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DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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Memorandum

To: Commissioners
From: Samantha Horn Olsen
Nicholas Livesay
James Francomano
Hugh Coxe
Date: July 3, 2014
Re: Subdivision Rule Revision Background and Process

Introduction

The Commission directed staff to undertake revision of the subdivision rules. The basic lot creation and subdivision exemption rules were revised in 2013. However, the Commission has also directed staff to work on amending subdivision standards that relate to subdivision layout and design, level 2 subdivisions, and to road requirements. In considering how to approach this issue, the Commission preferred a stakeholder-driven approach, as was the case with the Recreational Lodging rules, and directed staff to pursue grant funding to hire a facilitator. In the intervening time, staff was directed to survey stakeholders to gather information in advance of facilitated discussions.

In the last few months, staff conducted a survey to identify issues that will likely arise in the stakeholder discussions and received 8 responses. Staff also prepared grant request submissions and recently learned that the Sewall Foundation has awarded the LUPC with a grant to fund the hiring of a facilitator. We are now in a position to get started on the facilitated process. Because of state procurement policies, we are preparing and will be issuing a Request For Proposals (RFP) to select a facilitator. That is likely to take around one month. In the meantime, we can prepare background materials, contact stakeholders and put together a basic process outline, to be refined when a facilitator is hired.

Draft Process Outline

To begin the RFP, staff has had to make some assumptions about the number and location of meetings. Because stakeholders will be coming from many parts of the UT, and it will be important that each stakeholder participate in as many meetings as possible, staff is recommending that all meetings be held in the Bangor/Brewer area. Further, since we know the commission is interested in concluding this process as quickly as possible, while still achieving a quality product, we have presented a timeline that is best-case and assumes no significant delays. As each meeting concludes, if there is more material to synthesize or research than was anticipated, extra time may need to be built in. As a component of the process, staff is recommending that an expert panel hold a workshop with the Commission at a regularly scheduled meeting to lead Commissioners and stakeholders through the highest priority issues in a real-world fashion.

- July **Issue list and background materials**
- July **Conduct RFP**
- August **Award contract**
- Aug. or Sept. **Stakeholder meeting 1** (consultant)
- Refine issue list
 - Add new issues
 - Send unresolvable issues to a “parking lot” for write-up in report
 - Prioritize among the issues
 - Stakeholders discuss issues to improve understanding
 - Identify possible actions
- September **Produce issue document** (consultant and staff)
- Oct. Com mtg **Panel presentation/workshop** with Commissioners (experts, staff)
- Consultant attends but does not run the meeting
 - Experts lead the commission through key issues in a workshop format
 - Stakeholders should attend and participate in workshop
- October **Refine issue document**, identify results of workshop (staff)
- Late Oct. **Stakeholder meeting 2** (consultant)
- Work on individual issues, possibly in sub-groups (TBD)
 - Generate solution options, recommendations where possible
- Late Oct. Meeting notes (consultant and staff)
- Early Nov.¹ **Stakeholder meeting 3** (consultant)
- Identify which issues have a consensus solution, which have viable alternative options, and which are simply position statements
 - Finalize consensus recommendations and options to be presented to Commission

¹ If it would be helpful to the stakeholders for staff to do research regarding potential solutions or options, additional time may be needed.

Mid Nov. **Final report** (consultant and staff)

Dec. Com mtg **Commission receives report**

- Staff presents stakeholder options and recommendations, and (if needed) staff analysis
- Commission directs staff how to proceed (to formal rulemaking?)

Background Materials

In preparation for the facilitated process, staff has also developed several work products, which are attached to this memo:

- Attachment A: A document providing an overview of subdivisions, including legal and policy information and some history about how the regulations evolved to their present form
- Attachment B: Excerpts of relevant sections from the Commission's statutes and rules
- Attachment C: Data about subdivision activity in the unorganized and deorganized areas since 1971
- Attachment D: A document with short descriptions of the issues that are likely to be raised during the stakeholder process
- Attachment E: Responses to the Commission's stakeholder survey

Subdivision Rule Revision Memo Attachment A:

Subdivision Overview for the Unorganized and Deorganized Areas of Maine

I. Introduction

This background document, which is intended to serve as a resource for the Commission and public during the subdivision rules review, provides an overview of:

- The legal framework governing subdivisions in the unorganized and deorganized areas of the State;
- Subdivision activity;
- The LUPC's subdivision standards.
- Notable similarities and differences between the regulation of subdivisions in the organized and unorganized/deorganized parts of the State;
- How zoning affects subdivision differently in the organized and uorganized/deorganized parts of the State; and

II. Legal Framework

A. Overview of Commission Regulation of Subdivisions

State law provides the LUPC with regulatory authority to review and approve subdivisions. Title 12, section 685-B(1)(B) states:

A person may not commence development of or construction on any lot, parcel or dwelling unit within any subdivision or sell or offer for sale any interest in any lot, parcel or dwelling unit within any subdivision without a permit issued by the commission

The LUPC's rules further establish:

Subdivisions are prohibited unless allowed with a permit pursuant to the standards set forth for the subdistrict involved, except as provided in Section 10.25,Q,5.

Ch. 10.06,F.¹ The referenced Chapter 10, Section 10.25,Q contains the LUPC's subdivision and lot creation standards and is included as part of the Chapter 10 excerpts in Attachment B.

As indicated in Chapter 10.06,F, subdivisions are allowed only by permit and only may be permitted in certain subdistricts. All of the unorganized and deorganized areas of Maine are

¹ All references to Chapter 10 rules in this overview document are to the Commission's Chapter 10 Land Use Districts and Standards.

zoned as being within at least one of three land use districts: Protection, Management, or Development. *See* 12 M.R.S. § 685-A(1) (establishing the three land use districts). These land use districts are further divided into subdistricts. Presently, there are 14 Protection subdistricts, three Management subdistricts, and 12 Development subdistricts. Approximately 79 percent (8.2 million acres) of the area zoned by the LUPC is in a Management subdistrict; 21 percent (2.17 million acres) is in a Protection subdistrict, and less than 1 percent (41,000 acres) is in a Development subdistrict. 2010 Comprehensive Land Use Plan (CLUP) at 25.

Most of the land in a Management subdistrict is in the General Management Subdistrict (M-GN). In general, this subdistrict includes areas zoned as appropriate for commercial forestry and agricultural uses. Single- and two-family dwellings are an allowed use within the M-GN, but all subdivisions are prohibited, with the exception of level 2 subdivisions discussed below.

The areas in which residential subdivisions are an allowed use requiring a permit include the Residential Development (D-RS), General Development (D-GN), and Planned Development (D-PD) subdistricts. Subdivisions also are allowed in the Resource Plan Protection Subdistrict (P-RP) as part of a concept plan. Additionally, for the prospectively zoned Rangeley region² the Commission has developed several additional subdistricts that only are used in that region. Among these Rangeley region-specific subdistricts, the following allow residential subdivisions: Community Center Development (D-GN2), Community Residential Development (D-RS2), Residential Recreation Development (D-RS3), and Semi-Remote Lake Protection (P-GP2).

To obtain a permit for a subdivision within one of the subdistricts in which this type of residential development is an allowed use, an applicant must satisfy the applicable land use standards, including the Commission's subdivision layout and design standards. The key subdivision permitting standards are discussed below in section VI.

B. What is a Subdivision and What Divisions are Exempt

Within the unorganized and deorganized areas of Maine:

Except as provided in section 682-B, “subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing.

The term “subdivision” also includes the division, placement, or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period.

12 M.R.S. § 682(2-A). The Commission has established in rule:

² The Rangeley region includes 10 MDCs located around the Town of Rangeley: Adamstown Twp., Dallas Plt., Lincoln Plt., Magalloway Plt., Rangeley Plt., Richardstown Twp., Sandy River Plt., Township C (Oxford Cty.), Township D (Franklin Cty.), and Township E (Franklin Cty.).

For the purposes of the definition of subdivision in [12 M.R.S. § 682(2-A)] and in these rules, an “existing parcel” shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.

Ch. 10.25,Q,1,f.

Divisions exempt from counting towards the creation of three or more parcels or lots within any 5-year period are identified in 12 M.R.S. 682-B and Chapter 10.25,Q,1,g of the Commission’s rules. The following list illustrates the range of exemptions, but does not quote or include all the material regulatory language:

- Transfer of certain lots at least 40 acres in size for forest management, agricultural management, or conservation of natural resources;
- Retention of a lot used for forest management or agricultural management;
- Transfer to an abutter;
- Division by inheritance, court order, or gift;
- Transfer of a conservation lot to a qualifying non-profit entity;
- Transfer to a governmental entity;
- Transfer or retention of a large lot (at least 5,000 acres) managed solely for forest management or agricultural management activities; and
- Unauthorized subdivision lots in existence for at least 20 years.

Attachment B contains the section of the Commission’s rules that includes all of the subdivision exemptions, Ch. 10.25,Q,1,g.

Additionally, the Commission has added clarity in rule about when the leasing of remote rental cabins or lots counts as a division for subdivision purposes. Up to eight remote rental cabins may be located on a single parcel, provided the parcel is greater than 5,000 acres within a township. The renewal of a lease for a lot within a LUPC-approved subdivision does not count as a division, nor does the renewal of a lease for a lot that has been continuously leased, with no gaps in lease of more than two years, since before the creation of the Commission or for at least the last 20 years. *See* Ch. 10.25,Q,1,d & e.

C. What is a Level 2 Subdivision

In 2004, the Commission revised its rules to allow residential subdivisions in the M-GN Subdistrict in 42 minor civil divisions (MCDs) (e.g., townships, plantations, and towns), provided the subdivisions meet certain criteria qualifying them as “level 2” subdivisions. Level 2 subdivisions must:

- Include five or fewer lots or dwellings, except subdivisions meeting the cluster development standards may have up to 15 lots or dwellings;

- Occupy an aggregate land are of 20 acres or less, except subdivisions meeting the cluster development standards may occupy up to 30 acres; and
- Be located within:
 - 1,000 feet of a public road,
 - No more than one mile by road from existing compatible development, and
 - A M-GN Subdistrict or a subdistrict allowing level 2 subdivisions, with few exceptions; and
 - One of the 42 townships, plantations, or towns specifically identified in the Commission’s rules as eligible for development with level 2 subdivisions.

Ch. 10.25,Q,2.

The intent behind the creation of level 2 subdivisons was to simplify the permitting process for small-scale subdivisions and incentivize residential subdivision development in certain locations. CLUP at 65. The 42 MCDs in which level 2 subdivisions are allowed generally border organized towns, but also share important characteristics that make them particularly suitable for future development, including their connections to an adjacent service center by a major state route or to areas recognized by the Commission as having special planning needs. CLUP at 65.

Five level 2 subdivisions have been created since 2004, establishing 33 lots. *See* Attachment C, Figure C-6. We anticipate the reason for this relatively low number of level 2 subdivisions and whether the level 2 rules should be revised will be evaluated during the upcoming subdivision review and rulemaking.

D. The Role of Rezoning in the Development of Subdivisions

When the Commission developed its initial zoning map in the mid-1970s it largely drew Development subdistricts around development in existence at that time. The initial zoning was not developed to identify areas where future residential or commercial development was desired. With regard to the designation of D-RS Subdistricts, for example, as part of the Commission’s initial zoning effort over 650 of these residential subdistricts were created across 135 MCDs. CLUP at 61, 94. This subdistrict was placed around existing patterns of development, defined as four or more dwellings within a 500 foot radius).

Since the initial zoning effort, through the end of 2013 the Commission has approved 642 zoning petitions, 328 of which created new Development subdistricts. 115 of these actions involved the creation of Development subdistricts with the intent of supporting future subdivision. These 115 rezonings covered 66 MCDs in nine counties.

Because subdistricts that allow residential subdivision were drawn around existing development, generally individuals interested in subdividing their property first must successfully petition the Commission to rezone their property. (To date, prospective zoning has only been completed in the Rangeley region.) Rezoning is covered by statute:

A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
- B. The proposed land use district 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. § 685-A(8-A). In addition to these statutory review criteria, the Commission's rules clarify that in applying these criteria for rezoning property adjacent to lakes the standards contained in Ch. 10.25,A must be considered and that when reviewing a zoning petition involving property in the Rangeley region additional criteria specific to that region also apply.³ See Ch. 10.08 (quoting the statutory review criteria and explaining how the zoning of property adjacent to lakes and within the Rangeley region is reviewed).

When rezoning to a subdistrict that will accommodate residential subdivision, the review criteria that tend to be most significant are those that require no undue adverse impact on existing uses and resources and consistency with the CLUP. In evaluating consistency with the CLUP the central consideration is whether the proposed rezoning is consistent with the adjacency principle. The CLUP explains:

With regard to the criterion that zoning changes be consistent with the Comprehensive Land Use Plan, past plans have expressed the need to encourage orderly growth within and proximate to existing, compatibly developed areas particularly near organized towns and patterns of settlement. The Commission's application of this concept has evolved over its history in response to changing trends and growing appreciation for the often counterproductive fiscal and economic impacts of dispersed development. The requirement that new development should be located near existing development is referred to as the "adjacency" principle. The commission has generally interpreted adjacency to mean that most rezoning for development should be no more than one mile by road from existing, compatible development – i.e., existing development of similar type, use, occupancy, scale and intensity to that being proposed, or a

³ A petitioner seeking to rezone property in the Rangeley region must demonstrate that:

- a. the requested change is needed due to circumstances that did not exist or were not anticipated during the prospective zoning process;
- b. the new development subdistrict is either contiguous to existing development subdistricts or within areas that are suitable as new growth centers; and
- c. the change will better achieve the goals and policies of the Comprehensive Land Use Plan, including any associated prospective zoning plans.

Ch. 10.08,C.

village center with a range of uses for which the proposed development will provide complementary services, goods, jobs and/or housing.

CLUP at 62. In addition, with regard to the one mile rule-of-thumb that is part of the adjacency principle: “The Commission recognizes that there are certain instances in which a greater or lesser distance may be appropriate in measuring distances to existing developments.” CLUP at 62, n.2. For example, the Commission has recognized that a greater or lesser distance may be appropriate when conditions or circumstances exist that result in the objectives underlying the adjacency principle being achieved equally well or better than would be the case if the one-mile measurement were strictly applied.

An individual who seeks to subdivide property that first must be rezoned may elect to petition for a zoning change and then, following Commission action, submit a subdivision permit application. Alternatively, an individual may file both the zoning petition and subdivision application at the same time. Only the Commission may approve zoning petitions; staff, however, commonly review and act on subdivision applications.

E. Key Evolutionary Steps in the Regulation of Subdivisions

1. 40 Acres Lot Exemption

Both the statute and rules governing subdivision within the unorganized and deorganized areas have evolved since their inception in the early 1970s. One area of evolution and considerable legislative attention has been the 40 acre lot exception. This exception originated in an early amendment to the definition of “subdivision,” that provided:

No sale or leasing of any lot or parcel shall be considered a subdivision if such lot or parcel is not less than 40 acres in size except where the intent of such conveyance is to avoid the objectives of this statute.

P.L. 1971, ch. 544, § 28-B. This exclusion from the statutory definition of subdivision remained unchanged until 1987; at that time a flurry of legislative and regulatory activity commenced for the next four year period. In 1987, the Legislature added additional parameters to the 40 acre lot exclusion, requiring Commission subdivision review for lots 40 acres or more located in whole or in part within 250 feet of a great pond and certain other water bodies if the lot had a lot depth to shore frontage ratio greater than five to one. P.L. 1987, ch. 514, § 1. Since this time, the 40 acres exception and the limit of the scope of this exception has remained tied, at least in part, to the proximity of lots to water bodies. This same legislation also introduced a recording requirement triggered by the creation of three or more lots of 40 acres or more.

The following year, more changes were made by the Legislature. One change was the creation of a blanket exception for lots greater than 500 acres. P.L. 1987, ch. 810, § 1.⁴ Lots between 40

⁴ Only odd number years are assigned to public laws. This means, for example, that public laws enacted during the second regular session, which are held in even years, are assigned the prior odd number year for citation purposes.

and 500 acres in size and wholly outside of shoreland areas continued to be exempt. The treatment of lots within shoreland areas, whether in whole or in part, was modified so that these lots no longer could be exempt, regardless of the depth to shore frontage ratio. The 1988 legislation also established that the creation of three or more lots between 40 and 500 acres in size and outside of the shoreland area triggered recording and that these lots could not be further divided for a 10 year period without being considered a subdivision.

The very next year, in 1989, the 500 acre lot exception was repealed. P.L. 1989, ch. 584, § 1.) The 40 acre lot exemption also was narrowed, effectively limiting the number of 40 acre lots outside the shoreland area that could be created from a single parcel within a 5-year period, without triggering subdivision review, to 10. The result of this legislation was that many lot divisions, which would have been previously exempt under the old law, became legally recognized subdivisions subject to regulatory review by the Commission. The Commission determined that the sale or conveyance by the subdivider of lots within such a subdivision, occurring after the effective date of the new law, would constitute subdivision activity requiring Commission approval. To provide a mechanism for the approval of large lot subdivisions, the Commission added a new chapter to its rules in 1990, Chapter 16 Rules Relating to Large Lot Land Divisions.

In 1991 the 40 acre lot exception was narrowed again. The area around water bodies within which the exception did not apply was expanded to 1,320 feet from great ponds and rivers, and to 250 feet from certain coastal and freshwater wetlands. Outside of these areas the 10 lot threshold with a 5-year period remained. Property owners engaging in exempt, large lot divisions were required to obtain Commission certification that the divisions were exempt prior to recording the required plans. P.L. 1991, ch. 306.

From 1991 through 2000 there was no significant statutory or regulatory change with regard to large lot divisions. In 2001, the Commission overhauled the 40 acre lot exception, effectively replacing it with the exception for the transfer of lots for forest management, agricultural management or conservation of natural resources that exists today. This exemption, which contains a 40 acre or more component, provides:

A lot or parcel is not considered a subdivision lot if the following conditions are met:

- A. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
- B. The lot is at least 40 acres in size;
- C. If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water line of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A;

- D. The original parcel from which the lot was divided is divided into a aggregate of no more than 10 lots within any 5-year period; and
- E. When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with section 685-B, subsection 6-A. Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval.

P.L. 2001, ch.431, § 2 (enacting 12 M.R.S. § 682-B(4).)

Large lot subdivision activity on which the Commission has data is summarized in Attachment C, Figures C-7 through C-9.

2. Site Law Certification

Reform legislation in 2012 shifted permitting responsibility for projects in the unorganized and deorganized areas that are large enough to trigger the Site Location of Development Law (Site Law) from the LUPC to the Department of Environmental Protection (DEP or the Department). P.L. 2011, ch. 685, §§ 15 and 33 (enacting 12 M.R.S. § 685-B(1-A)(B-1) and 38 M.R.S. § 489-A-1, respectively). For projects reviewed by DEP under Site Law, the Department may not issue a permit unless the Commission certifies to DEP that the proposed development (a) is an allowed use within the subdistrict or subdistricts within which it is proposed and (b) meets the Commission's land standards that are not considered by the Department in its review.

In general, although with some exceptions, residential subdivisions must include 15 or more lots to trigger DEP permitting under the Site Law. *See* 38 M.R.S. § 482(2) & (5), 483-A(1).

To assist the public and its staff understand which of its land use standards the Commission would apply in reviewing a request for certification, the Commission has adopted, in consultation with DEP, a guidance document identifying which of its standards the Commission would apply in the certification context. Subdivision layout and design standards are among those the Commission would continue to apply as part of its review of a request for certification. Others, such as soil suitability, phosphorus control, and erosion and sedimentation control would be covered in the DEP permitting process.

III. Subdivision Activity in the Unorganized and Deorganized Areas of Maine

Attachment C contains a series of figures summarizing subdivision activity in the unorganized and deorganized areas since the inception of the LUPC (formerly the Land Use Regulation Commission or LURC) through 2013. Over this period, the Commission has received 600 subdivision permit applications, including both initial applications and subsequent amendment applications. The largest percentage of these applications, 35 percent, has been for projects in

Franklin County. Collectively, the three counties with the most subdivision permitting activity – Franklin, Somerset, and Piscataquis, respectively – account for 69 percent of all the subdivision permitting activity. *See* Attachment C, Fig. C-1.

The overwhelming majority of applications have been approved. Since 1971, 505 of 600 applications (84 percent) have been approved either in whole (503) or in-part (2). Since 1996, the approval rate has been slightly higher, 90 percent, with 2 applications having been denied since that time, 5 returned, and 11 withdrawn. *See* Fig. C-2. While these statistics show that most applicants obtain a permit, they do not capture those individuals interested in subdividing their property who never filed an application.

Residential subdivision activity since 1971 has created nearly 3,000 new lots. Not all subdivisions, however, create new lots; some create new dwelling units on a single lot. In addition to the new lots created through subdivision, a little over 550 new dwelling units have been created through approved subdivisions. (For example, a sporting camp can be converted to a condominium with each cabin being sold as a residential dwelling unit and the condo association owning the single lot on with the multiple, individually owned condo units (the former sporting camp cabins) sit.) *See* Fig. C-4.

Considerable residential development occurs outside of subdivisions. Figure C-5 compares the number of subdivision lots created within a given period to the number of new dwellings permitted during the same period. While some of these dwellings are permitted for construction in a subdivision, the number of new dwellings permitted by the Commission, as one would expect, exceed the number of subdivision lots. This is shown graphically in Attachment C.

Finally, as noted in section II.C above, since creating the level 2 subdivision category in 2004, the Commission has approved five such subdivisions, including a total of 33 lots. *See* Fig. C-6.

IV. LUPC Subdivision Standards

Prior to 2004, the Commission applied its general review criteria to subdivision applications, but many of the requirements existed in policy, application materials, or typical agency review comments, rather than in rule. There was some level of uncertainty about exactly how any particular subdivision application would be decided. Based on a directive from the 120th legislature to “reduce processing time and cost and to increase predictability,” the Commission undertook a major rule revision that included the adoption of subdivision standards. These standards went into effect in 2004 after a substantial public involvement process that included one-on-one and group consultations with stakeholders, a panel discussion at a Commission meeting, two public workshops prior to the formal rulemaking and two formal public hearings. The goals of the rulemaking were to: respond to the legislative directive; “simplify the review process for small-scale, appropriately located subdivisions;” adopt subdivision layout, design and permitting rules to increase the predictability of agency decisions; and provide guidance about the “demonstrated need” criterion (which is no longer part of the Commission’s statutory criteria). The sections that follow describe several major components of the Commission’s subdivision standards, many of which were enacted as part of the 2004 rulemaking.

A. Layout and Design Standards

Chapter 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Having such rules provides predictability to developers and the public as to what types of subdivision design will meet the Commission's statutory Criteria for Approval. 12 M.R.S. § 685-B(4). These rules were developed consistent with the Commission's charge to "extend principles . . . of sound planning" to the unorganized and deorganized parts of the State. 12 M.R.S. § 681; *see also* § 685-A (establishing that the Commission, acting on principles of sound land use planning and development shall prepare land use standards that encourage the most desirable and appropriate use of air, land and water resources). At the time of the rulemaking, a commenter raised a concern that certain provisions may constitute a taking of land, however, the Commission's counsel advised that was not the case. Many jurisdictions have standards for layout and design of subdivision, and it seems likely that improvements can be made to the Commission's current standards.

B. Cluster and Open Space

Chapter 10.25,R, subsection 1 of the Commission's rules specifies that level 2 subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the cluster development standards, although the Commission may waive these standards in some cases. In these locations, clustering of dwellings and the conservation of a significant amount of open space are required to be included in any proposed subdivision plan. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

Chapter 10.25,R, subsection 2, also contains provisions governing the actual layout of cluster subdivisions and identifying the steps necessary to calculate the amount of "net developable land" and "net developable shorefront" of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shorefront area can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development.

Chapter 10.25,S of the Commission’s rules sets forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a proposed cluster subdivision plan. The intent behind these standards is to ensure the availability of these lands to the residents of the subdivision into the future, whether for agricultural, recreation or conservation purposes as specified by the holder. Cluster provisions can provide flexibility for property owners who, for reasons of site design, want flexibility in dimensional standards. They are also important in providing some open space around lakes that are already largely developed. During the 2004 rulemaking, there was one comment made that waterfront cluster development rarely has the same value as traditional waterfront development.

C. Roads and access

Chapter 10.25,D, subsections 1, 2 and 3 of the Commission’s rules contain provisions for vehicular circulation, access management and parking area layout and design. Goals in regulating these issues are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering. A concern was raised at the time of the rulemaking about ensuring visibility for commercial activities. The commission made edits to the rules at the time to clarify that buffering standards for parking were not intended to prevent visibility for the commercial structures themselves. This continues to be an issue for some property owners.

Chapter 10.25,D, subsection 4, contains roadway design specifications that address design and construction standards for roadways associated with a subdivision. These provisions are intended to ensure that roads are durable and suited for the anticipated traffic, including provision of services and future development potential. A perennial issue for the Commission, which was not resolved in the 2004 rule revisions, is whether to require that an applicant for a subdivision permit acquire access rights for the private roads leading to it. There is presently no such requirement, and this leads to a condition where the roads leading to a subdivision are not guaranteed to be available in the future, and do not have to conform to the same standards as roads within the subdivision itself.

D. Level 2 subdivisions

As discussed above, Chapter 10.25, Q, subsection 2 provides that some smaller subdivisions in certain townships, towns, or plantations (Minor Civil Divisions or MCDs) are allowed on land that is not already designated as a development subdistrict. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to obtain a rezoning before applying for the subdivision permit. Allowing applicants to proceed without rezoning is intended to streamline the subdivision application process in locations that are clearly suitable for residential subdivision. This initiative generated several comments during the 2004 rulemaking, and the Commission included an addendum to the basis statement. It stated that the objective was to “simplify the permitting process for petitioners of small-scale subdivisions and concurrently guide new development to appropriate locations within the jurisdiction.” The addendum documents the planning process and rationale behind the locations where level 2

subdivisions are allowed and describes the relationship between the level 2 subdivision provisions and the adjacency principle. The addendum also describes a need for periodic evaluation and update to the rules in response to the Commission's experience with the functioning of the rules, changes in designated service centers, and a comparison of development in areas that are or are not in the list of level 2 subdivision MCDs. The basis statement addendum gives the Commission an excellent place to start in evaluating and revising the level 2 subdivision rules.

V. Comparison of Statute and Rule Provisions - Title 12/Chapter 10 v. Title 30-A

The LUPC's regulation of subdivisions is different from the regulation of subdivisions in organized municipalities that administer their own land use provisions. Different statutes pertain to LUPC subdivisions and municipal subdivisions and, while the LUPC's Chapter 10 rules pertain uniformly to all subdivisions anywhere in the LUPC jurisdiction, under municipal home rule authority any municipality may choose to adopt its own local ordinance to regulate subdivisions as long as the provisions of that ordinance are no less strict than the municipal statute.

The following section describes some of the major differences, but not all differences, between municipal subdivision law and LUPC subdivision law. It does not attempt to capture any differences that may be created by local municipal ordinances. It compares the LUPC provisions that exist in statute (Title 12) and rule (Chapter 10) with the municipal provisions that exist solely in statute (Title 30-A).

A. Definition of Subdivision

The definitions of "subdivision" are very similar under LUPC law and municipal law and at their core define a subdivision as a division of land into 3 or more lots within any 5 year period. Both definitions apply "whether the division is accomplished" by sale or lease. Both also indicate that a division may be accomplished by the division, placement, or construction of buildings or structures resulting in 3 or more dwelling units in a 5 year period. 30-A M.R.S. § 4401(4); 12 M.R.S. § 682(2-A).

Notable differences that are not shared by the two definitions are that the LUPC law refers to accomplishing the division "by platting of the land for immediate or future sale" and the municipal law refers to divisions accomplished by "development, buildings or otherwise."

B. Determination of Subdivision

The LUPC Chapter 10 rules contain provisions that provide additional detail for determining what constitutes a subdivision within the unorganized and deorganized parts of the State, while Title 30-A serves a similar function for municipal subdivisions but by a different approach. Municipal law specifies that the first dividing of a parcel creates the first 2 lots and the next dividing of either of those creates the 3rd lot. LUPC rules do not specify the sequencing of

divisions in the same way but generally have the same result for land that is divided and not retained.

1. Retained land

Differences arise between jurisdictions with how “**retained**” land is treated. Under municipal law the 2nd division does not create a 3rd lot for subdivision purposes if the first two “dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division” or is otherwise exempt. 30-A M.R.S. § 4401(4)(A)(1). Under LUPC rules, the land retained by the person dividing the land is counted as a subdivision lot unless the retained lot qualifies for any of the exemptions in rule (discussed below).

2. Prior Lots

Both jurisdictions recognize that lots may be created that at the time do not fall within the subdivision definition and, therefore, are not reviewed under the relevant subdivision law, but may, upon some subsequent land division, meet the subdivision definition. Both jurisdictions require that the subsequent subdivision review “consider the existence of the previously created lot or lots,” 30-A M.R.S. § 4401(4)(B), or that they be “counted as a lot under the subdivision definition,” Ch. 10.25,Q,1,c, but the lot itself does not require a subdivision review or approval.

3. Existing parcel

The LUPC definition of subdivision refers to the division of an “**existing parcel**” while the municipal definition refers to the division of a “**tract or parcel.**” Both jurisdictions define these terms similarly (“contiguous area ...in common ownership,” Ch. 10.25,Q,1,f, and “contiguous land in the same ownership,” 30-A M.R.S. § 4401(6)). The primary difference between the jurisdictions is the LUPC limits the extent of the existing parcel to the township, plantation, or town boundary and municipal law considers lands on opposite sides of a pre-1971 road to be separate tracts or parcels.

The LUPC rules have several specific provisions unique to the unorganized and deorganized areas, and not found in municipal law, pertaining to remote rental cabins and renewal of leases. Ch. 10.25,Q,1,d & e. Both are noted above in section II.B.

C. Exemptions from Definition

1. Exemptions Common to Both Jurisdictions

Both the LUPC and the municipal subdivision law and rules enumerate certain divisions that are “exempt” (LUPC language) or do “not create a lot” (municipal language) for purposes of subdivision. Both exclude any transfer made with the intent to avoid the objectives of the

subdivision laws. 30-A M.R.S. § 4401(4)(D-1 – D-6); 12 M.R.S. § 682-B. Many of these exemptions are similar between the two jurisdictions, though generally not exactly the same.

- **Inheritance and court order** - The municipal statute exempts a division accomplished by “devise,” “condemnation,” or “by order of court.” 30-A M.R.S. § 4401(4)(D-1 – D-3). The LUPC rules exempt divisions “by inheritance, or by court order, to a person related to the donor by blood, marriage, or adoption.” Ch. 10.25,Q,1,g(4).
- **Gift** - Both the LUPC and the municipal standards exempt a division accomplished by gift to a person related to the donor if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division and the lot is not further divided or transferred within 5 years from the date of division. 30-A M.R.S. § 4401(4)(D-4); 12 M.R.S. § 682-B(1) and Ch. 10.25,Q, 1,g(4).
- **Abutting land** - Both the LUPC and the municipal standards exempt a division accomplished by the transfer of any interest in land to the abutting owners of land as long as the abutter’s contiguous property is maintained as a single merged parcel of land for a period of 5 years. 30-A M.R.S. § 4401(4)(D-6); Ch. 10.25,Q, 1,g(3).

2. Exemptions in Both Jurisdictions but With Significant Differences

- **Governmental entity** - The LUPC statute exempts lots transferred to a **governmental entity** - municipality, county, the State, or the Federal government - if the governmental entity holds the lot for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes for a period of 20 years. 12 M.R.S. § 682-B(2) and Ch. 10.25,Q, 1,g(6).
 - The municipal statute exempts division accomplished by a gift to a **municipality**. 30-A M.R.S. § 4401(4)(D-5).
- **Retained lot** - Under LUPC rules, a lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years is not conveyed or further divided (except for transfer to an abutter) and is used solely for forest or agricultural management activities and associated development. Only one retained lot may be created from any one existing parcel. Ch. 10.25,Q,1,g(2).
 - Under the municipal law definition of subdivision, and as discussed above in the “Determination of subdivision” section of this memo, a lot retained for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding does not count as a subdivision lot.⁵ 30-A M.R.S. § 4401(4)(A)(1).

3. Exemptions Unique to the LUPC

⁵ 30-A M.R.S. § 4401(4) treats this as an exception to subdivision rather than as an exempt lot.

The LUPC rules have several specific exemptions unique to the jurisdiction, and not found in municipal law. These include:

- Lots transferred and managed solely for **forest** management, **agricultural** management or **conservation** of natural resources that are at least 40 acres in size. The original parcel from which the new lot is divided may not be divided into more than 10 lots within any 5 year period and if 3 or more lots are created within a 5 year period, a plan must be recorded. 12 M.R.S. § 682-B(4) and Ch. 10.25,Q, 1,g(1).
- Lots transferred to a nonprofit, tax-exempt **conservation organization** with a deed restriction or conservation easement for at least 20 years. 12 M.R.S. § 682-B(3) and Ch. 10.25,Q, 1,g(5).
- Lots containing **at least 5,000 acres** provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and is not further divided for at least 5 years. Ch. 10.25,Q, 1,g(7).
- **Unauthorized subdivisions lots**, in existence for 20 or more years, that when sold or leased created a subdivision requiring a permit but the permit has not been obtained. 12 M.R.S. § 682-B(5) and Ch. 10.25,Q, 1,g(8).

D. Review and approval

1. Process

Subdivisions in the unorganized and deorganized areas require a permit issued by the Commission, but the Commission has delegated authority to staff to review and decide most subdivision applications. The Commission may choose to hold a hearing on the application. The Commission must act upon the permit application within 60 days of a public hearing or, if no hearing is held, within 90 days of determining it has received a complete application. 12 M.R.S. § 685-B.

Subdivisions in municipalities are reviewed by the municipal reviewing authority (frequently the planning board) and may include a public hearing. The municipal reviewing authority may adopt additional reasonable regulations governing subdivisions including a review procedure of no more than 3 stages. Subdivisions that cross municipal boundaries are reviewed through joint meetings and hearings held by the municipal reviewing authorities from each municipality. The municipal reviewing authority must act upon the permit application, within 30 days of a public hearing or, if no hearing is held, within 60 days of determining it has received a complete application or within any other time limit that is otherwise mutually agreed to. 30-A M.R.S. § 4403.

As discussed in section II.E.2 above, the Department of Environmental Protection has permitting responsibility in the unorganized and deorganized areas for projects, including subdivisions that are large enough to trigger the Site Law. For such projects, the DEP may not issue a permit

unless the Commission certifies that the proposed development is an allowed use and meets the Commission's standards that are not considered by the Department in its review.

2. Standards

The LUPC review standards for subdivisions are found in statute (12 M.R.S. § 685-B(4) Criteria for Approval, which are repeated in Chapter 10.24, General Criteria for Approval of Permit Applications), and in rule (Chapter 10.25, Development Standards). The municipal review standards exist in statute (30- A M.R.S. § 4404), but many municipalities have also adopted local ordinances that may have additional or stricter provisions, but which are not considered in this present overview. The LUPC statutory review criteria are similar, but not identical, in scope and subject to the municipal statutory review criteria. LUPC's Chapter 10.25 Development Standards are more detailed and specific, as would be expected with rules implementing statute. In many ways, the Commission's Chapter 10 rules are like municipal ordinance provisions.

Topics addressed by the LUPC review standards (statute and rule) and the municipal review standards (statute only) for subdivisions are largely the same and include review of things such as technical & financial capacity, traffic, soil suitability, solid waste disposal, subsurface waste water disposal, water supply, water quality, air quality, erosion and sedimentation control, and activities in flood areas.

The primary difference between the LUPC review standards and those set out in Title 30-A for municipal review, is the specificity of the Chapter 10 standards in comparison with the more general statutory provisions applicable to municipal review. For instance, Title 30-A requires that the "proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results," while the erosion and sedimentation control provisions of the LUPC's Chapter 10.25, M. set out design standards, the required components of an erosion control plan, and the inspection requirements.

Also Chapter 10 includes a few topics not covered in the municipal statute – noise, lighting, and subdivision design and Title 30-A includes a few topics not covered in the LUPC rules – impact on adjoining municipality and identification of farmland.

For projects in the unorganized and deorganized areas that are reviewed by DEP under Site Law, the Commission would review the project to certify whether the project meets the Commission's standards that are not considered by the DEP. Subdivision layout and design are among those standards the Commission would apply in a certification review, but DEP would review others, such as soil suitability, phosphorus control, and erosion and sedimentation control.

VI. Comparison of Zoning Regulation Differences and How that Affects Subdivision

Subdivision development in the LUPC jurisdiction differs from that in municipal jurisdictions due, in part, to the type of zoning in place within each. As discussed above, because subdistricts

that allow residential subdivision in the LUPC jurisdiction were originally drawn around existing development, and were not located to identify areas where future residential or commercial development was desired, property owners that wish to subdivide usually must first petition the Commission to rezone their property.

Development of a subdivision in a municipality rarely involves a property owner first rezoning its property. Some municipalities do not have any zoning, other than shoreland zoning, and allow subdivisions anywhere. Many municipalities that do have zoning allow subdivisions in all of their zoning districts, and where prohibited there may be limited demand for residential development. Moreover, municipalities with zoning typically will designate zoning districts according to a comprehensive plan or future land use plan that identifies areas where future residential or commercial development is desired⁶, and attempt to provide sufficient land area to meet expected future needs.

⁶ The existing development and infrastructure in municipalities, which are comparatively more developed than the townships and plantations within the LUPC jurisdiction, often create conditions for guiding the location of development to appropriate locations.

Subdivision Rule Revision Memo July 3, 2014

Attachment B

Title 12

12 § 682. Definitions

- 2-A. **Subdivision.** Except as provided in section 682-B, “subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing.

The term “subdivision” also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period.

12 § 682-B. Exemption from subdivision definition

A division accomplished by the following does not create a subdivision lot or lots unless the intent of the transfer is to avoid the objectives of this chapter.

1. **Gifts to relatives.** A division of land accomplished by gift to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division.
2. **Transfer to governmental entity.** A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State is not considered a subdivision lot if the following conditions are met:
 - A. The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and
 - B. At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection.
3. **Transfer to conservation organization.** A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:
 - A. For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
 - B. The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity.

4. **Transfer of lots for forest management, agricultural management or conservation of natural resources.** A lot or parcel is not considered a subdivision lot if the following conditions are met:
 - A. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
 - B. The lot is at least 40 acres in size;
 - C. If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water line of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A;
 - D. The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
 - E. When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with section 685-B, subsection 6-A. Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval.
5. **Unauthorized subdivision lots in existence for at least 20 years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
 - A. Approval of the subdivision under section 685-B was denied by the commission and record of the commission's decision was recorded in the appropriate registry of deeds;
 - B. A building permit for the lot or parcel was denied by the commission under section 685-B and record of the commission's decision was recorded in the appropriate registry of deeds;
 - C. The commission has filed a notice of violation of section 685-B with respect to the subdivision in the appropriate registry of deeds; or
 - D. The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds.
6. **Permit not required.** Nothing in this section requires a permit for, or restricts the use of property for, hunting, fishing or other forms of primitive recreation, use of motorized vehicles on roads and trails or snowmobiling as otherwise permitted by law.

SUBCHAPTER 3: COMMISSION POWERS AND DUTIES

12 § 685-A. Land use districts and standards

1. **Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter 2, shall adopt rules for determining the boundaries of each major type of district in accordance with the following standards:
 - A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State;
 - B. Management districts: Areas that are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional development are not presently formulated nor additional development anticipated; and
 - C. Repealed.
 - D. Development districts: Areas that are appropriate for residential, recreational, commercial or industrial use or commercial removal of metallic minerals and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be necessary and desirable to carry out the intent of this chapter. The commission may delineate and designate planned subdistricts and establish standards unique to each to efficiently balance the benefits of development and resource protection.

- 8-A. **Criteria for adoption or amendment of land use district boundaries.** A land use district boundary may not be adopted or amended unless there is substantial evidence that:
 - A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
 - B. The proposed land use district 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 § 685-B. Development review and approval

1-B. Delegation to staff. The commission may establish standards by which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted. Any person aggrieved by a decision of the staff has the right to a review of that decision by the commission. A request for such a review must be made within 30 days of the staff decision.

4-A. Subdivision of land subject to liquidation harvesting. The commission may not approve an application for a subdivision if the commission determines that timber on the parcel proposed for subdivision has been harvested in violation of rules adopted pursuant to section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the commission must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The commission may request technical assistance from the Maine Forest Service to determine if a rule violation has occurred.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to section 8869, subsection 14.

6. Recording of approved proposals. A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

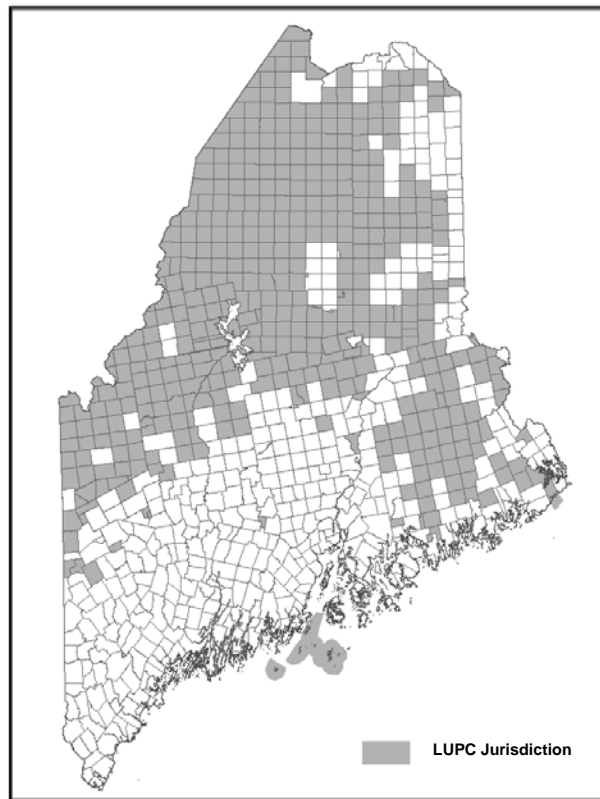
In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the real estate lies.

A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide real estate located within the unorganized and deorganized lands of the State, unless the commission's approval is evidenced thereon.

The grantee of any conveyance of unrecorded subdivided real estate or subdivided real estate recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

LAND USE DISTRICTS AND STANDARDS

FOR AREAS WITHIN THE JURISDICTION OF THE
MAINE LAND USE PLANNING COMMISSION



CHAPTER 10 OF THE COMMISSION'S RULES AND STANDARDS

Initially Adopted January 12, 1977
Latest Revision September 1, 2013

Note: In response to P.L. 2011, ch.599 (enacting LD 1739), in management and protection districts (except for development areas in Resource Plan Protection Subdistricts (P-RP)), the Commission no longer is responsible for regulating timber harvesting, land management roads, water crossings associated with land management roads, and gravel pits less than five acres in size. The regulation of these activities has been transferred to the Maine Forest Service.

10.24 GENERAL CRITERIA FOR APPROVAL OF PERMIT APPLICATIONS

In approving applications submitted to it pursuant to 12 M.R.S.A. §685-A(10) and §685-B, the Commission may impose such reasonable terms and conditions as the Commission may consider appropriate in order to satisfy the criteria of approval and purpose set forth in these statutes, rules and the Comprehensive Land Use Plan.

Pursuant to 12 M.R.S.A. Section 685-B,(4) in making a decision on an application for a community-based offshore wind energy project, the commission may not consider whether the project meets the specific criteria designated in 12 M.R.S.A. Section 1862, Subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the commission's review of related potential impacts of the project as determined by the commission.

“The commission may not approve an application, unless:

- A. Adequate technical and financial provision has been made for complying with the requirements of the State's air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, [12 M.R.S.A.] Sections 4807 to 4807-G, the site location of development laws, 38 M.R.S.A. §481 to §490, and the natural resource protection laws, 38 M.R.S.A. §480-A to §480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;
- B. Adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;
- C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal.

In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the Commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, Section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this paragraph, the Commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a community-based offshore wind energy project, the commission shall consider the development's or project's effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

In making a determination under this paragraph regarding a wind energy development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for a location within the expedited permitting area, the commission shall consider the development's or projects effects on

scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452;

- D.** The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site;
- E.** The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto; and
- F.** In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public's health, safety and general welfare will be adequately protected. Except as otherwise provided in Title 35-A, Section 3454, the commission shall permit the applicant and other parties to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources." 12 M.R.S.A. §685-B(4)

In addition, the applicant must demonstrate "evidence of sufficient right, title or interest in all of the property that is proposed for development or use." 12 M.R.S.A. §685-B(2)(D)

D. VEHICULAR CIRCULATION, ACCESS AND PARKING

1. **General circulation.** Provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along existing roadways and within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.
2. **Access management.** Access onto any roadway shall comply with all applicable Maine Department of Transportation safety standards. For subdivisions and commercial, industrial and other non-residential development, the following standards also apply:
 - a. The number and width of entrances and exits onto any roadway shall be limited to that necessary for safe entering and exiting.
 - b. Access shall be designed such that vehicles may exit the premises without backing onto any public roadway or shoulder.
 - c. Shared access shall be implemented wherever practicable.
 - d. Access between the roadway and the property shall intersect the roadway at an angle as near to 90 degrees as site conditions allow, but in no case less than 60 degrees, and shall have a curb radius of between 10 feet and 15 feet, with a preferred radius of 10 feet.
 - e. The Commission may require a traffic impact study of roadways and intersections in the vicinity of the proposed project site if the proposed development has the potential of generating significant amounts of traffic or if traffic safety or capacity deficiencies exist in the vicinity of the project site.
3. **Parking layout and design.** The following standards apply to all subdivisions and commercial, industrial and other non-residential development, except for parking areas associated with trailered ramps and hand-carry launches which are regulated under the provisions of Section 10.27,L:
 - a. Sufficient parking shall be provided to meet the parking needs of the development. The minimum number of parking spaces required shall be based on parking generation rates determined in accordance with standard engineering practices. In cases where it is demonstrated that a particular structure can be occupied or use carried out with fewer spaces than required, the Commission may reduce number of required spaces upon finding that the proposed number of spaces will meet the parking needs of the structure or use and will not cause congestion or safety problems.
 - b. Parking areas and access roads shall be designed such that runoff water is discharged to a vegetated buffer as sheet flow or alternatively collected and allowed to discharge to a concentrated flow channel, wetland or water body at a rate similar to pre-construction conditions. If runoff water is discharged to a concentrated flow channel, wetland or water body, a sediment basin shall be constructed to collect sediment before the runoff water is discharged.
 - c. **On-street parking.** In areas where on-street parking already exists, new development shall have on-street parking where practicable and if there are sufficient spaces available in the immediate vicinity. Otherwise, parallel or diagonal on-street parking is permitted where the

Commission finds that it will adequately meet the parking needs of the development and will not cause congestion or safety problems. Perpendicular on-street parking is prohibited.

- d.** Off-street parking for commercial, industrial and other non-residential development.
- (1) Where practicable, off-street parking shall be located to the side or rear of the principal structure.
 - (2) Notwithstanding the dimensional requirements of Section 10.26, the Commission may reduce the minimum road setback requirement by up to 50 percent for development utilizing on-street parking in accordance with Section 10.25,D,3,c or for development whose parking area is located to the rear of the principal structure, except where the Commission finds that such parking will cause an undue adverse impact to the natural resources or community character of the area.
 - (3) Off-street parking shall not be directly accessible from any public roadway. Ingress and egress to parking areas shall be limited to driveway entrances.
 - (4) Off-street parking areas with more than two parking spaces shall be arranged so that each space can be used without moving another vehicle.
- e.** Parking spaces shall not be placed in the required roadway vegetative buffer. However, a “sight triangle” shall be maintained 25 feet in length on each side of the intersection of the driveway and the roadway right-of-way, with the third side connecting the other two sides. Within each sight triangle, no landscape plants, other than low growing shrubs, shall be planted. These shrubs must be maintained to be no more than 30 inches in height above the driveway elevation.

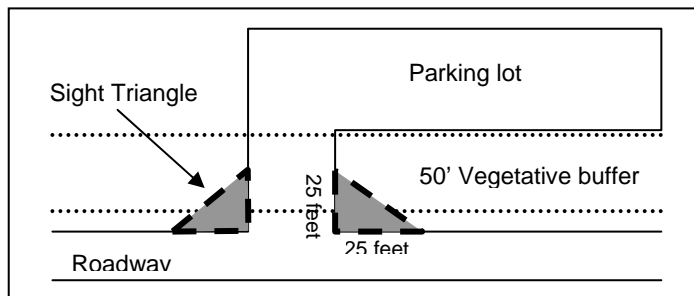


Figure 10.25,D-2. Sight triangle within a vegetative buffer.

- f.** Except for sight triangles, parking areas for commercial, industrial or other non-residential development shall be visually buffered from the roadway by planting and maintaining a vegetative buffer of trees and shrubs or by locating parking areas to the rear of the principal structure.
- g.** When parking areas associated with commercial, industrial or other non-residential development are adjacent to residential structures or uses, landscaping and/or architectural screens shall be used to provide an effective visual buffer and separation between property lines and the edge of the parking area.

- d. Roadways in towns and plantations within the Commission’s jurisdiction that are proposed to be dedicated to the town or plantation shall also comply with the town’s or plantation’s roadway construction and design standards. The applicant shall clearly specify the ownership of all roadways proposed to be dedicated and shall submit a maintenance plan that includes roadway construction and design standards in accordance with the Commission’s standards.
- 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.

	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.

- f. Roadways that will be co-utilized for forest management purposes shall include turnouts that are large enough to accommodate wood haulers and other large vehicles.

Q. SUBDIVISION AND LOT CREATION

This section governs the division of lots and the creation of subdivisions.

1. Counting Parcels, Lots, or Dwelling Units Under the Definition of Subdivision.

- a. **Lots Created by Dividing a Parcel.** When a parcel is divided, the land retained by the person dividing land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Section 10.25,Q,1,g below. This figure illustrates two examples:

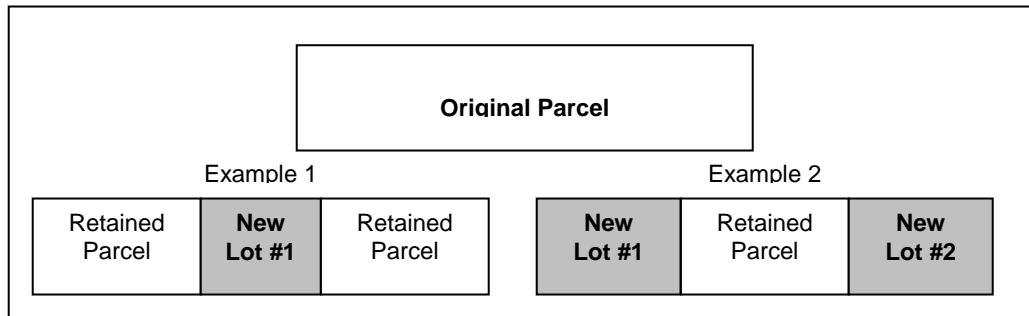


Figure 10.25,Q-1. Two examples where two new lot lines were drawn, each resulting in the creation of three parcels.

- b. **Subdivision Created by the Placement of Dwelling Units.** The placement of three or more dwelling units on a single lot within a five-year period creates a subdivision. The division of one lot into two parcels coupled with the placement of one or two dwelling units on either or both lots does not create a subdivision.
- c. **Parcels Originally Part of a Subdivision.** A lot or parcel which, when sold, leased or developed, was not part of a subdivision but subsequently became part of a subdivision by reason of another division by another landowner is counted as a lot under the subdivision definition. The Commission, however, will not require a subdivision permit be obtained for such lot, unless the intent of such transfer or development is to avoid the objectives of 12 M.R.S.A. §206-A.
- d. **Remote Rental Cabins.** In order to foster primitive recreational opportunities on large tracts of land, up to eight remote rental cabins within a single contiguous ownership larger than 5,000 acres within a township shall be allowed without subdivision review. Placement of more than eight remote rental cabins within such an ownership requires subdivision review by the Commission.
- e. **Renewal of Leases.** For the purpose of counting lots under the Commission's definition of subdivision, the renewal of a lease within a Commission approved subdivision shall not be counted as the creation of a lot. For the renewal of leases in other than Commission approved subdivisions, a lease that is renewed within two (2) years of its expiration shall not be counted as the creation of a lot. Renewal of leases in other circumstances shall be counted as the creation of a lot.
- f. **Existing parcels.** For the purposes of the definition of subdivision in 12 M.R.S.A. §682(2) and in these rules, an "existing parcel" shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.

- g. Exempt lots.** The following divisions are exempt when counting lots for purposes of subdivision, unless the intent of such transfer is to avoid the objectives of 12 M.R.S.A. Chapter 206-A:
- (1) Transfer of Lots for Forest Management, Agricultural Management or Conservation of Natural Resources. A lot or parcel is not considered a subdivision lot if the following conditions are met:
 - (a) The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
 - (b) The lot is at least 40 acres in size;
 - (c) If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S.A. §436-A;
 - (d) The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
 - (e) When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S.A §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S.A §682-B(4).
 - (2) Retained Lots. A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
 - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Only one retained lot exempt under this Section 10.25,Q,1,g,(2) may be created from any one existing parcel
 - (3) Transfers to an Abutter and Contiguous Lots. A lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years. Where a lot is transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for:
 - (a) lots that are part of a subdivision approved by the Commission;

- (b) a land division certified by the Commission as qualifying under 12 M.R.S.A. §682-B; or
- (c) as provided in Section 10.11.

If the property exempted under this paragraph is transferred within 5 years to another person without all of the merged land, or without satisfying either subparagraph (a), (b), or (c) above, then the previously exempt division creates a lot or lots for purposes of Section 10.25,Q.

- (4) Divisions by Inheritance, Court Order, or Gifts. Divisions of land accomplished solely by inheritance, or by court order, to a person related to the donor by blood, marriage, or adoption are not counted as lots for the purposes of this subsection.

A division of land accomplished by bona fide gift, without any consideration paid or received, to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division. 12 M.R.S.A. §682-B(1)

- (5) Conservation Lots. A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:
 - (a) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
 - (b) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity. 12 M.R.S.A. §682-B(3)
- (6) Transfer to Governmental Entity. A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State, or an agency of the Federal government is not considered a subdivision lot if the following conditions are met:
 - (a) The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and
 - (b) At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection. 12 M.R.S.A. §682-B(2)

- (7) **Large Lots Managed for Forest or Agricultural Management Activities or Conservation.** A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot.
- (8) **Unauthorized Subdivision Lots in Existence For at Least 20 Years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
 - (a) Approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
 - (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S.A §682-B(5)

- 2. Level 2 Subdivision Identification Criteria.** Any subdivision that meets all of the criteria below is considered a level 2 subdivision. A level 2 subdivision:
- a. Is a division within any 5-year period of an existing parcel of land within a single contiguous ownership into (a) 5 or fewer lots or 5 or fewer dwelling units or (b) 6 to 15 lots or 6 to 15 dwelling units that meet the requirements of cluster development, Section 10.25,R;
 - b. Occupies an aggregate land area of (a) 20 acres or less or (b) 30 acres or less within a subdivision that meets the requirements of cluster development, Section 10.25,R. For purposes of this section, “aggregate land area” includes lots or parcels to be offered and all roads and other infrastructure associated with the subdivision, but excludes open space;
 - c. Is located within 1,000 feet of a public roadway;
 - d. Is located no more than one mile by road from existing compatible development;
 - e. Is located wholly on land within an M-GN subdistrict or within a development subdistrict where level 2 subdivisions are allowed, except that up to 10 percent of the aggregate land area may be designated or identified as a stream channel or wetland at the time of the filing of a subdivision application; and
 - f. Is located wholly in a township, plantation or town within the jurisdiction of the Commission listed in Table 10.25,Q-1, below.

Aroostook	Connor Twp Cyr Plt Garfield Plt Hamlin, Town of Nashville Plt Saint John Plt Sinclair Twp T11 R4 WELS T17 R3 WELS T17 R5 WELS	Penobscot	Argyle Twp Greenfield Twp Grindstone Twp Mattamiscontis Twp T3 Indian Purchase Twp T4 Indian Purchase Twp TA R7 WELS
Franklin	Coplin Plt Freeman Twp Lang Twp Salem Twp Wyman Twp	Piscataquis	Beaver Cove, Town of Elliottsville Twp Harfords Point Twp Lily Bay Twp Moosehead Junction Twp T1 R9 WELS
Hancock	T32 MD	Somerset	Dennistown Plt Lexington Twp Long Pond Twp Parlin Pond Twp Rockwood Strip T1 R1 NBKP Spring Lake Twp Tomhegan Twp
Oxford	Albany Twp Lower Cupsuptic Twp Mason Twp Milton Twp	Washington	Edmunds Twp Trescott Twp

Table 10.25,Q-1. Towns, plantations and townships where Level 2 subdivisions are permitted.

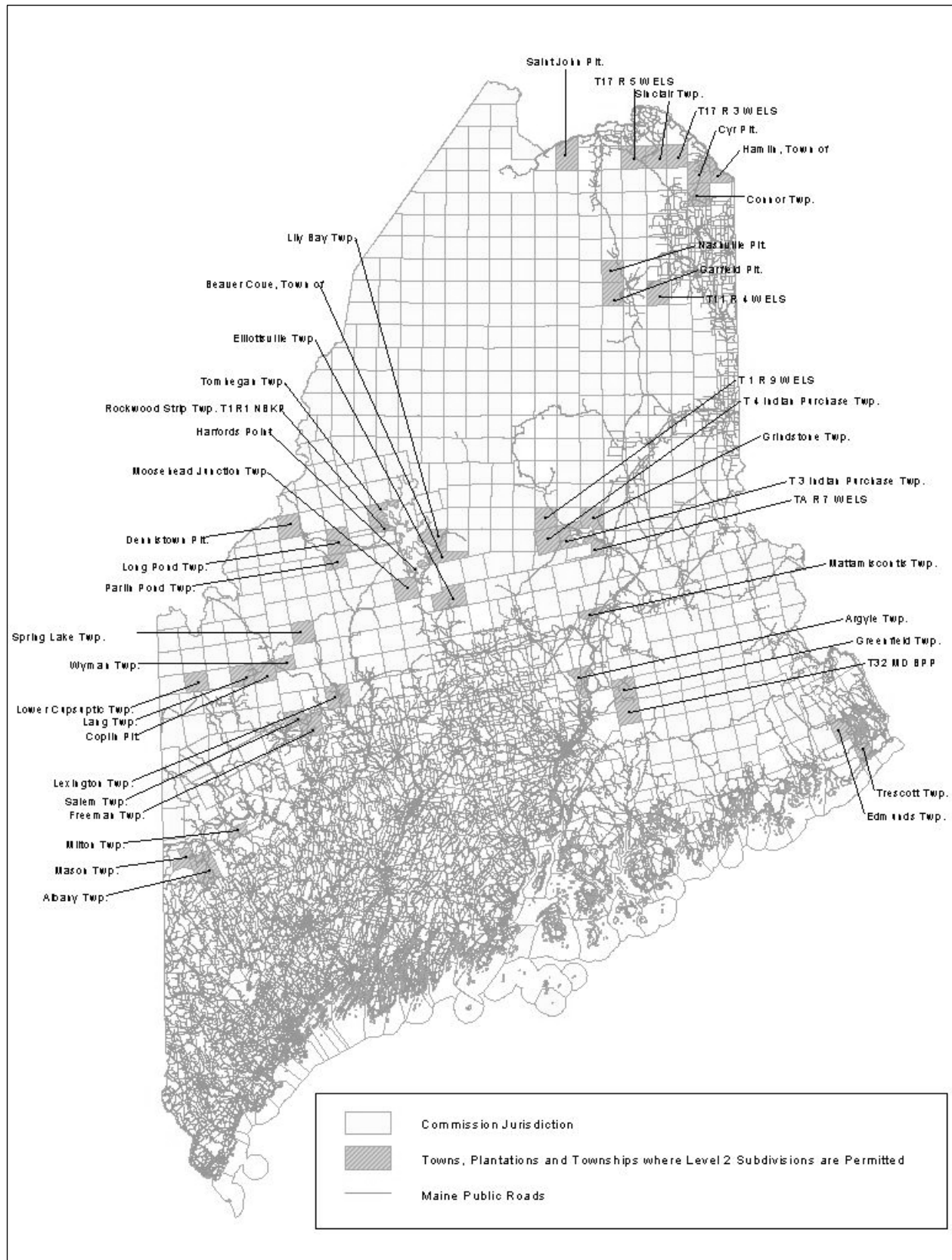


Figure 10.25,Q-2. Towns, plantations and townships where Level 2 subdivisions are permitted.

3. Layout and Design for all Subdivisions.

- a. Subdivisions shall be designed to harmoniously fit into the natural environment and shall cause no undue adverse impact on existing surrounding uses. When determining “harmonious fit”, the Commission shall consider the existing character of the surrounding area, potential for conflict with surrounding uses, proposed driveway and roadway locations, and proposed lot sizes, among other factors.
- b. Subdivisions shall be designed to avoid the linear placement of lots and driveways along roadways or shorelines.

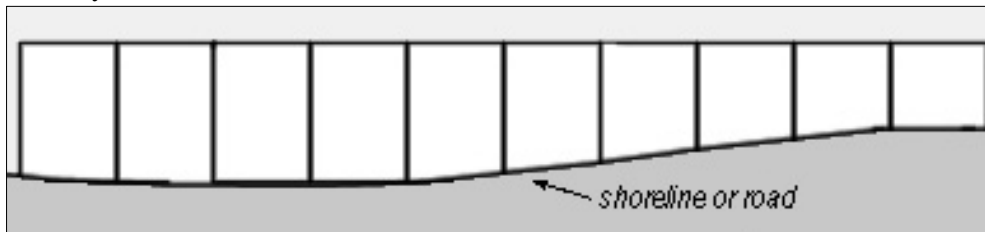


Figure 10.25,Q-3. Linear placement of lots along roadways or shorelines.

To the extent practicable, subdivision lots shall be placed so as to create a distinct community center or expand an existing neighborhood, as long as the expansion is no further than 1,320 feet from the center of the existing neighborhood.

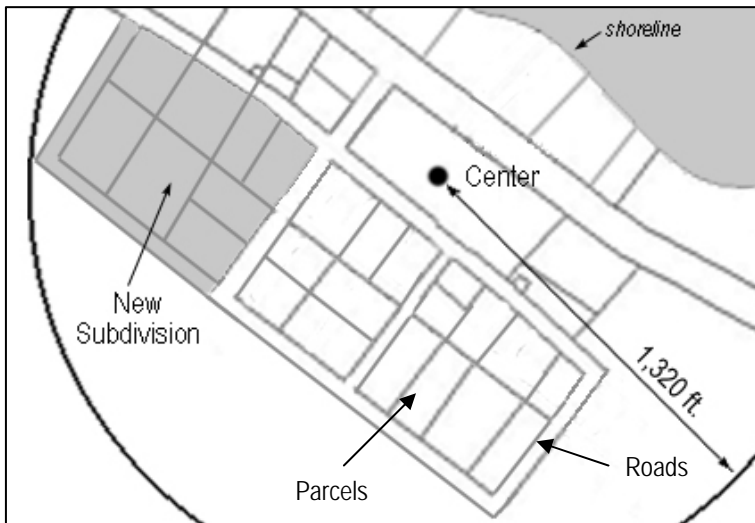


Figure 10.25,Q-4. Placement of subdivision lots within 1,320 feet of an existing neighborhood center.

Where such development is not practicable, lots shall be configured in such a manner so that groups of lots are separated by at least 500 feet of undeveloped land and the lots within a group do not extend more than 1,320 feet along any roadway or shoreline.

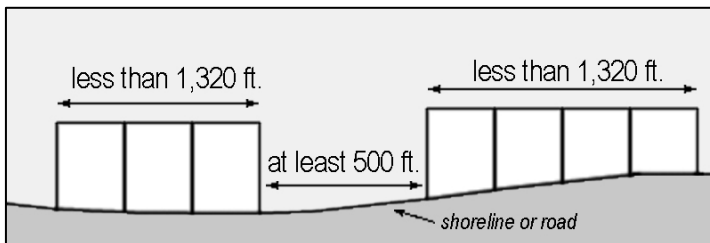


Figure 10.25,Q-5. Grouping of subdivision lots along a roadway or shoreline.

The provisions of this subsection, 10.25.Q.3.b., shall not apply to maple sugar processing subdivisions.

- c. To the extent practicable, subdivisions shall be designed to reduce the number of driveway access points onto roadways through the utilization of shared driveways and interior roads. Notwithstanding Section 10.26,C, the Commission may reduce the minimum road frontage for individual lots within subdivisions with shared driveways by up to 50 percent, as long as the Commission finds that reducing road frontage will not adversely affect resources or existing uses or that reducing road frontage will prevent the loss of important natural features.
- 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 15%, or any other important topographic and natural features.
- e. Subdivisions proposed with mixed residential, commercial, or civic uses shall also meet the following requirements:
 - (1) Commercial uses must fit the size, scale and intensity of the surrounding residential uses; and
 - (2) A combination of residential, commercial, or civic uses on a single lot is allowed only if the most restrictive dimensional requirements, as provided in Section 10.26, are met and provided that the commercial or civic uses are otherwise compatible with residential uses.
- f. All subdivision and lot boundary corners and angle points shall be marked by suitable, permanent monumentation as required by the Maine Board of Registered Land Surveyors.
- g. Shorefront subdivisions with proposed permanent docks, trailered ramps, hand-carry launches or water-access ways shall comply with the requirements of Section 10.27,L,2.

4. Spaghetti-lots.

- a. A person may not divide any parcel of land in such a way as to create a spaghetti-lot. This prohibition does not apply to utility or transportation rights-of-ways, government purchases, or a parcel of land that the Commission determines has significant public benefit and cannot be configured in any other way in order to provide that benefit. 12 M.R.S.A. §682-A

5. Subdivision Redistricting Considerations.

Subdivisions are allowed only in appropriate subdistricts, as designated in Sub-Chapter II. However, the Commission may approve subdivisions which include land area designated as open space within subdistricts where subdivision is otherwise prohibited, provided the designated land area meets the requirements of Section 10.25,S.

6. Subdivision Filing with Registry of Deeds and Sale of Lots.

- a. Filing requirements.** Following the approval of any subdivision by the Commission, the applicant must file the subdivision plat signed by the Commission's Director with the County Registry of Deeds where the real estate is located.

A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide real estate located within the unorganized and deorganized lands of the State, unless the Commission's approval is evidenced thereon. 12 M.R.S.A §685-B(6)

- b. Certificates of Compliance.** The sale of lots in any subdivision approved by the Commission may not proceed until a certificate of compliance has been issued. A certificate of compliance requires that, among other things, proposed deeds and plats be reviewed and approved by the Commission to ensure that permit conditions have been fulfilled. 12 M.R.S.A. §685-B(8)
- c.** The fee interest in lots in maple sugar processing subdivisions, shall not be offered for sale except as part of a sale of the entire parcel originally so subdivided, or with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds. The subdivision plat, and any deed for lots in subdivisions created by lease for the purpose of establishing and operating maple sugar processing operations, shall contain conditions setting out such restrictions.
- d.** For maple sugar subdivisions created after the effective date of this rule, deeds for each leased lot in maple sugar processing subdivisions must be created with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds. The deeds for each leased lot in maple sugar processing subdivisions shall be recorded with the registry of deeds at the time the subdivision is created.

7. Recording of Large Lot Land Divisions.

- a.** When 3 to 10 lots each containing at least 40 acres are created within a 5-year period and are located more than 1,320 feet from the normal high water mark of any great pond or river and more than 250 feet from the upland edge of a coastal or freshwater wetland as those terms are defined in 38 M.R.S.A. §436-A, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the Commission within 60 days of the creation of that lot. The plan must state that the lots may be used only for forest management, agricultural management or conservation of natural resources. A "Guide to Certification of Plans for Large Lot Land Divisions" is available from the Commission that details submission requirements.
- b.** The Commission shall determine whether the plan qualifies under 12 M.R.S.A §682-B, ordinarily within 15 days of receipt of plan.
- c.** A copy of the certified plan must be filed, within 30 days of certification by the Commission, with the State Tax Assessor and the appropriate registry of deeds in the county in which the land is located. A register of deeds may not record any plan depicting these lots unless the Commission's certification that the division qualifies under 12 M.R.S.A §685-B is evidenced on the plan. 12 M.R.S.A. §685-B(6-A)

Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds is considered a subdivision.
12 M.R.S.A §682-B

R. CLUSTER DEVELOPMENT

1. Applicability.

- a.** The cluster development standards set forth below must be met for all subdivisions located within 250 feet of the normal high water mark of a Management Class 4 or 5 lake and for all level 2 subdivisions comprised of more than 5 lots or more than 5 dwelling units.
- b.** Other subdivisions located on land that could be developed under normal applicable standards may also be clustered, or portions of the subdivision may be clustered, if the subdivisions provide for the efficient use of land and the protection of a significant amount of open space, in accordance with the standards of Section 10.25,R and Section 10.25,S.
- c.** The cluster development standards may be waived for subdivisions located within 250 feet of the normal high water mark of a Management Class 4 or 5 lake, where the Commission finds that cluster development is clearly inappropriate due to physical site limitations. Such site limitations may include, without limitation, the presence of soils that are unsuitable for high density development or the size and configuration of a parcel that does not lend itself to clustering.

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% of net developable land for development and, within shorefront subdivisions, shall reserve no more than 50% of net developable shore frontage 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%, 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;
 - (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%, water bodies or wetlands.

- b.** Cluster subdivisions shall be designed to protect developable land as open space through (1) clusters of dwellings on commonly-owned land; (2) creation of individual lots with reduced lot size, reduced road frontage or, within shorefront subdivisions, reduced shore frontage as permitted under these rules; or (3) a decrease in the number of individual lots that meet dimensional requirements.

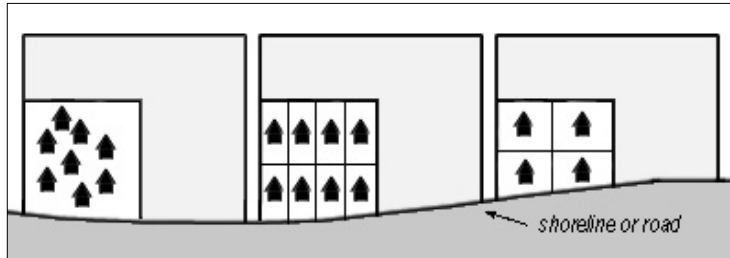


Figure 10.25,R-1. From left to right, (1) clustering on a commonly-owned parcel, (2) clustering on individual parcels with reduced lot size and frontage, and (3) clustering on individual parcels without reduced lot size or frontage.

- c.** Open space within cluster subdivisions shall be preserved and maintained in accordance with Section 10.25,S.
- d.** The Commission may reduce lot size, road frontage, or shore frontage for individual dwellings or lots in a cluster development, provided that, in the aggregate, dimensional requirements are met within the development.
- e.** Notwithstanding Section 10.25,R,2,d, the Commission may waive the provision that dimensional requirements for individual dwellings or lots in a cluster development be met, in the aggregate, where the following conditions are satisfied:
- (1) Dimensional requirements, in the aggregate, are not waived by more than 50%;
 - (2) Site conditions are suitable for more concentrated development on some portions of a site and such concentrated development will not adversely affect resources; and
 - (3) The specific benefits afforded by the cluster approach will prevent the loss of or enhance the conservation of important natural features.
- f.** No individual lot or dwelling unit for which road frontage has been reduced shall have direct vehicular access onto an existing roadway, unless the individual lot or dwelling unit uses a shared driveway.

S. OPEN SPACE

The standards set forth below must be met for all cluster subdivisions and other land area designated as open space.

1. **Preservation and Maintenance of Open Space.** Open space may be owned, preserved and maintained as required by this section, by any of the following mechanisms or combinations thereof, listed in order of preference, upon approval by the Commission:
 - a. Conveyance of open space to a qualified holder, as defined under Section 10.25,S,2.
 - b. Dedication of development rights of open space to a qualified holder, as defined under Section 10.25,S,2 with ownership and maintenance remaining with the property owner or a lot owners association.
 - c. Common ownership of open space by a lot owners association which prevents future structural development and subsequent subdivision of open space and assumes full responsibility for its maintenance.
 - d. Any other mechanism that fully provides for the permanent protection or conservation of open space and that is acceptable to the Commission.
2. **Qualified Holders.** The following entities are qualified to own, preserve and maintain open space:
 - a. “A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
 - b. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.” 33 M.R.S.A. §476, sub-§2
3. Open space may be usable for low-intensity non-commercial recreation or for purposes intended to conserve land and preserve important natural features of the site. Uses within the open space may be limited or controlled by the Commission at the time of approval, as necessary, to protect natural resources and adjacent land uses. Specifically, open space lots are subject to subdivision and other permit conditions prohibiting residential, commercial, industrial or other structures and uses.
4. If any or all of the open space is to be reserved for common ownership by the residents of the subdivision, the bylaws of the proposed lot owners association shall specify responsibilities and methods for maintaining the open space and shall prohibit all residential, commercial, industrial or other structures and uses.
5. Open space shall be dedicated as a separate lot of record with no further subdivision or conversion of use of that lot allowed. Such lot shall be shown on the subdivision plat with a notation thereof to indicate that no further subdivision or conversion of use is allowed.

D. ROADS AND WATER CROSSINGS

Roads and water crossings not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following road and water crossing requirements shall apply in P-WL1, P-WL2, P-SL, P-FP, P-GP subdistricts and all development subdistricts:

1. The following requirements shall apply to construction and maintenance of roads:
 - a. All cut or fill banks and areas of exposed mineral soil outside the roadbed within 75 feet of a flowing water, body of standing water, tidal water, or a wetland shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies or wetlands;
 - b. Road banks shall have a slope no steeper than 2 horizontal to 1 vertical;
 - c. Drainage ditches shall be provided so as to effectively control water entering and leaving the road area. Such drainage ditches will be properly stabilized so that the potential for unreasonable erosion does not exist;
 - d. In order to prevent road surface drainage from directly entering water bodies or wetlands, roads and their associated drainage ditches shall be located, constructed, and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the road and the normal high water mark of a surface water body or upland edge of a wetland:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

Table 10.27,D-1. Unscarified filter strip width requirements for exposed mineral soil created by roads and their associated drainage ditches.

This requirement shall not apply to road approaches to water crossings or wetlands.

- e. Drainage ditches for roads approaching a water crossing or wetland shall be designed, constructed, and maintained to empty into an unscarified filter strip, of at least the width indicated in the table set forth in Section 10.27,D,1,d above, between the outflow point of the ditch and the normal high water mark of the water or the upland edge of a wetland. Where such filter strip is impracticable, appropriate techniques shall be used to reasonably avoid sedimentation of the water body or wetland. Such techniques may include the

installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed so as to reasonably avoid sedimentation of the water body or wetland;

- f.** Ditch relief (cross drainage) culverts, drainage dips and water turnouts will be installed in a manner effective in getting drainage onto unscarified filter strips before the flow in the road or its drainage ditches gains sufficient volume or head to erode the road or ditch.
- (1) Drainage dips may be used in place of ditch relief culverts only where the road grade is 10% or less;
 - (2) On roads having slopes greater than 10%, ditch relief culverts shall be placed across the road at approximately a 30 degree angle downslope from a line perpendicular to the center line of the road;
 - (3) Ditch relief culverts, drainage dips and water turnouts shall direct drainage onto unscarified filter strips as required in Section 10.27,D,1,d and e above;
 - (4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials; and
 - (5) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0-2	500-300
3-5	250-180
6-10	167-140
11-15	136-127
16-20	125-120
21+	100

Table 10.27,D-2. Spacing requirements for drainage dips and associated water turnouts.

- 2.** The following requirements shall apply to water crossings when surface waters are unfrozen:
 - a.** Bridges and culverts shall be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 ½ times the cross-sectional area of the stream channel.
 - b.** Culvert and bridge sizes may be smaller than provided in Section 10.27,D,2,a if techniques are employed such that in the event of culvert or bridge failure, the natural course of water flow is reasonably maintained and sedimentation of the water body is reasonably avoided; such techniques may include, but are not limited to, the effective use of any or all of the following:
 - (1) Removing culverts prior to the onset of frozen ground conditions;
 - (2) Using water bars in conjunction with culverts; or
 - (3) Using road dips in conjunction with culverts.

- c. Culverts utilized in water crossings shall:
 - (1) Be installed at or below stream bed elevation;
 - (2) Be seated on firm ground;
 - (3) Have soil compacted at least halfway up the side of the culvert;
 - (4) Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 - (5) Have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.
- 3. The design and construction of land management road systems through wetlands, other than those areas below the normal high water mark of standing or flowing waters, must avoid wetlands unless there are no reasonable alternatives, and must maintain the existing hydrology of wetlands.

To maintain the existing hydrology of wetlands, road drainage designs shall provide cross drainage of the water on the surface and in the top 12 inches of soil in wetlands during both flooded and low water conditions so as to neither create permanent changes in wetland water levels nor alter wetland drainage patterns. This shall be accomplished through the incorporation of culverts or porous layers at appropriate levels in the road fill to pass water at its normal level through the road corridor. Where culverts or other cross-drainage structures are not used, all fills shall consist of free draining granular material.

To accomplish the above, the following requirements apply:

- a. **Road construction on mineral soils or those with surface organic layers up to 4 feet in thickness.**
 - (1) Fill may be placed directly on the organic surface compressing or displacing the organic material until equilibrium is reached. With this method, culverts or other cross-drainage structures are used instead of porous layers to move surface and subsurface flows through the road fill material.
 - (a) For road construction on mineral soils or those with surface organic layers less than 16 inches in thickness, culverts or other cross-drainage structures shall be appropriately sized and placed at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum intervals of 300 feet.
 - (b) For road construction on surface organic layers in excess of 16 inches but less than 4 feet in thickness, cross drainage must be provided by placing culverts at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum 300-foot intervals. Culverts shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface.

- (c) Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the road centerline shall be constructed along the toe of the fill to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Unditched breaks shall be left midway between culverts to prevent channelization.
 - (2) Alternatively, a porous layer may be created to move surface and subsurface flows through the road fill materials. If a porous layer is used, geotextile fabric must be placed above and below fill material to increase the bearing strength of the road and to preserve the bearing strength of fill material by preventing contamination with fine soil particles.
- b. Road construction on soils with organic layers in excess of 4 feet in thickness.**
- (1) Such construction shall only take place under frozen ground conditions.
 - (2) Geotextile fabric shall be placed directly on the soil surface. Road fill or log corduroy shall then be placed on the geotextile fabric.
 - (3) Cross drainage shall be provided by either a continuous porous layer or appropriate placement of culverts or other cross-drainage structures and ditching as specified below:
 - (a) A continuous porous layer or layers shall be constructed by placement of one or more layers of wood corduroy and/or large stone or chunkwood separated from adjacent fill layers by geotextile fabric placed above and below the porous layer(s) such that continuous cross drainage is provided in the top 12 inches of the organic layer; or
 - (b) Cross drainage culverts or other cross-drainage structures shall be placed at points where they will receive the greatest support. Culverts or other cross-drainage structures shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface. Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the roadbed on both sides shall be used to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Such ditches shall be located three times the depth of the organic layer from the edge of the road fill. Unditched breaks shall be left midway between culverts to prevent channelization.
- 4. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.**

5. Maintenance of the above required water control installations shall continue until the road is discontinued and put to bed by taking the following actions:

a. Water bars shall:

(1) Be constructed and maintained across the road at intervals established below:

Road Grade (Percent)	Distance Between Water Bars (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

Table 10.27,D-3. Spacing requirements for water bars.

- (2) Be constructed at approximately 30 degrees downslope from the line perpendicular to the center line of the road;
- (3) Be constructed so as to reasonably avoid surface water flowing over or under the water bar; and
- (4) Extend sufficient distance beyond the traveled way so that water does not reenter the road surface.

b. Any bridge or water crossing culvert in such road shall satisfy one of the following requirements:

- (1) It shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
- (2) It shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the stream channel; or
- (3) It shall be dismantled and removed in a fashion so as to reasonably avoid sedimentation of the water body.

6. Provided they are properly applied and used for circumstances for which they are designed, methods including but not limited to the following are acceptable to the Commission as means of calculating the 10 and 25 year frequency water flows and thereby determining crossing sizes as required in Section 10.27,D,2 and 5:

- a. The USDA Soil Conservation Service (SCS) Methods; specifically: "Urban Hydrology for Small Watersheds," June 1986 Soil Conservation Service Technical Release #55.
- b. The United States Geological Survey Series; specifically: U.S.G.S. Maine Water Science Office. 1999. "Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals." WRI 99-4008.

7. Extension, enlargement or resumption of use of presently existing roads, which are not in conformity with the provisions of Section 10.27,D, are subject to the provisions of Section 10.11.

8. Publicly owned roads may be constructed in a fashion that is not in strict conformity with the provisions of this section, provided that other measures are applied that are effective in reasonably avoiding sedimentation of surface waters.
9. Except that Section 10.27,D,10 below always applies, trail crossings of minor flowing waters shall be exempt from the standards of Section 10.27,D, provided such crossings are constructed in a manner that causes no disturbance to the stream bed, and no substantial disturbance to the banks or shoreland areas in the vicinity of the crossing, and provided such crossings do not impede the flow of water or the passage of fish. If properly undertaken, acceptable methods may include but not be limited to the laying of logs from bank to bank, or placement of bed logs and stringers with decking. This exemption shall not extend to the construction of abutments or piers.

Trail crossings not so exempted shall be subject to the water crossing standards of Section 10.27,D, including specifically Sections 10.27,D,2, 4, 5, 6, 10 and 11.

10. In addition to the foregoing minimum requirements, provision shall otherwise be made in the construction and maintenance of roads and water crossings in order to reasonably avoid sedimentation of surface waters.
11. Written notice of all road and water crossing construction activities, except level A road projects and exempt trail crossings as provided in Section 10.27,D,9 above, shall be given to the Commission prior to the commencement of such activities. Such notice shall conform to the requirements of Section 10.16 and shall state the manner in which the water crossing size requirements of this section will be satisfied.

Attachment C: Subdivision Data

Part 1 – Subdivision Actions, 1971 through 2013

Within the Areas Served by the Maine Land Use Planning Commission

“Subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period; or the division, placement or construction of a structure or structures on a parcel of land resulting in 3 or more dwelling units within a 5-year period. 12 M.R.S.A. § 682(2-A); Ch. 10.02(197). The following data summarize the Commission’s subdivision permit activity from several different perspectives.

Statistics of note include:

- Figures C-1 and C-2. 600 subdivision applications were received by the Commission between 1971 and 2013. This total includes all subdivision applications and amendments. Only two applications have been denied since 1996.
- Figure C-3. 505 of the 600 applications received were either approved (503) or approved in-part (2). A more detailed summary of these 505 applications is provided in Figure C-3.
- Figure C-4. Nearly 3,000 lots have been created through approved subdivisions. The placement of multiple dwelling units on a single parcel also may create a subdivision, even if new lots are not created. In addition to the new lots, approximately 550 new dwelling units were authorized through subdivision approvals.
- Figure C-5. Many new dwellings are developed outside of subdivision lots. Figure C-5 compares the number of new lots created through subdivision with the number of new dwellings permitted during the same period.
- Figure C-6. Since 2004, the Commission has approved five level 2 subdivisions that collectively created 33 lots.

Figure C-1. Subdivision Permits, by County and Outcome (1971 – 2013)

County	Approved	Approved in-part \ Disapproved in-part	Disapproved	Application Returned	Application Withdrawn	Total
Aroostook	25		3		8	36
Franklin	185		10	2	13	210
Hancock	16			1	6	23
Kennebec						0
Knox	3					3
Lincoln	1				2	3
Oxford	41		2	1		44
Penobscot	40		3		3	46
Piscataquis	73		9		7	89
Sagadahoc						0
Somerset	96	2	4	2	11	115
Waldo						0
Washington	23		2		6	31
Total	503	2	33	6	56	600
<i>Percentage</i>	83.8%	0.3%	5.5%	1.0%	9.3%	100.0%

Figure C-2. Subdivision Permits, by Period and Outcome (1971 – 2013)

Period	Approved	Approved in-part \ Disapproved in-part	Disapproved	Application Returned	Application Withdrawn	Total
1971-1975	54	0	14	0	33	101
1976-1980	44	0	1	0	2	47
1981-1985	32	1	2	0	4	39
1986-1990	119	1	8	1	0	129
1991-1995	85	0	6	0	6	97
1996-2000	36	0	1	0	3	40
2001-2005	66	0	1	2	5	74
2006-2010	52	0	0	3	3	58
2011-2013	15	0	0	0	0	15
Total	503	2	33	6	56	600
<i>Percentage</i>	<i>83.8%</i>	<i>0.3%</i>	<i>5.5%</i>	<i>1.0%</i>	<i>9.3%</i>	<i>100.0%</i>

Figure C-3. Approved Subdivision Data, by Minor Civil Division (1973 – 2013)

County	Town Name	Total Subdivision Actions	Actions Creating Lots ¹	Lots Created	Actions Creating Units	Total Units Created	Other Amendments ²
Aroostook	Benedicta Twp.	2	2	16			
	Cary Plt.	1	1	5			
	Connor Twp.	1	1	3			
	Glenwood Plt.	2	2	13			
	Macwahoc Plt.	3	3	33			
	Molunkus Twp.	2	1	4			1
	Saint John Plt.	1			1	12	
	Sinclair Twp.	1	1	3			
	T16 R 5 WELS	2	1	6			1
	Winterville Plt.	10	8	23			2
Franklin	Chain of Ponds Twp.	1	1	25			
	Coplin Plt.	14	8	90			6
	Dallas Plt.	65	46	359	4	114	16
	Freeman Twp.	4	2	8			2
	Jim Pond Twp.	1	1	2			
	Rangeley Plt.	46	25	183	3	34	20
	Salem Twp.	10	5	41			5
	Sandy River Plt.	30	15	175	6	191	12
	Wyman Twp.	14	5	26			9
Hancock	Osborn	2	1	4			1
	T 3 ND BPP	3	2	29			1
	T10 SD BPP	1	1	3			
	T22 MD BPP	2	2	11			
	T28 MD BPP	3	1	61			2
	T41 MD BPP	5	1	51			4
Knox	Matinicus Isle Plt.	3	1	1	1	3	1
Lincoln	Monhegan Island Plt.	1	1	9			

¹ Some actions created both lots and units; in this table, "Total Subdivision Actions" may not match the sum of "actions creating lots," "actions creating units," and "other amendments."

² Some permit actions included multiple townships, plantations, or towns. In these cases, a permit amendment may only implicate one of these MCDs – some MCDs may have "subdivision permits" without creating lots or units.

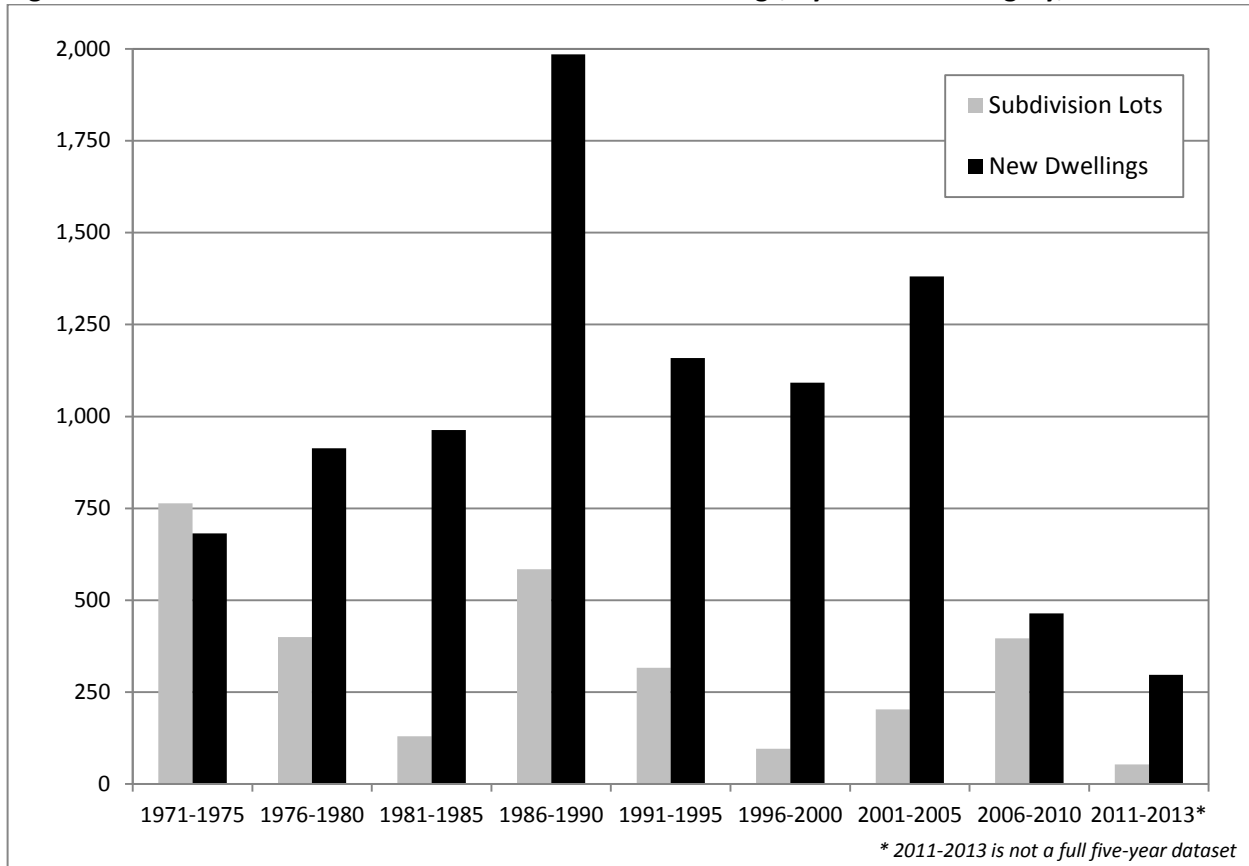
County	Town Name	Total Subdivision Actions	Actions Creating Lots ¹	Lots Created	Actions Creating Units	Total Units Created	Other Amendments ²
Oxford	Adamstown Twp.	16	9	37	1	1	7
	Albany Twp.	10	9	34			1
	Andover North Surplus Twp.	2	2	30			
	Lincoln Plt.	2	2	11			
	Lynchtown Twp.	1					1
	Magalloway Plt.	5	3	20			2
	Mason Twp.	2	2	5			
	Milton Twp.	2	2	8			
	Township C	1	1	3			
Penobscot	Argyle Twp.	2	2	5			
	Grand Falls Twp.	4	2	15			2
	Indian Purchase #3 Twp.	2	1	8			1
	Lakeville	5	4	30			1
	Mattamiscotis Twp.	7	5	26			2
	Mount Chase	6	4	62	1	4	1
	Summit Twp.	1			1	4	
	T 1 R 8 WELS	2	2	4			
	T 3 R 1 NBPP	3	2	26			1
	T 5 R 7 WELS	4	1	12			3
	TA R 7 WELS	4	1	30			3
Piscataquis	Barnard Twp.	1	1	3			
	Beaver Cove	7	5	53	1	41	1
	Big Moose Twp.	3	2	30	1	25	
	Blanchard Twp.	5	3	8			2
	Days Academy Grant Twp.	1	1	9			
	Elliottsville Twp.	4	4	21			
	Frenchtown Twp.	11	9	100			2
	Harfords Point	4	3	14			1
	Kineo Twp.	10	6	72			4
	Kingsbury Plt.	6	5	45			1
	Lake View Plt.	5	2	47			3
	Lily Bay Twp.	5	1	25			4
	Moosehead Junction Twp.	6	4	22	1	15	1
	Nesourdnhunk Twp., portion of	1			1	22	
	Orneville Twp.	3	2	24			1
T 7 R15 WELS	1	1	8				
Somerset	Attean Twp.	7	5	60	2	16	2
	Bald Mountain Twp.	1	1	1			
	Big W Twp.	2	2	10			
	Carrying Place Town Twp.	1	1	10			
	Dennistown Plt.	1			1	2	
	Holeb Twp.	3	1	1	2	21	1
	Lexington Twp.	3	1	4			2
	Long Pond Twp.	2	2	11	1	5	
	Parlin Pond Twp.	2	1	1	2	15	
	Rockwood Strip Twp. T1R1 NBKP	26	20	127	1	4	5
	Rockwood Strip Twp. T2R1 NBKP	4					4
	Sandbar Tract Twp.	2					2
	T 3 R 4 BKP WKR	7	5	120			2
Taunton and Raynham Academy	3	3	23	1	2		

County	Town Name	Total Subdivision Actions	Actions Creating Lots ¹	Lots Created	Actions Creating Units	Total Units Created	Other Amendments ²
	Grant						
	The Forks Plt.	5	4	112			1
	Tomhegan Twp.	16	8	130	2	17	7
	Upper Enchanted Twp.	3	1	20	1	7	1
	West Forks Plt.	10	5	50	1	3	4
Washington	Baring Plt.	2	1	3	1	6	
	Big Lake Twp.	2	2	101			
	Brookton Twp.	1	1	12			
	Cathance Twp.	1	1	44			
	Forest Twp.	2	2	7			
	Grand Lake Stream Plt.	2	2	7			
	Greenlaw Chopping Twp.	1	1	6			
	Marion Twp.	6	2	37			4
	T 6 ND BPP	3	1	3			2
	T26 ED BPP	2	1	11			1
	Trescott Twp.	1					1
Total		505	315	2,942	37	564	167

Figure C-4. Approved Subdivision Lots and Units, by Period (1971 – 2013)

Period	Actions Creating Lots	Net Lots Created	Average Lots Created	Actions Creating Units	Net Units Created	Average Units Created
1971-1975	38	764	19	5	90	18
1976-1980	39	400	10	2	9	5
1981-1985	26	130	5	5	70	18
1986-1990	77	584	7	12	165	15
1991-1995	40	316	7	3	12	1
1996-2000	21	96	5	3	9	4
2001-2005	30	203	7	4	67	34
2006-2010	35	396	11	2	136	33
2011-2013	9	53	6	1	6	0
Total	315	2,942	9	37	564	16

Figure C-5. Number of New Subdivision Lots and New Dwellings, by Five Year Category, 1971 – 2013



Period	Subdivision Lots	New Dwellings
1971-1975	764	682
1976-1980	400	913
1981-1985	130	963
1986-1990	584	1,985
1991-1995	316	1,159
1996-2000	96	1,092
2001-2005	203	1,381
2006-2010	396	464
2011-2013*	53	297
Total	2,942	8,936

Figure C-6. Approved Level II Subdivisions (2004 – 2013)

Date	County	Township Name	Net Lots Created
2004	Somerset	Rockwood Strip Twp.	15 ³
2006	Oxford	Mason Twp.	3
2009	Franklin	Salem Twp.	5
2010	Oxford	Milton Twp.	5
2011	Oxford	Albany Twp.	5

³ This subdivision was clustered in accordance with Section 10.25,R of the Commission's Land Use Districts and Standards.

Part 2 – Large Lot Subdivisions

Within the Areas Served by the Maine Land Use Planning Commission

Beginning in 1990 certain 40 acre or larger divisions were required to be reviewed by the Commission. These were authorized as Large Lot Division Plans (LDP) or Chapter 16 subdivisions, as noted below.

- a. In accordance with P.L. 1991, Chapter 306 (effective October 9, 1991), Large Lot Division Plans (LDPs) were certified by the Commission as qualifying, or not qualifying, as an exception to the definition of subdivision. Some of these plats involved the same areas, thereby superseding earlier plats.
- b. On September 22, 1990, the Commission adopted Chapter 16, Rules Relating to Large Lot Land Divisions, in response to Public Law 1989, Chapter 584 dealing with certain lot divisions. Those rules provided specific transitional standards for a limited number of subdivisions that were affected by the elimination of exemptions from the Commission's regulatory standards and procedures for certain large lot divisions.

While these exemptions were achieved through a permit issued by the Commission, review was limited to certifying qualification as an exemption and other limited criteria; these actions were not reviewed to the same extent as other subdivision permits issued by the Commission (most particularly in regards to adjacency and subdivision design).

The following data summarize the Commission's review of these actions from several different perspectives; however, these data cannot summarize other large lot divisions that preceded 1990 through previous laws and were not subsequently reviewed under Chapter 16.

The 40 acre lot exemption effectively was eliminated in 2001. See P.L. 2001, ch. 431. The data below include 2002. A single Chapter 16 subdivision was amended in 2002 and this amendment is reflected in the data.

Figure C-7. Large Lot Subdivisions, by County and Outcome (1990 – 2002)

County	Approved	Approved in-part \ Disapproved in-part	Disapproved	Application Returned	Application Withdrawn	Total
Aroostook	5					5
Franklin	2					2
Hancock						0
Kennebec						0
Knox						0
Lincoln						0
Oxford	1					1
Penobscot	21		1			22
Piscataquis						0
Sagadahoc						0
Somerset	21		2		2	25
Waldo						0
Washington	2					2
Total	52	0	3	0	2	57
<i>Percentage</i>	<i>91.2%</i>	<i>0.0%</i>	<i>5.3%</i>	<i>0.0%</i>	<i>3.5%</i>	<i>100.0%</i>

Figure C-8. Large Lot Subdivisions, by Period and Outcome (1990 – 2002)

Period	Approved	Approved in-part \ Disapproved in-part	Disapproved	Application Returned	Application Withdrawn	Total
1986-1990	1					1
1991-1995	26		2			28
1996-2000	13		1		2	16
2001-2002	12					12
Total	52	0	3	0	2	57
<i>Percentage</i>	<i>91.2%</i>	<i>0.0%</i>	<i>5.3%</i>	<i>0.0%</i>	<i>3.5%</i>	<i>100.0%</i>

Figure C-9. Approved Large Lot Subdivision Lots, by Period (1990 – 2002)

Period	Actions Creating Lots	Net Lots Created	Average Lots Created	Other Amendments
1986-1990	1	47	47	0
1991-1995	24	507	21	3
1996-2000	11	128	12	1
2001-2002	9	71	7	2
Total	45	753	17	6

Important Information About the Data in this Attachment:

1. These data include permitting actions within the towns, plantations, and townships currently served by the Maine Land Use Planning Commission.
2. The LUPC's permitting data represent activities that required permit approval from the LUPC when applicants sought permit approval. Generally, approval is sought prior to commencement of the activity requiring a permit. In some instances, individuals apply for after-the-fact permits for activity previously undertaken without the required permit. These data include after-the-fact permits in the totals. Permitting trends only loosely reflect development trends, in that an unknown number of activities permitted by the LUPC may not have been started or may not have been completed. Additionally, some activities may have been completed without a permit where a permit was required. In some cases activities may have been permitted through several amendments before being completed years later.
3. Actions that were withdrawn, returned, or disapproved may have been approved through a later amendment or separate proposal.
4. New dwellings:
 - a. "New dwellings" only include permitted activities that result in a net gain of the number of dwellings on the property. The reconstruction, relocation, or replacement of a dwelling is not counted as a new dwelling; the conversion of a non-residential structure to a dwelling or the change of a single family dwelling into a multi-family dwelling counts as a new dwelling. The term new dwelling may include any type of residential dwelling, including a home, camp, cabin, mobile home, duplex, apartment, condominium, or townhouse.
 - b. A new dwelling is indicated with the first permit action that authorizes the dwelling. In some cases the dwelling may not be constructed for years, if at all.

Subdivision Rule Revision Memo - Attachment D

Summary of Issues Likely to be Raised in the Facilitated Process

The following is a summary of subdivision issues likely to be discussed and considered for changes during the Commission's upcoming facilitated process. Stakeholder comments, staff's observations about potential improvements, and the survey responses were all considered in generating this list.

1. **Motor vehicle circulation, access management, and parking area layout.** Sections 10.25,D,1-3 contain provisions that are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering. Are changes necessary to adapt the Commission's standards to rural areas with very low population and traffic demands or areas where commercial development is more of a presence?
2. **Road design and construction.** Section 10.25,D,4 addresses size, design, and construction standards for roadways associated with a subdivision. The Commission's intent is to ensure that approved subdivision roads are durable, suited for the anticipated traffic, and minimize visual and other impacts to the area. Are changes necessary to adapt the Commission's standards to rural areas with very low population and traffic demands? Is there enough flexibility in construction specifications for access roads to smaller subdivisions?
3. **Level 2 subdivisions.** Section 10.25,Q,2 provides a relaxed, alternative adjacency test for smaller subdivisions in select towns, townships and plantations. The Commission's intent is to streamline the application process for these smaller subdivisions, even though they are proposed to be located on land that is not already designated as a development zone. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to seek approval of a separate petition to change the zoning before proceeding with an application for a subdivision permit. However, the current standards for this alternative adjacency test and the streamlined process to skip rezoning have not attracted many applications for level 2 subdivision permits. Would revised standards create more beneficial development without causing additional, undesired adverse impacts?
4. **Layout and design of all subdivisions.** Section 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. Current subdivision design standards reflect the Commission's preference for a community center concept in which house lots are arranged around a central feature in the plan. Where a linear plan is the only practical option, in particular along shorelines or roadways, the Commission requires "grouping" of lots, with a maximum of 1,320 feet of combined frontage of contiguous lots per group and a minimum of 500 feet of undeveloped frontage between such groups. Are these standards appropriate for the areas the Commission serves? Should there be more than one option for layout and design

standards, geared toward different types of areas? Are there ways to make the standard clearer while incorporating flexibility?

5. **Cluster development standards.** Section 10.25,R, subsection 1 of the Commission’s rules specifies that in certain locations, subdivision plans must include a clustered lot configuration and a significant amount of open space. Level 2 subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the cluster development standards, although the Commission may waive these standards in some cases. For class 4 and 5 lakes, the clustering requirement is intended to maintain natural qualities associated with the lakes, enhance scenic values and retain some undeveloped shoreline. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

The Commission has been informed by stakeholders that market demand, in general, appears to favor linear development along shorelines and yet the existing rules also reflect concern for the presumed cumulative negative impact on economic development if a linear pattern of residential subdivision were allowed to fill all available waterfront property without at least some “clustering” or “grouping.”

To what extent must the Commission control subdivision design to promote the economic and community values associated with scenic character? Where should “clustering” or “grouping” be mandatory? Where should they be merely incentivized? In the alternative, is there anywhere where these design standards should be actively discouraged?

6. **Design for Cluster Subdivisions.** Section 10.25,R, subsection 2, also contains provisions governing the design of cluster subdivisions and identifying the steps necessary to calculate the amount of “net developable land” and “net developable shorefront” of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shoreline can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development. Should these provisions be different – either the proportion of land that can be consumed, or the method for calculating that proportion? Should the provisions for waiving dimensional requirements for each dwelling unit be expressed or calculated in a different way?
7. **Open space provisions.** The Commission’s rules set forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a cluster subdivision plan. The intention behind these standards is to ensure the availability of these lands to the subdivision’s residents in the future, for agriculture, recreation or conservation purposes or as specified by the holder.

In ongoing discussion of this issue, some consideration has been given to scenarios where a Homeowners’ Association or other holder of any common lands set aside within a

subdivision can no longer fulfill its obligations to the owners and residents. Revisions may be necessary to the mechanism by which potential substitute holders, including government agencies, may assume control or assist in management of such lands.

In the alternative, would it be appropriate in some cases to offer the option for off-site or “in-lieu” types of conservation if it more effectively achieves the goals? Would this type of “banking” of open space be an appropriate substitute for on-site open space? How far away would make sense for such a transfer? Would the LUPC keep a roster of qualifying offsite conservation projects?

8. **Incentive-based standards to promote BMP’s.** In addition to (or in the place of) level 2 subdivisions and cluster subdivisions mentioned above, other possible incentive-based standards for residential subdivisions could be proposed for all or part of the LUPC jurisdiction. Incentive-based or “bonus” provisions could include reduced minimum setbacks and lot size for proposals in which multiple small projects share the cost of common infrastructure like roadways, septic systems and storm water management. It would be beneficial to achieve some consensus on how such “bonus” provisions could be tied to natural resource conservation goals.
9. **Performance guarantees. Typically the only form of performance guarantee in use in rural and low traffic settings is a basic or implied condition of approval that the Certificate Of Compliance will not be issued until and unless infrastructure passes inspection.** Larger projects and smaller projects with common infrastructure require extensive financial and technical capacity. We have learned of residential subdivisions where road improvements have not been completed to appropriate specifications and/or home owners associations have not taken on as much responsibility for maintenance as anticipated. This may result in environmental degradation and additional costs borne by owners and developers. In some regions of the LUPC jurisdiction it has been suggested that these conditions have created an oversupply of substandard lots for sale in previously approved residential subdivisions.

Should certain types of project characteristics, such as number of lots or length of roadways, be considered as triggers for bonding or other form of performance guarantees? What other steps could be taken to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?

10. **Revisions to the subdivision rules could be based on diverse types of terrain found in the Commission’s service area. For example, development patterns around small islands and remote lakes have some important similarities, but also obvious differences. The same could be said of the “fringe” of the jurisdiction and the “Deep Woods”.** Would it be helpful to see these differences reflected in the rules and standards? What about greater emphasis on lakes classifications as the starting point in review standards for proposed subdivisions?

11. **Soil surveys.** Intensity of survey analysis is a threshold issue for potential subdivision applicants. What level of analysis should be required and at what stages in the permitting and development process?
12. **Access roads v. driveways.** Significant staff and applicant discussions have gone into interpretations of the right of access requirements. In some cases, a highly inefficient use of land from multiple driveways is the result, but some developers report that shared driveways are not attractive to buyers. To what extent should the subdivision applicant be required to construct shared access, up to and beyond a fork in the driveways? Can the standards be clarified as to how to determine what qualifies as a road vs. a driveway?
13. **Subdivisions proposed to be accessed by water only.** What provision for water access structures may/must an owner make if the lot has no road access? Is it necessary to address appropriate means of vehicular storage? (e.g., overnight/long-term parking at or near a boat launch) [note most public boat launches do not allow overnight or long-term parking]
14. **Condominiums, sporting camps and other preexisting developments proposed for “conversion” into subdivisions.** The strategy of placing multiple dwelling units on one parcel is arguably as important a factor as the “clustering” and “grouping” functions that are regulated in greater detail by the Commission’s rules and standards. Are special considerations necessary to ensure compliance with the Commission’s goals for development patterns over the long term in the context of condominium development?
15. **Cost and timeliness:** Are there ways to reduce costs to applicants and/or shorten the processing time?

Subdivision Rule Revision Memo July 3, 2014

Attachment E



Appalachian Mountain Club

Jamie Francomano
Land Use Planning Commission
22 State House Station
Augusta, ME 03444-0022
May 9, 2014

Dear Mr. Francomano:

As a landowner and conservation organization in Maine, the Appalachian Mountain Club (AMC) has an interest in land use decision-making in the Unorganized Territories of the state. We appreciate the opportunity you have provided for organizations to participate in the process of reviewing the residential subdivision development rules.

AMC is the nation's oldest outdoor recreation and conservation organization, and we are dedicated to promoting the protection, enjoyment, and understanding of the mountains, forests, waters, and trails. We represent 5,200 members in Maine, and manage 67,000 acres of land in Piscataquis County. Our land management efforts in the Moosehead Lake region include a focus on access to outdoor recreation, resource protection, sustainable forestry, and community partnerships. We work closely with the LUPC in our region and across the state, and appreciate your efforts to balance appropriate land use with supporting Maine's nature-based economy.

After carefully reviewing the sections of LUPC's Chapter 10 referenced in the survey, we were unable to find significant concerns or issues with the current Subdivision rules. We do think that rules regarding stream crossings should be updated to reflect current science and new common practices that account for increased flood events and aquatic connectivity. We would be interested in seeing how this survey uncovers clear examples of where the current rules have proven to be out of date or out of step with current practices or uses. For example, before re-writing the rules around sporting camps, LUPC clearly identified inconsistencies and problems given new uses with the agency's rules for sporting camps and recreational facilities. AMC recommends that the Commission avoid taking on a comprehensive rule revision process unless clear, jurisdiction-wide issues with the current rules are identified or witnessed by

staff in the field, as was the case with recreational facilities LUPC has many items on its plate in the next 6-12 months and with limited staffing should be sure carefully prioritize staff time.

Thank you for considering our comments,

A handwritten signature in cursive script that reads "J. Bryan Wentzell". The signature is written in dark ink and is positioned centrally on the page.

Bryan Wentzell

AMC Maine Policy & Program Director

Answers to LUPC Review of Subdivision Rules Survey Questions

Appalachian Mountain Club

1.) Bryan Wentzell, Maine Policy & Program Director, Appalachian Mountain Club

bwentzell@outdoors.org

15 Moosehead Lake Road

Greenville, ME 04441

(207) 899-0150

2.) Yes. AMC has applied to LUPC for multiple development permits for sporting camp redevelopment projects and a dam reconstruction project, and anticipate submitting a zoning petition in the near future. We worked closely with LUPC staff on the Recreational Facility rulemaking process. We were an independent intervening party in the Plum Creek Concept Plan, as well as with past commercial wind power development projects.

3.) The current standards are effective in meeting the outlined goals. We do not recommend any changes.

4.) If the road design and construction rules are updated, we believe they should match the “Stream Smart” principles currently being developed by Maine Audubon, the Army Corps of Engineers, and the ARMS Committee.

5.) The current rules for Level 2 Subdivisions allow for appropriate development in specific places. We think the criteria and streamlined process are fine and do not recommend any changes. If overall changes to subdivision rules are made, they should encourage development in places that are already specified as appropriate by the current rules rather than opening up more areas for subdivision development.

6.) The current layout and design standards for subdivisions are effective in promoting the Commission’s stated goals. We do not recommend any changes.

7.), 8.), 9.) We do not recommend any changes to the cluster development or design standards for subdivisions.

10.) If this process moves forward, our only recommendation would be to incentivize those areas which are already specified as appropriate by the current rules, as mentioned above in response to question 5. Rather than adding new areas to the list of those approved for subdivision development, the Commission should focus on those areas that are already approved and under-utilized.

11.) AMC supports efforts to minimize lapses in maintenance and non-compliance with LUPC standards and specifications. We think these upfront agreements are especially appropriate in cases where the property in question is in close proximity to high value natural resources.

SURVEY QUESTIONS

The Maine Land Use Planning Commission (the LUPC or the Commission) is preparing to review and likely to revise parts of its rules governing residential subdivision development. The Commission would like to gather advice and suggestions from individual stakeholders, businesses and other organizations familiar with the development process in the LUPC jurisdiction. Once initial comments are gathered, the Commission will convene meetings to have a stakeholder-driven discussion of its subdivision rules and related issues and ideas.

Each of the questions below includes some background discussion that is specific to the relevant rules and standards. This information is intended to be useful to you in preparing your responses. Please send your responses to Jamie Francomano at james.francomano@maine.gov or 22 State House Station, Augusta, ME 04333-0022 ideally by May 16, 2014. Also, please let us know of others familiar with development in the LUPC jurisdiction who might be interested in participating. These Survey Questions and related materials will also be posted here:

http://www.maine.gov/dacf/lupc/projects/subdivision_review/subdivision_review.shtml

INTRODUCTION

1. Please provide name and contact information, including e-mail address.

Dean A. Beaupain, Esq.
PO Box 1404
Bangor, Maine 04402-1404
dbeaupain@gwi.net

2. Stakeholders participating in this process.

Have you applied for or considered applying for permit(s) from the Commission in the past? If yes, please describe the type of project(s) or proposal(s). If no, please describe your involvement or interest in land use decision-making in the unorganized and deorganized areas of Maine. We appreciate learning from multiple points of view as the Commission considers making changes to its subdivision rules.

I currently own property in LUPC's jurisdiction. I have owned a number of properties in the jurisdiction since 1977. Numerous family members own property in the jurisdiction and have since 1958. I have obtained permits for myself and family members concerning property in the jurisdiction. I spend substantial time in the jurisdiction hunting, fishing, ice fishing, snowmobiling, riding an ATV, white water rafting, hiking and similar pursuits.

On a professional level, I represent landowners who own several hundred thousand acres in and adjacent to the jurisdiction and advise those landowners on a regular basis concerning the application of your statutes, rules and regulations as they apply to the client's property in the jurisdiction.

I have participated in permitting, rezoning, subdivisions, hydro permitting, wind power permitting, rule making, Commission hearings, judicial review of LURC decisions and related matters since 1977.

ROAD CONSTRUCTION STANDARDS

3. Circulation, access management, and parking for residential subdivisions

Section 10.25,D, subsections 1, 2 and 3 of the Commission's rules contain provisions for vehicular circulation, access management and parking area layout and design. Goals in regulating these issues are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering.

In your opinion, are the current access management standards effective in promoting the Commission's stated goals? How might these standards be improved?

No comment

4. Road design and construction

Section 10.25,D, subsection 4, contains roadway design specifications that address design and construction standards for roadways associated with a subdivision. These provisions are intended to ensure that roads are durable and suited for the anticipated traffic, including provision of services and future development potential.

In your opinion are the current road construction standards effective in promoting the Commission's stated goals? Do the three classes of roadways provide enough flexibility? How might these standards be improved? Additional standards dealing with roads, ditches and water crossings are found in Section 10.27,D.

No comment

SUBDIVISION DESIGN STANDARDS

5. Level 2 Subdivisions

Section 10.25, Q, subsection 2 provides that some smaller subdivisions in certain townships, towns, or plantations are allowed on land that is not already designated as a development subdistrict. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to obtain a rezoning before applying for the subdivision permit. Allowing applicants to proceed without rezoning is intended to streamline the subdivision application process in locations that are clearly suitable for residential subdivision.

In your opinion are the criteria in 10.25,Q,2 appropriate for Level 2 Subdivisions? Would different criteria be more effective in promoting a streamlined application process for some subdivisions in these areas? If yes, what criteria should the Commission apply?

This question needs to be considered in the context of the Commission's failure, during its entire existence since 1971, to zone a reasonable amount of land in the jurisdiction for development. Less than 1% of the jurisdiction is zoned for development which means virtually every development proposal is dependent on a zone change with its difficult standard, expense of the zone change process (including the requirement to submit a complete development application with the zone change) and uncertainty as to result. This failure to zone a reasonable amount of property for development is one of the primary reasons land owners file so few development proposals.

The Level 2 process is flawed because:

1-It is limited to 20 to 30 acres of land for the development in areas in which the demand for land is for 20+ acre lots;

2-It is limited to property located within 1,000 feet of a public road way which eliminates most of the jurisdiction;

3-It is limited to areas located no more than one mile by road from existing compatible development which further limits the area in which the rule can be used;

4-It provides no relief for landowners whose property is not near public roadways and existing development.

The level 2 process should be:

1-expanded to apply through out the jurisdiction;

2-each township in the jurisdiction should have some area zoned for development or at least a level 2 type subdivision; and

3-Some degree of residential development should be allowed in M-GN districts on large lots in each township.

6. Layout and design for all subdivisions

Section 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Do you have comments about these provisions? Would a different approach or different standards be more effective in promoting the Commission's stated goals?

The current layout and design rules are based on aesthetics rather than environmental protection. The rules for development on water are based on the premise that little or no evidence of human existence should be seen from the water. This premise is not fair to landowners and has no basis in protecting the environment.

The rules make no sense in most of the jurisdiction and simply deprive landowners of reasonable development opportunities.

Prohibiting linear placement of lots makes no sense in most of the jurisdiction and should be allowed on large lots.

7. Cluster development standards

Section 10.25,R, subsection 1 of the Commission's rules specifies locations in which a clustered lot configuration and a significant amount of open space are required to be included in any proposed subdivision plan, consistent with the Commission's goal of promoting efficient use of land for development purposes. Level 2 Subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the Cluster development standards, although the Commission may waive these standards in some cases. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

Do you have comments about whether or not it is appropriate to require cluster development in these locations or in other locations?

Cluster development is a concept the Commission has tried to force on landowners and the public and is not necessary to protect the environment. It deprives landowners of a substantial portion of a parcel without compensation and results in lots that no one wants.

The unworkability of this rule is shown by the lack of applications for it to the Commission and the poor lot sales following approval.

Cluster development is based on aesthetics and not on environmental protection.

8. Layout and design for Cluster Subdivisions

Section 10.25,R, subsection 2, also contains provisions governing the actual layout of Cluster Subdivisions and identifying the steps necessary to calculate the amount of “net developable land” and “net developable shorefront” of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shoreline can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development.

Do you have comments about the layout and design of Cluster Subdivisions? Are these standards the right ones for areas that are currently or are likely to be densely developed in the future? If not, what other approaches would be better?

Layout and design for cluster subdivisions make no economic sense from a landowner perspective and seem designed to extract the maximum land cost on landowners in return for a subdivision approval for lots that are difficult to sell.

9. Open space provisions

Section 10.25,S of the Commission’s rules sets forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a proposed Cluster Subdivision plan. The intention behind these standards is to ensure the availability of these lands to the residents of the subdivision into the future, whether for agricultural, recreation or conservation purposes as specified by the holder.

Do you have any comments on whether the current methods for the dedication of open space are effective in making the cluster provisions workable and how the standards might be improved?

Open space requirements may make some sense adjacent to heavily developed areas. Open space requirements in the vast majority of the jurisdiction is an attempt to solve a problem that does not exist. The entire jurisdiction is open space.

INCENTIVES AND PERFORMANCE GUARANTEES

The following questions relate to possible new standards that could work in tandem with any changes proposed by respondents in questions 3 through 9 above. These concepts are not currently found in the Commission’s rules.

10. Incentive-based standards to promote best practices

In addition to (or in the place of) Level 2 Subdivisions and Cluster Subdivisions mentioned above, other possible incentive-based standards for residential subdivisions could be proposed for all or part of the LUPC jurisdiction.

One example of an incentive-based or “bonus” provision could be a reduced or eliminated requirement for Certificates of Compliance if the land development work is performed by a certified contractor. Another example might be incentives for developers of single lots and other smaller projects to share the cost of high quality infrastructure improvements to reduce adverse environmental impacts. Such provisions could be designed to take into account the cumulative impact of multiple smaller projects in a manner similar to those of one large project.

What ideas do you have for incentive-based standards? If your suggested changes include “bonus” provisions, how would they be structured? How might they be tied to appropriate natural resource conservation goals?

Landowners do not need incentives. Landowners need a reasonable opportunity to seek and economic return on their land and your present rules are too complex, expensive, limited and restrictive which is why so few landowners go through the development process.

11. Performance guarantees for subdivision development

Larger projects and smaller projects with common infrastructure require extensive financial and technical capacity. In numerous cases, we have learned of residential subdivisions where road improvements have not been completed to appropriate specifications and/or home owners associations have not taken on as much responsibility for maintenance as anticipated. This may result in environmental degradation and additional costs borne by owners and developers. In some regions of the LUPC jurisdiction it has been suggested that these conditions have created an oversupply of substandard lots for sale in previously approved residential subdivisions.

Should certain types of project characteristics, such as number of lots or length of roadways, be considered as triggers for bonding or other form of performance guarantees? What other steps could be taken to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?

Landowners should not be responsible for lot owner associations failing to maintain roads. Inspection of infrastructure before lots are sold should be the preferred method to ensure that a developer has complied with permit conditions.

12. Other suggestions for improvement

What other suggestions do you have for issues or solutions that the Commission should address as this rule revision process moves forward?

The existing CLUP is a fatally flawed document that needs to be completely redone.

The document and the Commissions land use standards are based on the premise that paradise will be paved if the Commission does not save us from ourselves.

The reality is that the population of Aroostook Count was 106,000 people in 1960 and it is less than 75,000 people today. Rural Maine is being depopulated and them trend will continue for a long time. Landowners should be allowed to sell land where the public wants to be located in an environmentally sound manner

without aesthetic restrictions that deprive landowners of use of their property for no environmentally necessary reason.

Section 25.Q.1.a provides two examples of creating three lots in a five year period which is not consistent with Maine law in organized towns and will most likely be overturned in an appropriate court case since the statutory language in defining a subdivision is so similar. Example 1 should not be a subdivision unless the landowner intends to sell the two retained lots and example 2 should not create a subdivision unless the retained lot is to be sold within 5 years . See Schmidt et al v Town of Northfield, 534 A.2d 1314 (Me., 1987)

SURVEY QUESTIONS

The Maine Land Use Planning Commission (the LUPC or the Commission) is preparing to review and likely to revise parts of its rules governing residential subdivision development. The Commission would like to gather advice and suggestions from individual stakeholders, businesses and other organizations familiar with the development process in the LUPC jurisdiction. Once initial comments are gathered, the Commission will convene meetings to have a stakeholder-driven discussion of its subdivision rules and related issues and ideas.

Each of the questions below includes some background discussion that is specific to the relevant rules and standards. This information is intended to be useful to you in preparing your responses. Please send your responses to Jamie Francomano at james.francomano@maine.gov or 22 State House Station, Augusta, ME 04333-0022 ideally by May 16, 2014. Also, please let us know of others familiar with development in the LUPC jurisdiction who might be interested in participating. These Survey Questions and related materials will also be posted here:

http://www.maine.gov/dacf/lupc/projects/subdivision_review/subdivision_review.shtml

INTRODUCTION

1. **Please provide name and contact information, including e-mail address.**

Ken Lamond

30 Rider Rd

Brewer, Me. 04412

207-944-2807

ken.familyforestry@gmail.com

Thank you for the opportunity to participate.

Please see the attached letter from the Introduction Section of the CLUP. This letter, especially the second paragraph, was in response to concerns that the landowner community delivered to Governor Baldacci during the final days prior to his approval of the revised CLUP. Landowners expressed concern that the revised CLUP did not adequately address the issue of economic development and the input that landowners and residents should have in the process of creating opportunity in the jurisdiction.

Governor LePage's administration has recognized that concern in the effort to move from LURC to the new LUPC. The composition of the Commission has changed to allow landowners and residents to play a greater role in shaping planning and zoning policy in the LUPC jurisdiction. The current system does not work for landowners. That is evident by how few landowners are participating in the rezoning and subdivision process. Most proposals are stopped before they start. I am hopeful that we can find solutions that result in a balance of economic opportunity and conservation.



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

March 16, 2010

Land Use Regulation Commission Members
Department of Conservation
22 State House Station
Augusta, Maine 04333-0022

Dear Commission Members:

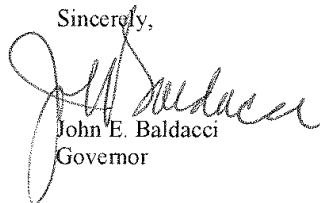
By this letter, I approve the Land Use Regulation Commission's revised Comprehensive Land Use Plan that you adopted unanimously on March 3, 2010. The revised Plan provides a balanced, fair and flexible approach for promoting orderly growth and development in the 10.4 million acres of the jurisdiction for the next decade. I recognize that it is the result of 5 years of extensive public and stakeholder involvement and that it reflects the input from landowners, residents, various recreation and conservation organizations and the general public.

In approving this Plan, I take special notice that one of the most important and overarching goals of the revised Plan is to update LURC's role regarding economic activity in the jurisdiction and to support economic development in appropriate locations. I also recognize your commitment to inclusive, collaborative stakeholder processes to find solutions that work for landowners and residents of the jurisdiction while protecting the public interests in this extraordinary area. It is important to continue to provide every opportunity for residents and landowners within the LURC jurisdiction to meaningfully shape new policies as they are developed and implemented.

In the revised Plan, you mention that considerable opportunities may exist for non-regulatory, voluntary approaches that provide landowners with flexibility and incentives to protect the principal values of the jurisdiction while achieving reasonable economic returns. You have assured me that you will actively explore collaborative processes as they may offer a path forward which not only maintains but improves landowners' value while enhancing the protection of public interests. These assurances are integral to my approval of this revised Plan.

LURC's important role in the planning and zoning of this unique and vital part of our state is critical to Maine's future. Working forests, healthy and vibrant communities, and abundant recreational and natural resources are part of our heritage and must be safeguarded and enhanced for our generation as well as our children and grandchildren. I urge you to continue your hard work on behalf of the great state of Maine.

Sincerely,


John E. Baldacci
Governor



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in the past? If yes, please describe the type of project(s) or proposal(s). If no, please describe your involvement or interest in land use decision-making in the unorganized and deorganized areas of Maine. We appreciate learning from multiple points of view as the Commission considers making changes to its subdivision rules.

I own property in Argyle, Me. I have never applied for a building permit or subdivision permit from the Commission. I have worked on projects for other landowners that required permits for forestry operations in P-FW and P-MA protection zones, road building in protection zones, building permits, rezoning and subdivision permits. Most of the forest operations, road building and building permit processes have been fairly straight forward. The exception to that was a forest operations permit in a P-MA zone that took months longer than it should have. This took place in 1989 during a period where the relationship between the LURC staff at the time and landowners began to move to a more adversarial nature. Beginning with the departure of Glen Angel as the Director of LURC, from a landowners perspective, this relationship changed and has never been the same. I am hopeful that this can be repaired.

In my opinion, rezoning and subdivision review requirements are the principal issue that need to be addressed in the LUPC Jurisdiction. As it stands there are very few landowners that can endure the cost, time, uncertainty, risk, and frustration that is involved in the current process. In my view there have to be areas in the jurisdiction that are identified and zoned in a way to allow development. There needs to be short term relief and a continuing effort for a more comprehensive long term solution.

My interest in this process is to try and work towards an outcome where in selected areas of the LUPC jurisdiction development projects could be proposed, reviewed, and approved in a way that is more like what I have experienced in municipalities. Twice in rural towns I have worked through a subdivision process with the selectman. Each project included a start to finish of less than 6 months, and a cost of about \$1500/lot (Athens, Me – 10 lots, Bradford, Me. 7 lots).

ROAD CONSTRUCTION STANDARDS

3. Circulation, access management, and parking for residential subdivisions

Section 10.25,D, subsections 1, 2 and 3 of the Commission's rules contain provisions for vehicular circulation, access management and parking area layout and design. Goals in regulating these issues are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering.

In your opinion, are the current access management standards effective in promoting the Commission's stated goals? How might these standards be improved?

The current standards are not an issue as long as the staff and Commission recognize that some development is more seasonal and remote where some of the standards are not applicable. Also, common sense is applied on a site by site basis. We need to limit unnecessary expense. See question 4.

4. Road design and construction

Section 10.25,D, subsection 4, contains roadway design specifications that address design and construction standards for roadways associated with a subdivision. These provisions are intended to ensure that roads are durable and suited for the anticipated traffic, including provision of services and future development potential.

In your opinion are the current road construction standards effective in promoting the Commission's stated goals? Do the three classes of roadways provide enough flexibility? How might these standards be improved?

Additional standards dealing with roads, ditches and water crossings are found in Section 10.27,D.

The road design and construction standards and three classes of roads are not an issue. I believe that the current standards are effective in promoting the Commission's stated goals and provide enough flexibility if Commission representatives apply the standards with the use of common sense.

I have been involved with projects where I was forced by a LURC staff representative to build structures such as “Stone Sandwichs” on an upland sites, and timber bridge sections that would never have anything but air flow through them. It was unnecessary, costly, time consuming, and an aggravation.

SUBDIVISION DESIGN STANDARDS

5. Level 2 Subdivisions

Section 10.25, Q, subsection 2 provides that some smaller subdivisions in certain townships, towns, or plantations are allowed on land that is not already designated as a development subdistrict. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to obtain a rezoning before applying for the subdivision permit. Allowing applicants to proceed without rezoning is intended to streamline the subdivision application process in locations that are clearly suitable for residential subdivision.

In your opinion are the criteria in 10.25,Q,2 appropriate for Level 2 Subdivisions? Would different criteria be more effective in promoting a streamlined application process for some subdivisions in these areas? If yes, what criteria should the Commission apply? 2.

NO, the criteria in 10.25,Q,2 need to be changed. The Level 2 Subdivision originated following the loss of, and modification to subdivision exemptions that severely reduced opportunity for landowners. Senator Ed Youngblood and Senator John Nutting introduced an amendment that directed LURC to review and modify the subdivision review process and to specifically address the lost opportunity for developing recreational lots on backland. It took two years to present the Level 2 Subdivision product to a new ACF Committee. Senators Youngblood and Nutting were longer on the ACF Committee. The Level 2 Subdivision, as designed, is a streamline process that applies almost nowhere, allowing for the development of lots that are not marketable.

While in my view the Level 2 Subdivision standard is not useful, the template could be very useful. Managing allowable uses is a tool that would improve economic opportunity in selected areas without a need for new zoning maps.

Rework the Level 2 Subdivision Identification Criterion to:

Eliminate subsection 2(a), (b), (c), (d), and (e). Increase the number and size of lots allowed in a Level 2 Subdivision such that Maine's Site Law review is not triggered. This is what is allowed for local review in neighboring municipalities. **Expand the allowable uses** to include residential and commercial development in the M-GN district within the listed towns shown on Table 10.25, Q-1. This would represent roughly 10% of the LUPC jurisdiction that would have residential and commercial development as an allowable use in the General Management District, M-GN. Building envelopes should be located in the M-GN or an existing Development District (Development Districts currently represent less than 1% of the jurisdiction) Each project would be reviewed through a re-worked subdivision review process at LUPC. This would offer short term relief to landowners and residents. Change the Level 2 Subdivision definition to be aligned with the language governing neighboring municipalities.

A Level 2 Subdivision is the division of a parcel of land into 5

or more lots to be offered for sale or lease to the general public during any 5-

year period, if the aggregate land area includes more that 20 acres; except

That when all lots are for single family, detached, residential housing, common areas or open space a "subdivision" is the division of a parcel of land into 15 or more lots to be offered for sale or lease to the general public within any 5-year period, if the aggregate land area includes more than 30 acres. The aggregate land area includes lots to be offered together with the roads, common areas, easement areas and all portions of the parcel of land in which rights or interests, whether express or implied, are to be offered.

Include subsection 2(f). This identifies where a Level 2 Subdivision is allowed. Additional areas should be added to this list following county and regional planning efforts.

This would allow for larger residential lots that would be more marketable in the UT. Customers in the UT do not want small lots and close neighbors when the lots are located away from waterfront areas.

This suggestion allows for development in the areas closest to public roads, service centers, and populated areas within the LUPC jurisdiction. These are areas that have been identified as where development should be directed through the Comprehensive Land Use Planning processes in the past.

Again, managing allowable uses is a tool that would improve economic opportunity in selected areas and would eliminate the need for new zoning maps.

Allow a single seasonal dwelling, "Land Management Camp", to be built on the current 40 acre exempt lots as described in 10.25 Q, g, 1 & 7. (forest management and conservation lots)

This offers opportunity in a much more limited way but over a larger area. These forest management and conservation lots are back lots located away from environmentally sensitive areas. This would give at least some opportunity to a larger number of landowners. This is far more restrictive than the 40 acre exemption of the past that allowed residential and commercial development on exempt lots. Define "seasonal dwelling" as occupied less than 6 months per year and create a footprint standard for a "Land Management Camp".

6. Layout and design for all subdivisions

Section 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be

arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Do you have comments about these provisions? Would a different approach or different standards be more effective in promoting the Commission's stated goals?

This looks and feels like "City of Boston" type standards for the unorganized areas in Maine. These standards are most appropriate in the area of environmentally sensitive resources. If this review process results in other areas away from shorelines being made available for development the standards need to be adjusted for those locations.

As an example, you could have a 50 acre backlot/woodlot with 1320 feet of road frontage that is 1650 feet deep. You do not need 500 feet of undeveloped frontage because you will only use 50 of the 1320 feet of frontage for access. This is the type of lot that is in demand. There is little if any market for small, backland lots right next to each other.

7. Cluster development standards

Section 10.25,R, subsection 1 of the Commission's rules specifies locations in which a clustered lot configuration and a significant amount of open space are required to be included in any proposed subdivision plan, consistent with the Commission's goal of promoting efficient use of land for development purposes. Level 2 Subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the Cluster development standards, although the Commission may waive these standards in some cases. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

Do you have comments about whether or not it is appropriate to require cluster development in these locations or in other locations?

Cluster development may work in a shoreline development. Even in that situation most buyers want privacy. I believe that too much emphasis is placed on limiting the intensity of development by clustering. Larger lots that are more spread out with a building envelop proportional to the size of the lot could also limit environmental impact. Cluster developments are fine in Portland and Gorham but are much less marketable in the UT. This may be part of the problem with maintaining roads in the Rangeley area. If the Commission rules dictate an oversupply of small lots that are less marketable it creates a challenge to generate the necessary funds to build and maintain infrastructure.

The requirement to cluster lots should be limited to shoreline or other high value and environmentally sensitive locations. Larger, more marketable lots are more appropriate away from these areas.

8. Layout and design for Cluster Subdivisions

Section 10.25,R, subsection 2, also contains provisions governing the actual layout of Cluster Subdivisions and identifying the steps necessary to calculate the amount of “net developable land” and “net developable shoreline” of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shoreline can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development.

Do you have comments about the layout and design of Cluster Subdivisions? Are these standards the right ones for areas that are currently or are likely to be densely developed in the future? If not, what other approaches would be better?

The requirement to cluster lots should be limited to shoreline or other high value and environmentally sensitive locations. Larger, more marketable lots are more appropriate away from these areas. If less than 50% of a shoreline property can be considered “net developable shoreline” then the 50% rule should not apply. I can't see the reasoning for limiting the use of suitable sites in such an arbitrary way.

9. Open space provisions

Section 10.25,S of the Commission’s rules sets forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a proposed Cluster Subdivision plan. The intention behind these standards is to ensure the availability of these lands to the residents of the subdivision into the future, whether for agricultural, recreation or conservation purposes as specified by the holder.

Do you have any comments on whether the current methods for the dedication of open space are effective in making the cluster provisions workable and how the standards might be improved?

Open space is another planning tool that is best reserved for Portland. In the UT there is open space available throughout the jurisdiction. Most of the 10 million acres is open space. If an applicant decides that common areas are

useful from a marketing point of view that is fine. Commission rules that dictate the reservation of land for the purpose of “open space” in an area of unprecedented access to open space has always felt like extortion. “We will deny your application if you don't do this.” Open space should be market driven not a requirement in the UT.

INCENTIVES AND PERFORMANCE GUARANTEES

The following questions relate to possible new standards that could work in tandem with any changes proposed by respondents in questions 3 through 9 above. These concepts are not currently found in the Commission’s rules.

10. Incentive-based standards to promote best practices

In addition to (or in the place of) Level 2 Subdivisions and Cluster Subdivisions mentioned above, other possible incentive-based standards for residential subdivisions could be proposed for all or part of the LUPC jurisdiction. One example of an incentive-based or “bonus” provision could be a reduced or eliminated requirement for Certificates of Compliance if the land development work is performed by a certified contractor. Another example might be incentives for developers of single lots and other smaller projects to share the cost of high quality infrastructure improvements to reduce adverse environmental impacts. Such provisions could be designed to take into account the cumulative impact of multiple smaller projects in a manner similar to those of one large project.

What ideas do you have for incentive-based standards? If your suggested changes include “bonus” provisions, how would they be structured? How might they be tied to appropriate natural resource conservation goals?

I have nothing to offer at this time on the subject of incentives. I will think more about this.

11. Performance guarantees for subdivision development

Larger projects and smaller projects with common infrastructure require extensive financial and technical capacity. In numerous cases, we have learned of residential subdivisions where road improvements have not been completed to appropriate specifications and/or home owners associations have not taken on as much responsibility for maintenance as anticipated. This may result in environmental degradation and additional costs borne by owners and developers. In some regions of the LUPC jurisdiction it has been suggested that these conditions have created an oversupply of substandard lots for sale in previously approved residential subdivisions.

Should certain types of project characteristics, such as number of lots or length of roadways, be considered as triggers for bonding or other form of performance guarantees? What other steps could be taken to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?

I don't think that bonding is necessary. The financial capacity of the applicant is considered in the current process. I believe that the Commission should encourage a more market driven approach to the type of lots that are created in the UT. The current process dictates the creation of lots that often are not marketable. Fixing that reality would go a long way towards meeting the objective: “to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?”

12. Other suggestions for improvement

What other suggestions do you have for issues or solutions that the Commission should address as this rule revision process moves forward?

I believe that Commissioners on the Land Use Planning Commission need to advocate for:

- 1. An increase in area where residential and commercial development is an allowable use under the rules. I would like to see a solution that creates opportunity that could be achieved in the short term and built on through a more extensive process involving counties and regions.**
- 2. Subdivision review reform for proposals that include environmentally sensitive sites, (lakefront, wetland areas, etc.)**
- 3. Subdivision review reform for backland. There needs to be a separate process for development review on less valuable backland where larger lots are in greater demand and are located away from environmentally sensitive sites.**
- 4. A less subjective, less time consuming, less costly, and more predictable subdivision review process.**

SURVEY QUESTIONS

The Maine Land Use Planning Commission (the LUPC or the Commission) is preparing to review and likely to revise parts of its rules governing residential subdivision development. The Commission would like to gather advice and suggestions from individual stakeholders, businesses and other organizations familiar with the development process in the LUPC jurisdiction. Once initial comments are gathered, the Commission will convene meetings to have a stakeholder-driven discussion of its subdivision rules and related issues and ideas.

Each of the questions below includes some background discussion that is specific to the relevant rules and standards. This information is intended to be useful to you in preparing your responses. Please send your responses to Jamie Francomano at james.francomano@maine.gov or 22 State House Station, Augusta, ME 04333-0022 ideally by May 16, 2014. Also, please let us know of others familiar with development in the LUPC jurisdiction who might be interested in participating. These Survey Questions and related materials will also be posted here:

<http://www.maine.gov/dacf/lupc/projects/index.html>

INTRODUCTION

1. Please provide name and contact information, including e-mail address.

Gardner Land Company, Inc.	Webber Surveying, Inc.
Attn: Tom Gardner	Attn: Kevin Webber
P. O. Box 189	220 Dover Road
Lincoln, ME 04457	Charleston, ME 04422
Email: twgardner@gardner.com	Email: kwpls@myfairpoint.net

2. Stakeholders participating in this process.

Have you applied for or considered applying for permit(s) from the Commission in the past? If yes, please describe the type of project(s) or proposal(s). If no, please describe your involvement or interest in land use decision-making in the unorganized and deorganized areas of Maine. We appreciate learning from multiple points of view as the Commission considers making changes to its subdivision rules.

Gardner: Yes, we have applied for several residential subdivision permits in the past.

Webber: We conduct survey work for many landowners located within the Commission's jurisdiction.

ROAD CONSTRUCTION STANDARDS

3. Circulation, access management, and parking for residential subdivisions

Section 10.25,D, subsections 1, 2 and 3 of the Commission's rules contain provisions for vehicular circulation,

access management and parking area layout and design. Goals in regulating these issues are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering.

In your opinion, are the current access management standards effective in promoting the Commission's stated goals? How might these standards be improved?

Access Management – The shared access driveway requirement should be eliminated. To prospective residential subdivision lot owners, privacy is paramount; in fact a primary factor in the location decision. Therefore, shared access is a non-starter. In addition, driveway maintenance ... divided responsibilities and cost allocation, is a significant issue to abutting subdivision lot owners.

We feel that larger lots are necessary for retaining the scenic character, which happens naturally when buildings and driveways can be placed reasonable distances apart. Parking areas and traffic congestion seems only to be issues with cluster developments. If cluster developments are proposed, then these issues should be considered.

4. Road design and construction

Section 10.25,D, subsection 4, contains roadway design specifications that address design and construction standards for roadways associated with a subdivision. These provisions are intended to ensure that roads are durable and suited for the anticipated traffic, including provision of services and future development potential. ***In your opinion are the current road construction standards effective in promoting the Commission's stated goals? Do the three classes of roadways provide enough flexibility? How might these standards be improved?***

Additional standards dealing with roads, ditches and water crossings are found in Section 10.27,D.

SUBDIVISION DESIGN STANDARDS

5. Level 2 Subdivisions

Section 10.25, Q, subsection 2 provides that some smaller subdivisions in certain townships, towns, or plantations are allowed on land that is not already designated as a development subdistrict. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to obtain a rezoning before applying for the subdivision permit. Allowing applicants to proceed without rezoning is intended to streamline the subdivision application process in locations that are clearly suitable for residential subdivision. ***In your opinion are the criteria in 10.25,Q,2 appropriate for Level 2 Subdivisions? Would different criteria be more effective in promoting a streamlined application process for some subdivisions in these areas? If yes, what criteria should the Commission apply?***

Level 2 subdivisions are a good idea but we would recommend allowing them in many more areas than currently allowed. Another option would be to even have a subcategory to allow rather small divisions in other areas where landowners could have the option to develop a residential subdivision, without rezoning, comprised of up to 5 lots without going through the rezoning process. This subcategory would have to be not be subject to The Identification Criteria under Level 2 of (c.) location within 1,000 feet of a public roadway, (d.) location no more than one mile by road from existing compatible development, and (f.) location restriction within a specified township, plantation or town (all jurisdictions of the Commission should be applicable).

We also feel that the one mile "rule" needs to be reconsidered and redefined. It is our understanding that it was not created for the intention of being used as a limiting distance, but rather just for a general idea. Being limited to one mile by road is subjective and not reasonable nor sensible in most areas. We would recommend a straight line distance of much more than a mile, or no limiting distance at all.

6. **Layout and design for all subdivisions**

Section 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Do you have comments about these provisions? Would a different approach or different standards be more effective in promoting the Commission's stated goals?

Layout and design standards should be kept simple. Since it is the landowner's property, one would think that the land owner would have authority to design the lots that they see fit. All areas require different layouts and privacy is typically the most desirable factor. Having to create lots around a center point and being forced to create back lots doesn't make sense to a land owner in some cases, nor does it make sense in protecting any resources. Therefore, we feel it should be the landowner's decision to decide what type of lot is marketable for the area being developed and should basically need to simply meet established lot size requirements, consider wetlands delineations, and provide satisfactory soils testing to support a septic system for each lot.

7. **Cluster development standards**

Section 10.25,R, subsection 1 of the Commission's rules specifies locations in which a clustered lot configuration and a significant amount of open space are required to be included in any proposed subdivision plan, consistent with the Commission's goal of promoting efficient use of land for development purposes. Level 2 Subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the Cluster development standards, although the Commission may waive these standards in some cases. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

Do you have comments about whether or not it is appropriate to require cluster development in these locations or in other locations?

The concepts of cluster development standards, cluster subdivisions, and open space requirements are not desirable to landowners or prospective buyers of residential subdivision lots. Generally, the market for residential subdivision lots in locations under the jurisdiction of the Commission demands traditional, and private, camp lots. Residential subdivision lots must have marketable and saleable characteristics to these prospective traditional buyers.

8. **Layout and design for Cluster Subdivisions**

Section 10.25,R, subsection 2, also contains provisions governing the actual layout of Cluster Subdivisions and identifying the steps necessary to calculate the amount of "net developable land" and "net developable shoreline" of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shoreline can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set

aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development.

Do you have comments about the layout and design of Cluster Subdivisions? Are these standards the right ones for areas that are currently or are likely to be densely developed in the future? If not, what other approaches would be better?

Only allowing 50% of developable land to be developed and requiring the other developable land to be set aside for Open Space is not a reasonable request and should be eliminated. Land owners should not be forced to create Open Space.

9. Open space provisions

Section 10.25.S of the Commission's rules sets forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a proposed Cluster Subdivision plan. The intention behind these standards is to ensure the availability of these lands to the residents of the subdivision into the future, whether for agricultural, recreation or conservation purposes as specified by the holder.

Do you have any comments on whether the current methods for the dedication of open space are effective in making the cluster provisions workable and how the standards might be improved?

Open Space areas should be voluntary for divisions where a developer decides to do a cluster design since the lots do not provide enough area for much more than a building and septic. If a developer is given the option to provide larger lots to the prospective owners then open space is not necessary and not desirable. Most people do not want to own land in common with others.

INCENTIVES AND PERFORMANCE GUARANTEES

The following questions relate to possible new standards that could work in tandem with any changes proposed by respondents in questions 3 through 9 above. These concepts are not currently found in the Commission's rules.

10. Incentive-based standards to promote best practices

In addition to (or in the place of) Level 2 Subdivisions and Cluster Subdivisions mentioned above, other possible incentive-based standards for residential subdivisions could be proposed for all or part of the LUPC jurisdiction. One example of an incentive-based or "bonus" provision could be a reduced or eliminated requirement for Certificates of Compliance if the land development work is performed by a certified contractor. Another example might be incentives for developers of single lots and other smaller projects to share the cost of high quality infrastructure improvements to reduce adverse environmental impacts. Such provisions could be designed to take into account the cumulative impact of multiple smaller projects in a manner similar to those of one large project.

What ideas do you have for incentive-based standards? If your suggested changes include "bonus" provisions, how would they be structured? How might they be tied to appropriate natural resource conservation goals?

11. Performance guarantees for subdivision development

Larger projects and smaller projects with common infrastructure require extensive financial and technical capacity. In numerous cases, we have learned of residential subdivisions where road improvements have not been completed to appropriate specifications and/or home owners associations have not taken on as much responsibility for maintenance as anticipated. This may result in environmental degradation and additional costs borne by owners and developers. In some regions of the LUPC jurisdiction it has been suggested that these conditions have created an oversupply of substandard lots for sale in previously approved residential subdivisions.

Should certain types of project characteristics, such as number of lots or length of roadways, be considered as triggers for bonding or other form of performance guarantees? What other steps could be taken to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?

12. Other suggestions for improvement

What other suggestions do you have for issues or solutions that the Commission should address as this rule revision process moves forward?

We have been required to provide High-intensity soils surveys in the past, but have yet to see the value of these for the Commission or us and we feel they are unnecessary for residential subdivision developments. We feel that it is appropriate to delineate wetlands and provide enough soils testing to prove that each lot has adequate soils to support a septic system, as required in municipal reviews.

The Subdivision rules should be more closely aligned with market demand and give due consideration to landowner rights. To the detriment of landowners, the financial burden and permitting requirements applied by present rules simply de-value lands in the Unorganized and De-organized areas of the State. Additionally, in the big picture these factors mitigate potential tax revenues to the State's treasury.



20 Gilsland Farm Road
Falmouth, Maine 04105
207-781-2330
www.maineaudubon.org

May 16, 2014

Jamie Francomano
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: Response to Subdivision Survey Questions

Dear Mr. Francomano:

I am writing in response to your subdivision survey questions posted last month. Maine Audubon appreciates the opportunity to respond.

Maine Audubon is a statewide non-profit organization that works to conserve Maine's wildlife and wildlife habitat by engaging people of all ages in education, conservation and action. We have 15,000 members and supporters who come from all over the state. We have never applied for a subdivision permit. However, we do routinely participate in policy discussions with the Legislature and the Land Use Planning Commission (and its former iteration as Land Use Regulation Commission) regarding development and location of development as it relates to wildlife and wildlife habitat.

Overall, we think that the residential subdivision rules are working well. We are not aware of significant flaws. We recommend that the Commission not open up the rules without clear, compelling, jurisdiction wide and documented examples of flaws in with the rules. In regard to the stream crossing standards, they do need to be updated and revised to reflect new thinking and changes to the Natural Resources Protection Act (NRPA). Those changes, however, are more appropriately done through the Commission's anticipated process to conduct a NRPA consistency update.

Please see our specific responses to the survey attached. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Burns Gray".

Jennifer Burns Gray
Staff Attorney and Advocate

MAINE AUDUBON
RESPONSES TO LUPC SUBDIVISION RULES SURVEY QUESTIONS
MAY 16, 2014

1.) Jennifer Burns Gray, Staff Attorney and Advocate, Maine Audubon, 20 Gilsland Farm Rd., Falmouth, ME 04105, 781-6180 ext. 224, jgray@maineaudubon.org

2.) Maine Audubon has not applied to the LUPC (or LURC) for a permit. We routinely participate in policy discussions with the Legislature and the Land Use Planning Commission (and its former iteration as Land Use Regulation Commission) regarding development and location of development as it relates to wildlife and wildlife habitat. We have also participated as an intervenor and as an interested party in various permit review and rezoning petitions.

3.) The current standards are effective in meeting the goals as described. We do not recommend any changes.

4.) If the road design and construction rules are updated, we believe they should match the “Stream Smart” principles. As currently drafted, the stream crossing standards are not update to date with current Natural Resources Protection Act (NRPA) standards. This issue could be resolved through the LUPC’s NRPA update process.

5.) The current rules for Level 2 Subdivisions allow for appropriate development in specific places. We think the criteria and streamlined process are appropriate and do not recommend any changes. If overall changes to subdivision rules are made, they should encourage development in places that are already specified as appropriate by the current rules rather than opening up more areas for subdivision development.

6.) The current layout and design standards for subdivisions are effective in promoting the Commission’s stated goals. We do not recommend any changes. Should changes be made, they should encourage growth to be directed towards expansion of existing development or modification of already approved but not developed subdivisions.

7.), 8.), 9.) We do not recommend any changes to the cluster development, design standards or open space provisions for subdivisions.

10.) If this process moves forward, LUPC should focus its efforts on providing incentives to develop those areas which are already specified as appropriate by the current rules, as aforementioned. Rather than adding new areas to the list of those approved for subdivision development, the Commission should focus on those areas that are already approved and under-utilized.

11.) We support efforts to minimize lapses in maintenance and non-compliance with LUPC standards and specifications. Upfront agreements and performance bonds or guarantees are particularly appropriate in cases where the property in question is in close proximity to high value natural resources.

12.) One of our take away points is that if developers are finding that their subdivisions are not selling, this is not a compelling reason to expand the potential locations for subdivision development. And, one significant factor that cannot be ignored for why subdivisions are not selling could be the recession. We encourage the Commission to move cautiously and think carefully before it opens up the subdivision rules.

SURVEY QUESTIONS

The Maine Land Use Planning Commission (the LUPC or the Commission) is preparing to review and likely to revise parts of its rules governing residential subdivision development. The Commission would like to gather advice and suggestions from individual stakeholders, businesses and other organizations familiar with the development process in the LUPC jurisdiction. Once initial comments are gathered, the Commission will convene meetings to have a stakeholder-driven discussion of its subdivision rules and related issues and ideas.

Each of the questions below includes some background discussion that is specific to the relevant rules and standards. This information is intended to be useful to you in preparing your responses. Please send your responses to Jamie Francomano at james.francomano@maine.gov or 22 State House Station, Augusta, ME 04333-0022 ideally by May 16, 2014. Also, please let us know of others familiar with development in the LUPC jurisdiction who might be interested in participating. These Survey Questions and related materials will also be posted here:

http://www.maine.gov/dacf/lupc/projects/subdivision_review/subdivision_review.shtml

INTRODUCTION

1. **Please provide name and contact information, including e-mail address.**

Thomas R. DuBois, PE, Main-Land Development Consultants, Inc. P. O. Box Q, Livermore Falls, ME 04254, 207-897-6752 tom@main-landdci.com

2. **Stakeholders participating in this process.**

Have you applied for or considered applying for permit(s) from the Commission in the past? If yes, please describe the type of project(s) or proposal(s). If no, please describe your involvement or interest in land use decision-making in the unorganized and deorganized areas of Maine. We appreciate learning from multiple points of view as the Commission considers making changes to its subdivision rules.

Main-Land has applied numerous times on behalf of our clients for everything from a Building Permit, to a large scale subdivision, and just about everything in between

ROAD CONSTRUCTION STANDARDS

3. **Circulation, access management, and parking for residential subdivisions**

Section 10.25,D, subsections 1, 2 and 3 of the Commission's rules contain provisions for vehicular circulation, access management and parking area layout and design. Goals in regulating these issues are related to ensuring safety, minimizing congestion, and maintaining scenic character where appropriate through visual buffering.

In your opinion, are the current access management standards effective in promoting the Commission's stated goals? How might these standards be improved?

The requirement for a vegetated buffer serves the purpose of maintaining a rural character, but for some types of businesses, visibility is an absolute "must" from a marketing standpoint. If the business is screened out, it may not be a viable business for very long. Consideration should be made for this type of facility. Also,

development in what has been traditionally on open field also should be exempt from this buffer requirement.

4. Road design and construction

Section 10.25,D, subsection 4, contains roadway design specifications that address design and construction standards for roadways associated with a subdivision. These provisions are intended to ensure that roads are durable and suited for the anticipated traffic, including provision of services and future development potential. ***In your opinion are the current road construction standards effective in promoting the Commission's stated goals? Do the three classes of roadways provide enough flexibility? How might these standards be improved? Additional standards dealing with roads, ditches and water crossings are found in Section 10.27,D.***

Generally, the road standards are appropriate, with only one exception – the maximum grade of 10% for a Class 1 Roadway. In several regions of LUPC lands, this would be a significant hardship for development, requiring significant “cuts and fills” resulting in much more earth-moving activity than would be necessary with a steeper maximum grade – such as even 12%, with a provision for steeper grades with proper engineering.

SUBDIVISION DESIGN STANDARDS

5. Level 2 Subdivisions

Section 10.25, Q, subsection 2 provides that some smaller subdivisions in certain townships, towns, or plantations are allowed on land that is not already designated as a development subdistrict. If the size and location of the proposed subdivision satisfy subsections 2(a) through 2(f) then it is not necessary to obtain a rezoning before applying for the subdivision permit. Allowing applicants to proceed without rezoning is intended to streamline the subdivision application process in locations that are clearly suitable for residential subdivision. ***In your opinion are the criteria in 10.25,Q,2 appropriate for Level 2 Subdivisions? Would different criteria be more effective in promoting a streamlined application process for some subdivisions in these areas? If yes, what criteria should the Commission apply?***

I am generally in favor of this provision, but find that the requirement of a project with 6 to 15 lots be done as a cluster development to be onerous. See my comments below on cluster developments

6. Layout and design for all subdivisions

Section 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Do you have comments about these provisions? Would a different approach or different standards be more effective in promoting the Commission's stated goals?

I think the main problem here may be the “Commission's stated goals”, for the design criteria in this section reads like a page out of an urban city's subdivision ordinance. I live in one of the State's unorganized

territories, and the people who live there with me generally are not the “type” who gather together at the “town square”.

This whole provision for a center gathering point creates many more problems than it does provide any kind of solution. For example – who owns the land of this center gathering place? Who maintains the center gathering place? Who pays taxes on the center gathering place?

Then the provision for the 500 feet between groups does just the opposite of what LUPC should be doing – for this provision almost by its very description creates sprawl, building roads simply for the sake of addressing this provision in the rules – a provision that does not really make sense in the first place. In a large scale subdivision, this provision alone could result in the construction of thousands of feet of road that serve no purpose but to connect these so-called groups. That is not land conservation, but in fact just the opposite.

7. Cluster development standards

Section 10.25,R, subsection 1 of the Commission’s rules specifies locations in which a clustered lot configuration and a significant amount of open space are required to be included in any proposed subdivision plan, consistent with the Commission’s goal of promoting efficient use of land for development purposes. Level 2 Subdivisions that are comprised of more than 5 lots and all subdivisions within 250 feet of class 4 and 5 lakes (which already have significant shoreline development) generally must follow the Cluster development standards, although the Commission may waive these standards in some cases. Landowners may also choose to obtain flexibility in dimensional requirements by using cluster development in locations where it is not required.

Do you have comments about whether or not it is appropriate to require cluster development in these locations or in other locations?

To make these standards mandatory for level 2 subdivisions, and for those near Class 4 or 5 lakes removes significant flexibility to the design of any subdivision. Also, the provision for setting aside 50% of the developable lakefront is a “taking” of significant value from the land owner; and not just the land owner, but the State of Maine in the form of taxable value. This is a fundamental mistake.

Second, if later in this questionnaire, you identify problems with homeowners associations not maintaining roads, how do you suppose they are doing with maintaining common areas. In the larger projects, this is not as significant a problem, but consider the six-lot subdivision that is required to set aside land. A whole system of collecting fees, creating some kind of governing body to deal with common land is now necessary. Often, these land owners are rarely on site, and rarely available to do this kind of governing.

There is a place for clustered developments, but the smaller projects I do not believe are that place.

8. Layout and design for Cluster Subdivisions

Section 10.25,R, subsection 2, also contains provisions governing the actual layout of Cluster Subdivisions and identifying the steps necessary to calculate the amount of “net developable land” and “net developable shorefront” of a parcel proposed for residential subdivision development. These standards are intended to ensure that no more than 50% of land and shoreline can be consumed by a proposed subdivision plan, to promote the efficient use of land, and to set aside some open space in areas that already have or are likely to receive significant development. Examples where this may be useful are heavily developed shorelines, island communities, or other areas of dense residential development.

Do you have comments about the layout and design of Cluster Subdivisions? Are these standards the right ones for areas that are currently or are likely to be densely developed in the future? If not, what other approaches would be better?

Removing the “highest best use” of a property for the setting aside of land for conservation represents a taking of that land. We are fundamentally opposed to this concept. However, if a land owner chooses to utilize this method of land development, there should be significant benefits available to them in terms of infrastructure improvements (road frontage requirements for example), and density bonuses.

9. Open space provisions

Section 10.25,S of the Commission’s rules sets forth the mechanisms for the establishment of open space areas and the dedication of associated development rights to a qualified holder, such as may be proposed by the applicant as a required part of a proposed Cluster Subdivision plan. The intention behind these standards is to ensure the availability of these lands to the residents of the subdivision into the future, whether for agricultural, recreation or conservation purposes as specified by the holder.

Do you have any comments on whether the current methods for the dedication of open space are effective in making the cluster provisions workable and how the standards might be improved?

This is where a seemingly good idea gets worked over by the details. By definition, a qualified holder is a governmental entity, or a non-profit with conservation-minded goals. It has been our experience that many of these non-profits are looking for not only the conservation easement or land gift, but also for a significant cash donation to go with it, for the management of the land.

Most governmental agencies are not in a place to accept land grants or easements. So, this leaves Homeowners Associations as the only viable alternative in many cases.

INCENTIVES AND PERFORMANCE GUARANTEES

The following questions relate to possible new standards that could work in tandem with any changes proposed by respondents in questions 3 through 9 above. These concepts are not currently found in the Commission’s rules.

10. Incentive-based standards to promote best practices

In addition to (or in the place of) Level 2 Subdivisions and Cluster Subdivisions mentioned above, other possible incentive-based standards for residential subdivisions could be proposed for all or part of the LUPC jurisdiction. One example of an incentive-based or “bonus” provision could be a reduced or eliminated requirement for Certificates of Compliance if the land development work is performed by a certified contractor. Another example might be incentives for developers of single lots and other smaller projects to share the cost of high quality infrastructure improvements to reduce adverse environmental impacts. Such provisions could be designed to take into account the cumulative impact of multiple smaller projects in a manner similar to those of one large project.

What ideas do you have for incentive-based standards? If your suggested changes include “bonus” provisions, how would they be structured? How might they be tied to appropriate natural resource conservation goals?

Your second example sounds much more like an additional “tax” versus an incentive.

11. Performance guarantees for subdivision development

Larger projects and smaller projects with common infrastructure require extensive financial and technical capacity. In numerous cases, we have learned of residential subdivisions where road improvements have not been completed to appropriate specifications and/or home owners associations have not taken on as much responsibility for maintenance as anticipated. This may result in environmental degradation and additional costs borne by owners and developers. In some regions of the LUPC jurisdiction it has been suggested that these conditions have created an oversupply of substandard lots for sale in previously approved residential subdivisions.

Should certain types of project characteristics, such as number of lots or length of roadways, be considered as triggers for bonding or other form of performance guarantees? What other steps could be taken to ensure common infrastructure is constructed and maintained to protect future owners and local natural resources?

This sounds like a lack of enforcement more than it does anything else. LUPC standards for developments are rigorous – if land owners choose to ignore what they agreed to do in their permit, then enforcement action should be (and often is) taken. Bonding simply adds another expense to the process (up to 5% of the infrastructure costs). For the folks who consistently follow the rules, it is an unjustifiable expense. For the rule breakers, it is no real dis-incentive.

12. Other suggestions for improvement

What other suggestions do you have for issues or solutions that the Commission should address as this rule revision process moves forward?



Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330

Jamie Francomano
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

May 16, 2014

Dear Jamie:

Thank you for including the Natural Resources Council of Maine in your effort to gather information prior to reviewing the residential subdivision development rules. As you well know, NRCM is very interested in land use decision-making in the unorganized and deorganized areas of Maine; our organization is committed to protecting the remote character of Maine's North Woods by advocating for responsible land development. We believe that the LUPC serves as an important guardian of the extraordinary qualities of Maine's unorganized territories.

As you will see by our answers to the survey questions, we do not have any major objections to or concerns about the current subdivision rules; we believe that the rules largely guide responsible development and have not seen on-the-ground examples of the rules "not working." When you review others' responses to the questionnaire, we encourage you to consider whether individual comments truly reflect jurisdiction-wide issues witnessed by staff in the field. We do not think that one person's bad experience should dictate changes that would affect the entire jurisdiction. We are also cognizant of the LUPC staff's busy schedule and would advise the Commission to not take on the rule revision process unless it becomes clear that there are significant, jurisdiction-wide issues that contradict the Commission's guidance documents.

Thank you for considering our answers (attached) to the survey questions. Please do not hesitate to be in touch with any questions.

Sincerely,

Eliza Donoghue, Esq.
North Woods Policy Advocate

Answers to Survey Questions

Natural Resources Council of Maine

(1), (2) See cover letter.

(3) The current access management standards are effective in promoting the Commission stated goals. We do not recommend any improvements.

(4) If changes are made to roadway design specifications, those changes should be in keeping with the “Stream Smart” principles developed by biologists at Maine Audubon in partnership with the Maine Department of Environmental Protection and the Maine Forest Service, among others. As drafted, the stream crossing standards are not in keeping with Natural Resources Protection Act (NRPA) standards, though this issue could be resolved through LUPC’s NRPA update process.

(5) The current Level 2 subdivision criteria effectively guides responsible development. We do not recommend any changes.

(6) The current layout and design standards for subdivisions are consistent with the Comprehensive Land Use Plan. If changes are made, they should incentivize the build-out of already approved subdivisions. It is our understanding that there are many subdivisions in the jurisdiction that have yet to be developed.

(7), (8) We believe that the standards for cluster subdivisions are consistent with the Comprehensive Land Use Plan and do not need improvement.

(9) The current open space provisions are effective in making the cluster subdivision provisions workable. They do not need improvement.

(10) As stated above, the only changes we recommend would be to incentivize the build-out of already approved subdivisions.

(11) NRCM supports the concept of performance guarantees that protect against substandard common infrastructure. Bonding, etc. may be appropriate for development within or adjacent to high value natural resources.

Subdivision Rule Review: Survey Questions for Stakeholder Comment

Introduction

1. Michael L. Lane, Esq.
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2. In addition to the following list of permits and approvals I have obtained for clients, I also was a participant in the 2010 CLUP Working Group, including two “firsts”: the first rezoning for development under the 2010 Comprehensive Land Use Plan (CLUP) and the first Level 2 Subdivision for 15 lot subdivision in Rockwood Strip.
 - ULP 417-B – Obtained a two mile utility line extension permit. LURC had previously denied a similar application.
 - ZP 705 – Obtained LURC permit for the rezoning of 46 acres from M-GN, P-GP, P-WL3, and P-WL1 to D-RS for a residential subdivision in T3R1 NBPP.
 - ZP 706 – Obtained LURC permit for the rezoning of 71 acres from M-GN and P-GP to D-RS for a residential subdivision in T3R1 NBPP.
 - ZP 721 – Obtained LURC permit for the rezoning within Rangeley Prospective Plan for a 13-acre border patrol station in Dallas Plantation.
 - ZP 728 – Obtained LURC permit for the rezoning of 34.08 acres from M-GN and P-GP to D-RS for two residential subdivisions on Wytopotlock Lake in Glenwood Plantation. This was the first rezoning for development under the 2010 Comprehensive Land Use Plan (CLUP).
 - SP 3090-G – Obtained LURC permit for a three lot residential subdivision in Rangeley Plantation.
 - SP 4052 – Obtained the first LURC permit for a Level 2 Subdivision for 15 lot subdivision in Rockwood Strip.
 - SP 4082 – Obtained LURC permit for a 12 lot residential subdivision in T3R1 NBPP.
 - SP 4083 – Obtained LURC permit for a 17 lot residential subdivision in T3R1 NBPP.
 - SP 4090 – Obtained LURC permit for 7 lot residential subdivision in Glenwood Plantation.

- SP 4091 – Obtained LURC permit for 6 lot residential subdivision in Glenwood Plantation.
- DP 4131-L – Obtained LURC permit for 24 condominium units, 42 timeshare units, new trails, ski lift, snow making infrastructure, water withdrawal and surface water monitoring in Sandy River Plantation and Dallas Plantation.
- DP 4131-K – Obtained LURC permit for 22 house lots, snow-making infrastructure and buildings, ski lifts and trails, roads and transient parking areas, electric utility lines, water storage building, access roads, and subsurface wastewater disposal systems in Sandy River Plantation and Dallas Plantation.
- DP 4807 – Obtained LURC development permit for temporary U.S. Border Patrol Station in Dallas Plantation.
- DP 4807-A and DP 4807-B – Obtained LURC development permit for permanent U.S. Border Patrol Station in Dallas Plantation.
- BP 14159 – Obtained LURC permit to allow tear down and reconstruction of non-conforming (Section 10.11) camp in Dallas Plantation.
- BP 14525 – Obtained LURC permit for a Yurt platform in the shoreland zone on Moosehead Lake within 1329 feet of Eagle’s Nest regulated under the Bald Eagle-Golden Eagle Protection act administered by U.S. Fish and Wildlife Service.

Road Construction Standards

3. The current access management standards are effective in prohibiting development within the jurisdiction. By making the standards so onerous, little to no development occurs, thus these standards are never implicated; i.e. allowing no development minimizes traffic congestion.

The jurisdiction is huge and distinct between one region to another. No single access management standard can fairly apply to all regions. The Commission’s attempt at regional planning is a small step toward more appropriate standards, but it moves too slowly. Chapter 10 should be reflective of the land that it regulates; i.e. private commercial timberland, the access to which is across privately maintained (or not) logging roads.¹ Whether these roads are maintained or plowed is entirely dependent upon the vagaries of logging, yet people still want to be in these areas.

4. Sec. 10.25,D.4 should be reflective of the roads at issue, not urban and suburban subdivisions.

¹ My comments here are solely limited to mainland areas of the jurisdiction. The coastal islands are an orphan in search of a home. If LUPC is to retain control over these islands – which I do not think it should – then it should adopt an entirely separate and distinct set of regulation. Some variant of Long Island or Chebeague or any of the other organized islands/towns land use ordinances would be far more appropriate.

Subdivision Design Standards

5. The thought behind Level 2 Subdivisions is a good one – encouraging small scale subdivisions in certain, relatively (compared to the jurisdiction as a whole) developed areas. In practice, however, the criteria identifying appropriate areas have been too narrowly drawn. The result being that only two or three Level 2 projects have been approved. The area where Level 2 subdivisions are allowed should be expanded. Doing so will not open the Maine Woods to unfettered development; any proposed development would still need to comply with the provisions of Chapter 10, which provide substantial protections to the environment. One alternative approach would be to allow Level 2 projects in all of the jurisdiction EXCEPT the core, being generally those areas behind North Maine Wood’s gates.
6. Sections of Chapter 10 pertaining to subdivision layout and design may be appropriate for Levittown-like areas in Falmouth or Scarborough, but have no rational relationship to development in the jurisdiction. Residents, current or prospective, seasonal or year-round, do not want “community centers” and small, closely packed lots. Buyers want a two to three acre or bigger lot, with individual driveways, where you cannot see adjacent properties. The market demand supports this. Community Centers and tiny lots waste land, limiting its potential for harvesting fiber and going unused.

If the intent of Chapter 10 is, in fact, to promote efficient use of land then residential development should be limited to riparian and littoral areas where timber harvesting is already limited thus preserving back land for timber harvesting. So-called back lots restrict the wood basket for no valid purpose. Linear placement of lots along a road or water body is what the market demands and doing so will not result in the sudden ex-urban sprawl around every shore in the jurisdiction.

7. Requiring clustered development is an inappropriate use of the police power. It is one thing to give a landowner an incentive to clustering – by allowing more units. It is quite another to demand that all development be clustered. The cluster standards should be retained but should be voluntary, not obligatory.
8. Clustering should be voluntary.
9. Clustering should be voluntary.

Incentives and Performance Guarantees

10. I do not understand the idea behind using incentives to promote Best Practices. Best Practices are required in order to obtain Certificates of Compliance. Why should this change? The jurisdiction is not competing with adjacent municipal areas for development. Investing LUPC staff time – already at a premium – in schemes that might encourage development to comply with Best Practices, which are already required, seems a terrible waste of resources.

11. Performance guaranties are not necessary. Instead, prohibiting the sale of lots in an approved subdivision until LUPC has issued the Certificate of Compliance is the appropriate control mechanism.

12. ***Not Answered***