



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

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Robert Gee, Development Manager  
Apex Clean Energy, Inc.  
366 US Hwy 1  
Columbia, ME 04623

**VIA E-mail Only**

**RE: Request for Additional Information about the Downeast Wind Proposal I (SLC-14)**

Dear Mr. Gee,

On May 5, 2021, the Maine Department of Environmental Protection (DEP or the Department) submitted to the Land Use Planning Commission (LUPC or the Commission) a Request for Certification for the Downeast Wind Project (Project). The DEP requested that the Commission review the application materials and make a certification determination, as required in 12 M.R.S. § 685-B(1-A) and 38 M.R.S. §§ 488(9-A) and 489-A-1, and as further described in the Memorandum of Understanding (MOU), dated August 31, 2012.

On May 19, 2021, the Commission accepted the request as complete for processing, and sent a Certification of Allowed Use letter to Department staff, indicating that wind energy development is an allowed use in the affected zones within the proposed project area.<sup>1</sup> Commission staff are now evaluating whether the proposal meets the rules and standards over which the LUPC has authority in accordance with Maine law and the MOU. To complete that review, Commission staff require additional information about the Project.

**Additional Information Required:**

1. Maps depicting the LUPC zones within the Project area.

Please provide maps showing the location of existing LUPC zones in relation to turbine location, laydown areas, roads, collection systems, any other proposed development, as well as landscape features such as waterbodies and land cover. Including this information

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<sup>1</sup> The May 19, 2021 letter is available, along with other information about the project, on the Commission's website: [https://www.maine.gov/dacf/lupc/projects/site\\_law\\_certification/slc14.html](https://www.maine.gov/dacf/lupc/projects/site_law_certification/slc14.html).



will help the Commission staff evaluate the proposal for conformance with dimensional requirements.

In the LUPC Certification section of the Site Location of Development Application (SLODA; Section 31), Figure 31-1 on page 31-9 includes one map depicting zoning, proposed project elements like roads and collection systems, and landcover near Turbine Site # 35. Above the one map provided is text saying "Placeholder (42 pages)," so it seems possible that some of this information was left out unintentionally. In any case, please provide maps such as this covering all portions of the Project within the Commission's service area. Each map should have a clear scale allowing easy measurement of distances in feet.

2. GIS data for proposed development.

Access to detailed GIS information associated with the proposal would facilitate efficient review of the application, particularly when measuring setbacks or determining applicability of the hillside standards (see Chapter 10, Section 10.25,E,2). If possible, please provide shp files or a geo-database with feature classes depicting the following elements of the Project within the LUPC service area:

- The Project area boundary;
- Existing and proposed roads (including crane paths);
- Electrical collection and transmission infrastructure;
- Locations of turbine bases and pads;
- Laydown areas; and
- Delineated wetlands that meet the description of significant wetlands protected by the P-WL1 subdistrict. [See attached excerpt from Chapter 10, Section 10.23,N,2,a,(1),(c).]

3. Land Division History.

Please provide illustrations of all qualifying divisions to accompany the bulleted land division histories included in Exhibit 31-1 (starting on page 31-51 of Section 31, LUPC Certification, in the SLODA). For example, in the 20-year land division history for each division include an illustration showing the location of the division (and date if possible). A copy of the Land Division History exhibit from the Commission's application forms is attached to show how illustrations can help communicate a land division history. Additional questions about specific divisions may come up during review of the land division history, and if so, Commission staff will contact you.

4. Provide additional information about proposed infrastructure in the Floodplain Protection Subdistrict (P-FP).

Based on review of the application materials, at least one crane path would cross a P-FP subdistrict (see Section 19.3, Land Use Planning Commission (LUPC) Flood Prone Areas, p. 19-2). The construction plans on sheet 24.1, indicate that this crossing would be an open-bottomed structure with a minimum eight-foot span. Water crossings in the P-FP must meet standards for Activities in Flood Prone Areas, specifically including sections 10.25,T,2,a; 10.25,T,2,E; and possibly 10.25,T,2,m if the crossing is a bridge (see attached). Please provide the following information:

- To identify all potential water crossings in the P-FP, either submit GIS data for all water crossings (or lines depicting roads) allowing for easy comparison with the Commission's zoning, or submit static maps (see information request #'s 1 & 2 above); and
- Construction plans for any crossings in the P-FP subdistrict, including evidence that any bridges will be at least one foot above the base flood elevation, and evidence that any culvert installed will not reduce the carrying capacity of the watercourse. Designs must be certified by a professional engineer registered to work in Maine.

5. Vehicular Circulation, Access, and Parking

Certain segments of road are proposed to be less than 18 feet wide and so would require turnouts at regular intervals. Please provide the following information:

- Identify any road segments less than 18 feet wide and show where turnouts would be located on those segments (required every 500 feet, on average; See Section 10.25,D,4,c).
- Describe other anticipated users of the road system. Will roads be co-utilized for forestry or agriculture? If yes, explain any steps taken to ensure the design of roads and turnouts is adequate and safe for anticipated traffic.

6. Temporary structures during construction phase.

The proposal includes temporary structures to be used during construction, and which would be located in the proposed laydown areas. Please confirm that temporary structures would be placed in locations meeting applicable setbacks from streams or roads. Temporary storage containers/boxes (no doors or windows) and construction trailers (on wheels and designed to be moved around the site) are not considered to be structures by the Commission.

7. Motion-sensitive lighting at turbine entrances.

The proposal includes motion-sensitive entry lights adjacent to the stairs at the base of each turbine (Section 31, LUPC Certification, page 31-7.) Would maintenance or other activities require that workers turn off the motion-sensitivity of proposed lighting for any reason? If

yes, please explain when and why that would occur. What steps would be taken to ensure motion sensitivity is restored once maintenance or other activities are complete?

Please contact me if you have any questions or want to discuss the contents of this request.

Sincerely,



Ben Godsoe, Chief Planner  
Land Use Planning Commission  
[Benjamin.godsoe@maine.gov](mailto:Benjamin.godsoe@maine.gov); or  
(207)-287-2619

CC: Maria Eggett, Maine Department of Environmental Protection

Attachments:

1. Land Division History Exhibit
2. Excerpt from Chapter 10: Section 10.25,D
3. Excerpt from Chapter 10: Section 10.23,N (relevant portion of zone description marked in yellow)
4. Excerpt from Chapter 10: Section 10.25,T (relevant provision numbers marked in yellow)

## Land Division History

Applicability: Required if lot is not part of an LUPC approved subdivision.

*Rule Sections: 12 M.R.S. §682-B & 12 M.R.S. §685-B,1,B & 10.25,Q*

Knowledge of the parcel's land division history is needed for the LUPC to issue a permit. Contiguous parcels in the same township under the same legal deed name are considered one parcel when determining land division history.

In general, land divisions occur when:

- a parcel is split into smaller lots
- the landowner leases a portion of a parcel that creates exclusive rights, generally for the purpose of development, or
- a new dwelling is placed on a parcel that already has one or more dwellings on it

Exemptions apply to certain types of land divisions, such as transfer of property to an abutting land owner or to a family member.

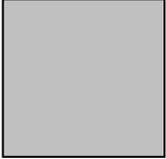
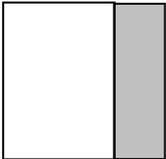
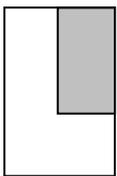
*Using your deed, lease or sales contract as a starting point, trace the ownership history and configuration changes of the parcel or contiguous parcels back 20 years from today. List all changes in ownership and all divisions of lots from which your lot originated. Describe the transaction (sale, lease, gift, inheritance, court-order, transfers to abutters, transfers for forest management, agriculture management, conservation, etc.), the book and page numbers, the seller's/grantor's and buyer's/grantee's names, the date of the deed or lease, and the size of the lot resulting from the transaction. Be sure to include any land transfers to abutting land owners as well as property gifted to relatives.*

In reporting the land division history, closely follow the example below. Be sure to start the history 20 years ago (rather than in the present) and include a drawing showing all the land divisions (for example, creation of new lots, creation of new leases for development, or the placement of new dwellings on your parcel). Your listings must account for all the acreage within the original parcel as it existed 20 years ago.

 *A fillable table for Land Division History that you must use to organize this information is provided near the beginning of this application.*

*See the Next Page for a Land Division History Example*

## Land Division History Example

<p style="text-align: center;"><u>Transaction Details</u></p>	<p style="text-align: center;"><u>Seller/Grantor and Buyer/Grantee</u></p>	<p style="text-align: center;"><u>Book/Page, and Date of Transaction</u></p>	<p style="text-align: center;"><u>Lot Size</u></p>
 <p>← Amy Adams sold a 10 acre lot to her neighbor, Rob Rogers, on November 22, 1990.</p>	<p>Amy Adams → Rob Rogers</p>	<p>Book 1251, Page 125 11/22/1999</p>	<p>10 acres</p>
 <p>← Rob Rogers sold a 4-acre portion of his lot to Dan Davis on June 12, 1997.</p>	<p>Rob Rogers → Dan Davis</p>	<p>Book 1254, Page 63 06/12/2006</p>	<p>4 acres</p>
 <p>← Rob Rogers gifted the remaining 6 acres to his daughter, Sue Smith, on January 11, 1999.</p>	<p>Rob Rogers → Sue Smith</p>	<p>Book 1254, Page 178 01/11/2008</p>	<p>6 acres</p>
 <p>← Sue Smith sold a 2-acre part of her lot to John Jones on May 21, 2005. Sue Smith still owns the remaining 4 acres.</p>	<p>Sue Smith → John Jones</p>	<p>Book 1257, Page 36 05/21/2014</p>	<p>2 acres</p>
 <p>← Applicant purchased the 2-acre lot from John Jones on July 15, 2011.</p>	<p>John Jones → Applicant</p>	<p>Book 1260, Page 91 07/15/2019</p>	<p>2 acres</p>

## 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 road 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.

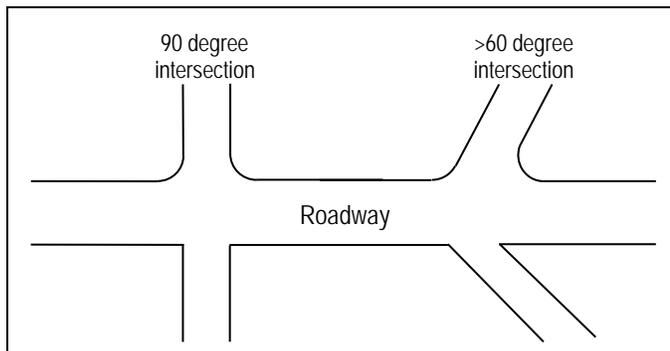


Figure 10.25,D-1. Intersection angle.

- 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 or to no less than 20 feet, whichever is greater, 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.

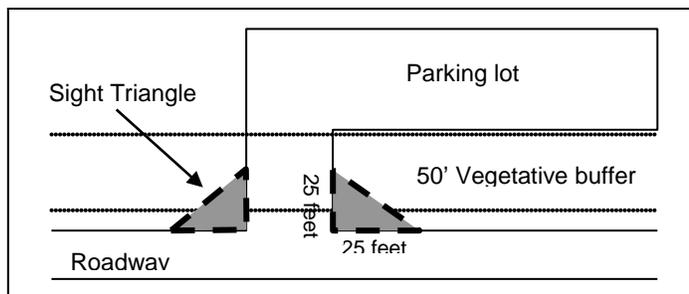


Figure 10.25,D-2. Sight triangle within a vegetative buffer.

- 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.
- h.** For parking areas associated with commercial, industrial or other non-residential development that are greater than one acre in size, a landscaping plan shall be developed and implemented that indicates planting locations, type and maintenance. The plan shall include the following:
  - (1) Parking areas shall have landscaped strips along the perimeter, as well as landscaped islands within the parking area.
  - (2) Expanses of parking area shall be broken up with landscaped islands that include shade trees and shrubs. Where possible, the area of ground left uncovered around the base of a tree must be at least equal to the diameter of the branch area or crown at maturity. Where not possible, adequate measures, including but not limited to soil enhancement techniques and underground irrigation, shall be used to ensure sufficient space for root growth and vegetative survival.

**4. Subdivision and Development Roadway Design Specifications.** The following standards apply to Level B and Level C road projects:

- a. Classification of Roadways.** The Commission shall determine which roadway classification is most appropriate for a particular project. For the purposes of Section 10.25,D,4, the following general criteria shall apply:
  - (1) **Class 1 Roadway.** Generally appropriate for most projects surrounded by a relatively compact development pattern, for high-intensity commercial or industrial projects, and for residential subdivisions with 15 or more lots.
  - (2) **Class 2 Roadway.** Generally appropriate for low-intensity commercial or industrial projects surrounded by a relatively sparse development pattern and for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern.
  - (3) **Class 3 Roadway.** Generally appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern or located on an island.
- b. Determination of Classification.** In making its determination on the appropriate roadway classification, the Commission shall consider the following factors:
  - (1) The number of lots served by the roadway or projected level of use;
  - (2) The nature of roadways accessing the project site;
  - (3) Location in relation to surrounding patterns of development;
  - (4) The level of development within the vicinity of the project;
  - (5) Natural and imposed limits on future development;

- (6) The type and intensity of the proposed use; and
- (7) Service by utilities or likelihood of service in the future.

**c. Roadway Design.**

- (1) To the fullest extent practicable, roadways must be designed to first fit the natural topography of the land such that cuts and fills are minimized, and then to minimize the overall length, minimize the use of ditching, and protect scenic vistas while preserving the scenic qualities of surrounding lands.
- (2) Roadways in towns and plantations within the Commission's service area 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.
- (3) Roadways shall adhere to the applicable standards of Section 10.27,D and Section 10.27,H and the roadway specifications outlined in Table 10.25,D-1, below, unless the applicant utilizes site-specific best management practices and the Commission determines that proposed alternative roadway specifications will meet the needs of the development and will not cause erosion or safety problems.

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

	<b>Class 1 Roadway</b>	<b>Class 2 Roadway</b>	<b>Class 3 Roadway</b>
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 in. fine gravel.
Maximum sustained grade	10 percent	15 percent	15 percent

Table 10.25,D-1. Roadway construction specifications.

- (4) 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.

**d. Additional Subdivision Road Standards.**

- (1) **Emergency Egress.** All subdivisions that include a new interior road exceeding one-quarter mile in length must include provisions for all lot owners to have at least two ways of emergency egress from the development. Emergency egress may include: (i) egress by water for subdivisions on water bodies, provided there is a legally enforceable right of egress off the water body such as a public boat ramp or dock, and (ii) may include existing motorized trails maintained for public access, provided all lot owners have a legally enforceable right to access the trail.
- (2) **New Entrances.** Subdivision access must be limited to no more than two new entrances onto an existing roadway within any one-half mile section of the existing road. Also, where practicable for the proposed development site, subdivision roads must be designed such that new entrances onto existing roads are located directly across from existing entrances on the roadway, allowing for safe cross movement of traffic at the intersection.
- (3) **Future Connectivity.**
  - (a) Whenever there is remaining land on a parcel proposed for subdivision that is not included in the subdivision layout and design, the subdivision design must include provisions for future access to the remaining land to accommodate and minimize conflicts between proposed and future uses such as timber harvests, further lot development, or recreation.
  - (b) Right-of-way widths for internal subdivision roads must include sufficient room for future expansion unless demonstrated that future expansion is not technically feasible. Rights-of-ways must be at least 50 feet in width.
- (4) **Road and Infrastructure Maintenance.**
  - (a) Subdivision designs must include a plan for long-term maintenance of the subdivision access roads and common infrastructure, including but not limited to maintenance of drainage structures, water crossings, and road grading or resurfacing. The plan must include a list of inspection and maintenance tasks, recommended task frequency, and a responsible party.
  - (b) If an association is proposed for maintenance of roads and common infrastructure, documents necessary for establishing the association must be created. The documents must require lot owner or lessee membership, lot owner or lot lessee rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover operating costs, and the subdivision developer's responsibilities until development sufficient to support the association has taken place. Responsibilities of the association must include the maintenance of common property, infrastructure, or facilities; assessing annual charges to all owners or lessees to cover expenses; and the power to place liens on property of members who fail to pay assessments. The following governmental entities are not required to be members of road associations: the State; executive branch agencies of the State; counties; municipalities, townships, or plantations; or the federal government. Those governmental entities, however, should work with associations to create an agreement through which, subject to allocation by the Maine Legislature or applicable budgetary authority, the governmental entity would contribute a fair

percentage of the minimum maintenance and repair costs through financial contributions or in-kind services.

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## N. WETLAND PROTECTION SUBDISTRICT (P-WL)

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### 1. Purpose

The purpose of the P-WL subdistrict is to conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform.

Preserving wetlands will promote the public health and safety of persons and protect property against the hazards of flooding and drought by holding back water during floods and retaining water during dry periods. Wetlands also maintain water quality for drinking, store nutrients from upland run-off in plant tissue, serve as settling basins for silt and sediment from upland erosion, stabilize water supply by maintaining the groundwater table and groundwater recharge and discharge areas, and provide plant, fish and wildlife habitat. Wetlands function as integral and irreplaceable parts of a larger natural system, influencing our climate, economy, environment, and natural heritage.

Insofar as this protection subdistrict also includes the area enclosed by the normal high water mark of surface water bodies within the Commission's jurisdiction, the purpose of this subdistrict shall also be to help insure compatible surface water uses on those water bodies where there is the potential for conflict with other uses and values of such water bodies.

### 2. Description

- a. Except as allowed in Section 10.23,N,2,d, water bodies and areas meeting the definition of coastal or freshwater wetlands shall be included in P-WL subdistricts as described below:

**(1) P-WL1: Wetlands of special significance:**

- (a) Areas enclosed by the normal high water mark of flowing waters and bodies of standing water, except for constructed ponds less than 10 acres in size which are not fed or drained by flowing waters;
- (b) Coastal wetlands, together with areas below the normal high water mark extending seaward to the limits of the State's jurisdiction; or
- (c) Freshwater wetlands, as follows:
  - (i) Within 250' of the normal high water mark of a coastal wetland or any body of standing water greater than 10 acres;
  - (ii) Containing at least 20,000 square feet in total of the following: aquatic vegetation, emergent marsh vegetation, or open water, unless the wetlands are the result of constructed ponds less than 10 acres in size which are not fed or drained by flowing waters;
  - (iii) That are inundated with floodwater during a 100 year flood event;
  - (iv) Containing significant wildlife habitat;
  - (v) Consisting of, or containing, peatlands, except that the Commission may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance;
  - (vi) Within 25 feet of the normal high water mark of a flowing water; or
  - (vii) Containing a natural community that is critically imperiled (S1) or imperiled (S2).

- (2) **P-WL2:**
    - (a) Scrub shrub and other nonforested freshwater wetlands, excluding those covered under P-WL1; and
    - (b) Constructed ponds less than 10 acres in size which are not fed or drained by flowing waters.
  - (3) **P-WL3:** Forested freshwater wetlands, excluding those covered under P-WL1 and P-WL2.
- b.** Areas meriting protection as P-WL1, P-WL2, or P-WL3 subdistricts will be identified by the Commission after consideration of relevant data including, without limitation:
    - (1) Identification of freshwater and coastal wetlands 15,000 square feet or larger by the National Wetlands Inventory; and
    - (2) When on-site delineation is required, identification of freshwater and coastal wetlands of any size by methods described in the "Corps of Engineers Wetlands Delineation Manual," U.S. Army Corps of Engineers (1987) and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region," U.S. Army Corps of Engineers (Version 2.0, January 2012).
  - c.** P-WL subdistricts described in Section 10.23,N,2,a above and identified on the Commission Land Use Guidance Maps may contain inclusions of upland areas or other wetland types smaller than 15,000 square feet that do not conform to the description of P-WL subdistricts in Section 10.23,N,2,a. Such inclusions will be regulated in accordance with the mapped P-WL subdistrict in which they are located.
  - d.** Areas that qualify for inclusion in a P-WL subdistrict pursuant to Section 10.23,N,2,a may remain in an existing development subdistrict or be included in a new development subdistrict. A person engaging in a land use activity requiring a permit within a portion of a development subdistrict that otherwise could be zoned P-WL must comply with all applicable land use standards, including the standards of Section 10.25,P, Protected Natural Resources.

### 3. Land Uses

#### a. Uses Allowed Without a Permit

The following uses are allowed without a permit from the Commission within P-WL subdistricts:

- (1) Boating, with the exception of the use of personal watercraft on bodies of standing water listed in Appendix D of these rules;
- (2) Docking structures: Temporary docking structures, and moorings for non-commercial use;
- (3) Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations;
- (4) Fish weirs and traps;
- (5) Forest management activities, except for timber harvesting<sup>21</sup>;
- (6) Motorized vehicular traffic on roads and trails, and snowmobiling;

<sup>21</sup> Explanatory note: Timber harvesting is not prohibited in this subdistrict, but instead is regulated by the Maine Forest Service. (See P.L. 2011, ch. 599.) Refer to subsection "e. Uses Regulated by the Maine Forest Service."

- (7) Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing;
- (8) Sea or ski plane use;
- (9) Surveying and other resource analysis; and
- (10) Wildlife and fishery management practices.

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

The following uses are allowed without a permit from the Commission within P-WL subdistricts, subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Agricultural activities: Agricultural management activities, excluding cranberry cultivation;
- (2) Constructed ponds: Creation, alteration or maintenance of constructed ponds of less than 4,300 square feet in size within P-WL2 or P-WL3 subdistricts 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;
- (3) Draining, dredging or otherwise altering less than 4,300 square feet of a P-WL2 or P-WL3 subdistrict;
- (4) Driveways associated with residential uses within P-WL2 and P-WL3 subdistricts;
- (5) Filling and grading or otherwise altering less than 4,300 square feet of a P-WL2 or P-WL3 subdistrict;
- (6) Hand-carry launches: Commercial, private and public hand-carry launches within a P-WL2 or P-WL3 subdistrict or below the normal high water mark of flowing waters or bodies of standing water;
- (7) Mineral exploration activities: Mineral exploration to discover or verify the existence of mineral deposits, including the removal of specimens or trace quantities, provided such exploration is accomplished by methods of hand sampling, including panning, hand test boring and digging and other non-mechanized methods which create minimal disturbance and take reasonable measures to restore the disturbed area to its original condition;
- (8) Motorized recreational gold prospecting within the normal high water mark of flowing waters;
- (9) Road projects: Level A road projects;
- (10) Service drops for telephone or electrical service, including associated vegetative clearing, provided:
  - (a) the line extension does not cross or run beneath a coastal wetland, or flowing water;
  - (b) the placement of wires or installation of utility poles is located entirely upon the premises of the customer requesting service, upon an established utility line easement, upon a roadway right-of-way or, in the case of telephone service, on existing utility poles; and
  - (c) the total length of the extension is less than 2,000 feet;
- (11) Signs;
- (12) Trailered ramps: Public trailered ramps within a P-WL2 or P-WL3 subdistrict or extending below the normal high water mark of flowing waters or bodies of standing water;
- (13) Trails, provided that any associated vegetation clearing or filling and grading are in conformance with the standards of 10.27,B,1,c and d,2, and 4 and 10.27,F, and provided the trails are constructed and maintained so as to reasonably avoid sedimentation of water bodies; and

- (14) Water crossings of minor flowing waters, except water crossings of minor flowing waters on/for land management roads.

**c. Uses Requiring a Permit**

Except as provided for in Section 10.23,N,3,b,(3) and (5), the following uses, and related accessory structures, may be allowed within P-WL subdistricts upon issuance of a permit from the Commission according to 12 M.R.S. § 685-B and subject to the applicable requirements set forth in Sub-Chapter III:

- (1) Constructed ponds: Creation, alteration or maintenance of constructed ponds which are not fed or drained by flowing waters
  - (a) of less than 4,300 square feet in size within a P-WL2 or P-WL3 subdistrict which are not in conformance with the vegetative buffer strip requirements of Section 10.27,C,2,a;
  - (b) 4,300 square feet in size or greater within a P-WL2 or P-WL3 subdistrict; and
  - (c) within a P-WL1 subdistrict;
- (2) Cranberry cultivation;
- (3) Docking structures: Temporary docking structures and moorings associated with commercial marinas and recreational lodging facilities, and moorings established for rent or lease on a commercial basis in areas not regulated by a harbor master;
- (4) Dredging, other than for riprap associated with water crossings and except as provided for in Section 10.23,N,3,b;
- (5) Driveways associated with non-residential uses within P-WL2 and P-WL3 subdistricts; driveways associated with residential uses within P-WL2 and P-WL3 subdistricts which are not in conformance with the standards of Section 10.27,H; driveways within P-WL1 subdistricts;
- (6) Filling and grading except as provided for in Section 10.23,N,3,b;
- (7) Hand-carry launches addressed in Section 10.23,N,3,b which are not in conformance with the standards of Section 10.27,L;
- (8) Motorized recreational gold prospecting which is not in conformance with the standards of section 10.27, G;
- (9) Peat extraction affecting an area less than 30 acres in size;
- (10) Road projects: Level B road projects, other than crossings of minor flowing waters as provided for in Section 10.23,N,3,b;
- (11) Shoreland alterations, including reconstruction of permanent docking structures; but excluding marinas, new or expanded permanent docking structures, water access ways, trailered ramps, hand-carry launches, water crossings of minor flowing waters, and motorized recreational gold prospecting;
- (12) Signs which are not in conformance with the standards of Section 10.27,J;
- (13) Trailered ramps: Public trailered ramps addressed in Section 10.23,N,3,b which are not in conformance with the standards of Section 10.27,L;
- (14) Trails which are not in conformance with the standards of Section 10.27,B,1,c and d,2, and 4 and 10.27,F;
- (15) Water crossings of minor flowing waters which are not in conformance with the standards of Section 10.27,D, except water crossings of minor flowing waters on/for land management roads; and water crossings of coastal wetlands, bodies of standing water, and of major flowing waters, except water crossings of coastal wetlands, bodies of standing water, and of major flowing waters on/for land management roads;
- (16) Water impoundments;
- (17) Wind projects: Community-based offshore wind energy projects, as defined in 12 M.R.S. § 682(19); offshore wind power projects, as defined in 38 M.R.S.A §480-

B(6A); and wind energy development in accordance with 35-A M.R.S., Chapter 34-A in areas identified in Appendix F herein;

- (18) Other structures, uses or services that are essential to the uses listed in Section 10.23,N,3,a through c; and
- (19) 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 or uses which they protect, and are of similar type, scale and intensity as other allowed uses.

**d. Special Exceptions**

Except as provided for in Section 10.23,N,3,b,(3) and (5), the following uses, and related accessory structures, may be allowed within P-WL subdistricts as special exceptions upon issuance of a permit from the Commission according to 12 M.R.S. § 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 other uses or resources within the subdistrict with which it is 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) Draining or altering of the water table or water level for other than mineral extraction;
- (3) Hand-carry launches, except as provided for in Sections 10.23,N,3,b and c;
- (4) Lobster sheds and fish sheds, as provided for in Section 10.25,T,2,p,(6);
- (5) Marinas;
- (6) Mineral exploration activities: Level A mineral exploration activities, except as provided for in Section 10.23,N,3,b,(7), and Level B mineral exploration activities;
- (7) Road projects: Level C road projects;
- (8) Trailered ramps: Trailered ramps except as provided in Section 10.23,N,3,b and c;
- (9) Utility facilities, including service drops except as provided for in Section 10.23,N,3,b; and
- (10) Water-access ways.

**e. Uses Regulated by the Maine Forest Service**

Pursuant to Statute, the following uses are not regulated by the Commission within P-WL subdistricts but are regulated by the Maine Forest Service.

- (1) Land management roads;
- (2) Timber harvesting; and
- (3) Water crossings of minor flowing waters, major flowing waters, bodies of standing water and coastal wetlands on/for land management roads.

**f. Prohibited Uses**

All uses not expressly allowed, with or without a permit or by special exception, shall be prohibited in P-WL subdistricts.

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## T. ACTIVITIES IN FLOOD PRONE AREAS

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All development in flood prone areas, including areas of special flood hazard, as identified by P-FP subdistricts or Federal Emergency Management Agency (FEMA) Flood Boundary and Floodway, Flood Hazard Boundary or Flood Insurance Rate maps, shall meet the following applicable requirements and standards:

### 1. Procedural Requirements.

- a. Where a special flood hazard area is indicated solely by a P-FP subdistrict, the area will be regulated according to standards applicable to the A zone.
- b. Determinations of base flood elevations (bfe) in P-FP subdistricts and A zones and flood prone areas shall be made in a consistent manner, according to methods outlined in the document “Dealing with Unnumbered A Zones in Maine Floodplain Management,” Maine Floodplain Management Program. (September 25, 2013).
- c. Base flood elevations for A1-30, AE and VE zones shall be those determined by FEMA in a Flood Insurance Study, where available.
- d. If P-FP zones and A1-30, AE, A, or VE zones apply to an area where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to an applicant determining that the structure or property is not located in the area of special flood hazard, the requirements of Sections 10.23,C and 10.25,T, shall not apply to the structure or property specified in the LOMA or LOMR.
- e. Applicants shall notify adjacent towns, plantations and townships in writing prior to any alteration or relocation of a watercourse when project applications propose alterations or relocations of flowing waters in a Flood Prone Area Protection (P-FP) Subdistrict or FEMA zone.

### 2. Development Standards.

- a. Development in flood prone areas, including areas of special flood hazard, shall:
  - (1) Be designed or modified and adequately anchored to prevent flotation (excluding floating piers and docks), collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (2) Use construction materials that are resistant to flood damage;
  - (3) Use construction methods and practices that will minimize flood damage; and
  - (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- b. **Water Supply.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- c. **Sanitary Sewage Systems.** All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

- d. On-Site Waste Disposal Systems.** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- e. Watercourse Carrying Capacity.** All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- f. Residential Structures.** New construction or substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, and when located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
- g. Nonresidential Structures.** New construction or substantial improvement of any nonresidential structure shall:
- (1) Have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or
  - (2) Together with attendant utility and sanitary facilities:
    - (a) Be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (c) Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 10.25,T. Such certification shall be provided with the application for any permit and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  - (3) When located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
- h. Manufactured Homes.** New manufactured homes or substantial improvements of any manufactured home must:
- (1) Be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
  - (2) Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and

- (3) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
  - (a) Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by
  - (b) Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

All components of the anchoring system described in (a) and (b) above must be capable of carrying a force of 4,800 pounds.

- (4) When located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.

**i. Recreational Vehicles.** Recreational vehicles shall either:

- (1) Be on the site for fewer than 90 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (2) Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in Section 10.25,T,2,h.
- (3) When located within Zone VE, be on the site for fewer than 90 consecutive days and be fully licensed and ready for highway use, or meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.

**j. Accessory Structures.** Accessory structures, as defined, located within Zones A1-30, AE, and A, shall be exempt from the required elevation criteria if all other requirements of Section 10.25,T and the following are met. Exempt accessory structures shall:

- (1) Be 500 square feet or less and have a value less than \$3,000;
- (2) Have unfinished interiors and not be used for human habitation;
- (3) Have hydraulic openings, as specified in Section 10.25,T,2,l,(2), in at least two different walls of the accessory structure;
- (4) Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,k;
- (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
- (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.

**k. Development in Floodways.**

- (1) In Zones A1-30 and AE adjacent to areas of flowing water, encroachments, including fill, new construction, substantial improvement and other development shall not be permitted within a regulatory floodway which is designated on the township's, plantation's, or town's "Flood Insurance Rate Map" or "Flood Boundary and Floodway Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the township, plantation, or town during the occurrence of the base flood discharge.
- (2) In Zones A1-30, AE, and A adjacent to areas of flowing water, for which no regulatory floodway is designated, encroachments, including without limitation fill, new construction, substantial improvement and other development shall not be permitted in the floodway as determined in Section 10.25,T,2,k,(3) below unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
  - (a) Will not increase the water surface elevation of the base flood more than one foot at any point within the township, plantation, or town; and
  - (b) Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors. FEMA. (37/ January 1995).
- (3) In Zones A1-30, AE, and A adjacent to areas of flowing water for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other flowing water and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

**l. Enclosed Areas Below the Lowest Floor.** New construction or substantial improvement of any structure in Zones A1-30, AE, and A that meets the development standards of Section 10.25,T, including the elevation requirements, and is elevated on posts, columns, piers, piles, stilts, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

- (1) Enclosed areas are not basements as defined in Section 10.02;
- (2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
  - (a) Be engineered and certified by a registered professional engineer or architect; or
  - (b) Meet or exceed the following minimum criteria:
    - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (ii) The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and

- (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  - (3) The enclosed area shall not be used for human habitation; and
  - (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- m. Bridges.** New construction or substantial improvement of any bridge shall be designed such that:
- (1) When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
  - (2) A registered professional engineer shall certify that:
    - (a) The structural design and methods of construction shall meet the elevation requirements of Section 10.25,T,2,m,(1) above and the floodway standards of Section 10.25,T,2,k; and
    - (b) The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- n. Containment Walls.** New construction or substantial improvement of any containment wall shall:
- (1) Have the containment wall elevated to at least one foot above the base flood elevation;
  - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - (3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 10.25,T. Such certification shall be provided with the application for a permit.
- o. Commercial Wharves, Piers and Docks.** A registered professional engineer shall develop or review the structural design, specifications, and plans for the new construction or substantial improvement of commercial wharves, piers, and docks.

**p. Coastal Floodplains.**

- (1) All development shall be located landward of the reach of mean high tide except for wharves, piers and docks or as provided in Section 10.25,T,2,p,(6) below.
- (2) New construction or substantial improvement of any structure located within Zone VE shall:
  - (a) Be elevated on posts or columns such that:
    - (i) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
    - (ii) The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
    - (iii) Water loading values used shall be those associated with the base flood. Wind loading values used shall be those contained in the “Coastal Construction Manual” (FEMA P-55). Federal Emergency Management Agency (August 2011).
  - (b) Have the space below the lowest floor:
    - (i) Free of obstructions; or
    - (ii) Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or
    - (iii) Constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
  - (c) Require a registered professional engineer or architect to:
    - (i) Develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the “Coastal Construction Manual” (FEMA-P55) Federal Emergency Management Agency (August 2011); and
    - (ii) Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Section 10.25,T,2,p,(2).
- (3) The use of fill for structural support in Zone VE is prohibited.
- (4) Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
- (5) Enclosed areas below the lowest floor may be used solely for parking vehicles, building access, and storage.

- (6) Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement only if permitted as a special exception, and if all the following requirements and those of Section 10.25,T,2,a,k, and l are met:
- (a) The special exception shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - (b) The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - (c) The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - (d) The structure shall have unfinished interiors and shall not be used for human habitation.
  - (e) Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
  - (f) All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.