DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

MAINE LAND USE PLANNING COMMISSION

Proposed Rule Revisions: Subdivision Technical Issues

Adopted November 4, 2015

The following revisions propose changes to Chapter 10, *Land Use Districts and Standards for Areas served by the Maine Land Use Planning Commission. This document only includes relevant sections of Chapter 10, and indicates additions in* underlined text *and deletions in* ~~stricken text~~.

SECTION 10.08

A. GENERAL CRITERIA

[Public Law 2011, c. 682, §13 revised 12 M.R.S. Section 685-A(8-A) by removing the requirement that proposed land use districts satisfy a demonstrated need in the community or area. The Commission proposes in this rulemaking to update its rules to conform to the statute. Concurrent with the update of its rules, the Commission also proposes to withdraw the official guidance document titled "Clarifying the Rezoning Criterion of 'Demonstrating Need'," effective April 1, 2004.]

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2. The proposed land use district ~~satisfies a demonstrated need in the community or area and~~ has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area." 12 M.R.S.A. §685-A(8-A)

SECTION 10.25

D. VEHICULAR CIRCULATION, ACCESS AND PARKING

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4. Subdivision and D~~d~~evelopment R~~r~~oadway D~~d~~esign S~~s~~pecifications. The following standards apply to Level B and Level C road projects:

e. Roadways shall adhere to the applicable standards of Section 10.27,D and Section 10.27,H and the roadway specifications outlined in Table 10.25,D-1, below, unless the applicant utilizes site-specific best management practices and the Commission determines that proposed alternative roadway specifications will meet the needs of the development and will not cause erosion or safety problems.

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.

	Class 1 Roadway	Class 2 Roadway	Class 3 Roadway
Minimum roadway surface width	18 ft. or 14 ft. with turnouts every 500 feet, on average.	14 ft. or 8 ft. with turnouts every 500 feet, on average.	8 ft.
Minimum base (coarse gravel)	18 in.	12 in.	As needed.
Minimum wearing surface	3 in. fine gravel or 2.5 in. bituminous concrete.	3 in. fine gravel or 2.5 in. bituminous concrete.	2~~"~~ in. fine gravel.
Maximum sustained grade	10~~%~~ percent	15~~%~~ percent	15~~%~~ percent

Table 10.25,D-1. Roadway Construction Specifications.

G. SOIL SUITABILITY

The standards set forth below must be met for all subdivisions and commercial, industrial and other non-residential development.

1. Soil types shall be determined by a site-specific soil survey, according to the "Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping" ~~(~~Maine Association of Professional Soil Scientists, ~~2004)~~2009. The soil survey class shall be determined as follows, unless the Commission finds that a lower intensity soil survey will provide the information necessary or a higher intensity soil survey class is needed for the Commission's review:

   a. For both level 1 and 2 subdivisions, a Class B~~A~~ high intensity soil survey shall be used to identify soils within the proposed building envelopes~~, driveway locations~~ and other disturbed areas, aside from proposed access roads, driveway locations, and utility lines. The Class B survey for this purpose must be completed with a minimum delineation of one acre for similar soils and ¼ acre for dissimilar soils. For proposed access roads, driveway locations and utility lines, a Class L soil survey shall be used. A Class ~~B~~ C soil survey may be used to identify soils elsewhere within the project area.

   ~~b. For level 2 subdivisions, a Class B high intensity soil survey shall be used to identify soils within the proposed building envelopes, driveway locations and other disturbed areas. A Class C soil survey may be used to identify soils elsewhere within the project area.~~

   ~~c.~~b. For new commercial, industrial and other non-residential development, a Class A high intensity soil survey shall be used to identify soils within any proposed disturbed area. A Class C soil survey may be used to identify soils elsewhere within the project area.

   c. For linear projects or project components that involve soil disturbance, such as road construction, fairway construction or trail construction and that have little or no adjacent development, a Class L soil survey shall be used.

d. **Hydric Soils and Soils Potential Ratings.** Hydric soil map units, and map units with a low or very low development potential rating for low density development must be clearly identified on the soil survey map as being hydric soils or as having a low or very low development potential rating, respectively.

e. **Exceptions.** The Commission may:

(1) Allow the use of U.S.D.A. Natural Resources Conservation Service (NRCS) Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c when the published mapping indicates the map unit(s) in the project area is rated with a medium or high potential for low density development.

(2) Allow the use of NRCS Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c for areas within a development that will be preserved as undeveloped open space in accordance with Section 10.25,S.

(3) In lieu of a site-specific soil survey of any proposed disturbed area within a development, the Commission may allow use of a geotechnical investigation prepared for that area by a registered professional engineer and other licensed professionals, as appropriate, if the Commission determines that the geotechnical report will provide sufficient information.

(4) The Commission may waive one or more of the provisions of a Class A or B high intensity soil survey, including but not limited to the contour mapping requirement, where such provision is considered by the Commission unnecessary for its review.

2. Determination of soil suitability shall be based on the NRCS~~Natural Resources Conservation Service's~~ soils potential ratings for low density development. Soils with a low or very low development potential rating shall not be developed unless the Commission determines that adequate corrective measures will be used to overcome those limitations that resulted in a low or very low rating.

3. For all developments that include onsite subsurface wastewater disposal, a sufficient number of test pits must be provided within the footprints of all proposed wastewater disposal fields to adequately document that disposal fields can be installed entirely on soils and slopes in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241).

a. At least ~~two~~ one test pit~~s~~ shall be dug within the boundaries of each subdivision lot proposed to be served by a combined septic system. The applicant shall provide additional subsurface exploration data for certain soil conditions or disposal field designs, in accordance with the following requirements:

(1) Soil conditions AII and AIII (bedrock depth nine inches to 24 inches). A minimum of five subsurface explorations: one test pit is to be centrally-located within each disposal field footprint, plus a subsurface exploration at each disposal field corner which may consist of either a test pit, boring, or probe.

(2) Soil with profile 8- or 9-parent material (lacustrine/marine deposits). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

(3) Soil condition D (limiting factor depth less than 15 inches). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

(4) Disposal field length of 60 feet or longer. A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.

b. For lots to be served by primitive and limited disposal systems, evidence must be submitted to show there are suitable locations on the lot for a grey water disposal field, any proposed pit privy (outhouse), and a backup system reserve area as required by and in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241,4,I). At least one test pit shall be dug within the boundaries of each ~~lot proposed to be served by a primitive septic system~~proposed disposal area and the backup system reserve area on the lot.

c. The location of such test pits shall be shown on the subdivision plat.

L. PHOSPHORUS CONTROL

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2. General Standards.

a. Provision shall be made to limit the export of phosphorus from the site following completion of the development or subdivision so that the project will not exceed the allowable per-acre phosphorus allocation for the water body, determined by the Commission according to the "Maine Stormwater Best Practices Manual, Volume II, Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development" ~~(~~Maine Department of Environmental Protection, 2008~~)~~, and hereafter cited as the Phosphorus ~~Control~~ Design ~~Guide~~Manual.

b. **Impact Analysis.** The phosphorus impact analysis and control plan for~~of~~ a proposed subdivision or development on a water body shall be prepared using the procedures set forth in the ~~calculated using the Standard Method for Calculating Phosphorus Export, according to the procedures in the~~ Phosphorus ~~Control Guide~~Design Manual, including all worksheets, engineering calculations, and construction specifications and diagrams for control measures as may be required by the manual, except as allowed in Section 10.25,L,2,d, below.

c. **Erosion Control.** All filling, grading, excavation or other similar activities that result in unstabilized soil conditions must meet the standards of Section 10.25,M.

d. **Alternative Standard Option.** In lieu of meeting the general standard in Section 10.25,L,2,a, and conducting a phosphorus impact analysis according to Section 10.25,L,2,b, an applicant with a project that includes less than three acres of impervious area and less than five acres of developed area in a watershed of a body of standing water that is not severely blooming (as identified in 06-096 CMR 502, Appendix A), may choose to limit the export of phosphorus from the site by meeting the alternative buffer standard in Section 10.25,L,3. For the purposes of Section 10.25,L,2,d, developed area means all disturbed area, including, in the case of a subdivision, all proposed building envelopes, but excluding area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, provided the revegetated area is not mowed more than once per year.

3. Alternative Buffer Standard.

a. To meet the alternative standard, a project must include treatment measures that will provide for effective treatment of phosphorus in stormwater. This must be achieved by using vegetated buffers to

control runoff from no less than 95 percent of the impervious area and no less than 80 percent of the developed area that is impervious, landscaped or otherwise disturbed, except as provided in Section 10.25,L,3,d below.

b. **Vegetated Buffers**. Vegetated buffers for phosphorus control are undisturbed strips of dense vegetation located adjacent to and down gradient of developed areas, and that provide storage and treatment for stormwater that enters them in diffuse overland flow. Five types of vegetated buffers are allowed under the alternative standard as listed in Section 10.25,L,3,b,(1) through (5) below. All vegetated buffers must be appropriately used, located, designed, sized, constructed, and maintained as specified in the "Maine Stormwater Best Practices Manual, Volume III. BMP Technical Design Manual, Chapter 5. Vegetated Buffers" Maine Department of Environmental Protection, June 2010, and hereafter cited as the Technical Design Manual. Where the Technical Design Manual allows for a variation in the design specification with approval from the Department of Environmental Protection, approval from the Land Use Planning Commission is required for projects located in the unorganized and deorganized areas of Maine.

(1) Buffers adjacent to residential, largely pervious or small impervious areas;

(2) Buffers with stone bermed level lip spreaders;

(3) Buffers adjacent to the downhill side of a road;

(4) Ditch turn-out buffers; and

(5) Buffers down gradient of a single family residential lot.

c. **Deed Restrictions and Covenants.** Areas designated as vegetated buffers, not otherwise protected as open space in accordance with Section 10.25,S, must be clearly identified on the subdivision plat and plans, and protected from alteration by deed restrictions and covenants.

d. **Exception for Linear Portions of a Project**. For a linear portion(s) of a project, runoff control may be reduced to no less than 75 percent of the impervious area and no less than 50 percent of the developed area that is impervious, landscaped or otherwise disturbed.

~~3.~~4. Design and Maintenance Standards.

a. Phosphorus control measures and their maintenance shall meet the design criteria contained in the ~~Phosphorus Control Guide~~"Maine Stormwater Best Practices Manual, Volume III. BMP Technical Design Manual, Chapter 11. Designing for Operation and Maintenance" Maine Department of Environmental Protection, 2008, and hereafter cited as the Technical Design Manual.

b. **Structural Measures.** High maintenance structural measures, such as wet ponds and runoff infiltration systems, shall not be used as part of any proposed phosphorus control plan unless:

(1) Other measures, such as increasing the width of vegetated buffers, greater limits on clearing, reducing road lengths, and clustering of lots to achieve less disturbed area are clearly demonstrated to be insufficient to allow the proposed ~~subdivision~~ development to meet the standards of this section; and

(2) The Commission finds that the applicant has the technical and financial capabilities to properly design, construct, and provide for the long-term inspection and maintenance of the facility in accordance with the procedures in the ~~Phosphorus Control Guide~~Technical Design Manual.

Q. SUBDIVISION AND LOT CREATION

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3. Layout and Design for all Subdivisions.

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d. Building envelopes shall be marked and identified on the subdivision plat for each proposed lot in accordance with the following requirements:

(1) Building envelopes shall identify all areas within each subdivision lot where structural development may occur;

(2) Building envelopes shall be arranged to conform with the minimum water body, road and property line setback and maximum lot coverage requirements, as provided in Section 10.26; and

(3) Where practicable, building envelopes shall be arranged so as to avoid the placement of structures and driveways along ridge lines, on agricultural land, wetlands, slopes greater than 20 percent~~15%~~, or any other important topographic and natural features.

R. CLUSTER DEVELOPMENT

2. Cluster Development Standards

a. Cluster subdivisions shall provide for a reasonable balance between development and conservation. Specifically, cluster subdivisions shall reserve no more than 50~~%~~ percent of net developable land for development and, within shorefront subdivisions, shall reserve no more than 50~~%~~ percent of net developable ~~shore frontage~~shorefront for development.

(1) For the purposes of this section, "net developable land" is the area of a parcel which, as determined by the Commission, is suitable for development. The area shall be calculated by subtracting the following from the total acreage of the parcel:

(a) Portions of the parcel subject to rights-of-way and easements for vehicular traffic; and

(b) Unbuildable land which includes, without limitation, land that has a low or very low soil potential rating, in accordance with Section 10.25,G, or contains sensitive areas such as slopes exceeding ~~15%~~20 percent, water bodies or wetlands.

(2) For the purposes of this section, "net developable shorefront" is land that:

(a) Meets the minimum water body setback requirements of Section 10.26,D;

(b) Does not have a low or very low soil potential rating, in accordance with Section 10.25,G; and

(c) Contains land area at least 40,000 contiguous square feet in size that is not comprised of sensitive areas such as slopes exceeding ~~15%~~20 percent, water bodies or wetlands.