



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

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August 3, 2015

Ron & Carla Festa  
33 Gover Road  
Millbury, MA 01527

Subject: ADVISORY RULING AR 15-02; Lot #3 on Dallas Plantation Tax Map 02, Franklin County

Dear Mr. and Mrs. Festa:

Thank you for the information provided in your request for an Advisory Ruling. It is our understanding that you are contemplating acquiring an undeveloped lot along the Nichols Road and Dallas Hill Road that is across Nichols Road from your own lot on that road. The subject lot is currently owned by Michael and Deborah McManus. You have asked our opinion as to whether the McManus' lot is a developable lot, and if so, what type of development could be placed upon the lot. The subject lot is currently designated as Lot #3 on Dallas Plantation Tax Map 02. This lot is Lot #25 as shown on a subdivision plat titled "Plan of Land Owned by Mr. and Mrs. Robert Nichols in the Town of Dallas, Maine," dated and recorded in the Franklin County Registry of Deeds in Plan Book #140 ½, Page 63, hereinafter referred to as the "Nichols Plan." Based upon information provided in the deed descriptions of the subject lot, it appears to be approximately 26,000 square feet in size, with approximately 185 feet of frontage along Nichols Road and 110 feet along Dallas Hill Road. Also, based upon deed descriptions, it appears that the lot is approximately 110 - 150 feet deep from Nichols Road and 185 -190 feet deep from Dallas Hill Road. The lot is zoned (D-RS2) Community Residential Development Subdistrict.

You currently own lot #18 on Dallas Plantation Tax Map 02, which is located across from the subject lot. Your lot is designated as lot #1 on the Nichols Plan. Mr. and Mrs. McManus also own lot #17 on Dallas Plantation Tax Map 02, which abuts your lot, and is also located across Nichols Road from the subject lot. This McManus lot is designated as lot #2 on the Nichols Plan. I have enclosed an excerpt from Dallas Plantation Tax Map 02 showing the relevant lots and the LUPC zoning, and a reduced copy of the Nichols Plan for your reference.

We will attempt to provide our view on these matters as we understand them, pursuant to 5 M.R.S.A. 9001. I want to caution however, this is an informal response and not a legal determination. You may want to consult your attorney on these matters. In providing our views on your inquiry, we have relied upon the facts as you have presented them to us, supplemented by our research of our permit files and records available through the Franklin County Registry of Deeds. Lot numbers hereinafter refer to the lot number as shown on the Nichols Plan unless otherwise noted.

**History of Lot #25 (Nichols Plan), and abutting Lot #23/#24 (Nichols Plan) and Lot #2 on Tax Map 02.**

Based upon our review of records at the Registry Deeds and historical tax listings, it appears that the lots on the Nichols Plan all originated from a 25 acre parcel of land formerly owned by J. Robert and Evelyn G. Nichols. The Nichols acquired the 25-acre parcel by a deed dated June 14, 1963 and recorded in the Franklin County Registry of Deeds in Book 381, Page 112. It appears that this deed includes all of the lots and what is now the Nichols Road as shown on the Nichols Plan. Subdivision Permit SP 207-A, issued to Mr. Nichols in October of 1977, authorized the creation of five lots out of his original parcel, being lots #10, #12, #13/#14, #15/#16 and #17 on the Nichols Plan. According to Finding of Fact #4 of Subdivision Permit SP 207-A, the Nichols parcel had been previously platted prior to the inception of the Commission in 1971, and that all of the other lots as shown on the approved Nichols Plan had been transferred prior to the inception of the Commission. The assumed pre-Commission lots are lots #1 - #9, #11 and #18 - #25 on the Nichols Plan and the plan shows property owners' names for each of these individual lots, except Lots #22 and #25.

Sole ownership of the remainder of Mr. and Mrs. Nichols' parcel, excluding lots previously sold, passed on to Mr. Nichols upon Mrs. Nichols' death on October 25, 1985.

The following are the histories of subject lot #25 and abutting lot #23/#24 on the Nichols Plan, and abutting Lot #2 on Dallas Plantation Tax Map 02, based upon our deed research:

**Subject Lot #25, Nichols Plan (Lot 3 on Tax Map 02):**

*February 2, 1987; Book 951, Page 53:* Mr. Nichols transferred his remaining ownership of the original 25 acre parcel to Telesis North, Inc. This include Lots #10, #12- #17 as permitted under Subdivision Permit SP 207-A, Lot #25, and Nichols Road. This deed appears to contradict Finding of Fact #4 of the subdivision permit that stated that Lot #25 was a pre-Commission lot.

*October 23, 1987; Book 999, Page 99:* Telesis North, Inc. transferred Lot #25 to Paul and Maureen Lennon, apparently retaining ownership of Nichols Road.

*October 9, 2001; Book 2063, Page 17:* Paul and Maureen Lennon, transferred Lot #25 to Michael and Deborah McManus.

*August 8, 2003; Book 2327, Page 82:* This is a corrective deed by inserting Exhibit A, describing the premises conveyed, that had been inadvertently omitted from the original deed from the Lennons to McManus.

**Lot #23/24, Nichols Plan (Lot #4 on Tax Map 02):** This is the lot on the south side of Nichols Road that abuts subject Lot #25.

*September 17, 1963; Book 381, Page 112:* The Nichols conveyed lot #24/#25 to George Faulkner, Jr. and Elizabeth Faulkner.

*December 24, 1992; Book 1338, Page 49:* George Faulkner, Jr. and Elizabeth Faulkner conveyed lot #24/#25 to the Faulkner Family Trust.

**Lot #2 on Dallas Plantation Tax Map 02:** This property is not part of the original Nichols' 25-acre parcel. It appears to be part of the "land formerly owned by Harry Hinkley" shown on the Nichols Plan, abutting the

original Nichols parcel to the south. It is currently owned by Linda Van Mater and Ann Marie Van Mater. We traced this lot back to September 1, 1971, when Lot #2 was transferred from John Egan to Vincent and Dorothy Drosdick, up until the present. It appears from that research that this lot was never under common ownership with Lot #25 on the Nichols Plan.

### Relevant Standards

- Section 10.21,K of the Commission's standards describes the (D-RS2) Community Residential Subdistrict and lists the allowed uses within the (D-RS2) Community Residential Subdistrict. I have enclosed a copy of this section for your reference. This section lists uses that are allowed without a permit, allowed without a permit subject to standards, allowed with a permit, and allowed with a permit by special exception. Uses that are not specifically listed under Section 10.21,K,3 are prohibited within the (D-RS2) Community Residential Subdistrict under Section 10.21,K,3,e. Under the provisions of Section 10.21,K,3,c(3) and 10.21,K,3,c(16), campsites and residential dwellings are allowed uses, respectively, within the (D-RS2) Community Residential Subdistrict upon issuance of a permit from the Commission.
- Under the provisions of Section 10.02(21) of the Commission's Land Use Districts and Standards, a campsite is defined as: "A camping location containing tents, registered tent trailers, registered pickup campers, registered recreational vehicles, registered trailers or similar devices used for camping. 'Campsite' does not include a camping location that has access to a pressurized water system or permanent structures other than outhouses, fireplaces, picnic tables, picnic tables with shelters or lean-tos. A campsite may be designed to contain a maximum of 4 camping sites for transient occupancy by 12 or fewer people per site, or numbers of sites and occupancy rates consistent with a landowner's recreational policy filed with the commission. The commission may require a campsite permit if it determines that the recreational policy is inconsistent with the commission's comprehensive land use plan." 12 M.R.S.A §682(15). The term 'tents' includes but is not limited to tents with ground level platforms not to exceed 150 square feet in area. The shelters for picnic tables shall not exceed 120 square feet in area. Lean-tos shall not exceed 150 square feet, and outhouses shall not exceed 36 square feet. For the purpose of the application of the Commission's rules, the statutory provision that a 'campsite may be designed to contain a maximum of 4 camping sites for transient occupancy by 12 or fewer people per site' means there may be not more than 4 camping parties occupying a campsite, that an individual party may not exceed a total of 12 people, and that each camping site shall be designed for a single party of not more than 12 people. A group of people sharing an association or relationship, apart from staying in the same camping site, traveling together, or sharing meals and camping equipment shall be considered a camping party unless the assemblage of the group is intended to avoid regulation of the camping facilities as a campground."
- Section 10.02(197) of the Commission's Land Use Districts and Standards states that "except as provided in 12 M.R.S.A § 682-B, "subdivision" means a division of an existing parcel 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."
- Under provisions of Section 10.25,Q,1(f) of the Commission's Standards, 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.

- Under provisions of Section 10.25,Q,1,g(8) of the Commission's Standards, 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)
  
- Under provisions of Section 10.25,Q,1,g(3) of the Commission's Standards, where 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.
  
- Under provisions of Section 10.26,A of the Commission's Standards, the minimum required lot size for residential uses is 40,000 square feet per dwelling unit or residential campsite except where each dwelling unit is to use a common or community sewer and not on-site subsurface waste water disposal, the minimum lot size shall be 20,000 square feet per dwelling unit. The minimum required lot size for commercial, industrial, and other non-residential uses involving one or more buildings is 40,000 square feet, except as provided in Section 10.26,A,3. Under Section 10.26,A,3, there is no minimum lot size requirement for lots developed only with a campsite.
  
- Under provisions of Section 10.26,C of the Commission's Standards, the minimum required road frontage is 100 feet per dwelling unit for residential uses; 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings; and 100 feet for a lot that only contains a residential campsite. Under Section 10.26,C,7, there is no minimum road frontage requirement for lots developed only with a campsite.
  
- Under provisions of Section 10.26,D of the Commission's Standards, the applicable minimum required setbacks for residential structures are 50 feet from Dallas Hill Road and Nichols Road, and 15 feet from other property boundary lines. The applicable minimum required setbacks for multi-family dwellings and commercial, industrial, and other non-residential structures are 75 feet from Dallas Hill Road and Nichols Road, and 25 feet from other property boundary lines. Under the provisions of this section, campsites shall be set back such that the area designed for camping, including cleared or graded areas, fire rings, tables, and related construction, is at least 50 feet from roads, and 25 feet from property lines.

- Under the provisions of Section 10.11,E,3 of the Commission's Standards, an unimproved, nonconforming lot, legally existing as of September 23, 1971, may not be developed unless the Commission grants a variance to those standards that make the lot nonconforming. However, if a lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage, and is not a contiguous lot as described in Section 10.11,E,5 below, the Commission may allow for development by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. In this case a variance is not required. This waiver may only be granted if the proposed development would meet the shoreline setback requirements in Section 10.26,D.
- Under the provisions of Section 10.11,E,4 of the Commission's Standards, when a lot was lawfully created after September 23, 1971, in conformity with LURC dimensional requirements applicable at the time, the Commission may waive, to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.
- Under the provisions of Section 10.11,E,5 of the Commission's Standards, two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where:
  - a. Such lots are part of a subdivision approved by the Commission, or
  - b. Each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed.

Under these two circumstances the lots may be conveyed separately or together.

### **Interpretation**

Notwithstanding Finding of Fact #4 of Subdivision Permit SP 207-A, it appears that Lot #25 was not created prior to the inception of the Commission in 1971. However, it appears that it was still lawfully created in accordance with the Commission's rules regarding the division of land under provisions of Section 10.25,Q,1,g(8). Specifically, it appears that lot #25 has existed in its current configuration more than 20 years, since October 23, 1987 when Telesis North, Inc. transferred it to Paul and Maureen Lennon.

Lot #25 appears to meet the Commission's minimum required road frontage for residential uses or a residential campsite, but not for commercial or other non-residential uses. Furthermore, Lot #25 does not meet the minimum required lot size of 40,000 square feet for either residential or commercial or other non-residential uses. However, the Commission may waive the minimum lot size down to no less than the minimum lot size requirement in effect at the time of Lot #25's creation in October 23, 1987. At that time the minimum required lot size was established under Section 10.17,B,1 of the April 16, 1986 version of Chapter 10 of the Commission's rules, a copy of which is attached for your reference.

Under the provisions of under Section 10.17,B,1,a(1) the minimum lot size for residential uses without a pressurized water supply was 20,000 square feet; and for residential uses with a pressurized water supply minimum lot size was based upon the soil type pursuant to the Maine State Plumbing Code, as shown in the table under this section. Under the provisions of Section 10.17,B,1,a(2) the minimum lot size for commercial uses was variable but in no case less than 40,000 square feet. Under the provisions of Section 10.17,B,1,g(4) the minimum lot size for residential uses with a pressurized water supply could be waived to no less than 20,000 square feet if there was a sufficient area of suitable soils on the lot to accommodate a sewage disposal system and a future replacement sewage disposal system; and if in an area where groundwater contamination could

occur the resulting density of development in the area would not be greater than that which would be allowed under the dimensional requirements of Section 10.17,B,1.

### Summary

It appears that:

- Lot #25 was legally created in accordance with the Commission's subdivision statutes and regulations.
- No commercial or other non-residential development of Lot #25 would be allowed in that the lot does not meet the Commission's minimum road frontage or lot size for a commercial use either now, or when the lot was created in 1987.
- A residential dwelling without a pressurized water supply may be allowed with a permit, and provided that all applicable standards are met, under the provisions of Section 10.11,E,4 in that the lot meets the minimum required lot size for a dwelling without a pressurized water supply at the time the lot was created in 1987.
- A residential dwelling with a pressurized water supply may be allowed with a permit, and provided that all applicable standards are met, under the provisions of Section 10.11,E,4 only if the soil types at the lot are such that the lot meets the minimum required lot size for a dwelling with a pressurized water supply at the time the lot was created in 1987. A Licensed Site Evaluator would need to be hired to go to the lot and determine the soil type based on the state plumbing code to see if the lot would meet the minimum lot size in the table under Section 10.17,B,1,a(1)(c); or failing that, to see if the soils are such that the provisions of Section 10.17,B,1g(4) could be met.
- A campsite may be allowed with a permit, and provided that all applicable standards are met, since the minimum lot size and road frontage requirements do not apply to campsites under Sections 10.26,A,3 and 10.26,C,7, respectively.

Please note that our interpretation is based upon the Commission's current statutes and standards. The status of Lot #25 may change in the future should relevant statutes and/or standards be amended.

Should you have any further questions, please contact Sara Brusila at our West Farmington Office at (207) 670-7493.

Sincerely,



*for* Jean A. Flannery, Permitting and Compliance Manager  
Department of Agriculture, Conservation & Forestry  
Division of Land Use Planning

JF/slb

Enclosures: Excerpt, Dallas Plantation Tax Map 02  
Nichols Plan (reduced copy)  
Section 10.21,K  
Section 10.17,B,1 (ver. 4/16/86)

xc: Geo File, Dallas Plantation

Dallas Plantation Tax Map 2, Excerpt



**Subject lot** →

**Legend**

- E911 Roads
- Island
- Lot

1 inch = 200 feet



## **K. COMMUNITY RESIDENTIAL DEVELOPMENT SUBDISTRICT (D-RS2)**

### **1. Purpose**

The purpose of the D-RS2 subdistrict is to designate residential areas that can accommodate an appropriate range of low-impact commercial and public uses that are compatible with residential uses. This subdistrict seeks to promote residential living and thriving neighborhoods with a limited range of services.

### **2. Description**

The D-RS2 subdistrict shall be located adjacent to a D-GN2 subdistrict in order to limit the fiscal and visual impacts of sprawling development. Adjacent is interpreted as within a distance of one road mile. This subdistrict is similar to the D-RS subdistrict but it allows for commercial development such as bed and breakfasts, health care facilities, and golf courses.

This subdistrict will be applied only in communities located in the fringe of the Commission's jurisdiction as defined in the Comprehensive Land Use Plan, and in areas appropriate as centers of growth after a prospective planning process has been undertaken by the Commission.

The Commission shall, using Section 10.08 of these rules, designate areas for this subdistrict that are consistent with its purpose and suitable for supporting development when measured against the standards of 12 M.R.S.A. §685-B(4) and the Commission's rules and regulations.

### **3. Land Uses**

The provisions of the D-RS2 subdistrict will not apply to any applications that have been received and deemed complete for processing by the Commission staff on or before January 1, 2001.

#### **a. Uses Allowed Without a Permit**

The following uses shall be allowed without a permit from the Commission within D-RS2 subdistricts:

- (1) Docking structures: Temporary docking structures for non-commercial use;
- (2) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (3) Forest management activities, except for timber harvesting;
- (4) Motorized vehicular traffic on roads and trails, and snowmobiling;
- (5) Primitive recreational uses, including fishing, hiking, wildlife study and photography, wild crop harvesting, horseback riding, tent and shelter camping, canoe portaging, cross country skiing and snowshoeing, excluding hunting and trapping;
- (6) Surveying and other resource analysis;
- (7) Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies; and
- (8) Wildlife and fishery management practices.

**b. Uses Allowed Without a Permit Subject to Standards**

The following uses shall be allowed without a permit from the Commission within D-RS2 subdistricts subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Accessory structures: New and expanded structures accessory to any legally existing principal structures and uses, provided that the total square footage of the footprint of all new or expanded accessory structures built on a lot within a two (2) year period is not more than 750 square feet and all other requirements and standards of Section 10.27,P are met;
- (2) Agricultural management activities;
- (3) Constructed ponds: Creation, alteration, or maintenance of constructed ponds of less than 4,300 square feet in size which are not fed or drained by flowing waters provided they are constructed and maintained in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (4) Driveways associated with residential uses;
- (5) Filling and grading;
- (6) Hand-carry launches: Public hand-carry launches;
- (7) Home occupations: Minor home occupations;
- (8) Mineral exploration activities: Level A mineral exploration activities, excluding associated access ways;
- (9) Road projects: Level A road projects;
- (10) Service drops;
- (11) Signs;
- (12) Trailered ramps: Public trailered ramps;
- (13) Utility services: Buildings or structures necessary for the furnishing of public utility services, provided they contain not more than 500 square feet of floor area, are less than 20 feet in height, and are not supplied with water; and
- (14) Water crossings of minor flowing waters.

**c. Uses Requiring a Permit**

The following uses may be allowed within D-RS2 subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, subject to the applicable requirements set forth in Sub-Chapter III and, where within 500 feet of Management Class 2 lakes or within 250 feet of Management Class 4 and Management Class 5 lakes, subject to the applicable requirements of Section 10.21,K,3,g, h and i below:

- (1) Agricultural management activities which are not in conformance with the standards of Section 10.27,A;
- (2) Bed and breakfast facilities;
- (3) Campsites;
- (4) Campsites, Residential;
- (5) Cemeteries, and family burying grounds in accordance with 13 M.R.S.A. §1142;
- (6) Community living facilities;
- (7) Constructed ponds: Creation, alteration or maintenance of constructed ponds 4,300 square feet or greater in size which are not fed or drained by flowing waters, or of such ponds less than 4,300 square feet in size which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
- (8) Draining, dredging and alteration of the water table or water level for other than mineral extraction;
- (9) Driveways associated with non-residential uses; driveways associated with residential uses which are not in conformance with the standards of Section 10.27,H;

- (10) Filling and grading which is not in conformance with the standards of Section 10.27,F;
- (11) Hand-carry launches: Hand-carry launches addressed in Section 10.21,K,3,b which are not in conformance with the standards of Section 10.27,L;
- (12) Home occupations: Major home occupations;
- (13) Land management roads;
- (14) Mineral exploration activities: Access ways for Level A mineral exploration activities; Level A mineral exploration activities which are not in conformance with the standards of Section 10.27,C; and Level B mineral exploration activities;
- (15) Public and Institutional: Places of worship and other religious institutions; public, private and parochial day schools; non-profit children's day care facilities; local parks and local public recreation areas;
- (16) Residential: Single and two-family dwellings;
- (17) Road projects: Level B and C road projects, except for water crossings as provided for in Section 10.21,K,3,b;
- (18) Shoreland alterations, including reconstruction of permanent docking structures, and permanent on-shore structures used to secure docks and moorings; but excluding marinas, new or expanded permanent docking structures, water-access ways, trailered ramps, hand-carry launches, and water crossings of minor flowing waters;
- (19) Signs which are not in conformance with the standards of Section 10.27,J;
- (20) Subdivisions: Residential level 1 subdivisions;
- (21) Timber harvesting;
- (22) Trailered ramps: Trailered ramps addressed in Section 10.21,K,3,b which are not in conformance with the standards of Section 10.27,L;
- (23) Utility facilities compatible with residential uses other than service drops; and wire and pipe line extensions which do not meet the definition of service drops;
- (24) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D and water crossings of bodies of standing water and of major flowing waters;
- (25) Water impoundments;
- (26) Wind projects: Community-based offshore wind energy projects, as defined in Title 12 M.R.S.A., Section 682, Subsection 19; offshore wind power projects, as defined in Title 38 M.R.S.A., Section 480-B, Subsection 6A, and wind energy development in accordance with Title 35-A, M.R.S.A., Chapter 34-A in areas identified in Appendix F herein;
- (27) Other structures, uses or services that are essential to the uses listed in Section 10.21,K,3,a through c; and
- (28) Other structures, uses, or services which the Commission determines are consistent with the purposes of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources and uses they protect, and are of similar type, scale and intensity as other allowed uses.

**d. Special Exceptions**

The following uses may be allowed within D-RS2 subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those uses within the vicinity or area likely to be affected by the proposal with which it is or may be incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

- (1) Docking structures: New or expanded permanent docking structures;
- (2) Golf courses: Private and public golf courses;
- (3) Health care facilities up to 4,000 square feet of gross floor area;
- (4) Marinas;
- (5) Post offices up to 1,250 square feet of gross floor area;
- (6) Residential: Three and four unit multi-family dwellings;
- (7) Trailered ramps: Commercial and private trailered ramps; and
- (8) Water-access ways.

**e. Prohibited Uses**

All uses not expressly allowed, with or without a permit, shall be prohibited in D-RS2 subdistricts.

**f. Water Quality Limiting Lakes**

For information relative to water quality limiting lakes see Section 10.23,E,3,g.

**g. Management Class 2 Lakes** (Accessible, Undeveloped, High Value Lakes) as shown on the Commission's Land Use Guidance Maps.

With respect to single family dwelling proposals within 500 feet of the normal high water mark of Management Class 2 Lakes, the Commission will require an average density per landownership of no more than one dwelling unit per shore mile.

**h. Management Class 4 Lakes** (High Value, Developed Lakes) as shown on the Commission's Land Use Guidance Maps.

Within 250 feet of the normal high water mark of Management Class 4 lakes, the Commission will:

- (1) With respect to subdivisions and commercial and other non-residential structures, require the applicant to indicate future plans for other undeveloped shorelands on the lake that are owned by the applicant. Such indication of future plans shall address, at a minimum, the next 10 years, and shall include, but not be limited to, the following information regarding the applicant's landownership on the lake:
  - (a) area and shoreline length;
  - (b) potential suitability for development based on an appropriate inventory of soils and significant natural and cultural resources; and

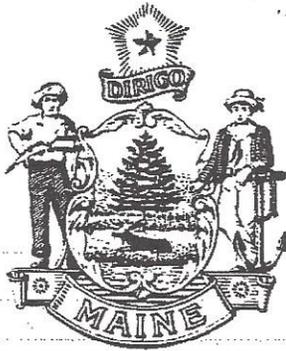
(c) development proposed or anticipated, if any.

This indication of future plans shall be considered part of the proposal. Therefore, changes in such plans, evidenced by a development proposal not included in the description of future plans, will require approval of an application to amend the original proposal in which these future plans were indicated.

(2) With respect to subdivision proposals, require cluster developments which meet the requirements of Section 10.25,R.

i. **Management Class 5 Lakes** (Heavily Developed Lakes) as shown on the Commission's Land Use Guidance Maps.

With respect to subdivision proposals within 250 feet of Management Class 5 lakes, the Commission will require cluster developments which meet the requirements of Section 10.25,R.



# Land Use Districts and Standards

For Areas Within the  
Jurisdiction of the  
Maine Land Use  
Regulation Commission

**Chapter 10**  
of the Commission's Rules  
and Regulations

Initially Adopted January 12, 1977

**Latest Revision April 16, 1986**

Land Use Regulation Commission  
MAINE DEPARTMENT OF CONSERVATION

## 1. DIMENSIONAL REQUIREMENTS

The following dimensional requirements shall apply to all lots on which building development is proposed unless otherwise provided by subsection g:

### a. Minimum Lot Size

#### (1) Residential Uses

Except as provided for in Section 10.17,B,1,g, the following minimum lot sizes shall apply to dwelling units:

- (a) Where a dwelling unit is to use a sanitary sewer but not on-site subsurface sewage disposal, the minimum lot size shall be 20,000 square feet per unit;
- (b) Where a dwelling unit is to use on-site subsurface sewage disposal, but not facilities for piped water, the minimum lot size shall be 20,000 square feet per unit;
- (c) Where a dwelling unit is to use on-site subsurface sewage disposal and facilities for piped water, the minimum lot size for each such unit shall be as set forth in the following table:

#### MINIMUM LOT SIZE BASED ON SOIL CONDITIONS AND PROFILES

PROFILE	SOIL PROFILES	Soil Conditions		
		A Bedrock encountered at depths of 0 to 100 cm (39")	B Free of drainage mottling to depth of 100 cm (39") or greater	C Generally bright colors in the top 60 cm. (24") of the soil with drainage mottling at depths 38-100 cm. (15"-39")
		sq. ft.	sq. ft.	sq. ft.
1	SILTY GLACIAL TILL SOILS — Silt loam soils to a depth of 100 cm (39") or more, or until bedrock. These soils tend to become more compact with depth. Stones may be present throughout the profile. May or may not have an impervious layer. Generally finer-textured (silty) tills	40,000	25,000	33,000
2	LOAMY GLACIAL TILL SOILS — Loam to sandy loam soils to a depth of 100 cm (39") or more, or until bedrock. Stones may be present throughout the profile.  Glacial till	30,000	21,000	29,000
3	LOAMY GLACIAL TILL SOILS WITH PAN — Loam to sandy loam soils to a depth of 100 cm (39") or more, or until bedrock. These soils become firm to very firm at depths of 30-75 cm. (12" - 30") Stones may be present through the profile. This till is a firm basal or lodgement till	30,000	29,000	29,000
4	SANDY GLACIAL TILL SOILS — Sandy loam to loamy sand soils to a depth of 100 cm. (39") or more, or until bedrock. Stones may be present throughout the profile. This till is a coarse textured ablation till	26,000	20,000	25,000
5	LOAMY OUTWASH SOILS — Loam to sandy loam soils underlain by stratified sands and gravels at depths less than 100 cm. (39") Stones or cobbles may be present in the lower portion of the profile. Proglacial and ice-contact stratified drift — medium to fine sands.	80,000	40,000	80,000

PROFILE		Soil Conditions		
		A	B	C
6	SANDY OUTWASH SOILS — Loamy sands and gravelly sandy soils underlain by stratified sands and gravels at depths less than 100 cm. (39") Stones or cobbles may be present throughout the profile. Proglacial and ice-contact stratified drift — coarse sand and gravels.	80,000	40,000	80,000
7	SANDY MIXED ORIGIN SOILS — Sandy loam to loamy sand soils underlain by very firm silts to silty clays at depths less than 100 cm. (39") Stones are usually absent in the profile. Stratified drift over marine and lacustrine sediments.	30,000	29,000	29,000
8	SANDY MIXED ORIGIN SOILS — Silt loam to fine sandy soils underlain by dense or firm stratified silts and lenses of very fine sands at depths less than 100 cm. (39") Stones are usually absent in the profile. Stratified deposits, primarily marine or lacustrine.	34,000	33,000	33,000
9	SILTY MARINE SOILS — Silt loam soils underlain by very firm silt loams to clays at depths less than 100 cm. (39") Stones are usually absent in the profile. Marine or lacustrine deposits.	39,000	38,000	38,000

## (2) Commercial, industrial, and other non-residential uses

Except as provided for in Section 10.17,B,1,g, the following minimum lot sizes shall apply to commercial, industrial, and other non-residential uses involving one or more buildings:

- (a) Where such buildings are to use a sanitary sewer but not on-site subsurface sewage disposal, the minimum lot size shall be 40,000 square feet;
- (b) Where such buildings are to use on-site subsurface sewage disposal, but not facilities for piped water, the minimum lot size shall be 40,000 square feet;
- (c) Where such buildings are to use on-site subsurface sewage disposal and facilities for piped water, the minimum lot size shall be as set forth in the above table for each 300 gallons of sewage generated by such buildings, but shall not be less than 40,000 square feet. The amount of sewage to be generated by such buildings shall be as estimated in Table 7-2 of the Subsurface Waste Water Disposal Rules. Upon a demonstration by the applicant, based upon some other reliable measure of estimated sewage flow, that a proposed use will result in a sewage flow which is significantly less than that estimated under the Subsurface Waste Water Disposal Rules, the Commission may employ such alternative estimate of sewage flow for purposes of applying this section.

## b. Minimum Shoreline Frontage

- (1) For lots fronting on a flowing water draining more than 2 square miles, a body of standing water, or a tidal water, the minimum shoreline frontage shall be:
  - (a) 100 feet per dwelling unit for residential uses, and
  - (b) 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings;
- (2) The shoreline shall be the normal high water mark of a tidal water, coastal or inland wetland designated as a P-WL Protection Subdistrict, standing body of water, or flowing water.
- (3) Frontage shall be measured in a straight line between the points of intersection of side lot lines with the normal high water mark of the shoreline.

c. Minimum Road Frontage

- (1) The minimum road frontage shall be:
  - (a) 100 feet per dwelling unit for residential uses, and
  - (b) 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings;
- (2) These requirements apply to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.
- (3) Where the lot is located at the end of a road or on a circular turnaround with an outside diameter of less than 25 feet, the road frontage requirements shall not apply.
- (4) Frontage shall be measured along the traveled portion of the road between the points of intersection of side lot lines with the traveled portion of the road.

d. Minimum Setbacks

- (1) The minimum setbacks for single family detached dwelling units shall be:
  - (a) 75 feet from the nearest shoreline;
  - (b) 50 feet from the traveled portion of all roadways except as provided for in subsection (c) below;
  - (c) 75 feet from the traveled portion of the following roadways: Routes 1, 2, 2A, 4, 9, 27, 163, 201, 161 from Caribou to Fort Kent, 157 in TA R7 (Penobscot County), and 6 in Orneville Township (Piscataquis County); and
  - (d) 15 feet from side and rear property lines.
- (2) The minimum setbacks for multiple family dwelling unit housing and commercial, industrial, and other non-residential buildings shall be:
  - (a) 100 feet from the nearest shoreline;
  - (b) 75 feet from the traveled portion of the nearest roadway; and
  - (c) 25 feet from the side and rear property lines.
- (3) "Setback" shall mean the minimum horizontal distance from the lot line, shoreline, or road to the nearest part of the building.
- (4) The shoreline shall be the normal high water mark of a tidal water, coastal or inland wetland designated as a P-WL Protection Subdistrict, body of standing water, or flowing water.
- (5) These requirements apply to any privately or publicly owned road that is used for public access, including roads used by the public for which a toll is paid.
- (6) With respect to garages accessory to residential uses, the minimum road setback shall be 20 feet.

e. Maximum Lot Coverage

- (1) The maximum lot coverage shall be 30% for all uses involving one or more buildings.
- (2) "Coverage" shall be calculated by determining the percentage of lot area covered by all structures.

f. Maximum Building Height

- (1) The maximum building height shall be:
  - (a) 75 feet for residential uses; and
  - (b) 100 feet for commercial, industrial, and other non-residential uses involving one or more buildings.
- (2) Features of buildings which contain no floor area such as chimneys, towers, ventilators and spires may exceed these maximum heights with the Commission's approval.

**g. Exceptions to Dimensional Requirements**

- (1) Where an applicant proposes a cluster form of development satisfactory to the Commission, including multiple family attached housing, the Commission may reduce shoreline and/or road frontage requirements by an amount it deems appropriate consistent with 12 M.R.S.A., Section 685-B,4, but not by more than 50%.
- (2) Where the applicant's lot is part of a subdivision approved by the Commission under prior applicable standards, the Commission shall waive to the minimum extent necessary lot size, shoreline frontage, road frontage, and setback requirements set forth herein provided that such waiver is consistent with the provisions of 12 M.R.S.A., Section 685-B,4 and the other requirements of this Chapter and applicable laws.
- (3) The dimensional requirements applicable to D-PD Development Subdistricts shall be established by the Commission pursuant to the provisions of Section 10.14,C, provided that the shoreline setback requirements hereof shall not be reduced.
- (4) To the extent consistent with 12 M.R.S.A., Section 685-B,4 the Commission may reduce the minimum lot size required to no less than 20,000 square feet in the case of residential uses and no less than 40,000 square feet in the case of non-residential uses involving one or more buildings if the applicant demonstrates:
  - (a) That such a lesser lot size provides sufficient area of suitable soil to accommodate the principal building and accessory structures, the on-site subsurface sewage disposal facility, a site for an alternative on-site subsurface sewage disposal system, and all applicable setback and other requirements for structures and disposal systems, and
  - (b) Where the site proposed by the applicant has soils or is in an area where ground water contamination may occur, that the density of development in the vicinity of the proposed site will not be greater than the density allowed pursuant to subsections a through f of these dimensional requirements. Areas comprising rapidly permeable outwash deposits or shallow soils over fractured bedrock shall be considered areas where ground water contamination may occur.
- (5) Notwithstanding any other provision of these regulations, in a proposed subdivision, or in other areas where there is or is likely to be relatively dense development, the Commission may increase the minimum lot size required where the Commission determines:
  - (a) That such a larger lot size is required to provide sufficient area of suitable soil to accommodate the principal building and accessory structures, the on-site subsurface sewage disposal facility, a site for an alternative on-site subsurface sewage disposal system, and all applicable setback and other requirements for structures and disposal systems, and
  - (b) Where the site proposed by the applicant has soils or is in an area where ground water contamination may occur, that the density of development in the vicinity of the proposed site may be greater than the density allowed pursuant to subsections a through f of these dimensional requirements.
- (6) An exception may be made to the shoreline and/or road setback requirements for buildings where the Commission finds that:
  - (a) such buildings must be located near to the shoreline or road due to the nature of their use; or
  - (b) there is a concentration of other similar legally existing buildings in the immediate vicinity which are located nearer to the shoreline or road than the setback requirements allow. No exception will be granted unless the