

# Adopted Rule Revisions: Recreational Lodging and Revegetation Standards

May 13, 2015

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~~.

This document includes the combined revisions as posted to public comment, and revisions proposed in response to comments received during the comment period (see the applicable Basis Statement for details).

## SECTION 10.02 – DEFINITIONS

### 144. **Outpost Cabin:**

... Guests of outpost cabins may use the services of the commercial sporting camp whether or not the commercial sporting camp is permitted for expanded access (see Section 10.27, Q,1).

### 168. **Recreational Lodging Facilities:**

... Related development that is located more than one half mile, measured in a straight line, from the nearest structure providing guest services, such as dining, gathering places, retail, shower house, dumping station, check-in office, and equipment rental shall be considered a separate facility, unless the owner chooses to consider them as one facility. ...

### 177. **Residential Campsite:**

A camping location containing tents, ~~;~~ or a legally registered tent trailer, ~~registered~~ pickup camper, ~~registered~~ recreational vehicle, ~~or registered~~ trailer; or similar device used for private non-commercial camping. “Residential campsite” includes a camping location that ~~has~~ may have access to a pressurized water system or permanent structures ~~other than outhouses, fireplaces, picnic tables, picnic tables with shelters or lean-tos.~~ Each sSuch additional permanent structures shall not have more than ~~400~~ 150 square feet ~~each~~ in floor area, ~~shall not have a permanent foundation and, except for lean-tos and tent platforms, shall not be used for human habitation.~~ A single lot may contain only one residential campsite, whether or not a dwelling is present, may be designed to contain not more than one (1) camping site for transient occupancy by 12 or fewer people. ~~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 have more than 120 square feet in area. Lean-tos shall not exceed 150 square feet, and outhouses shall not exceed 36 square feet. A residential campsite is distinguished from a “Campsite”, defined in Section 10.02,(21) above, by the presence of a permanent structure other than fireplaces, picnic tables, picnic table with shelters, lean-tos, tent platforms, and/or an outhouse.~~

### 208. **Transient Occupancy:**

“Occupancy that does not exceed 120 ~~consecutive~~ days in a calendar year” 12 M.R.S.A. §682(18). ~~For the purposes of the application of the Commission’s rules regarding~~ With respect to campsites, residential campsites, and campgrounds the Commission considers occupancy is measured by to mean the length of time the tent, trailer, camper, recreational vehicle, or similar device used for camping is located on the site.

## SECTION 10.26

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### A. MINIMUM LOT SIZE

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**1. Residential Uses and Residential Campsites.**

The minimum 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.

**2. Commercial, industrial, and other non-residential uses.**

The minimum 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, except that there shall be no minimum lot size requirement for a campsite.

**3. Campsites.**

There shall be no minimum lot size requirement for lots developed only with a campsite.

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### B. MINIMUM SHORELINE FRONTAGE

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**1. For lots fronting on a flowing water draining more than 2 square miles but less than 50 square miles, a body of standing water less than 10 acres in size, or a tidal water, the minimum shoreline frontage shall be:**

- a. 150 feet per dwelling unit for residential uses; ~~and~~
- b. 200 feet for commercial, industrial, and other non-residential uses involving one or more buildings; and
- c. 150 feet for a lot that only contains a residential campsite.

**2. For lots fronting on a flowing water draining 50 square miles or more or a body of standing water 10 acres or greater in size, the minimum shoreline frontage shall be:**

- a. 200 feet per dwelling unit for residential uses, ~~campsites, and residential campsites;~~ and
- b. 300 feet for commercial, industrial, and other non-residential uses involving one or more buildings; and
- c. 200 feet for a lot that only contains a residential campsite.

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**7. There shall be no minimum shore frontage requirement for lots developed only with a campsite.**

**C. MINIMUM ROAD FRONTAGE**

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1. Except as provided for in Section 10.26,C,6 below, 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;~~;~~ and
  - c. 100 feet for a lot that only contains a residential campsite.

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7. There shall be no minimum road frontage requirement for lots developed only with a campsite.
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**F. MAXIMUM STRUCTURE HEIGHT**

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1. Except as provided for in Section 10.26,F,2 and 4 below, the maximum structure height shall be:
  - a. 75 feet for residential uses, campsites, and residential campsites; and

## SECTION 10.27,B VEGETATIVE CLEARING

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~~In all subdistricts where natural vegetation is removed within the required vegetative buffer strip of a flowing water, body of standing water, tidal water, or public roadway, it shall be replaced by other vegetation (except where the area cleared is built upon) that is effective in preventing erosion and retaining natural beauty.~~

5. When revegetation is required: (i) in response to violations of the vegetation standards set forth in Section 10.27,B,1 through 4; (ii) to address the removal of non-native invasive species of vegetation; (iii) as a mechanism to allow for development by permit that exceeds the vegetation standards of Section 10.27,B or the cleared opening standards of Section 10.27,Q,1,Table A,(4), including removal of vegetation in conjunction with a shoreline stabilization project; or (iv) as part of a mitigation plan for clearing associated with a recreational lodging facility, the revegetation must comply with the following requirements.
  - a. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional (examples include: arborist, forester, landscape architect, U.S.D.A. Natural Resources Conservation Service), that describes revegetation activities and maintenance. The plan must include a scaled site plan depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
  - b. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed. When part of a mitigation plan, revegetation must occur along the same segment of shoreline, road, or other resource affected by proposed uses or development, and at a density and configuration comparable to other naturally occurring forests on the site or in the vicinity.
  - c. Revegetation activities must meet the following requirements for trees and saplings:
    - (1) All trees and saplings removed must be replaced with native noninvasive species;
    - (2) Replacement vegetation must at a minimum consist of saplings;
    - (3) If more than three trees or saplings are planted, then at least three different species shall be used;
    - (4) No one species shall make up 50% or more of the number of trees and saplings planted;
    - (5) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
    - (6) A survival rate of at least 80% of planted trees or saplings is required for a minimum five years period from the time of planting. Replanting of trees or saplings that did not survive does not trigger a new five year period.

- d. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:
- (1) All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable;
  - (2) Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (3) If more than three woody vegetation plants are to be planted, then at least three different species shall be planted;
  - (4) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
  - (5) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years from the time of planting. Replanting of trees or saplings that did not survive does not trigger a new five year period.
- e. Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- (1) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (2) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
  - (3) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within Section 10.27,B for a minimum of five years from the time of planting.
- f. The applicant may propose, and the Commission may approve or require, variations from the standards in Section 10.27,B,5,c through e if necessary to achieve effective buffering. The Commission may exempt an individual, whether an applicant or violator, from the requirement that the revegetation plan be prepared by a qualified professional in accordance with Section 10.27,B,5,a, when the proposed revegetation is routine and would not affect a particularly sensitive resource.

**SECTION 10.27,Q RECREATIONAL LODGING FACILITIES**

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**1. Recreational Lodging Categories.**

A recreational lodging facility will be categorized based on the factors in Table A below. A facility will be categorized in the lowest facility level (A, B, C, D or E, with A being the lowest level and E being the highest level) in which the facility does not exceed any of the limits established in the Table A. Facilities in existence prior to July 1, 2013 may be categorized without regard to footprint of clearing. ~~If such a facility exceeds the footprint of clearing standard for the facility level, the total footprint of clearing may not be increased without recategorizing the facility. Except that if necessary for the siting of new development on appropriate soils, up to 10,000 square feet of new cleared area may be created, provided an equivalent area of existing clearing must be revegetated, and must be sited to maximize visual screening.~~

Within the D-GN, D-GN2, D-GN3, D-RF, and M-GN Subdistricts, Level C and Level D facilities may offer expanded services to the general public and increased overnight occupancy as provided in Table B, with the rows labeled 5 through 9 in Table B substituting for the corresponding rows in Table A. In these subdistricts, Table B adjusts Table A. A Level C or Level D facility applying any of the Table B adjustments is referred to in Sub-Chapter II as a “Level C – Expanded Access” facility and “Level D – Expanded Access” facility, respectively. As provided in Sub-chapter II, these expanded access facilities require permit or special exception approval.

As used in Section 10.27,Q, the term “clearing” means an opening in the forest canopy, measured from the remaining crown or canopy, in an area that was once, but is no longer forested. Clearing includes but is not limited to areas that may now contain or be used for roads, parking, lawn, structures, or subsurface wastewater disposal systems. Land areas that are naturally devoid of trees or naturally consisting of sparse trees are not included in “clearing,” unless human intervention is required to maintain this state (e.g., burning, mowing).

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**Table A: Facility Level Determination.**

Factors	Facility Level				
	A	B	C	D	E
(4) Footprint of clearing within 250 feet of any body of standing water, tidal waters, or flowing waters downstream from the point where such waters drain 50 square miles or more, <u>in accordance with Section 10.27,Q.5. (in square feet) Section 10.27,B still applies:</u>	≤ 36,000	≤ 2436,000	≤ 3654,000	≤ 6090,000	No limit

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**4. Measuring ~~Square Footage~~Floor Area Limits.**

Unless otherwise specified by another provision, any ~~square footage~~floor area limitations for recreational lodging facilities shall be a calculation of the total floor area for all principal buildings associated with the facility. For purposes of this calculation, principal buildings generally include, for example: main lodge, cabins for the housing of guests, bathroom facilities, sauna/spa, caretaker and guide housing, and recreation rooms- (e.g., the principal space available to or necessary for serving the guests). ...

## **5. New or Enlarged Clearing.**

**a.** Recreational lodging facilities may create or enlarge a clearing within 250 feet of the shoreline, provided the clearing, in combination with all other clearings at the facility, does not exceed the applicable limits in Section 10.27,Q,1, Table A and such a clearing is in an area that has:

(1) a 100 foot vegetative buffer that meets the provisions of Section 10.27,B,2<sup>1</sup> between the proposed clearing and all points on the shoreline; and

(2) slopes of 20% or less as measured from the highest elevation in the area within 250 feet of the shoreline in which clearing or development is proposed, to the nearest point on the shoreline.

**b.** Recreational lodging facilities may create or enlarge clearings within 250 feet of the shoreline regardless of the limits in Section 10.27,Q,1, Table A or the provisions of Section 10.27,Q,5,a, provided the applicant:

(1) demonstrates that the overall visual impact of the facility will not increase as a result of the creation or enlargement of clearings, or from the development or uses located within those clearings; or

(2) submits a mitigation plan for visual impacts, noise, and phosphorus, that will provide substantially equivalent or increased effectiveness over existing conditions.

## **56. Campgrounds.**

**a.** RVs that are at individual sites or campgrounds shall not have permanent foundations and shall not have the wheels removed.

**b.** In order to comply with transient occupancy standards, a tent, trailer, camper, recreational vehicle, or similar device used for camping may be stored within a storage area on the premises of the campground provided that the device is not utilized or inhabited while located within the storage area that is not a campsite.

## **7. Water-dependent Structures for Recreational Lodging Facilities.**

Recreational lodging facilities may include not more than two water-dependent structures per waterbody, including but not limited to: swimmer sign-out boards, boat racks, and a shed building for the storage of personal floatation devices, paddles, anchors, and other water-related equipment. Such buildings and structures shall:

**a.** Contain not more than 100 square feet of floor area per structure;

**b.** Not be constructed on a permanent foundation;

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<sup>1</sup> Section 10.27,B,2 sets out restrictions on cleared openings and requirements for maintaining a well-distributed stand of trees within a buffer strip when conducting vegetative clearing activities in locations along shorelines and public roadways identified in Section 10.27,B,1. For purposes of Section 10.27,Q, the provisions of Section 10.27,B,2 shall apply to the required 100 foot vegetative buffer in the area between a proposed new or enlarged clearing within 250 feet of the shoreline and all points on the shoreline. This requirement will apply regardless of whether or not the buffer extends to the shoreline.

- c. Not be habitable or inhabited;
- d. Be located not less than 25 feet from the normal high water mark of any waterbody or watercourse;
- e. Be used only for the purposes of this section; and
- f. Be screened by vegetation or topography from the waterbody.

**58. Conversion of Use.**

Pursuant to 12 M.R.S.A. § 685-B(1)(A), recreational lodging facilities may not be converted to another use without a permit issued by the Commission. Conversion may be permitted, provided the proposed use is allowed within the subdistrict and complies with the all applicable regulations. When the conversion is to a residential use, the following shall apply:

- a. The structures will comply with the provisions of Sections 10.11,B, C and D;~~and~~
- b. Any water dependent structures for recreational lodging facilities must be removed or relocated to a location conforming with the provisions of Section 10.26,D; and
- c. The lots and structures must comply with all applicable rules, including, but not limited to, subdivision standards in Section 10.25,Q and Section 10.25,R, and the dimensional requirements of Section 10.26, except as provided in Section 10.27,Q,8,d.
- d. ~~However, n~~Notwithstanding Section 10.27,Q,~~68,c~~, the Commission may permit if the subdivision of the facility into individual lots would not meet the necessary subdivision design standards of Section 10.25,Q or Section 10.25,R, or the minimum lot standards, the Commission may permit the conversion of use provided that:
  - (1) the principal structures may be sold individually but shall be limited by deed restrictions to existing square footage of floor area or footprint;
  - (2) the lot must be commonly owned as a condominium lot;
  - (3) the conversion and related division shall meet the subdivision design standards of Section 10.25,Q to the greatest extent practicable;~~and~~
  - (4) the condominium lot and existing structures:
    - (a) in the aggregate, meet all dimensional requirements of Sections 10.26,A, B, and C;
    - (b) as an individual lot or structure, meet all dimensional requirements of Section 10.26 to the greatest extent practicable; and
  - ~~(4)(5)~~(5) in no case shall less than three-~~(3)~~ principal structures be located on a commonly owned lot.
- e. If a campground is converted to another use:
  - (1) the historic use of a site for an RV does not establish a right to use that site or permanently place an RV or other structure at that site; and
  - (2) permanent structures, including but not limited to an office, store, bathhouses, and recreation buildings, may be allowed to remain and/or be converted to another use, in conformance with other provisions of the Commission's Land Use Districts and Standards.