



PAUL R. LEPAGE
GOVERNOR

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

Memorandum

To: Commissioners
From: Stacie R. Beyer, Senior Planner
Date: August 4, 2015
Re: Proposed Rule Revisions for Subdivision Technical Issues

Introduction

At the August 12, 2015 Commission meeting, staff will present a request for the Commission to post proposed rule revisions for the subdivision technical issues to public comment. The rulemaking proposes changes to Section 10.25,D relating to maximum road grade, Section 10.25,G regarding soil investigation and mapping, Section 10.25,L on phosphorus control, Section 10.25,Q relating to development on steep slopes, and Section 10.25,R also regarding development on steep slopes. In addition, the staff is recommending inclusion of a change to Section 10.08 to update the rules in conformance with changes to the statute (*Public Law 2011, c. 682, §13 revising 12 M.R.S. Section 685-A(8-A)*) which removed the requirement that land use districts satisfy a demonstrated need in the community or area.

Background

During the subdivision rule review stakeholder process, a list of technical issues with the LUPC rules governing subdivision developments was finalized, prioritized and discussed in detail. From the discussions, staff developed a preliminary report, proposed next steps and possible rule revisions to address the technical issues. The preliminary report, possible rule revisions and a proposed approach for advancing the process on the technical issues was presented to the Commission at its June 10, 2015 meeting. The Commission directed staff to request comments from stakeholders on the preliminary report and possible rule revisions, finalize proposed rule revisions, and bring a request for posting the rulemaking to public comment back to the Commission as a separate rulemaking package.

Proposed Rule Changes

Soil Investigation and Mapping

Based on discussions with stakeholders, background research, and information from experts in the field, a proposed rule revision has been drafted to address issues raised about the intensity of soil mapping and

number of test pits currently required in the Soil Suitability standards of Chapter 10. The proposal includes the following key changes:

- Removes the requirement for a Class A high intensity soil survey for developed areas in Level 1 subdivisions.
- Expands the requirement for a Class B high intensity soil survey to all subdivisions.
- Adds language to limit the area of dissimilar soils in Class B surveys to <1/4 acre.
- Adds provisions for Class L soil surveys consistent with ME DEP.
- Includes waiver provisions to allow use of published mapping for undeveloped areas in certain circumstances and when geotechnical information is available.

Maximum Road Grade

Staff research on maximum road grade looked at existing LUPC requirements, other State guidance and regulation, and published fire codes. Based on that research, a proposed rule revision was developed for the road grade standards in the Vehicular Circulation, Access and Parking section of Chapter 10. The revision includes the following change:

- Adding an option to allow an increase in the maximum grade of a Class 1 roadway to 15%
 - For distances less than 300 feet,
 - When adequately separated from down gradient road intersections

Phosphorus Control

After considering the stakeholder feedback and discussions with Jeff Dennis of the ME DEP, staff developed a proposed rule revisions for Section 10.25,L, Phosphorus Control. These proposed revisions will provide a couple of performance standard based options for small projects to address phosphorus control without having to do detailed phosphorus calculations.

- First, by updating the reference to the DEP's Phosphorus Design Manual, a chapter currently in the Manual becomes available to landowners in the UT, "Chapter 6, Performance Standards for Smaller Projects."
- In addition, the proposed rule contains an alternative buffer standard that will allowing buffers meeting DEP design guidelines to be used in place of a site specific design.

Development on Steep Slopes

Maine municipalities use a range between 15% to 30% to define "steep" slopes for varies purposes in their ordinances, the most common percentage, based on the limited research done, appears to be 20%. Use of 20% is also consistent with language in the State Plumbing Code and the State Guidelines for Municipal Shoreland Zoning Ordinances. Therefore, revised standards have been drafted as proposed rule revisions for subdivision layout and design and cluster development defining steep slopes for subdivision review purposes as 20% instead of the 15% used in the current standards.

Preliminary Comments

An invitation to comment on the Preliminary Technical Issues Report and possible rule revisions was sent to 380 stakeholders on July 9, 2015 and again on July 17, 2015. We have received comments from a total of 4

stakeholders in response. There were no comments submitted on the Preliminary Technical Issues Report. Generally, the comments were supportive of the proposed rule changes. There were particular concerns raised, however, relating to soil suitability, phosphorus control, and cluster development. In addition, one comment reiterated a general concern that was raised during a follow-up conference call with stakeholders related to the application of LUPC standards to large lots. Given that any proposed rules addressing the layout and design for large lots have not been drafted, it is difficult to consider how specific land use standards should apply to these lots. Therefore, this comment will be addressed during the policy issue review and associated rule revision process for large lot subdivisions.

Soil Suitability

The LUPC received a request for additional information on the proposed waivers for the use of Natural Resources Conservation Service published mapping in lieu of onsite soil surveys. Research conducted during the subdivision rule review stakeholder process included contacts with certified soil scientists and discussions with the NRCS directly. Two important factors were identified in the research. One is that the published soil mapping is more accurate than it has been in the past, primarily due to more field verification of map units. Also, according to the participating certified soil scientists, the NRCS soil mapping tends to be conservative. For example, in cases where the NRCS soil rating is moderate to high for low density development, the soil scientists commented that it is reasonable to expect a majority of the soils in the map unit to be suitable for low density development. The recommended waiver language for published mapping only applies to areas within proposed projects where no development activity is planned.

Phosphorus Control

One preliminary comment raised concern that the proposed phosphorus control standards are complex and excessive for the UT. Staff agrees that adding a performance standard approach to the rule does increase complexity, but it also improves flexibility for landowners at the same time. The proposed revisions would allow a landowner to choose between using the DEP "Performance Standards for Smaller Projects," the alternative buffer standard, or a site specific analysis and design method in developing a phosphorus control plan that works best for their proposed development. The best management practices for phosphorus control, particularly which type of vegetated buffer to use, would be determined based on the design of the development, and the method and any analysis used to develop the plan.

The Commission also received a recommendation to strike "and protected from disturbance by deed restrictions and covenants" from the following proposed alternative buffer standard:

Section 10.25,L,3,c. Deed restrictions and covenants. Areas designated as vegetated buffers must be clearly identified on the subdivision plat and plans, *and protected from disturbance by deed restrictions and covenants.*

The stakeholder commented that plats and plans are sufficient and deed restrictions are cumbersome and unnecessary. If the requirement is not struck, there was a requested that the term "disturbance" in the referenced section be clarified.

Often water quality or other natural resource buffers are included as part of individual lots in a subdivision and the land area is conveyed with the lot. Subdivision permits with conditions of approval, such as protections for buffer areas, as referenced and depicted on subdivision plats, are issued to the developer of the subdivision. It is not likely that an individual lot owner will read the subdivision permit or review the subdivision plat after the lot is conveyed, especially after subsequent transfers of the lot. Incorporating

protective deed restrictions and covenants in property deeds is an important way to ensure long-term protection of buffers on individual lots. However, in response to this comment, language has been added to the proposed standard to clarify the intent. In response to the request for clarification of the term “disturbance,” the draft rules have been revised using the term “alteration” instead. Alteration is a defined term in Chapter 10. The standard in the proposed draft reads:

Section 10.25,L,3,c. Deed restrictions and covenants. Areas designated as vegetated buffers, not otherwise protected as open space in accordance with Section 10.25,S, must be clearly identified on the subdivision plat and plans, and protected from alteration~~disturbance~~ by deed restrictions and covenants.

Lastly, the Commission received a request to clarify where the 95 and 80 percent figures came from in the proposed Section 10.25,L,3,a, criteria for the alternative buffer standard. The proposed criteria was taken directly from the criteria in DEP rule, 06-096 CMR 500,4,B,(2), Stormwater Standards, General standards.

Cluster Development

A stakeholder commented on the existing standard in Section 10.25,R, relating to the amount of net developable land for cluster developments. The proposed revisions to the Cluster Development section included in the Subdivision Technical Issues rulemaking are limited to the technical issue regarding development on steep slopes. The Commission decided to move forward on this limited change to Cluster Development in response to the recommendation of some of the stakeholders. It is recognized that more discussion and possibly additional revisions to this section of the rule will be included as part of the larger subdivision policy issues portion of the subdivision rule review process.

Recommendation

Staff recommends that the Commission direct the staff to post the attached draft rule for a 30 day public comment period.

Attachments

Attachment 1: Proposed Rule Revisions: Subdivision Technical Issues

Attachment 2: Stakeholder Comments on the Preliminary Draft Subdivision Technical Issues Rule

SUBDIVISION TECHNICAL ISSUES RULEMAKING

Attachment 1

Chapter 10 Subdivision Technical Issues
Proposed Draft

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

Proposed Rule Revisions: Subdivision Technical Issues

July 22, 2015 Proposed Draft

The following revisions propose changes to Chapter 10, *Land Use Districts and Standards for Areas served by the Maine Land Use Planning Commission*. This document only includes relevant sections of Chapter 10, and indicates additions in underlined text and deletions in ~~stricken text~~.

SECTION 10.08

A. GENERAL CRITERIA

[Public Law 2011, c. 682, §13 revised 12 M.R.S. Section 685-A(8-A) by removing the requirement that proposed land use districts satisfy a demonstrated need in the community or area. The Commission proposes in this rulemaking to update its rules to conform to the statute. Concurrent with the update of its rules, the Commission also proposes to repeal the official guidance document titled "Clarifying the Rezoning Criterion of "Demonstrating Need," effective April 1, 2004.]

...

2. The proposed land use district ~~satisfies a demonstrated need in the community or area and~~ has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area." 12 M.R.S.A. §685-A(8-A)

SECTION 10.25

D. VEHICULAR CIRCULATION, ACCESS AND PARKING

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4. **Subdivision and development roadway design specifications.** The following standards apply to Level B and Level C road projects:
 - e. Roadways shall adhere to the applicable standards of Section 10.27,D and Section 10.27,H and the roadway specifications outlined in Table 10.25,D-1, below, unless the applicant utilizes site-specific best management practices and the Commission determines that proposed alternative roadway specifications will meet the needs of the development and will not cause erosion or safety problems.

Maximum sustained grade for Class 1 roadways may be increased by up to 5% over that specified in Table 10.25,D-1 below, if no other option is practicable, provided that the roadway portion exceeding the maximum sustained grade standard is no longer than 300 feet in length and is greater than 150 feet from the next down-hill road intersection, and the Commission determines that the proposed alternative grade will not cause unreasonable drainage, erosion or public safety impacts.

Proposed Rule Revisions: Subdivision Technical Issues

	Class 1 Roadway	Class 2 Roadway	Class 3 Roadway
Minimum roadway surface width	18 ft. or 14 ft. with turnouts every 500 feet, on average.	14 ft. or 8 ft. with turnouts every 500 feet, on average.	8 ft.
Minimum base (coarse gravel)	18 in.	12 in.	As needed.
Minimum wearing surface	3 in. fine gravel or 2.5 in. bituminous concrete.	3 in. fine gravel or 2.5 in. bituminous concrete.	2" fine gravel.
Maximum sustained grade	10%	15%	15%

Table 10.25.D-1. Roadway Construction Specifications.

G. SOIL SUITABILITY

The standards set forth below must be met for all subdivisions and commercial, industrial and other non-residential development.

1. Soil types shall be determined by a site-specific soil survey, according to the “Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping” (Maine Association of Professional Soil Scientists, ~~2004~~revised 2009). The soil survey class shall be determined as follows, unless the Commission finds that a lower intensity soil survey will provide the information necessary or a higher intensity soil survey class is needed for the Commission’s review:
 - a. For both level 1 and 2 subdivisions, a Class ~~BA~~ high intensity soil survey shall be used to identify soils within the proposed building envelopes, ~~driveway locations~~ and other disturbed areas. The Class B survey for this purpose must be completed with a minimum delineation of 1 acre for similar soils and ¼ acre for dissimilar soils. For proposed access roads, driveway locations and utility lines, a Class L soil survey shall be used. A Class ~~B-C~~ soil survey may be used to identify soils elsewhere within the project area.
 - ~~b. For level 2 subdivisions, a Class B high intensity soil survey shall be used to identify soils within the proposed building envelopes, driveway locations and other disturbed areas. A Class C soil survey may be used to identify soils elsewhere within the project area.~~
 - ~~e-b.~~ For new commercial, industrial and other non-residential development, a Class A high intensity soil survey shall be used to identify soils within any proposed disturbed area. A Class C soil survey may be used to identify soils elsewhere within the project area.
 - c. For linear projects or project components that involve soil disturbance, such as road construction, fairway construction or trail construction and that have little or no adjacent development, a Class L soil survey shall be used.
 - d. Hydric soils and soils potential ratings. Hydric soil map units, and map units with a low or very low development potential rating for low density development must be clearly identified on the soil

Proposed Rule Revisions: Subdivision Technical Issues

survey map as being hydric soils or as having a low or very low development potential rating, respectively.

e. Exceptions. The Commission may:

(1) Allow the use of U.S.D.A. Natural Resources Conservation Service (NRCS) Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c when the published mapping indicates the map unit(s) in the project area is rated with a medium or high potential for low density development.

(2) Allow the use of NRCS Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c for areas within a development that will be preserved as undeveloped open space in accordance with Section 10.25,S.

(3) In lieu of a site-specific soil survey of any proposed disturbed area within a development, the Commission may allow use of a geotechnical investigation prepared for that area by a registered professional engineer and other licensed professionals, as appropriate, and if the Commission determines that the geotechnical report will provide sufficient information.

(4) The Commission may waive one or more of the provisions of a Class A or B high intensity soil survey, including but not limited to the contour mapping requirement, where such provision is considered by the Commission unnecessary for its review.

2. Determination of soil suitability shall be based on the ~~NRCS Natural Resources Conservation Service's~~ soils potential ratings for low density development. Soils with a low or very low development potential rating shall not be developed unless the Commission determines that adequate corrective measures will be used to overcome those limitations that resulted in a low or very low rating.

3. For all developments that include onsite subsurface wastewater disposal, a sufficient number of test pits must be provided within the footprints of all proposed wastewater disposal fields to adequately document that disposal fields can be installed entirely on soils and slopes in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241).

a. At least ~~two~~ one test pits shall be dug within the boundaries of each subdivision lot proposed to be served by a combined septic system. The applicant shall provide additional subsurface exploration data for certain soil conditions or disposal field designs, in accordance with the following requirements:

(1) Soil conditions AII and AIII (bedrock depth 9 inches to 24 inches). A minimum of five subsurface explorations: one test pit is to be centrally-located within each disposal field footprint, plus a subsurface exploration at each disposal field corner which may consist of either a test pit, boring, or probe.

(2) Soil with profile 8 or 9-parent material (lacustrine/marine deposits). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

(3) Soil condition D (limiting factor depth less than 15 inches). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

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(4) Disposal field length of 60 feet or longer. A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

b. For lots to be served by primitive and limited disposal systems, evidence must be submitted to show there are suitable locations on the lot for a grey water disposal field, any proposed pit privy (outhouse), and a backup system reserve area as required by and in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241.4.I). At least one test pit shall be dug within the boundaries of each lot proposed to be served by a primitive septic system proposed disposal area and the backup system reserve area on the lot.

c. The location of such test pits shall be shown on the subdivision plat.

L. PHOSPHORUS CONTROL

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2. General Standards.

a. Provision shall be made to limit the export of phosphorus from the site following completion of the development or subdivision so that the project will not exceed the allowable per-acre phosphorus allocation for the water body, determined by the Commission according to the “Maine Stormwater Best Practices Manual, Volume II, Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development” (Maine Department of Environmental Protection, (2008), and hereafter cited as the Phosphorus Control Design Guide Manual.

b. **Impact analysis.** The phosphorus impact analysis and control plan for a proposed subdivision or development on a water body shall be prepared using the procedures set forth in the calculated using the Standard Method for Calculating Phosphorus Export, according to the procedures in the Phosphorus Control Guide Design Manual, including all worksheets, engineering calculations, and construction specifications and diagrams for control measures as may be required by the manual, except as allowed in Section 10.25.L.2.d, below.

c. **Erosion control.** All filling, grading, excavation or other similar activities that result in unstabilized soil conditions must meet the standards of Section 10.25.M.

d. **Alternative standard option.** In lieu of meeting the general standard in Section 10.25.L.2.a, and conducting a phosphorus impact analysis according to Section 10.25.L.2.b, an applicant with a project that includes less than three acres of impervious area and less than five acres of developed area in a watershed of a body of standing water that is not severely blooming (as identified in 06-096 CMR 502, Appendix A), may choose to limit the export of phosphorus from the site by meeting the alternative buffer standard in Section 10.25.L.3. For the purposes of Section 10.25.L.2.d, developed area means all disturbed area excluding area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, provided the revegetated area is not mowed more than once per year, and including, in the case of a subdivision, all proposed building envelopes.

3. Alternative buffer standard.

a. To meet the alternative standard, a project must include treatment measures that will provide for effective treatment of phosphorus in stormwater. This must be achieved by using vegetated buffers to control runoff from no less than 95 percent of the impervious area and no less than 80 percent of the

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developed area that is impervious, landscaped or otherwise disturbed, except as provided in Section 10.25.L.3.d below.

b. Vegetated buffers. Vegetated buffers for phosphorus control are undisturbed strips of dense vegetation located adjacent to and down gradient of developed areas, and that provide storage and treatment for stormwater that enters them in diffuse overland flow. Five types of vegetated buffers are allowed under the alternative standard as listed in Section 10.25.L.3.b.(1) through (5) below. All vegetated buffers must be appropriately used, located, designed, sized, constructed, and maintained as specified in the “Maine Stormwater Best Practices Manual, Volume III. BMP Technical Design Manual, Chapter 5. Vegetated Buffers” Maine Department of Environmental Protection. (June 2010), and hereafter cited as the Technical Design Manual. Where the Technical Design Manual allows for a variation in the design specification with approval from the Department of Environmental Protection, approval from the Land Use Planning Commission is required for projects located in the unorganized and deorganized areas of Maine.

(1) Buffers adjacent to residential, largely pervious or small impervious areas.

(2) Buffers with stone bermed level lip spreaders.

(3) Buffers adjacent to the downhill side of a road.

(4) Ditch turn-out buffers.

(5) Buffers down gradient of a single family residential lot.

c. Deed restrictions and covenants. Areas designated as vegetated buffers, not otherwise protected as open space in accordance with Section 10.25.S, must be clearly identified on the subdivision plat and plans, and protected from alteration ~~disturbance~~ by deed restrictions and covenants.

d. Exception for linear portions of a project. For a linear portion(s) of a project, runoff control may be reduced to no less than 75 percent of the impervious area and no less than 50 percent of the developed area that is impervious, landscaped or otherwise disturbed.

3. **Design and Maintenance Standards.**

a. Phosphorus control measures and their maintenance shall meet the design criteria contained in the ~~Phosphorus Control Guide~~ Technical Design Manual.

b. **Structural measures.** High maintenance structural measures, such as wet ponds and runoff infiltration systems, shall not be used as part of any proposed phosphorus control plan unless:

(1) Other measures, such as increasing the width of vegetated buffers, greater limits on clearing, reducing road lengths, and clustering of lots to achieve less disturbed area are clearly demonstrated to be insufficient to allow the proposed ~~subdivision development~~ to meet the standards of this section; and

(2) The Commission finds that the applicant has the technical and financial capabilities to properly design, construct, and provide for the long-term inspection and maintenance of the facility in accordance with the procedures in the ~~Phosphorus Control Guide~~ Technical Design Manual.

Q. SUBDIVISION AND LOT CREATION

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3. Layout and Design for all Subdivisions.

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- d. Building envelopes shall be marked and identified on the subdivision plat for each proposed lot in accordance with the following requirements:
- (1) Building envelopes shall identify all areas within each subdivision lot where structural development may occur;
 - (2) Building envelopes shall be arranged to conform with the minimum water body, road and property line setback and maximum lot coverage requirements, as provided in Section 10.26; and
 - (3) Where practicable, building envelopes shall be arranged so as to avoid the placement of structures and driveways along ridge lines, on agricultural land, wetlands, slopes greater than ~~20 percent~~15%, or any other important topographic and natural features.

R. CLUSTER DEVELOPMENT

2. Cluster Development Standards

- a. Cluster subdivisions shall provide for a reasonable balance between development and conservation. Specifically, cluster subdivisions shall reserve no more than ~~50%-percent~~ of net developable land for development and, within shorefront subdivisions, shall reserve no more than ~~50%-percent~~ of net developable ~~shore frontages~~shorefront for development.
- (1) For the purposes of this section, “net developable land” is the area of a parcel which, as determined by the Commission, is suitable for development. The area shall be calculated by subtracting the following from the total acreage of the parcel:
 - (a) Portions of the parcel subject to rights-of-way and easements for vehicular traffic; and
 - (b) Unbuildable land which includes, without limitation, land that has a low or very low soil potential rating, in accordance with Section 10.25,G, or contains sensitive areas such as slopes exceeding ~~15%~~20 percent, water bodies or wetlands.
 - (2) For the purposes of this section, “net developable shorefront” is land that:
 - (a) Meets the minimum water body setback requirements of Section 10.26,D;

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- (b) Does not have a low or very low soil potential rating, in accordance with Section 10.25,G; and
- (c) Contains land area at least 40,000 contiguous square feet in size that is not comprised of sensitive areas such as slopes exceeding ~~15%~~20 percent, water bodies or wetlands.

SUBDIVISION TECHNICAL ISSUES RULEMAKING

Attachment 2

Preliminary Stakeholder Comments

From: [Dan Hudnut](#)
To: [Beyer, Stacie R](#)
Subject: draft subdivision technical rules
Date: Tuesday, July 14, 2015 1:38:36 PM

Stacie –

I have reviewed the “[Preliminary Draft Subdivision Technical Issues Rule](#)”.

I believe that the changes proposed clarify some technical expectations, create some appropriate flexibility, and thereby improve these standards.

Thanks to the LUPC staff for engaging in this review.

Dan

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DAN HUDNUT
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From: [Ken Lamond](#)
To: [Beyer, Stacie R](#); [Sarah Medina \(smedina@sevenislands.com\)](#)
Cc: [Livesay, Nicholas](#); [Horn-Olsen, Samantha](#); [John Kolenik \(jkkolenik@prentissandcarlisle.com\)](#); [Kelly, John M.](#); [Tom Gardner](#); [Elgin Turner \(elgin@hchaynes.com\)](#); [Luke Muzzy \(luke.muzzy@plumcreek.com\)](#); [John Bryant \(john.bryant@amforem.biz\)](#); [William Ferdinand \(bferdinand@eatonpeabody.com\)](#); [Triandafillou, Peter](#); [Hank McPherson](#); [Eugene Mahar](#); [Gordon Gamble \(E-mail\)](#); [Dan Hudnut](#); [Mark Doty \(mark.doty@plumcreek.com\)](#); [Pat Strauch](#)
Subject: Technical Issues Rule review
Date: Wednesday, July 22, 2015 10:15:57 AM

Hi Stacie:

I don't see any problems with the proposed revisions as they relate to small lots that have been permitted in the past. I brought up my concern during our conference call that we have not settled revisions to the subdivision rules regarding large lots in the LUPC jurisdiction. I believe that it is important to recognize in any presentation to the LUPC Commission that large lots are an unresolved issue and the proposed technical rule revision will not address all of the technical issues related to large lots. As an example, landowners believe that a single site that is adequate for development on a large lot is sufficient for the permitting process. A more in depth look at soils is more appropriate at the building permit stage for large lots. We can not predict with certainty where a buyer wants to build on a large lot.

In my mind the issue of Level 2 Subdivision is also unresolved. Landowners have a different view of what a Level 2 Subdivision should be than the staff and the intervenor community. Landowners are interested in an opportunity to present to the LUPC Commission our vision for reform of the subdivision rule related to the Level 2 Subdivision, the types of lots that can be created, the area available for Level 2 Subdivision, adjacency as related to subdivisions of all types, etc. We are thankful for the opportunity to participate in the stakeholder process. We believe that the LUPC Commission needs to hear directly from the regulated community on these issues.

I question the idea of moving ahead with rule making without first dealing with these important issues.

I look forward to working with you, the rest of the staff, and the Commission to achieve meaningful change to the LUPC subdivision process.

Sincerely,

Ken Lamond

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Stacie R. Beyer
Senior Planner
Land Use Planning Commission
106 Hogan Road, Suite 8
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July 21, 2015

Dear Stacie:

Thank you for the opportunity to submit comments on the preliminary draft of the proposed Subdivision Technical Rules. We have a few comments, most of which relate to information that we would like to see presented at the upcoming Commission meeting.

- 1) Are the proposed changes to Section 10.25, G made to the most recent version of that rule section? While comparing the proposed rules to what we believe is the current rule, we found several inconsistencies. For instance, in the version we believe to be the current rule, 10.25,G,1,b begins, "For level 2 subdivisions...". Section 10.25,G,1,b of the proposed rule draft begins, "For new commercial...". This comment is not meant to suggest a substantive change. We only seek clarification.
- 2) With regard to Section 10.25,G,1,e: How often are U.S.D.A. Natural Resources Conservation (NRCS) Service Soil Survey map's updated? Under the existing rules, NRCS maps may only be utilized for low density development. It would be helpful for LUPC staff to discuss in their presentation to the Commission why they are confident in this resource.
- 3) With regard to Section 10.25,L,3,a: How did you settle on the 95 and 80 percent figures? It would also be helpful for LUPC staff to discuss this in their presentation to the Commission.

Thank you again for the opportunity to submit preliminary comments. If you have any questions, do not hesitate to be in touch.

Thank you,

Eliza Donoghue, Esq.
North Woods Policy Advocate & Outreach Coordinator

From: [Sarah Medina](#)
To: [Beyer, Stacie R](#)
Subject: FW: Subdivision Rules - Technical Issues - Comments
Date: Monday, July 20, 2015 10:35:56 AM

Thanks for the opportunity to comment on the Technical Issues, July 8, 2015 draft. The proposed changes are positive.

Changes to A. GENERAL CRITERIA and D. VEHICULAR ACCESS are appropriate, as is Q. 3. d. (3) [“avoid the placement of structures and driveways ... slopes greater than 20 percent±5%,”](#) and in R. CLUSTER DEVELOPMENT.

G. SOIL SUITABILITY seems to be more flexible, conforms better with current standards. This is the type of change the regulated community would appreciate more. It does not detract from protection of the environment, but does make the effort and expense of creating lots less onerous, so the lots can be affordable to a wider variety of people.

L. PHOSPHORUS CONTROL has been changed to reflect current DEP standards, but appears to be just as complex. Assessment and mitigation measures still seem to be “overkill” for most of LUPC’s jurisdiction. For example, stone bermed level lip spreaders and rock sandwiches are often not necessary in largely undeveloped areas where other measures are equally effective and less costly to create and maintain.

One thing in particular,

L. 3. c. [“Deed restrictions and covenants. Areas designated as vegetated buffers must be clearly identified on the subdivision plat and plans, and protected from *disturbance* by deed restrictions and covenants.”](#) What is disturbance? The plan is sufficient without deed restrictions & covenants. **Strike “and protected from disturbance by deed restrictions and covenants.”** Deed restrictions are cumbersome and unnecessary, while visual identification on the plan is clear and effective.

R. Cluster Development standards remain [“no more than 50% of net developable”](#) allowed for development. This would be better/ appropriate as: **“more than 50% of land/ shoreline.”** Taking into account soils, slopes, conservation and other factors, many lakes have considerable non-developable frontage. 50% of what is left leaves little room for development. There should be a way to accommodate those situations.

Thank you,
Sarah Medina

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