



Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330 • www.nrcm.org

Jan. 29, 2019

Ben Godsoe
Land Use Planning Commission

By email: Benjamin.Godsoe@maine.gov

Re: Adjacency rebuttal comments

Dear Ben,

The Natural Resources Council of Maine (NRCM) appreciates the opportunity to provide rebuttal comments to the public comments submitted on the proposed changes to the adjacency rules and related changes to the subdivision rules.

1. 95% of those filing written comments raised major concerns about the proposed rules.

The vast majority of those submitting written comments opposed the changes to the adjacency principle and asked that the existing one-mile-by-road adjacency principle be retained. A small handful of commenters expressed some level of support for the process but also raised major concerns about fundamental provisions in the proposed rules. Concerns raised and changes proposed include:

- Remove entire townships from the primary and secondary development areas
- Decrease the 7 mile distance for the primary development areas
- Eliminate all secondary development areas
- Use a “by road” measurement, not an “as the crow flies” method of measurement
- Measure distances for primary development areas from existing development nodes, not from the boundary of a township
- Remove development areas from national and state scenic byways
- Eliminate the provision allowing large-lot, low density subdivisions
- Eliminate residential subdivisions on Class 7 lakes until information is provided showing how many and which lakes could be developed
- Eliminate the provision that would allow recreation supply businesses outside the primary development areas
- Work with communities that border the UT to encourage development within the communities, not spread along roads outside the communities.

In addition, three former LURC planning division staff, the assistant attorney general who was the head of the Natural Resources Division and served as LURC's legal counsel for over 25 years (and, prior to that, served as LURC's staff director), and at least one former LURC Commissioner all raised concerns about the complex, complicated, and confusing nature of these proposed rules. If these people who spent significant portions of their professional careers working with the LURC regulations find the proposed rules too complex, complicated, and confusing to understand and evaluate the potential impacts of the largest proposed policy change in LUPC/LURC history, it is unquestionably a sign that the Commission should step back and reevaluate its approach.

Many other specific concerns have been raised about the proposed changes to the adjacency principle. The opposition to the changes in the adjacency principle is so broad and so deep that the Commission should go back to the drawing board.

2. The existence of near-by lands on which the landowner sold a conservation easement does not entitle a landowner to development rights on the lands not subject to a conservation easement.

One large landowner argues that existing development opportunities should be retained because they sold conservation easements on land nearby. However, the conservation easements that were sold could have, but did not, establish development envelopes within the lands subject to the conservation easement. This would have, arguably, been analogous to a concept plan and the argument for grandfathering those development envelopes would have been stronger.

However, the potential ability to develop those lands not part of the conservation easement was not part of the financial and legal transaction that resulted in the conservation easement. Instead, there is no legal relationship between the lands subject to the conservation easement and the lands not covered by the conservation easement. The lands not subject to the conservation easement should be treated like any other lands within the UT that are not subject to conservation easements.

3. The assertions that these rules “would prohibit development on most undeveloped lakes” or “take millions of acres out of consideration for subdivision” are inaccurate.

According to the LUPC, there is no data available to determine how many and which undeveloped lakes in the UT would be vulnerable to development under this proposal. The assertions are not based on facts.

LUPC staff attempted to analyze how many (but not which) lakes would be vulnerable to development under this proposal in their Oct. 5, 2018 memo. However, due to incomplete data, the conclusions cannot be relied on as any indicator of how many lakes could be developed under this proposal.

The random sample of 200 lakes used by staff in their analysis included 52 lakes that were less than 10 acres in size. Lakes under 10 acres clearly cannot meet the proposed criteria. Why so many lakes under 10 acres are included in the random sample remains a mystery, but it is clear that having 25% of the

lakes in the sample ineligible for development by definition renders the conclusions of the analysis unreliable.

In addition, no analysis has been done to determine which specific lakes would be vulnerable to development.

Given that there is no reliable, complete data to show how many and which of the lakes in the UT would be vulnerable to development, there is likewise no way to calculate how many acres would be vulnerable to development.

There is data, however, to show that there are undeveloped lakes within the primary and secondary areas that could be developed under this proposal.

It is also clear that all of the undeveloped lakes in the UT would remain vulnerable to development through the concept plan process. As is currently the case, any landowner could propose a concept plan that includes development on undeveloped lakes. Therefore, the suggestion that this proposal would “prohibit” development on any lake is inaccurate.

4. The concerns expressed by municipal officials and residents of towns bordering the UT about the proposed changes to the adjacency rule have not been resolved.

Written comments suggesting that the concerns raised by municipal officials and residents from the so-called “rural hubs” have been resolved are not accurate.

Town Councilors from Millinocket raised concerns about the primary development areas bordering their town in public meetings on both July 12, 2018, (https://townhallstreams.com/stream.php?location_id=61&id=17325) and on Dec. 13, 2018, (https://townhallstreams.com/stream.php?location_id=61&id=19394.) Their concerns were that the primary development areas would draw development out of the Town of Millinocket. No changes were made in the proposal to resolve those concerns.

Likewise, a resident of Millinocket who formerly served as a Millinocket Town Councilor and currently serves on the Katahdin Region Chamber of Commerce as Past President wrote: “The proposed adjacency rule, which would allow for development along any public road within 7 miles from the boundary of these rural hubs, could result in commercial and residential strip development. The “scenic byway” could become a strip of blight without further consideration as to how new development would fit into the existing landscape, how it would complement or contend with our regional brand, or how it could destroy or detract from our area’s assets.” (Written comments, Part 1, p. 198-199.)

She continued: “the most egregious result of development in the UT would be the loss of tax dollars to our struggling communities – communities with an abundance of housing stock, empty buildings for small businesses, and unoccupied industrial parks. Adding insult to injury would be the cost of emergency response services imposed upon these communities to serve the residents and businesses in the UT.” These concerns have not been resolved.

Similar concerns were expressed by the Chair of the Medway Board of Selectmen addressing specifically the Grindstone Road as it heads north from Medway, a road that is also the Katahdin Woods and Waters Scenic Byway. In November, the chair wrote: "I must submit my objections to having the one mile rule chang [sic] to a ten mile rule. It appears this project was taken on without much consideration for Municipal hubs, as we are in Medway. As you know, we have been in economic decline in this region. We are finally working collaboratively with neighboring communities to revitalize the area and rebuild the economy. We are collectively working on a high speed broadband utility and new comprehensive plans. Medway is also working towards water and sewer infrastructure all to enhance the area to draw interest for businesses and individuals to want to be a part of our community and the area. Therefore I believe it is imperative to exclude the Grindstone Road Route 11, entirely from any change beyond the current one mile rule... It is THE SCENIC BYWAY, which is beautiful, from the Medway Hub to the NATIONAL MONUMENT. Which potentially could be destroyed with the 10 mile rule."

After receiving LUPC staff's email attempting to convince her to support the proposal, she wrote on Jan. 21, 2019: "I must again stress that I feel changing the one mile rule, on the Grindstone Road, to a ten mile rule would be detrimental to the area, most particularly for the Town of Medway."

She continued: "Commercial, industry or housing built in the unorganized territory of Grindstone will not benefit Medway. It only lessens the municipalities potential for growth. We want people to come to Medway to build homes to add commercial or industrial growth, reduce our property taxes, to create jobs. We want people to come and visit, shop at our stores, eat in our restaurants or move to our nice little community."

She concluded: "So, again, I implore the LUPC to remove The Grindstone Road from the proposed zoning change. Keep the 1 mile rule in place, rather than imposing the 10 mile rule on a beautiful scenic by-way." (Written comments, Part 2, p. 75-83)

The Grindstone Road has not been removed from the proposal and the concerns of the Chair of the Medway Board of Selectmen have certainly not been resolved.

The Hancock County Commissioners also testified and submitted a resolution asking the LUPC to "retain the current one mile Adjacency principle."

Similar concerns have been raised by municipal officials and residents of other so-called "rural hubs," but public records of those meetings are not readily available.

5. Concerns expressed by proponents of the LUPC proposal about the proposed changes to the scenic resources and hillside resources standards fail to acknowledge public values.

The proposed scenic resources and hillside resources standards appropriately add "major water bodies, coastal wetlands, permanent trails, and public property" to the list of areas from which the visual impacts of proposed development needs to be taken into account. These are all areas with very high public values which are important for their economic benefits (to the tourism industry) as well as for their importance in maintaining Maine's natural character, quality of life, and water quality. To suggest

that LUPC has no authority to regulate these important public resources is to deny the balance between public and private rights that is fundamental to our system of government and LUPC jurisdiction.

Conclusion

NRCM notes that there are more than 500 pages of written comments. Public notice of their posting was provided Wednesday afternoon, Jan. 23. The deadline for rebuttal to these comments is Jan. 29, providing only six days for review of the comments. The time allowed for review of the posted comments and preparation of rebuttal comments is entirely insufficient to allow for thorough review of all comments. Our failure to rebut any particular assertion should not be interpreted as support of that assertion.

These written comments show that the overwhelming majority of Maine people oppose the proposed adjacency rules and want to continue with the existing “one-mile-by-road” application of the adjacency principle. Even those forest landowners who would stand to gain financially if these rules were to be adopted raise major concerns in their comments. Given the near universal opposition to the proposed rules, the very high likelihood of significant, irreversible, and adverse unintended consequences were the rules to be adopted, and the lack of any clearly articulated need for changes at this time, NRCM urges the Commission to set these rules aside and focus on discrete, limited and understandable changes to any existing provisions for which there is a clearly documented need for change.

Thank you for the opportunity to comment.

Catherine B. Johnson, Esq.
Senior Staff Attorney & Forests and Wildlife Project Director
Natural Resources Council of Maine
3 Wade St., Augusta, ME 04330
(207) 430-0109 office (207) 462-2164 cell