicant chooses to withdraw their application prior to final action by staff or the Commission. The application is returned, and no final action is issued by staff or the Commission.
- *Application Returned* – The application is incomplete, and the applicant has made insufficient effort to address the issue(s). The application is returned, and no final action is issued by staff or the Commission.

Appendix III. Maps of Relevant Permitting and Rezoning Actions: 2019-2021



Legend

- Minor Civil Division with Relevant Rezoning
- Minor Civil Division with Relevant Residential Subdivision
- Minor Civil Division with Relevant Resource-based Commercial Activity

ACTIVITY SUMMARY 2019-2021

- Wyman Township: M-GN Subdivision, 7 lots (2020)
- TAR2 WELS: Rezone to D-CI Subdistrict (2020)
- Lexington Twp: Recreation Supply Business (2020)
- Town of Osborn: Rezone to D-GN Subdistrict (2021)



**Adjacency & Subdivision Implementation Tasks:
REPORTING SYSTEM WORKPLAN
(January 13, 2021)**

INTRODUCTION

The following describes the LUPC staff proposed workplan to summarize and assess outcomes of what was referred to as the 2019 Adjacency & Subdivision rulemaking. That rulemaking:

- made changes to the ‘adjacency principle;’
- improved subdivision standards; and
- added other standards regarding an impact-based approach for residential and non-residential development, home- and farm-based businesses, scenic byways, and hillside development.

Due to a number of factors, not all outcomes or aspects of performance can be measured or assessed quantitatively. In some instances, the workplan describes other information or assessments that may be informative substitutes.

Workload

This workplan includes an assessment of the workload anticipated to achieve each research and assessment task. While the Commission previously committed to certain tasks, and the additional tasks are valuable and appropriate, it will require the devotion of time and resources. Specifically, anticipated workloads are indicated as one of three levels:

Workload	Description
+	<u>Negligible effect on LUPC workload:</u> information is already collected by the LUPC; summaries are easily achievable;
+ +	<u>Some increase to LUPC workload:</u> data collection or analysis will require a moderate amount of backfilling, summary, or linking of data; or additional staff time will be required on a regular basis;
+ + +	<u>Significant increase to LUPC workload:</u> significant staff time or agency resources will be necessary to complete the task.

Experience implementing the rules and carrying out this workplan will further inform the Commission’s perspective, provide perspective on the workload, and may suggest whether refinements are appropriate.

CHALLENGES AND LIMITATIONS TO COLLECTING OR INTERPRETING DATA

This workplan and the related assessments are and will be influenced or otherwise limited by a number of factors. In order to provide context and to inform expectations, the following items describe several factors.

1. A number of changes included in the 2019 rulemaking do not warrant specific data collection or assessment. Examples include but are not limited to: basic change in terminology (e.g., home-based business, common open space); new defined terminology; format of citations and basic restructuring of the rule. These elements will be monitored for issues consistent with the agency's normal administrative responsibilities and efforts.
2. Assessment of some portions of the rule are not feasible, often due to the absence of data. Examples include but are not limited to:
 - a. Assessing the success or failure of some standards based on a ratio of approvals versus denials is constrained because it is not always possible to know the number of people who did not apply due to their knowledge of the applicable standards; and
 - b. Effects on the rate of parcelization¹ and exempt lot creation is limited due to the lack of any data² and limits to agency authority.

Whenever possible, other data will be considered provided that the data is viewed as a valuable substitute or proxy (in-part or in-whole).

3. To varying degrees, outcomes from current or prior rules may be influenced by outside factors, such as direct or indirect markets, landowner goals, and other regulatory programs. These factors are not within the Commission's purview and often change or fluctuate over time. Ultimately, assessment of any and all data should consider applicable factors to the extent possible.
4. Comparisons to historical permitting trends can become less informative as the Commission's rules evolve regularly. Further, in some instances, comparing recent outcomes to past trends may not offer valuable perspective due to the number of variables.
5. Impacts and benefits from development often occur at a slower rate than anticipated.
6. Development review and the approval process may occur in stages – zoning approval, subdivision approval, and development approval.
7. Construction activity and completion of any one site may take months, while full buildout may not occur for several years.
8. Habitation and regular use will likely be sporadic and indistinct.
9. Affects to local or regional resources, or the strain on community services, could be subtle or abrupt, but attributing impacts to a single cause or source likely will be difficult.

¹ The LUPC has limited access to parcel data in municipalities or plantations within its service area, who are not required by law to share parcel data with the LUPC.

² When a property owner uses a subdivision exemption(s) to create a lot division(s), there is no requirement to report the action to LUPC. While such divisions are recorded in the registry of deeds, currently the LUPC does not have the capacity to research, either periodically or on an ongoing basis, when and how exempt lots are created. (See Chapter 10, Section 10.25,Q,1,g for the list of exemptions.)

PURPOSE

To monitor, assess, and report on the outcomes of the 2019 rule revisions concerning adjacency and subdivision.

GOAL 1: Periodically assess the effectiveness and outcomes of the rulemaking³.

Strategies:

- a. Review rule revisions at predetermined intervals [see letter (i), below] with attention to emerging patterns of development and any potential long-term implications.

Predetermined review intervals/research and assessment tasks:

Workload

Task

- | | | |
|-------|-------|---|
| + + | (i) | Conduct a review of the effectiveness of the revised application of the adjacency principle: <ul style="list-style-type: none">- Five years after adoption (<i>i.e.</i>, 2024).- Following the approval of five petitions for rezoning to create new, or expand existing, development subdistricts in any single county. Group by resource-based and non-resource-based development [excluding certain resource dependent zones (D-PD, D-PR, and D-RF), deorganizations, and FEMA map revisions].- Conduct a review of the effectiveness and effects following the approval of 100 residential lots created through subdivision (excluding lots created in a concept plan). |
| + + + | (ii) | Survey rural hub towns potentially impacted by new development activity (e.g. located near, or serving, new development), and other municipalities as needed, to identify any long-term implications of the revised rules. |
| + + + | (iii) | Identify and describe the status or buildout of residential subdivisions or commercial development in subdistricts established after the effective date of the revised rules. |
| + + | (iv) | Summarize permitting and rezoning data in five-year increments, or in other date ranges if applicable and as needed. |
| + + + | (v) | Assess whether the hillside development standards effectively minimize views of development from scenic resources. |

³ “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.” June 17,2019 Chapter 10 basis statement, page 25.

- b. Annually track and report relevant development activity, with focus on identifying specific locations that may experience rezoning or permitting activity, flagging any issues that may emerge, and capturing lessons learned along the way.

Annual research and assessment:

<u>Workload</u>	<u>Task</u>
++	(i) Regardless of whether the rate and location of development triggers a formal review, as described above in strategy a,(i), staff will summarize outcomes to the Commission, and will likely include a summary in the annual performance report to the Legislative Committee on Agriculture, Conservation and Forestry.
++	(ii) Maintain a general summary of other outreach conducted by staff.
++	(iii) Work to measure or otherwise describe the number of potential projects that do not result in a permit application or zoning petition. Including:
++	- On a quarterly basis, check in with staff for anecdotal information regarding pre-application meetings / discussions that likely will not result in an application or petition; and
+	- Monitor use of the Commission’s mapping and informational resources.
+++	(iv) Analyze travel distances for emergency services from point of origin to new development zones. If applicable and practicable, also analyze distances by road and in a straight line from new development subdistricts to: the boundary of the nearest rural hub; and the center of the nearest rural hub.
++	(v) Reach out to potentially impacted rural hubs or municipalities during active permitting or rezoning processes to solicit comments, and then summarize feedback in annual reports.
++	(vi) Analyze implementation of the new wildlife corridor requirements, for residential subdivision designs and certain commercial development, to determine if wildlife corridors are being incorporated into designs as intended.
+	(vii) Share reports with stakeholders and the public.
+++	(viii) As appropriate or needed, the staff will check in with stakeholders.

ADDITIONAL GOALS, STRATEGIES, and TASKS

GOAL 2: Guide development subdistricts to appropriate locations, siting most development where there is existing development and where services can be provided efficiently.

Strategies:

- a. Replace the one-mile rule of thumb with a more refined and predictable system to locate non-resource-based commercial and non-recreation-based residential subdivision development closest to services.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List all petitions processed for new or expanded (non-resource dependent) development zones. List to indicate:
+	- permit number, acres, Minor Civil Division (MCD), county, subdistrict, purpose, locational criterion (primary, secondary), lake management classification, disposition; and
++	- existing and resulting lake shoreline and area density calculations, and distance to the nearest rural hub;
+	(ii) Summarize approved petitions by subdistrict, county, and locational criterion;
+++	(iii) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes; and
++	(iv) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern.

- b. Allow subdistricts for resource dependent commercial uses to be located away from services, provided they do not undermine the quality of the surrounding natural or recreational resources, and do not create a burden for service providers.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List of all petitions processed for new or expanded resource dependent development zones. List to indicate: permit number, acres, MCD, county, subdistrict, purpose, locational criterion (resource or feature development is located near), and disposition;
+	(ii) Summarize approved petitions by subdistrict, county, and locational criterion;

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- + + (iii) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes;
 - + + (iv) Identify and describe any adverse impacts on natural or recreational resources that have been identified;
- c. Allow subdistricts for recreation-based subdivisions near certain management class lakes that are already developed, and near permanent trails serving motorized vehicles, nonmotorized vehicles, or equestrian users.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List all petitions processed for new or expanded D-RS subdistricts for recreation-based subdivisions. List to indicate:
+	- permit number, acres, MCD, county, subdistrict, purpose, applicable resource (lake or trail), lake management classification, disposition; and
+ +	- existing and resulting lake shoreline and area density calculations, distance to the nearest rural hub, and distance from a public road.
+	(ii) Summarize approved petitions by subdistrict, county, and locational criterion;
+ +	(iii) Assess the likelihood that the outcomes for approved and denied zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes;
+ +	(iv) If applicable, describe outcomes of any approvals or denials that have sparked reason for concern.

GOAL 3: Revise land use standards to improve flexibility and suitability for residential subdivisions proposed in the Commission’s rural service area.

Strategies:

- a. Encourage more lot creation through subdivision, rather than through exempt lot creation, by updating and broadening options for subdivision designs.

Annual Research and Assessment:

<u>Workload</u>	<u>Task</u>
+	(i) List all subdivisions processed. List to indicate: permit number, acres, MCD, county, subdistrict, net change in lots, purpose (for lease or sale), subdivision layout, and disposition;

- + (ii) Summarize approved subdivisions, by county and locational criterion, and by layout and density;
- + (iii) Comparison to historic data (20-year annual average of the net change in lots approved through subdivision); and
- + + (iv) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern.

GOAL 4: Increase flexibility for resource-based development 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 while simultaneously limiting the potential for similar development in locations near sensitive resources.

Strategies:

- a. Establish detailed and customized standards for new and existing allowed uses that accomplish or otherwise improve existing protections of natural and cultural resources. (For example, standards that protect views from development on hillsides, provide for wildlife passage and road associations, and require deeded access by road, etc.)

Annual Research and Assessment:

Workload

Task

- + (i) Summarize the number of applications (BPs, DPs, or SPs) where Section 10.25,E,2 (Hillside standards) applied; and
- + + (ii) Summarize the amount and type of hillside development that occurred near scenic byways.

- b. Allow new, and continue to allow existing, resource-based commercial uses to be located away from services, provided they do not undermine the quality of the surrounding natural or recreational resources, and do not create a burden for service providers.

Annual Research and Assessment:

Workload

Task

- (i) List all applications for resource-based uses processed. List to indicate:
 - + - permit number, MCD, county, subdistrict, use, resource dependency, general characterization of the type of activity (new site/use, expanded site/use, other), disposition; and
 - + + - distance to the nearest rural hub.
- + (ii) Summarize the number and type of permits by Use Listing: (i.e., natural resource processing, natural resource extraction, recreation

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supply, recreation day use, home-based businesses, agricultural processing, agritourism). For each use listing, identify each business type (e.g., peat extraction; canoe rental)

- + (iii) Summarize approved permits, by use, county and resource;
- + + (iv) Assess the likelihood that the outcomes for approved and disapproved zoning petitions would have been any different according to prior rules and policies. Describe any likely different outcomes.
- + + (v) If applicable, describe outcomes of any approvals or disapprovals that have sparked reason for concern.