

MAINE LAND USE PLANNING COMMISSION

Proposed Rule Revisions: Grid-scale Solar Energy Systems

1/10/2017

The following amendments propose changes to Chapter 10, Land Use Districts and Standards for Areas within the Jurisdiction of the Maine Land Use Planning Commission. This document only includes relevant sections of Chapter 10 and indicates additions in underline and deletions with a ~~strikethrough~~.

10.02 DEFINITIONS

The following definitions apply to the following terms as they appear in this chapter, the other chapters of the Commission's rules, and the Commission's statute (12 M.R.S.A., ~~§206-A~~Chapter 206-A):

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199. Solar Energy Generation Facility:

a. Grid-scale Solar Energy Generation Facility. A Solar Energy System that is primarily or solely intended to generate electricity for commercial sale for off-site use, occupies an area of one or more acres, and has a nameplate capacity of more than 250 Kilowatts.

200. Solar Energy System: A device or structural design feature, or group of devices or structural design features, a substantial purpose of which is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

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10.21 DEVELOPMENT SUBDISTRICTS

Pursuant to the Commission's Comprehensive Land Use Plan, the following development subdistricts are established:

A. COMMERCIAL INDUSTRIAL DEVELOPMENT SUBDISTRICT (D-CI)

1. Purpose

The purpose of the D-CI subdistrict is to allow for commercial, industrial and other development that is not compatible with residential uses. Designation of commercial, industrial and other similar areas of intensive development as D-CI subdistricts will ensure that other land values and community standards are not adversely affected, and will provide for the location and continued functioning of important commercial and industrial facilities.

2. Description

The D-CI subdistrict shall include:

- a. Areas having existing commercial, industrial or other buildings, structures or uses, that are incompatible with residential uses, including the following:
 - (1) Areas of 2 or more acres devoted to intensive, commercial and/or industrial buildings, structures or uses; except that saw mills and chipping mills and structures devoted to composting of septage, sludge or other residuals affecting an area of 5 acres or less in size shall not be included in this subdistrict unless such areas are part of a larger pattern of development which otherwise meets the criteria for D-CI zoning;
 - (2) Areas of 2 or more acres devoted to the commercial extraction of minerals including, but not limited to, borrow pits for sand, fill or gravel, peat extraction and the mining of metals and rock;
 - (3) Areas of 2 or more acres devoted to refuse disposal including, but not limited to, dumps and sanitary land fill operations;
 - (4) Areas used for aircraft landing and takeoff and the storage and maintenance of aircraft;
 - ~~(5)~~ Areas of 2 or more acres used for the storage of junk, oil products, or industrial or commercial materials or inventory;
 - ~~(5)~~~~(6)~~ Areas of 1 or more acres devoted to operation of a grid-scale solar energy generation facility;
 - ~~(6)~~~~(7)~~ Areas of 2 or more acres devoted to buildings, structures or uses similar to those listed in Section 10.21,A,2,a,(1) through (5) that are incompatible with residential uses; and

~~(7)~~(8) Areas where one or more existing principal buildings exist within a 500 foot radius and where the gross floor area of all such principal building(s) is more than 8,000 square feet provided the uses thereof are incompatible with residential uses.

The designated D-CI subdistrict boundary shall include all those areas described in Section 10.21,A,2,a,(1) through (7) above, as well as adjoining areas directly related to, and necessary for, the conduct of those activities.

b. Areas ~~which~~ the Commission determines meet the criteria for redistricting to this subdistrict, pursuant to Section 10.08 ~~hereof~~, are proposed for development ~~which that~~ is consistent with the purposes of this subdistrict, and are generally suitable for the development activities proposed ~~when measured against the standards of 12 M.R.S.A. §685-B(4) and the Commission's Rules and Regulations relating thereto.~~

(1) Mineral extraction. Where such an area is not adjacent to a D-CI subdistrict and redistricted for the purpose of allowing for commercial mineral extraction, once such operations are complete the D-CI subdistrict designation shall automatically revert to the prior subdistrict designation.

(2) Grid-scale solar energy facility. A person petitioning the Commission to establish a D-CI subdistrict for the purpose of allowing a grid-scale solar energy facility, establishes a presumption that the area proposed for redistricting is consistent with the portions of the Comprehensive Land Use Plan related to the location of development, upon demonstrating the area to be redistricted is:

(a) Accessible from a public road by a legal right of access that would allow construction, operation, maintenance, and decommissioning of the facility;

(b) Located within one mile of the proposed point of interconnection with the existing transmission grid and no other area suitable for the facility and closer to a point of interconnection is reasonably available to the petitioner, unless the petitioner demonstrates that redistricting an area no more than three miles from the point of interconnection would result in a project location that is compatible with current land uses and does not expand the pattern of development beyond already developed areas; and

(c) Located a reasonable distance from emergency service providers to allow for adequate response in the event of an emergency.

If no presumption is established, the proposed redistricting will be reviewed for consistency with the portions of the Comprehensive Land Use Plan related to the location of development in a manner similar to other commercial and industrial uses.

Where an area is redistricted for the purpose of developing a grid-scale solar energy facility, the area shall not provide the basis for subsequent redistricting of the area to another development subdistrict, nor shall the area serve to satisfy those requirements for redistricting surrounding areas to development subdistricts

pursuant to Section 10.08. Additionally, the D-CI subdistrict shall automatically revert to the prior subdistrict designation if the facility is not developed within a reasonable period or, if built, upon decommissioning of the facility.

3. Land Uses

a. Uses Allowed Without a Permit

The following uses shall be allowed without a permit from the Commission within D-CI 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 but not including hunting and trapping;
- (6) Surveying and other resource analysis; and
- (7) 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-CI subdistricts subject to the applicable requirements set forth in Sub-Chapter III.

- (1) Accessory structures: New or expanded structures accessory to, and located on the same lot as, any legally existing principal structures and uses, provided that:
 - (a) The accessory structure is located in a subdistrict that allows the principal use; and
 - (b) 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) Filling and grading;
- (5) Hand-carry launches: Commercial and private hand-carry launches;
- (6) Mineral exploration activities: Level A mineral exploration activities, excluding associated access ways;
- (7) Road projects: Level A road projects;
- (8) Service drops;
- (9) Signs;

- (10) 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
- (11) Water crossings of minor flowing waters.

c. Uses Requiring a Permit

The following uses, and related accessory structures, may be allowed within D-CI 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,A,3,f, g and h below:

- (1) Agricultural management activities which are not in conformance with the standards of Section 10.27,A;
- (2) Commercial and industrial: Any commercial and industrial uses;
- (3) 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;
- (4) Draining or altering the water table or water level for other than mineral extraction;
- (5) Driveways;
- (6) Filling and grading, which is not in conformance with the standards of Section 10.27,F;
- (7) Hand-carry launches addressed in Section 10.21,A,3,b which are not in conformance with the standards of Section 10.27,L;
- (8) Land application of septage, sludge and other residuals, and related storage and composting activities and structures;
- (9) Land management roads;
- (10) 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;
- (11) Mineral extraction including the use of mineral processing equipment and associated structural development;
- (12) Peat extraction, including the use of any related processing equipment;
- (13) Recreational lodging facilities:
 - (a) Level C;
 - (b) Level C – Expanded Access;
 - (c) Level D;
 - (d) Level D – Expanded Access; and
 - (e) Level E;
- (14) Road projects: Level B and C road projects, except for water crossings as provided for in Section 10.21,A,3,b;
- (15) Shoreland alterations, excluding water crossings of minor flowing waters, trailered ramps and hand-carry launches;
- (16) Signs which are not in conformance with the standards of Section 10.27,J;

(17) Solar energy generation facility: grid-scale solar energy generation facility not located on soils recognized by the U.S. Department of Agriculture as prime farmland soils;

~~(17)~~(18) Solid waste disposal;

~~(18)~~(19) Subdivisions: Commercial and industrial subdivisions for uses permitted in this subdistrict;

~~(19)~~(20) Timber harvesting;

~~(20)~~(21) Trailered ramps: Commercial and private trailered ramps;

~~(21)~~(22) Utility facilities, excluding service drops, and wire and pipe line extensions which do not meet the definition of service drops;

~~(22)~~(23) Water access ways;

~~(23)~~(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;

~~(24)~~(25) Water impoundments;

~~(25)~~(26) Wind projects: Community-based offshore wind energy projects, as defined in 12 M.R.S.A. §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.A., Chapter 34-A in areas identified in Appendix F herein;

~~(26)~~(27) Other structures, uses or services that are essential to the uses listed in Section 10.21,A,3,a through c; and

~~(27)~~(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, and related accessory structures, may be allowed within D-CI 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) upon decommissioning of the facility all structures and materials associated with the development will be removed, and affected soils will be replaced or restored to a state such that they could be utilized for active agricultural production; and (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

(1) Solar energy generation facility: grid-scale solar energy generation facility located on soils recognized by the U.S. Department of Agriculture as prime agricultural soils.

d.e. Prohibited Uses

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

e.f. Water Quality Limiting Lakes

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

f.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.

g.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 proposed subdivisions and commercial and industrial 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 land ownership 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.

h.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.