

Land Use Planning Commission

Subdivision Rules Review Stakeholder Process

Policy Options Outline – February 18, 2015

At the January 6, 2015 meeting #2, stakeholders discussed the primary policy issues that were identified in meeting #1 and generated ideas and considerations for further work by staff. The meeting #2 discussion is summarized in a report from the facilitator. Since that time, Commission staff have followed up on the policy items that were discussed. This document presents, in outline form, the options that staff developed in response to stakeholder suggestions. These options are presented here because it appears that they are generally implementable, and are in keeping with specific suggestions made by one or more stakeholders. Commission staff have not taken a position as to which options should move forward for further consideration. At meeting #3 on February 25, the stakeholders will work through the options and make recommendations to the Commission regarding what action should be taken. Stakeholders requested to review some mapping information, and staff will present maps for stakeholder discussion during the meeting.

Part I – Types of subdivisions

- A. **Information Available:** Please see Attachment A for a list of datasets that Commission staff have reviewed and compiled in working on this project.
- B. **Location of Various Levels/Types.** These factors will be relevant to the options that follow later in the document. The group should consider whether these are the factors that are most important in planning for development:
 1. **Primary factors in locating levels/types of subdivision** (not in priority order)
 - a. Distance from public road (measurable)
 - b. Access to service hub (see service hubs proposal)
 - c. EMS/Fire response time (Data may not be readily available? Can get general sense of proximity to EMS/Fire locations)
 - d. Distance from other residential development (see adjacency discussion)
 - e. Trend of residential development locally (new dwelling permitting data)
 - f. Status as a town or plantation (known)
 - g. Waterfront/ backland (what is appropriate distance – ¼ mile? ½ mile from shore?)
 - h. Separation from high-value resources
 - I. Class 1,2,3,6 lakes (what is appropriate distance?)
 - II. Remote areas (Can use public road proximity as proxy?)

III. High-value habitats (Difficult on a large scale – may need to be a township-level review)

- i. Avoid large blocks of soils unsuitable for development (LDD soils in map layer, but need to be aware of data limitations)
- j. Avoid high-value agricultural soils (Data available, but need to be aware of limitations)
- k. High-level screen for conserved land (but layer does not represent development potential or lack of it)

2. **Use retail sales and other information to generate list of UT service hubs.** (Will look similar to list of recreation hubs) The purpose of this effort is to identify communities that provide substantial services to UT areas, but that may be smaller than the state-defined “service centers”.

- a. This could have 2 levels – larger and smaller based on retail sales volume or other factors. The two levels could be used to determine how far away from that hub to allow certain subdivision.
- b. Use this to expand list of level 2 townships, locate large lot subdivisions, or for other similar purposes.

C. **Considerations for subdivision levels and permitting intensity/ requirements:**

1. **Large lot subdivisions:** Some stakeholders have indicated that there is market demand for large lots, and that the ability to divide off two lots every five years will not meet that demand. The Commission’s present zoning structure does not work well for large lot subdivisions. Staff have outlined below one method for allowing large lot subdivisions.

- a. **New large lot subdistrict (zone) that requires concurrent filing of subdivision permit application.** Concurrent filing necessary because lot size can be so variable for large lots. In approving rezoning, the Commission would need to understand lot size to understand impacts.
- b. **What should the lot size range be?**
- c. **Large lot subdivision locations:** Locational factors would be built into the description of the subdistrict. One example of locational factors that would provide a substantial area for potential rezoning follows. From staff’s initial analysis of the factors that can be mapped, it appears that this would identify approximately 3 million acres as meeting the initial locational screen. This may be on the higher end of the scale of options, but serves as a basis for discussion.
 - I. Within 20 miles of service hubs
 - II. Within 5 miles of a public road

- III. At least ½ mile away from bodies of water 10 acres or larger and flowing waters draining 50 square miles or more. (There may be a better method for identifying separation from rivers, this bears some discussion.)
- IV. Not in high-growth areas where land is in short supply
- V. Not where there are high-value natural resources such as deer yards.

2. **Level 2 subdivision location:** Some stakeholders indicated that it would be desirable to increase the area in which level II subdivisions are allowed. There are two primary ways to do this within the existing structure: expand the townships and/or expand the allowable distance of the edge of the subdivision from public roads.

a. **Add to list of level 2 townships based on factors above.** Options:

- I. All townships, anywhere (this may be difficult to justify based on statute)
- II. Two-tier approach around service hubs:
 - i. Larger hubs – 2 townships out from border, contains public road that connects to hub?
 - ii. Smaller hubs – 1 township out from hub border, contains public road that connects to hub?
- III. Current townships.
- IV. Look at all factors – including residential permit data, soils, conservation etc., and come up with revised list. This could be done in conjunction with options 1, 2 or 3 above, or as a standalone.

b. **Increase distance from public road** (currently 1,000')

- I. ¼ mile?
- II. ½ mile?
- III. 1 mile?

D. Change permitting requirements: Some stakeholders felt that subdivisions should be easier to permit. There are several options here, outlined below. Because some subdivisions trigger DEP Site Law review, these options should be coordinated with DEP in the early stages of rule development. In the case of cumulative development issues, the stakeholders will need to consider how some requirements (such as community centers) could be replaced by requirements that are more adaptable to the circumstances. This is discussed below.

1. **Make level 2 easier:**

- a. Change upper limit on lots to 14 to match DEP site law trigger

- b. Revise maximum aggregate land area (excluding open space)
 - I. Current limit is 20 acres if no cluster. Any need to change this? Should it be different in certain circumstances?
 - c. Eliminate cluster requirement
 - d. Area for stream channel or wetland is currently 10%. Keep it the same or increase this to 20%?
2. **Phasing approach for level 1 subdivisions.** Develop a phased development process that:
- a. Pre-approves, in concept, up to 3 phases of development
 - b. Freezes dimensional requirements for the future phases\
 - c. Each phase can be permitted separately
 - d. Phase 1 must be started no later than two years following approval, phase 2 no later than 5 years following approval, and phase 3 no later than 8 years following approval.
 - e. Infrastructure must be planned from the beginning, but can be built out in phases (e.g., road widening as you go as long as ROW is in place)
3. **Address idea of cumulative subdivision development over time.** Incentivizing multiple small developments by exempting them from infrastructure requirements will lead to disjointed, piecemeal development. However, it is not feasible to require small developments to build infrastructure for the neighboring small developments that may or may not be built in the future. The goals are to provide adequate infrastructure for durable roads, utilities, storm water management, etc. and to provide a place for residents to gather or recreate (should they desire to) so as to not unduly burden other local resources.
- a. **Provide options for identifying nearby infrastructure, recreation or gathering places;** developer would assess the needs for improvements or funding and build that into proposal; where available, use this as an alternative to common space or infrastructure within the development.
 - b. **Utilize a “common scheme of development” concept:** if a developer is proposing multiple small developments in an area, require that the infrastructure and common spaces are sized to provide for all of them.
 - c. **Require road connections between neighboring subdivisions:** where feasible, neighboring subdivision roads should connect to provide access and escape routes, and convenient travel routes for residents.
 - d. **Permit review:** this idea of accounting for cumulative impacts would argue against a “permit by rule” type of subdivision level.

4. **Adjacency:** Currently, level 2 subdivisions skip the rezoning step because the locations are likely to satisfy rezoning requirements, except for adjacency. The adjacency principle is still built into level 2 subdivision permitting by requiring the subdivision be located no more than 1 road mile from similar, compatible development. Proposals for subdivision permits that do not require rezoning would either have to follow the existing adjacency interpretation, like the current level 2, or a refined version of the Commission's interpretation of adjacency. If there is a need to refine the interpretation of adjacency, it is a big picture policy issue that would benefit from a holistic review following this round of changes. Approaching adjacency interpretation in a piecemeal fashion would not account for the many different uses that need space including residential, commercial, industrial, recreation, etc. It is important to consider all types of uses when looking at location of development, rather than just singling one out.
 - a. **Adjacency for large lot subdivisions:** The large lot subdistrict should describe the types of settings that would be appropriate (see discussion above). In the current interpretation of adjacency, similar compatible development for large lot subdivisions would be scattered residences. As is current practice, the one mile measurement would be taken from the edge of the rezoned area, giving a wide area around the proposed lots from which to derive adjacency. In many cases, adjacency would not provide the primary locational control for large lot subdivisions; rather it would be the subdistrict description.

Part II – layout and design

A number of stakeholders expressed that the current layout and design standard is often a poor fit for some of the most common settings for development in the Commission’s service area. What follows are some options that could be used as stand-alone changes or in combination to amend or replace the current standard.

- A. **Develop optional site analysis approach.** The intent would be to provide an alternative to the specific layout and design standards in cases where a site is unusual or the developer has an alternative site design in mind. The Commission would write a rule that would describe the site analysis approach in the context of the LUPC service area. There are other communities that follow this procedure, and so there are some materials to use as a starting place. The process would need to be described quite specifically to be effective and predictable, and may require a peer review at the applicant’s cost. It would be more time-consuming and costly to go through this review process than a standard review process, but would provide additional flexibility and may yield better quality designs.
- B. **Repeal the current layout standard and develop 3-4 different design standards that could be applied in certain situations.** An example of the considerations follows:

| Layout options | Village setting | Near class 4/5 waterbodies | Near other waterbodies | Distant from waterbodies and villages | Islands |
|------------------------|-----------------|----------------------------|------------------------|---------------------------------------|---------|
| Traditional | | | X | X | |
| Cluster/mixed use | X | X | X | X | X |
| Conservation subdiv. | X | X ¹ | X | X | X |
| Large lot | | | | X | |
| Site Analysis (custom) | X | X | X | X | X |

Is this the right approach? Are these generally the right categories? The following would also need to be considered if current layout and design standard is eliminated.

1. If community center requirement is eliminated, make provision for nearby resources to meet community needs (see cumulative subdivision impacts discussion in Part I)
 2. Look at connection to future development/infrastructure/recreation access (see cumulative subdivision impacts discussion in Part I)
- C. **Develop method to make provision for future backlot development/ water access.** This could be an alternative to requiring current backlot development in some circumstances.

¹ Whether to allow conservation subdivisions near class 4/5 water bodies depends on whether clustering is required (discussed below).

D. **Road setbacks** – The Commission has expressed an interest in addressing road setbacks for all development. This group could contribute to the discussion by recommending factors that should be influential in determining setback requirements. What follows are the factors that staff have initially identified.

1. Through road?
2. ROW placement, and is it known?
3. Speed limit
4. Utilities
5. # of entrances
6. Density of structures and uses
7. Future widening potential
8. Future improvements that would increase speed
9. Existing conditions with other structures
10. Need for buffering – visual, character of area
11. Need for connectivity for neighboring properties
12. Presence/absence of existing buffer (trees) – visual and preventing collisions with structures/people
13. Other?

E. **Eliminate shared driveway requirement:** this was a stakeholder suggestion and does not need further explanation.

F. For P-GP2 and clusters, allow conservation of developable shorefront land in nearby location that serves same purpose, same land area, just maybe separated a little. (This item needs further consideration – it may be only a P-GP2 issue)

Part IIIA Clustering

- A. **Staff will propose technical standards changes** to address some of the difficulties that are apparent when the rule is applied.
- B. **Alternatives for when to require clustering:** There were differing views among stakeholders about when clustering should be required. What follows is a list of options that staff considered implementable.
 - 1. Never – always voluntary
 - 2. Cluster always on class 4/5 lakes
 - 3. Cluster on class 4/5 lakes unless performance standards met. Examples of performance standards are:
 - a. Contiguous wildlife habitat, especially access to water and corridor to neighboring open land
 - b. Equal or better control of phosphorous
 - c. Natural-appearing shoreline
 - 4. Site analysis always on class 4/5 lakes
 - 5. Site analysis or cluster on class 4/5 lakes – developer's option.
- C. **Reduce % of land set aside:** some stakeholders felt that the required set aside was too high a percentage of the overall land area. Current requirement is 50% net developable land, 50% net developable shore frontage. Should the set aside be reduced for backland only? Backland or waterfront? Kept the same?

Part IIIB Open Space

- A. **Staff propose clarifying existing provisions** to address some of the difficulties that are apparent when the rule is applied.
- B. *Open space bonus* – this was discussed, but does not appear feasible because adjacency and site conditions are typically the limiting factors on number of lots, and these are addressed at rezoning to determine the size of the rezoned area. There is no specific control on number of lots at the subdivision permitting phase.
- C. Change P-GP2 requirements to allow nearby land set-aside? (This item needs further consideration because it only affects one zone and is very setting-specific)
- D. Open space requirement kicks in at # of lots in subdivision? # of lots in a radius? This is essentially the same issue as the cumulative effects of small subdivisions discussion in Part I.
- E. Existing nearby conservation could be used instead of open space, but then in-lieu fee payment? (see discussion in Part I – is this relevant to open space only for P-GP2 and cluster developments?)

- F. **Add to list of holder options:** Single land owner can hold open space with appropriate deed covenants.

LUPC SUBDIVISION RULES REVIEW – POLICY OPTIONS

ATTACHMENT A

GIS MAP PROJECT LAYERS

| <u>Layer Name:</u> | <u>Description:</u> |
|-----------------------------|--|
| Annotation.sym1 | An annotation layer for town name labeling created by the LUPC in ArcGIS. |
| Airports | A dataset of 179 public and private airports, heliports, seaplane bases and landing strips for ultralight aircraft from a semi-annual update of the FAA database. |
| New Dwellings | A classification of MCDs using graduated symbols to depict the total number of new dwellings approved in the community from the inception of the LUPC to January 30, 2015. |
| E-911 Structures | Point locations of addressable structures and locations for 9-1-1 applications. The dataset is updated on a daily basis by the Emergency Services Communication Bureau. |
| ME DOT CompRteSys | ME DOT routes and mile measurements along public road centerlines. The dataset is created weekly from the ME DOT GIS roads ‘basemap’ and associated attributes. |
| County | State and county boundaries, names and county codes at a 1:24,000 scale. |
| Towns (UT and Organized) | Political boundaries, common town names, and geocodes for Maine at 1:24,000 scale. The coverage was created by the Maine GIS from various data sources including the USGS, 7.5 minute map series, town boundaries. |
| Towns with Public Roads | A selection from Towns including unorganized minor civil divisions (MCDs) that contain ME DOT routes as identified through the ME DOT CompRteSys layer. |
| Towns with Structure Values | A classification of MCDs using graduated colors and based on the total building valuation in the community from data provided by the Maine Revenue Service. |
| Level II MCD’s | A selection of MCDs where Level 2 subdivisions are currently permitted. |
| Emergency Services | Name and location data for selected manmade features created by the ME GIS. The dataset includes ambulance, hospital, fire and EMS, and police facilities. Data for ambulance and hospital services was updated as part of a data stewardship agreement with the USGS. |
| Service Centers 2012 | Regional service centers in Maine depicted at a 1:24,000 scale, based on information developed by the Municipal Planning Assistance Program of the ME DACF. |

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|---------------------------|--|
| Public Roads Buffered | Outlines of the area included within 1000 feet, ½ mile, and 1 mile of ME DOT routes as identified through the ME DOT CompRteSys layer. |
| Pubrds_buffer2640 | A depiction of the area included within ½ mile of ME DOT routes as identified through the ME DOT CompRteSys using a single solid fill symbol. |
| Recreational Lodging | A selection of Towns showing retail hubs identified during the recreational lodging rule making process. |
| Statewide Conserved Lands | Conserved land ownership boundaries for Maine land in federal, state, municipal, and non-profit ownership with easements. Conserved Lands is an inventory of approximate property boundaries originally produced in 1989 by the State Planning Office, and continually updated monthly. The Conserved Lands layer does not contain information about what types of development are allowed in each easement or fee ownership area. |
| Zones | Resource & elevation, protection zones, development zones, and wetland zones showing current LUPC zoning information. |
| Aquifers | Delineated glacial deposits that may be significant ground water resources for water resource evaluation and ground water protection digitized at a scale of 1:24,000 from printed maps published by the Maine Geological Survey. |
| Flood (FIRM) areas | Q3 Flood Data for special flood hazard areas from the Flood Insurance Rate Maps published by FEMA mapped at a 1:24,000 scale. |
| Soils- 2014 | Information on the kinds and distribution of soils on the landscape. The dataset is a digital soil survey developed by the National Cooperative Soil Survey and published by the USDA, NRCS. |
| Level2 MCD Soils | Classification of soils using graduated colors to depict soils with low and very low potential for low intensity development and soils with potential for low intensity development above a low potential rating. |
| Hydrography | Streams, water bodies, LUPC mgt class lakes, and rivers. The stream, water bodies, and river dataset comes from the high resolution National Hydrography Dataset developed at a 1:24,000 scale. The LUPC Management Class Lakes data is from a collection of datasets for use with the ME DEP Lakes Program. |