

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
MAINE LAND USE PLANNING COMMISSION

CHAPTER 10, *LAND USE DISTRICTS AND STANDARDS*

Proposed Rule Revisions: Subdivision Layout and Design

August 17, 2018, Draft

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.

Revisions in Section 10.17, Sections 10.25,Q,2 through 7, and Section 10.25,R repeal and replace the existing rule language in its entirety. Therefore, the revisions are not shown in strikeout and underline format. Proposed changes to other sections of Chapter 10 are shown in strikeout and underline format with additions in underlined text, deletions as ~~strikethroughs~~, and relocations as double underline and double ~~strikethroughs~~. A version of the draft rules with all changes in strikeout and underline format is available upon request.

Where necessary, further explanations of some changes have been included in [brackets]. These explanatory notes would not be included in the final rule.

Subdivision Layout and Design

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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., Chapter 206-A):

[Explanation: Add or revise the following definitions; new definitions will be added in alphabetical order; the numbering of all subsequent definitions will be adjusted accordingly.]

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##. 145. Common Open Space:

"Common open space" or "open space" means Any parcel or area of land essentially unimproved and set aside, dedicated, designated, or reserved for the public use, for the common use of owners and occupants of land adjoining or neighboring such open space, or for purposes intended to preserve important natural features of the site.

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##. Hillside:

An area of two or more contiguous acres having a sustained slope of 15 percent or greater.

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##. Major Water Bodies:

Major water bodies are bodies of standing water greater than 10 acres in size and major flowing waters.

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##. Net Developable Land:

"Net developable land" is the area of a parcel ~~which~~, as determined by the Commission, that 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. Unbuildable land ~~which~~ includes, ~~without limitation~~ but is not limited to, land that has a low or very low soil potential rating, ~~in accordance with Section 10.25, G,~~ or that contains sensitive areas such as slopes exceeding 20 percent, non-tidal water bodies, or wetlands. Regarding soil suitability, the Commission may determine land is buildable if the plan for development satisfies the provisions of Section 10.25,G,2 for low or very low soil potential ratings.

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##. Net Developable Shorefront:

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 and is within 250 feet of ~~the~~ a non-tidal water body or coastal wetland;
- b. Does not have a low or very low soil potential rating, ~~in accordance with;~~ and

- c. Contains or is part of land area at least 40,000 contiguous square feet in size that is not comprised of sensitive areas such as slopes exceeding 20 percent, non-tidal water bodies or wetlands.

Regarding soil suitability, the Commission may determine the shorefront is developable if the plan for the development satisfies the provisions of Section 10.25.G,2 for low or very low soil potential ratings.

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[The conceptual definition for public view points was not carried forward into rule language. Instead, the concept was addressed directly in the standards for hillside development.]

##. Ridgeline:

The line formed by the meeting of steeply sloping surfaces of land that drop away from each other.

[The conceptual standards reference to significant ridgeline has been removed as the term is not used in the draft rule.]

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##. Subdivision, Maple Sugar Processing:

A maple sugar processing subdivision is a subdivision that meets the criteria of Section 10.25.Q,3,(3).

10.17 EXPIRATION OF PERMIT

[This rulemaking package includes a proposal to repeal and replace the standards for expiration of permits to clarify what constitutes substantial start and substantial completion, particularly for subdivisions. The language also provides additional time for starting and completing subdivision proposals, which, by their nature, take more time to develop; addresses how permit expiration applies to projects with partial certificates of compliance; and adds standards for permit renewals.]

If a development or use requiring a permit is not substantially started within the time period specified in the permit conditions of approval, or is not substantially completed within the time period specified, the permit lapses. Further development or activity, including, in the case of a subdivision, offering lots for sale or lease, is prohibited thereafter unless and until a new permit is granted, or the Commission otherwise specifically authorizes.

A. EXPIRATION DATE

1. Unless otherwise authorized by the Commission in the permit conditions of approval, development or uses authorized under a permit must be substantially started within 2 years of the effective date of the permit and substantially completed within 5 years of the effective date of the permit, except as provided in Sections 10.17,A,2 through 5 below:
2. **Permits issued prior to July 1, 2003.** With respect to permits issued prior to July 1, 2003, that do not specify any expiration date, that date shall be October 1, 2004.
3. **Special flood hazard areas.** In special flood hazard areas, a permit must be substantially started within 180 days of the effective date of the permit and substantially completed within 5 years of the effective date of the permit.
4. **Subdivisions.** In the case of approved subdivisions, the proposed development must be substantially started within 4 years of the effective date of the permit and substantially completed within 7 years of the effective date of the permit.

Upon determining that a subdivision's approval has expired under this paragraph, the Commission shall have a notice placed in the Registry of Deeds to that effect.

5. **Multi-phased Projects.** For multi-phased projects or project expansions that are permitted separately, final Commission approval of each phase or expansion shall be treated as a separate permit for the purposes of determining "substantial start" and "substantial completion" for each phase or expansion.

B. SUBSTANTIAL START

"Substantial start" shall mean:

1. Except as provided in Section 10.17,B,2 through 4, the first placement of a permanent structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of

columns, or any work beyond the stage of excavation. Permanent structures include buildings that are custom-built, manufactured, and modular; and mobile homes.

A substantial start is not made by land preparation, such as clearing, grading, and filling; the installation of streets or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms; or installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

2. For substantial improvements in special flood hazard areas, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
3. For approved subdivisions:
 - a. The approved subdivision plat has been recorded at the appropriate County Registry of Deeds; and
 - b. The completion of a portion of the proposed improvements, which represents no less than 10 percent of the costs of the proposed improvements within the subdivision, in accordance with the approved plan. Subdivision improvements may include internal subdivision roads, docks and boat launches, structural stormwater and erosion control practices, utilities, and other similar infrastructure. A substantial start for subdivisions is not made by land preparation, such as clearing, grading, and filling.

C. SUBSTANTIAL COMPLETION

“Substantial completion” shall mean:

1. Except as provided in Section 10.17,C,2:
 - a. Approved construction has been completed to the point where normal functioning, use, or occupancy of the development can occur without concern for general health, safety, and welfare of the occupant and the general public; and
 - b. Completion of and full compliance with all permit conditions of approval, except those requiring ongoing compliance beyond the expiration date of the permit such as annual water quality monitoring or maintenance of structural stormwater and erosion control best management practices.
2. For approved subdivisions, the Commission has issued a certificate of compliance pursuant to Section 10.25,Q,5,c,(1) or (2). In cases where only a portion of the development has been completed and a partial certificate of compliance has been issued for the project as of the expiration date of the permit, substantial completion shall only apply to that portion of the project for which the partial certificate of compliance was issued. Approval for the remainder of the project authorized by the permit shall lapse unless a permit renewal has been issued pursuant to Section 10.17,D.

D. PERMIT RENEWALS

An application to renew a permit must be submitted prior to the expiration of the permit.

1. If an application to renew a permit is not timely submitted prior to expiration of the permit, or is timely submitted but not accepted as complete for processing in accordance with Chapter 4, Section 4.03,(8),(a), the permit lapses.
2. If the renewal application is timely submitted prior to the expiration of the permit and accepted as complete for processing, the terms and conditions of the existing permit remain in effect until the final Commission decision on the renewal application.
3. The Commission may renew a permit and extend either or both the deadline for a substantial start or for substantial completion by up to two years. When processing a renewal application, the Commission may, but is not obligated to, consider any changes to its *Land Use Districts and Standards*. As a condition of approval of a renewal application, the Commission may require the permittee to comply with any new or amended standards.

10.25 DEVELOPMENT STANDARDS

This section contains review standards for structures and uses that require issuance of a permit from the Commission, or as otherwise required in Sub-Chapter II. Except as herein provided, development not in conformance with the standards of this section is prohibited.

Nothing in this section shall preclude the Commission from imposing additional reasonable terms and conditions in its permits as the Commission may deem appropriate in order to satisfy the criteria for approval and purposes set forth in the Commission's statutes, rules and the Comprehensive Land Use Plan.

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D. VEHICULAR CIRCULATION, ACCESS, AND PARKING

[Subdivision conceptual standards relating to access management, traffic movement, and roads have been included in Section 10.25,D,4,d to keep all standards relating to this topic in one place.]

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, ~~and shall have a curb radius of between 10 feet and 15 feet, with a preferred radius of 10 feet.~~

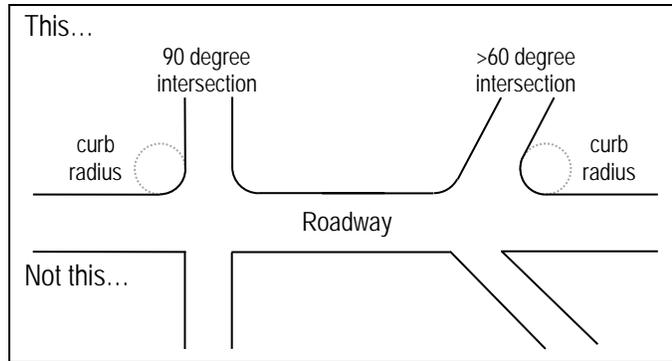


Figure 10.25,D-1. Intersection angle and curb radius.

- 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.

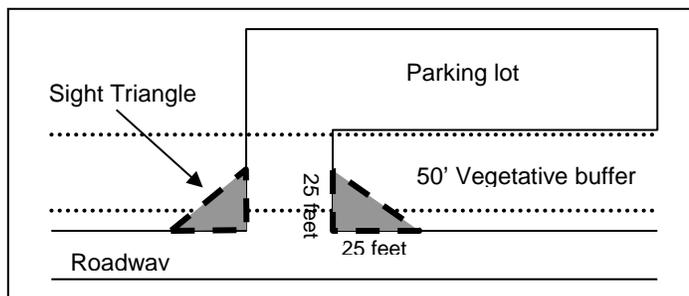


Figure 10.25,D-2. Sight triangle within a vegetative buffer.

- 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) Where practicable, roadways shall be designed to minimize the use of ditching, fit the natural topography of the land such that cuts and fills are minimized, minimize overall length, and protect scenic vistas while preserving the scenic qualities of surrounding lands.
 - (2) **d.**—Roadways in towns and plantations within the Commission’s jurisdiction 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) **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.

- (4) ~~f.~~ — 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 ¼ mile in length shall 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 legal 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 shall be limited to no more than two new entrances onto an existing roadway within any ½ mile section of the existing road. Also, where practicable for the proposed development site, subdivision roads shall 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.

[The conceptual standard on reserving a right of way for future connectivity between abutting parcels was not carried forward into rule language due to potential legal complications associated with the right to construct a connector road between the two parcels in the future.]

- (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 shall 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 shall include sufficient room for future expansion, if needed. Rights-of-ways shall be at least 50 feet in width.
- (4) Road and Infrastructure Maintenance.
- (a) Subdivision designs shall 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 shall include a list of inspection and maintenance tasks, recommended task frequency, and a responsible party.
 - (b) If a lot owners' association is proposed for maintenance of roads and common infrastructure, documents necessary for establishing the association shall be drafted and implemented. The documents shall provide for mandatory lot owner membership, lot owner 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 shall include the maintenance of common property, infrastructure, or facilities; assessing annual charges to all owners to cover expenses; and the power to place liens on property of members who fail to pay assessments.

E. NATURAL SCENIC CHARACTER, NATURAL AND HISTORIC FEATURES CULTURAL RESOURCES

[In accordance with direction from Commissions, the conceptual standards for hillside development have been added to this section and written so that they would apply to most types of development.]

1. Scenic ~~Character~~ Resources.

- a. The design of proposed development shall take into account the scenic character of the surrounding area. Structures shall be located, designed and landscaped to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways, major water bodies, coastal wetlands, permanent trails, or public property shorelines.
- b. To the extent practicable, proposed structures and other visually intrusive development shall be placed in locations least likely to block or interrupt scenic views as seen from existing roadways, traveled ways, major water bodies, coastal wetlands, permanent trails, or public property.

[This rulemaking proposal includes the revised language above to establish consistency throughout this section.]

- ~~e. If a site includes a ridge elevated above surrounding areas, the design of the development shall preserve the natural character of the ridgeline.~~

2. Hillside Resources. The standards for hillside resources must be met for all subdivision, residential, commercial, industrial, and other non-residential development, if any portion of the project area is located on a hillside, except as provided in Section 10.25.E.2.a below.

- a. **Exceptions.** The hillside resources standards in Sections 10.25.E.2.c through f shall not apply to:
 - (1) Features of structures within non-residential developments that contain no floor area such as chimneys, towers, ventilators, and spires; or to freestanding towers and turbines; or
 - (2) A development or portions of a development that will not be visible from existing roadways, major water bodies, coastal wetlands, permanent trails, or public property. Where views of the development are blocked by natural conditions or features such as existing vegetation, to qualify for this exception, the applicant shall demonstrate that these obstructing features or conditions will not be materially altered in the future by any uses allowed with or without a permit.
- b. **Stormwater Management.** The proposal shall include plans for the construction and maintenance of stormwater best management practices designed to slow down and spread runoff from developed areas and ensure that increased runoff does not cause downgradient soil erosion.
- c. **Ridgeline Protection.** The development shall be designed to ensure buildings, structures, and other improvements will not extend above the existing ridgeline or alter the ridge profile significantly when viewed from existing roadways, major water bodies, coastal wetlands, permanent trails, or public property.

- d. Vegetative Clearing.** The proposal shall include a vegetation management plan that establishes and provides for long-term maintenance of clearing limits that will minimize potential impacts to views from existing roadways, major water bodies, coastal wetlands, permanent trails, and public property. The vegetation management plan shall ensure:
- (1) There will be a sufficient area of clearing allowed around buildings to maintain the minimum extent needed for defensible space for fire safety, generally 30 feet in width;
 - (2) There will be sufficient vegetation maintained on steep slopes to protect long-term slope stability;
 - (3) Existing forest cover will be maintained to interrupt the view of the façade of buildings, provide a forested backdrop to buildings, and reduce or eliminate the visual impact of new development;
 - (4) Clearing for views will be limited, with narrow view openings between trees and beneath tree canopies being a desirable alternative to clearing large openings adjacent to building facades; and
 - (5) If cleared openings are allowed outside the building envelope, such as clearing for views, the plan shall include a quantifiable standard for limiting that clearing such as: any trees removed for views will not exceed a 25-foot width of clearcutting and extend, outward therefrom at an angle of 45 degrees or less on both sides, beyond a point down-slope where the tops of the trees are at the same elevation as the lowest adjacent grade for the principal building. The 25-foot opening may be located at any point along the down-slope boundary of the building envelope.
 - (6) The Commission may require additional vegetative clearing limitations or standards in cases where the proposed development could be visible from a scenic resource that has a unique or special value relative to other scenic resources in the area.
- e. Structural Development.** The development shall provide for building designs that will complement the site and topography (e.g., avoiding long unbroken roof lines; orienting buildings such that the greatest horizontal dimension of the structure is parallel with, and not perpendicular to, the natural contour of the land; stepping the building down the slope rather than creating building pads that require extensive excavation and filling, and sloping roofs in the direction and general angle of the natural slope on the project site).
- f. Construction Materials.** The development shall be designed to ensure that:
- (1) The exterior colors of structures, including but not limited to siding, roofing, retaining structures, foundations, trim, gutters, vents and chimneys, will be a muted tone naturally found at the specific site or in the surrounding landscape.
 - (2) Structures use only low or non-reflective exterior building materials, including but not limited to windows, roofing, gutters, vents, and chimneys. If a highly reflective material, such as aluminum or other smooth metal, shall be used for an essential component of the structure because no other material is reasonably available for that component, reduced reflectivity must be incorporated and maintained to the greatest extent practicable by, for example, painting the component with a muted color naturally found at the site, boxing in the component with non-reflective material, or using a textured or pre-weathered version of the component.

g. Linear Infrastructure. Roads, driveways, utility corridors, and other similar linear infrastructure must be located and constructed so as to minimize the visibility of corridor openings to the extent practicable (by, for example, following topographic contours and retaining existing vegetation).

h. Lighting. All lighting for the development shall comply with the standards of Section 10.25.F.

3. 2. Natural and Historic Resources Features.

a. Natural Features. If any portion of a subdivision or commercial, industrial or other non-residential project site includes critically imperiled (S1) or imperiled (S2) natural communities or plant species, the applicant shall demonstrate that there will be no undue adverse impact on the community and species the site supports and indicate appropriate measures for the preservation of the values that qualify the site for such designation.

b. Historic Features. If any portion of a subdivision or commercial, industrial or other non-residential project site includes an archaeologically sensitive area or a structure listed in the National Register of Historic Places, or is considered by the Maine Historic Preservation Commission or other pertinent authority as likely to contain a significant archaeological site or structure, the applicant shall conduct archaeological surveys or submit information on the structure, as requested by the appropriate authority. If a significant archaeological site or structure is located in the project area, the applicant shall demonstrate that there will be no undue adverse impact to the archaeological site or structure, either by project design, physical or legal protection, or by appropriate archaeological excavation or mitigation.

[The paragraph on natural features has been renamed to Plant Species and Communities, and moved in its entirety to Section 10.25,P,4.]

P. PROTECTED NATURAL RESOURCES

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3. High Mountain Areas.

The review standards of Section 10.25,P,1 apply to alterations for Uses Requiring a Permit and Special Exceptions in Section 10.23,G,3,c and d.

4. Plant Species and Communities. If any portion of a subdivision or commercial, industrial or other non-residential project site includes critically imperiled (S1) or imperiled (S2) natural communities or plant species, the applicant shall demonstrate that there will be no undue adverse impact on the community and species the site supports, and indicate appropriate measures for the preservation of the values that qualify the sitecommunity or species for such designation.

~~5.4.~~ **Coastal Sand Dune Systems.** (Reserved)

~~6.5.~~ **Community Public Water System Primary Protection Areas.** (Reserved)

~~7.6.~~ **Significant Wildlife Habitat.** (Reserved)

Q. SUBDIVISION AND LOT CREATION

This section governs the division of lots and the creation of subdivisions.

1. Counting Parcels, Lots, or Dwelling Units Under the Definition of Subdivision.

- a. **Lots Created by Dividing a Parcel.** When a parcel is divided, the land retained by the person dividing land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Section 10.25,Q,1,g below. This figure illustrates two examples:

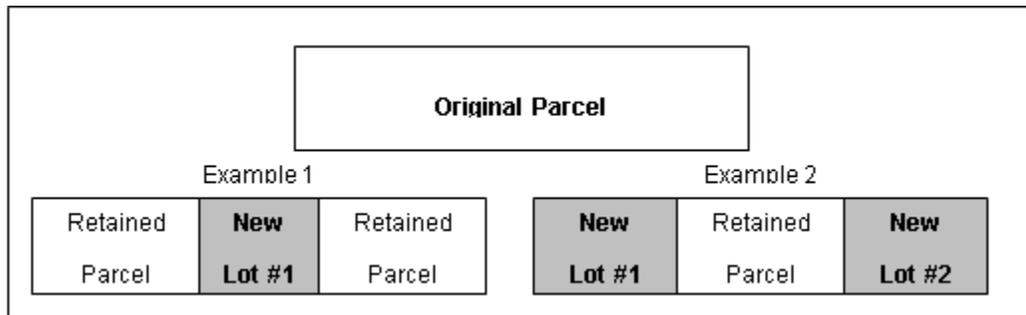


Figure 10.25,Q-1. Two examples where two new lot lines were drawn, each resulting in the creation of three parcels.

- b. **Subdivision Created by the Placement of Dwelling Units.** The placement of three or more dwelling units on a single lot within a five-year period creates a subdivision. The division of one lot into two parcels coupled with the placement of one or two dwelling units on either or both lots does not create a subdivision.
- c. **Parcels Originally Part of a Subdivision.** A lot or parcel which, when sold, leased or developed, was not part of a subdivision but subsequently became part of a subdivision by reason of another division by another landowner is counted as a lot under the subdivision definition. The Commission, however, will not require a subdivision permit be obtained for such lot, unless the intent of such transfer or development is to avoid the objectives of 12 M.R.S.A. Chapter §206-A.
- d. **Remote Rental Cabins.** In order to foster primitive recreational opportunities on large tracts of land, up to eight remote rental cabins within a single contiguous ownership larger than 5,000 acres within a township shall be allowed without subdivision review. Placement of more than eight remote rental cabins within such an ownership requires subdivision review by the Commission.
- e. **Renewal of Leases.** For the purpose of counting lots under the Commission's definition of subdivision, the renewal of a lease within a Commission approved subdivision shall not be counted as the creation of a lot. For the renewal of leases in other than Commission approved subdivisions, a lease that is renewed within two (2) years of its expiration shall not be counted as the creation of a lot. Renewal of leases in other circumstances shall be counted as the creation of a lot.
- f. **Existing parcels.** For the purposes of the definition of subdivision in 12 M.R.S.A. §682(2-A) and in these rules, an "existing parcel" shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.

g. Exempt lots. The following divisions are exempt when counting lots for purposes of subdivision, unless the intent of such transfer is to avoid the objectives of 12 M.R.S. ~~A~~ Chapter 206-A:

- (1) **Transfer of Lots for Forest Management, Agricultural Management or Conservation of Natural Resources.** A lot or parcel is not considered a subdivision lot if the following conditions are met:
 - (a) The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
 - (b) The lot is at least 40 acres in size;
 - (c) If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S. ~~A~~ §436-A;
 - (d) The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
 - (e) When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S. ~~A~~ §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S. ~~A~~ §682-B(4).
- (2) **Retained Lots.** A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
 - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Only one retained lot exempt under this Section 10.25,Q,1,g,(2) may be created from any one existing parcel.
- (3) **Transfers to an Abutter and Contiguous Lots.** A lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years. Where a lot is transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for:
 - (a) lots that are part of a subdivision approved by the Commission;
 - (b) a land division certified by the Commission as qualifying under 12 M.R.S. ~~A~~ §682-B; or

(c) as provided in Section 10.11.

If the property exempted under this paragraph is transferred within 5 years to another person without all of the merged land, or without satisfying either subparagraph (a), (b), or (c) above, then the previously exempt division creates a lot or lots for purposes of Section 10.25,Q.

- (4) **Divisions by Inheritance, Court Order, or Gifts.** Divisions of land accomplished solely by inheritance, or by court order, to a person related to the donor by blood, marriage, or adoption are not counted as lots for the purposes of this subsection.

A division of land accomplished by bona fide gift, without any consideration paid or received, to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division. 12 M.R.S. ~~A.~~ §682-B(1)

- (5) **Conservation Lots.** A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:

- (a) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
- (b) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity. 12 M.R.S. ~~A.~~ §682-B(3)

- (6) **Transfer to Governmental Entity.** A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State, or an agency of the Federal government is not considered a subdivision lot if the following conditions are met:

- (a) The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and
- (b) At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection. 12 M.R.S. ~~A.~~ §682-B(2)

- (7) **Large Lots Managed for Forest or Agricultural Management Activities or Conservation.** A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot.

- (8) **Unauthorized Subdivision Lots in Existence For at Least 20 Years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
- (a) Approval of the subdivision under 12 M.R.S. ~~A~~ §685-B was denied by the Commission and record of the Commission's decision was recorded in the appropriate registry of deeds;
 - (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S. ~~A~~ §685-B and record of the Commission's decision was recorded in the appropriate registry of deeds;
 - (c) The Commission has filed a notice of violation of 12 M.R.S. ~~A~~ §685-B with respect to the subdivision in the appropriate registry of deeds; or
 - (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S. ~~A~~ §682-B(5)

[The remainder of Chapter 10, Section 10.25,Q will be repealed and replaced with the following language.]

2. **Spaghetti-lots.** A person may not divide any parcel of land in such a way as to create a spaghetti-lot. This prohibition does not apply to utility or transportation rights-of-ways, government purchases, or a parcel of land that the Commission determines has significant public benefit and cannot be configured in any other way in order to provide that benefit. 12 M.R.S. §682-A

3. **General Standards for All Subdivision Layouts.**

a. **Locations and Layouts.**

Chapter 10, Subchapter II identifies the subdivision types and densities that are allowed in individual land use subdistricts. In addition, the following standards apply to subdivision developments:

- (1) **Residential Subdivisions.** All residential subdivisions shall be designed consistent with Table 10.25,Q-1, Location and Layout Overview.
- (2) **General Management Subdivisions.** Any subdivision that meets all of the criteria in Section 10.25,Q,3,a,(2),(a) through (f) below is considered a general management subdivision. For purposes of this section, "aggregate land area" includes lots to be offered and all roads and other infrastructure associated with the subdivision, but excludes common open space preserved and maintained in accordance with Section 10.25,S. A general management subdivision:
 - (a) Is a division within any 5-year period of an existing parcel of land within a single contiguous ownership into 3 to 14 lots or dwelling units;
 - (b) Occupies an aggregate land area of less than 30 acres;
 - (c) Is located within a primary location and wholly located within ½ mile of a public roadway;

- (d) Is located more than ½ mile from a major water body;
- (e) Is located wholly on land within an M-GN subdistrict, except that up to 20 percent of the aggregate land area may consist of protection subdistricts for minor flowing waters or wetlands at the time of the filing of a subdivision application; and
- (f) Is a high-density or moderate-density subdivision as defined in Section 10.02, and is designed consistent with Table 10.25,Q-1, Location and Layout Overview.

Table 10.25,Q-1. Location and Layout Overview

	Allowed Subdivision Layouts			
	Basic	Clustered	FlexDesign	Rural Lot
	High and Moderate Density			Low Density
Residential Subdivisions¹				
Inland (More than ½ mile from a major water body)	Yes	Yes	Yes	Yes
Shoreland (Management Class 3, 4, and 7 Lakes)	Yes	Yes	Yes	No
Shoreland with Heavy Development (Lakes exceeding CLUP density guidelines ^{2,3})	No	Yes	Yes	No
General Management Subdivisions				
Inland	Yes	Yes	Yes	No

[In the previous Subdivision Conceptual Layouts and Standards document, this table was divided by primary and secondary locations, and outside primary and secondary locations. The intent was to illustrate the larger picture, so there was overlap between zoning criteria and subdivision standards. In this revised table, we have removed criteria related to zoning that are addressed in the Adjacency Rulemaking package, and consolidated and simplified the table format. For most new residential subdivisions, it is likely that rezoning the property would be required as a first step. To illustrate, consider a proposal for a new D-RS subdistrict in a primary location. The proposed zoning criteria for determining whether the project site is a suitable location for a D-RS subdistrict is found in Section 10.08 and 10.08-A. If the D-RS subdistrict is adopted, the proposed use listings in Subchapter II would allow for a moderate-density or high-density subdivision within the primary location. Table Q-1 shows, in the subdivision standards, what layout options are available in the new D-RS subdistrict depending on the project location relative to shorelands. General Management subdivisions, which are allowed without rezoning in M-GN subdistricts were also added to the table.]

- (3) **Maple Sugar Processing Subdivisions.** Subdivisions containing lots created by lease for the purpose of establishing and operating commercial maple sugar

¹ Chapter 10, Subchapter II establishes where residential subdivisions may be located and what subdivision densities are allowed in the use listings for certain land use subdistricts. Criteria for adoption or amendment of land use districts are established in Sections 10.08 and 10.08-A.

² Lakes exceeding CLUP density guidelines are lakes having more than one development unit per 10 acres of lake surface area, or having more than one development unit per 400 feet of shore frontage, taken as an average around the entire lake shore.

³ This category includes, but is not limited to Management Class 5 lakes.

processing operations that meet all of the following criteria are maple sugar processing subdivisions:

- (a) The maximum number of leased lots shall be no more than 1 per every 300 acres of the lot or parcel being subdivided⁴;
- (b) The maximum size of each leased lot shall be no more than 4 acres;
- (c) Any two leased lots in a maple sugar subdivision may be located less than 1,000 feet from each other; these lots will be considered a set of lots for the purpose of determining leased lot separation;
- (d) Each set of leased lots must be separated from any other leased lot or set of leased lots in the subdivision by a minimum of 1,000 feet, measured horizontally from the closest point between lots or sets of leased lots; and

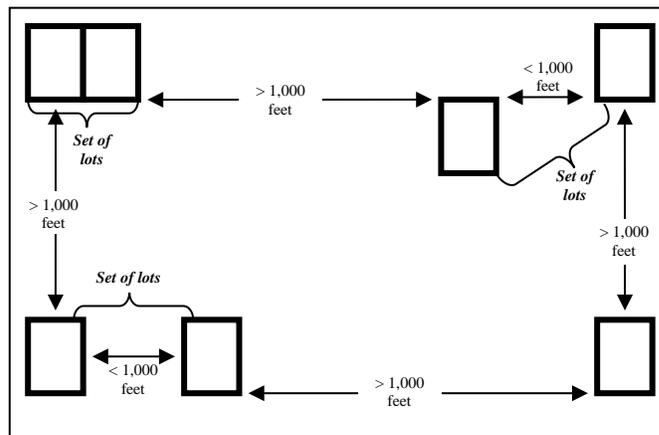


Figure 10.25,Q-2. Leased lots in maple sugar subdivisions.

- (e) Fee ownership in each of the leased lots shall only be transferred as part of a sale of the entire parcel originally so subdivided, or with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds.

The following general standards in Section 10.25,Q,3,b through g for subdivision layouts do not apply to maple sugar processing subdivisions.

[This section on maple sugar processing subdivisions has been relocated in its entirety from Subchapter II, Land Use Districts, Sections 10.21,I (Rural Business Development Subdistricts) and 10.22,A (General Management Subdistricts) to consolidate the standards for all types of subdivisions.]

⁴ Calculated by dividing the total acreage of the lot or parcel being subdivided by 300 and rounding down to the nearest whole number.

b. Harmonious Fit.

- (1) Subdivisions shall be designed to harmoniously fit into the natural environment and shall cause no undue adverse impact on existing surrounding uses. When determining “harmonious fit”, the Commission shall consider the existing character of the surrounding area, potential for conflict with surrounding uses, proposed driveway and roadway locations, and proposed lot sizes, among other factors.
- (2) Subdivisions proposed with mixed residential, commercial, or civic uses shall also meet the following requirements:
 - (a) Commercial uses must fit the size, scale, and intensity of the surrounding residential uses; and
 - (b) A combination of residential, commercial, or civic uses on a single lot is allowed only if the most restrictive dimensional requirements, as provided in Section 10.26, are met and provided that the commercial or civic uses are otherwise compatible with residential uses.

c. Building Envelopes.

- (1) Building envelopes shall be identified on each lot, designating suitable areas where structural development and permanently maintained cleared openings may occur. Activities not counted as permanently maintained cleared openings include a single driveway for access to the building envelope, cleared areas that are mowed less than twice a year, areas used for agricultural management activities, and trails for recreational access.
- (2) Building envelopes shall be shown and labeled on the subdivision plat. In addition, building envelope requirements shall be included in deed covenants for each lot specifying that structural development and permanently maintained cleared openings shall be located within the building envelope as shown on the Commission approved subdivision plan, as it may be amended from time to time.
- (3) Building envelopes shall be located and sized to allow conformance with the Commission’s dimensional requirements in terms of minimum water body, road, and property line setbacks, and maximum lot coverage requirements, as provided in Section 10.26; and vegetation clearing standards for shorelines and public roads, as provided in Section 10.27.
- (4) Where practicable, building envelopes shall be arranged:
 - (a) In groups, allowing for larger open areas between groups of building envelopes;
 - (b) To avoid placement along ridge lines, on prime farm land soils, in wetlands or drainage areas, on sustained slopes greater than 20 percent, or over any other topographic or natural features important to the site; and
 - (c) To maximize privacy afforded to each dwelling unit, such as providing sufficient buffering vegetation and staggering building envelopes.

d. Common Open Space.

- (1) Unless another configuration better achieves the Commission's natural and cultural resource goals, any common open space proposed for the subdivision shall be preserved in large, contiguous blocks that connect with off-site undeveloped land to form a continuous integrated open space system.
- (2) Significant wildlife habitats, imperiled and critically imperiled natural plant communities, and a minimum 250-foot undisturbed buffer around the boundaries of those habitats shall be included in common open space.
- (3) The subdivision design shall include suitable common open space for wildlife passage, at least 500 feet in width, around or through the development. The wildlife passage shall be located along the side of flowing waters or wetlands, in a way that links high value wildlife habitats on or off the property, along the property line of any abutting conserved land, or adjacent to one of the boundary lines of the subdivision, to the extent practicable. In addition, lots shall be configured so that groups of lots are separated by at least 500 feet of undeveloped land such that lots within a group do not extend more than 1,320 feet along the existing access road or shoreline.
 - (a) In cases where the subdivision design consists of four or fewer lots encompassing the entire existing parcel, and where the Commission has determined provision for wildlife passage exists within ¼ mile of the parcel, the Commission may allow subdivision designs without common open space for wildlife passage.
 - (b) In cases of subdivisions that constitute "in-fill" development, on parcels surrounded by existing development, for which designated common open space would be an isolated pocket providing little long-term value, the Commission may also allow subdivision designs without common open space for wildlife passage.

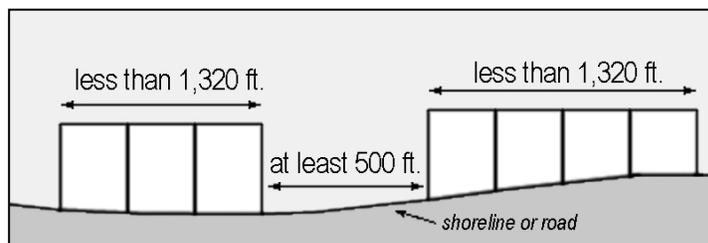


Figure 10.25,Q-3. Grouping of subdivision lots along a roadway or shoreline.

- (4) In cases where an existing recreational resource, such as a motorized or non-motorized trail managed for public access, is located in or within 1000 feet of the project boundary, the subdivision design shall include provisions for all lot owners in the subdivision to safely and legally access the recreational resource. A legal access to a recreational resource that crosses private land must be legally enforceable by the lot owners.
- (5) Common open space within the subdivision shall be preserved and maintained in accordance with the Commission's Chapter 10 rules, Section 10.25,S.
- (6) Subdivision Redistricting Considerations. Subdivisions are allowed only in appropriate subdistricts, as designated in Sub-Chapter II. However, the Commission

may approve subdivisions that include land area designated as common open space within subdistricts where subdivision is otherwise prohibited, provided the designated land area meets the requirements of Section 10.25,S.

e. Shoreland Development.

- (1) Shoreland development, subdivisions that include shoreline frontage on a major water body, shall include one of the following, except as allowed in Section 10.25,Q,3,e,(2) below:
 - (a) Non-waterfront lots that equal or exceed the number of waterfront lots in the layout;
 - (b) An area reserved for future layout and development of non-waterfront lots that is equal to or exceeds the area of waterfront lots in the layout; or
 - (c) A non-linear design that incorporates a majority of the waterfront in common ownership.
- (2) In cases where the Commission finds site specific constraints such as sustained steep slopes or wetlands do not allow for development of non-waterfront lots anywhere on the parcel, the Commission may allow an alternative layout for a project site.
- (3) Shoreland development shall also include provisions for useable common access to the water for all lots in the subdivision and for any future lots in reserve areas. Common water access shall avoid open space designated for wildlife passage to the extent practicable.
- (4) Proposed permanent docks, trailered ramps, hand-carry launches or water-access ways shall comply with the requirements of Section 10.27,L,2.
- (5) Designs shall include and provide for maintenance of best management practices for control of phosphorus in accordance with Section 10.25,L.

f. Legal Right of Access to Subdivision Lots.

Any lot in a subdivision created after *[Insert effective date of rule change]* must be accessible from a public road by a legal right of access. This legal right of access may be by road or by water.

- (1) Road Access. A legal right of access by road exists when the subdivision land:
 - (a) Abuts a public road or is part of a larger parcel in common ownership that abuts a public road; or
 - (b) Benefits from an easement, appurtenant to the land, that provides for vehicular access.

Under either option, if the road over which legal access is provided does not exist, it must be reasonable that the road could be built. Additionally, the access must be sufficient to support the land uses allowed in the subdivision, including any associated construction, maintenance, and use of structures. An easement providing for vehicular access may contain reasonable provisions to minimize the burden on the underlying fee owner, such as provisions that: allow for closure of the road during spring mud conditions; allow for closure during the winter to avoid snow plowing,

provided pedestrian and snowmobile access is allowed; and establish road standards and reasonable maintenance expectations and responsibilities.

- (2) Access by water. A legal right of access by water exists when the subdivision land reasonably may be accessed by boat from a public or private boat launch, provided the boat launch is accessible by road access consistent with Section 10.25,Q,3,f,(1) above.

[This language mirrors the language proposed for legal right of access in the adjacency rulemaking proposal, Section 10.08-A,E, when land proposed for rezoning is required to be accessible from a public road by legal right of access.]

- (3) Leased Lot Exception. The legal right of access requirement for subdivision lots contained in Section 10.25,Q,3,f does not apply to subdivision lots leased on an annual basis, provided lease payments do not exceed the fee for one year and at the time of annual renewal both the lessor and lessee have the legal right to not renew the lease, regardless of cause. However, as part of the sale of any such leased lot in a subdivision created after *[Insert effective date of rule change]*, the seller shall grant the buyer a legal right of access that satisfies Section 10.25,Q,3,f,(1) or (2).

- g. **Recreational Resource Capacity for Recreation-based Subdivisions.** A recreational-based subdivision must be integrated with a recreational resource. In cases where the recreational resource does not have sufficient capacity to accommodate all of the lot owners in the subdivision, the subdivision design must include provisions to adequately increase capacity of the resource. Factors that the Commission will consider in evaluating resource capacity include, but are not limited to, the amount of parking, availability of wastewater disposal facilities, and evidence of unstable or eroding soils due to overuse.

4. Layout Specific Standards.

The Commission has adopted additional subdivision standards for four different layouts, Basic, Clustered, Rural Lot, and FlexDesign.

- a. **Basic Subdivisions.** Basic subdivisions must meet all general standards in Section 10.25,Q,3, and the following layout specific standards:

- (1) Building envelope size shall be limited to no greater than 40 percent of the size of each lot.

- (2) For Recreation-based Subdivisions using the Basic Layout:

- (a) The subdivisions shall meet the required common open space percentage in Section 10.25,Q,4,a,(2),(b) below, unless the subdivision:

- i. Abuts or is located within 1/4 mile of permanently conserved land, or
- ii. Includes provisions for the preservation of near-by, off-site open space.

The conserved land specified in (i) and (ii) above must be equal to or greater than the required common open space, both in total contiguous area and shoreline frontage.

In cases where the subdivision abuts permanently conserved land, all building envelopes shall be at least 100 feet from the boundary line of the conserved parcel.

- (b) **Common Open Space Percentage.** For recreation-based subdivisions, the total common open space shall include at least 40 percent of the net developable land area and 40 percent of the net developable shorefront for shoreland developments.
 - (c) **Recreational Trail Incentive.** For recreation-based subdivisions, the total common open space percentage for the subdivision may be reduced by 5 percent if an existing trail on the property is included in common open space or a new trail is constructed in common open space. An additional 5 percent reduction may be allowed if the on-site trail connects with an existing off-site trail managed for public access. Common open space requirements for habitat protection and wildlife passage shall still be met, and trail construction shall avoid or minimize impacts to common open space designated for wildlife.
- b. Clustered Subdivision.** Clustered subdivisions must meet all general standards in Section 10.25,Q,3, except as provided in Sections 10.25,Q,4,b,(1) through (3) below:
- (1) **Density and Dimensional Requirements for Clustered Layouts.**
 - (a) Chapter 10, Subchapter II identifies the subdivision densities that are allowed in individual land use subdistricts. Depending on the subdistrict, clustered layouts can use a moderate or high-density design. Subdivision densities are defined in Section 10.02.
 - (b) The Commission may reduce the minimum lot size for moderate density designs provided the lot density requirement for the subdivision is met in the aggregate, inclusive of proposed common open space; and may reduce the minimum road frontage or shoreline frontage for individual lots in both moderate and high-density designs, provided, in the aggregate, these dimensional requirements are met within the development.
 - (c) In addition, the Commission may reduce dimensional requirements, in the aggregate, provided:
 - i. Dimensional requirements, in the aggregate, are not reduced by more than 50 percent;
 - ii. Site conditions are suitable for more concentrated development on some portions of a site and such concentrated development will not adversely affect resources; and
 - iii. The specific benefits afforded by the cluster approach will prevent the loss of or enhance the conservation of important natural features.
 - (2) **Common Open Space.**
 - (a) Cluster subdivisions shall be designed to protect developable land as common open space through (1) clusters of dwellings on commonly-owned land; (2) creation of individual lots with reduced lot size, reduced road frontage or, within shoreland developments, reduced shoreline frontage as permitted under these rules; or (3) a decrease in the number of individual lots that meet dimensional requirements.

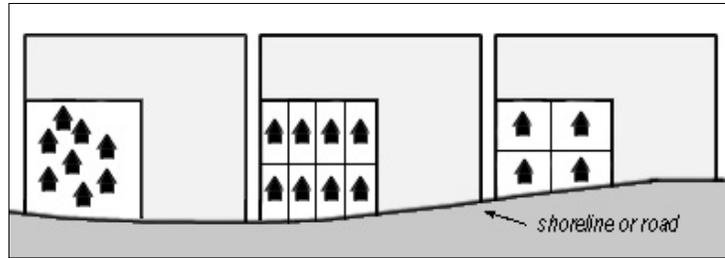


Figure 10.25,Q-4. From left to right, (1) clustering on a commonly-owned parcel, (2) clustering on individual parcels with reduced lot size and frontage, and (3) clustering on individual parcels without reduced lot size or frontage.

- (b) **Common Open Space Percentage.** The total designated common open space shall include at least 50 percent of the net developable land area and 50 percent of the net developable shorefront for shoreland developments.
 - (c) **Subsurface disposal systems** may be allowed in designated common open space, provided appropriate legal provisions are made for maintenance, access, and replacement; and the systems will not be located in areas designated for wildlife passage or habitat protection.
- (3) **Shoreland Development.** Shoreland developments using a clustered subdivision layout shall include non-waterfront lots that equal or exceed the number of water front lots in the layout. The general standard provision for using reserved area for future growth in lieu of non-waterfront lots is not allowed in this layout (Section 10.25,Q,3,e,(1) and (2)).
- c. Rural Lot Subdivisions.** Rural Lot subdivisions must meet all general standards in Section 10.25,Q,3, except as provided in Sections 10.25,Q,4,c,(1) through (5) below.
- (1) All building envelopes shall be located in the front third of the lot to leave the back two thirds available for open space and wildlife passage.
 - (2) Building envelopes shall be no greater than two acres in size.
 - (3) Design of the subdivision road shall minimize fragmentation and indirect impacts on wildlife habitat by using practices such as minimizing the length of new roads, to less than ¼ mile where practicable, locating new roads proximate to existing on-site or off-site development or infrastructure, and locating new roads closer to one of the existing parcel lines.
 - (4) The design shall include suitable space for wildlife passage. The wildlife passage may be on individual lots; however, it shall be outside designated building envelopes and at least 500 feet in width, extending around or through the development. In addition, the area for wildlife passage shall be located along the side of flowing waters or wetlands, in a way that links high value wildlife habitats on or off the property, along the property line of any abutting conserved land, or adjacent to a property line, to the extent practicable.
 - (5) The access provision for existing trails in Section 10.25,Q,3,d,(4) applies to Rural Lot subdivisions. Otherwise, the common open space provisions in Section 10.25,Q,3,d do not apply to this layout.

- d. FlexDesign Subdivisions.** The FlexDesign subdivision is a customized approach to subdivision layout and design. The only general standards in Section 10.25,Q,3 that apply to FlexDesign subdivisions are Sections 10.25,Q,3,a,c, and f; the standards of Section 10.25,Q,4,d apply.
- (1) Subdivision Objectives. FlexDesign subdivisions shall meet the Commission's local scale subdivision design objectives, as follows:
 - (a) Good Fit. Ensure well thought-out subdivision designs and quality infrastructure construction that are consistent with the local area's character, culture, land uses, and housing market; fit into the landscape to minimize the footprint and complexity of infrastructure, encourage continued timber and wood fiber production where appropriate, and protect existing resources where appropriate. Good fit recognizes the diversity of different regions.
 - (b) Limited Resources. Provide for efficient use of limited land resources such as shorelines, frontage on public roads, and suitable soils to encourage more capacity for residential development in appropriate locations and create efficiencies in the provision of services such as roads, communication infrastructure, emergency services, schools, solid waste disposal, and recreation.
 - (c) High Value Resources. Protect on-site and nearby high value resources including important farmlands, scenic resources, cultural features, wildlife habitats, water bodies, wetlands, and other natural areas through good design, open space connectivity, and off-site conservation when appropriate to mitigate adverse impact on these resources.
 - (d) Recreational Resources. Ensure that subdivision designs provide adequate access to on-site or off-site recreational opportunities to accommodate new residents and prevent negative impacts on existing public or private recreation resources, and encourage designs that provide access to a variety of, and interconnectivity between, recreational opportunities, where available.
 - (e) Adequate Infrastructure. Ensure adequate infrastructure that has been designed to efficiently and effectively maximize public health and safety, allow efficient provision of public services, and minimize the cost of operation and maintenance, including provisions for systems that have interconnectivity, sufficient capacity, and resiliency in extreme weather events.
 - (2) Subdivision Design. The development of the sketch plan for FlexDesign subdivisions shall be consistent with the following design approach:
 - (a) Step One. Identify Priority and Supplemental Conservation Areas. Identify the priority conservation areas, using existing information from State natural resource agencies and landowner knowledge, that shall be considered for inclusion within common open space. Priority conservation areas include those areas of the parcel containing or supporting protected natural resources such as significant wildlife habitat, water bodies and wetlands; buffer areas to protect those resources; areas needed for wildlife passage around or through the development; imperiled and critically imperiled natural plant communities; special flood hazard areas; and sustained steep slopes (greater than 20 percent). Also, identify any supplemental conservation areas, features that the landowner has determined warrant secondary consideration for inclusion within common

open space or protection from development, including other areas not well-suited for development, existing trails, areas with connection to off-site open space, open fields, or other special features of the property that are important to maximize opportunities such as protecting significant view sheds and providing solar access, and meet the applicant's design goals for the subdivision.

- (b) **Step Two. Locate Building Envelopes.** Building envelopes shall be located outside of priority conservation areas, and to the maximum extent feasible, should be located outside of supplemental conservation areas, as delineated in Step One. Building envelopes shall include sufficient area suitable for development and be located to reflect the Commission's local scale subdivision design objectives, outlined in Section 10.25,Q,4,d,(1) above, as well as the applicant's design goals for the subdivision. The placement of building envelopes and lot lines shall consider minimizing the creation of edges⁵ between developed areas and open space, and consider the cultural and natural features of the landscape to the greatest extent possible (e.g., follow stone walls, lines of boundary trees, and streams). Locations of building envelopes should also consider the privacy provided for individual homeowners.
 - (c) **Step Three. Align Roads and Trails.** The minimum length and network of roads necessary to access each lot shall be identified, subject to the road standards of the Commission, with consideration given to conforming roads to the natural landscape and to minimizing the creation of edges between developed areas and open space. Roads shall be located in such a way that avoids or at least minimizes adverse impacts on those areas delineated in Step One. Where practicable for the proposed development site, entrances onto existing roads shall be located to line-up directly across from existing entrances on the roadway, allowing for safe cross movement of traffic at the intersection. Proposed trails shall be identified where access to common open space or recreational resources on or off the development is appropriate.
 - (d) **Step Four. Draw Lot Lines.** For subdivisions with individual lots, proposed lot lines shall be identified. The placement of the lot lines shall consider those conservation areas identified in Step One, design decisions made in Steps Two and Three, and the Commission's dimensional and vegetation clearing standards, as well as conform to the cultural and natural features of the landscape to the greatest extent possible. The delineation of lots also should consider the opportunity for future owners to reasonably expand the structures on the lot, and privacy provided for individual lot owners.
- (3) **Future Development.** When a subdivision will not utilize the entire parcel and there are potential plans for future subdivision or development of the parcel, the sketch plan also shall include a conceptual, long-range development plan showing the potential utilization of the balance of the parcel not being subdivided. The conceptual long-range development plan is intended to show that the current subdivision proposal will not compromise the long-term development of the parcel, future access to recreational resources, or important conservation values. This plan must show the relationship of the proposed subdivision area to the balance of the parcel and to

⁵ In this context, "edge" relates to the boundary between areas of human activity such as lawns and roads, and undeveloped natural areas, such as meadows and forests. Where an edge exists along a natural area, native wildlife species can be adversely affected for a distance from the edge, often called "the edge effect."

adjacent land, as well as, in general terms, the potential road network and other infrastructure, development areas, and common open space areas for the long-range development plan.

- (4) Common Open Space.
 - (a) The area to be designated as common open space or otherwise preserved as part of the development shall include all identified priority conservation areas. Supplemental conservation areas may also be included in common open space or conserved as needed to ensure the Commission's subdivision objectives and the applicant's design goals for the subdivision are met.
 - (b) Sufficient supplemental conservation areas shall be included in the common open space to meet at least the minimum area percentage requirement for common open space.
 - (c) Common Open Space Percentage. Unless site conditions indicate less common open space will meet the Commission's local scale subdivision design objectives in Section 10.25,Q,4,d,(1), the common open space percentage for FlexDesign subdivisions shall be at least 50 percent of the net developable land area, and 50 percent of the net developable shoreline for shoreland developments.
 - (d) Unless another configuration better achieves the Commission's local scale subdivision design objectives, any common open space proposed for the subdivision shall be preserved in large contiguous blocks that connect with off-site, undeveloped land to form a continuous integrated open space system.
 - (e) Subsurface disposal systems may be allowed in common open space, provided legal provisions are made for maintenance, access, and replacement; and the systems are not located in areas designated for wildlife passage or habitat protection.
 - (f) Common open space shall be labeled as such on the subdivision plat, and preserved and maintained in accordance with Section 10.25,S.
 - (g) Subdivision Redistricting Considerations. Subdivisions are allowed only in appropriate subdistricts, as designated in Sub-Chapter II. However, the Commission may approve subdivisions that include land area designated as common open space within subdistricts where subdivision is otherwise prohibited, provided the designated land area meets the requirements of Section 10.25,S.
- (5) Sketch Plan Review Meeting. Sketch plan submissions for FlexDesign subdivisions shall be consistent with the objectives in Section 10.25,Q,4,d,(1) above; shall follow the approach set out in Section 10.25,Q,4,d,(2); and shall include the submission of a site context map, site inventory and analysis map, conceptual sketch plan, alternative design sketch, and project narrative discussing the applicant's design goals for the subdivision.

5. Procedural Requirements.

a. Sketch Plan Review Meeting for All Subdivisions.

- (1) Prior to submitting a permit application for any subdivision, the applicant shall request and attend a sketch plan review meeting.
- (2) Two sketch plans, with no engineering details, showing possible subdivision designs for the property using two different layout options shall be provided in advance of the meeting. Data provided on the sketch plan may be based on existing information available from State natural resource agencies and landowner knowledge. Site-specific survey work such as on-site wetland delineations is not expected and need not be a part of the sketch plan review.
- (3) The permit application for the subdivision shall be submitted within 12 months after the sketch plan review meeting. If the application is not submitted within 12 months, the Commission may require a new sketch plan review.
- (4) Applicants may present a subdivision in phases, provided that the first phase contains at least 25 percent of the total number of lots as shown on the sketch plan.

For phased proposals, the request for sketch plan review also must include a conceptual long-range development plan showing the potential utilization of the balance of the parcel. The conceptual long-range development plan is intended to show that the current subdivision proposal will not compromise the long-term development of the parcel or important conservation values. This plan must show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land, as well as, in general terms, the potential road network and other infrastructure, development areas, and common open space areas for the long-range development plan.

[The language in the paragraph above has been added to this section consistent with the future development provisions in the FlexDesign layout.]

b. Subdivision Filing with Registry of Deeds.

- (1) Filing requirements. Following the approval of any subdivision by the Commission, the applicant shall file the subdivision plat signed by the Commission's Director with the County Registry of Deeds where the real estate is located.
- (2) A registrar of deeds shall not record a copy of conditions or any plat or plan purporting to subdivide real estate located within the unorganized and deorganized lands of the State, unless the Commission's approval is evidenced thereon. 12 M.R.S. §685-B(6)

c. Sale or Lease of Lots.

- (1) Certificates of Compliance. The sale or lease of lots in any subdivision approved by the Commission may not proceed until a certificate of compliance has been issued. A certificate of compliance requires that:
 - (a) Proposed deeds and plats be reviewed and approved by the Commission to ensure that relevant permit conditions have been fulfilled. 12 M.R.S. §685-B(8)
 - (b) Signed plats have been filed with the appropriate county Registry of Deeds.

- (c) Project construction has been completed, including but not limited to all common infrastructure and improvements, such that all subdivision lots can be accessed and occupied, and infrastructure and improvements can be used for their intended purpose without concern for the general health, safety, and welfare of the occupant or user, and the general public. Common infrastructure and improvements include elements of the subdivision such as common access ways and trail systems, waterfront amenities and docking facilities, and community centers, as applicable, located anywhere within the subdivision.
 - (d) All permit conditions of approval have been fulfilled, except those requiring ongoing or long-term compliance activity such as annual water quality monitoring or maintenance of structural erosion control best management practices.
- (2) Partial Certificates of Compliance. The Commission may issue a partial certificate of compliance for a portion of a subdivision development if that portion of the project can stand on its own and all infrastructure systems will be able to function properly without the benefits of the unbuilt portions of the systems, when Section 10.25,Q,5,c,(a) and (b) have been met, and:
- (a) Project construction is complete for the standalone portion of the project, including but not limited to all common infrastructure and improvements needed to support lots or proposed for use by lot owners in that portion of the project, such that all lots in that portion of the project can be accessed and occupied, and infrastructure and improvements can be used for their intended purpose without concern for general health, safety, and welfare of the occupant or user, and the general public. Common infrastructure and improvements include elements of the subdivision such as common access ways and trail systems, waterfront amenities and docking facilities, and community centers, as applicable, located anywhere within the subdivision.
 - (b) All open space proposed for wildlife habitat and wildlife passage has been preserved in accordance with Section 10.25,S.
 - (c) All permit conditions of approval applicable to the standalone portion of the project have been fulfilled, except those requiring ongoing or long-term compliance activity such as annual water quality monitoring or maintenance of structural erosion control practices.

For information relative to permit expiration for partial certificates of compliance see Section 10.17,C,4.

[This language is added to clarify provisions for certificates of compliance particularly regarding what constitutes a complete project and when partial certificates of compliance are appropriate for subdivision development.]

- (3) Monumentation. All subdivision and lot boundary corners and angle points shall be marked by suitable, permanent monumentation in accordance with rules adopted by the Board of Licensure for Professional Land Surveyors, 02-369 CMR 90, Standards of Practice, effective April 1, 2001.

- (4) **Maple Sugar Processing Subdivisions.**
 - (a) The fee interest in lots in maple sugar processing subdivisions, shall not be offered for sale except as part of a sale of the entire parcel originally so subdivided, or with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds. The subdivision plat, and any deed for lots in subdivisions created by lease for the purpose of establishing and operating maple sugar processing operations, shall contain conditions setting out such restrictions.
 - (b) For maple sugar subdivisions created after February 22, 2013, deeds for each leased lot in maple sugar processing subdivisions must be created with a deed restriction requiring that the lot be used only for commercial maple syrup production unless the Commission, or its legal successor in function, releases the restriction and records such release in the registry of deeds. The deeds for each leased lot in maple sugar processing subdivisions shall be recorded with the registry of deeds at the time the subdivision is created.
- (5) **Rural Business Lots.** All subdivision lots permitted for rural businesses in the D-RB subdistrict shall include a condition requiring that the lot be used only for rural businesses unless the Commission, or its legal successor in function, releases the condition.

d. Recording of Large Lot Land Divisions.

- (1) When 3 to 10 lots each containing at least 40 acres are created within a 5-year period and are located more than 1,320 feet from the normal high water mark of any great pond or river and more than 250 feet from the upland edge of a coastal or freshwater wetland as those terms are defined in 38 M.R.S. §436-A, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the Commission within 60 days of the creation of that lot. The plan must state that the lots may be used only for forest management, agricultural management or conservation of natural resources. A “Guide to Certification of Plans for Large Lot Land Divisions” is available from the Commission that details submission requirements.
- (2) The Commission shall determine whether the plan qualifies under 12 M.R.S. §682-B, ordinarily within 15 days of receipt of the plan.
- (3) A copy of the certified plan must be filed, within 30 days of certification by the Commission, with the State Tax Assessor and the appropriate registry of deeds in the county in which the land is located. A register of deeds may not record any plan depicting these lots unless the Commission’s certification that the division qualifies under 12 M.R.S. §685-B is evidenced on the plan. 12 M.R.S. §685-B(6-A)
- (4) Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds is considered a subdivision. 12 M.R.S. §682-B

R. RESERVED

[The standards for clustered development have been incorporated into the subdivision layout specific standards of Section 10.25,Q. This section will be reserved for future use.]

S. COMMON OPEN SPACE

The standards set forth below ~~must~~shall be met for all cluster subdivisions and other land area designated as common open space.

1. **Preservation and Maintenance of Common Open Space.** Common open space ~~may be~~shall be owned, preserved and maintained as required by this section, by any of the following mechanisms or combinations thereof, listed in order of preference, upon approval by the Commission:
 - a. Conveyance of common open space to a qualified holder, as defined under Section 10.25,S,2.
 - b. Dedication of development rights of common open space to a qualified holder, as defined under Section 10.25,S,2 with ownership and maintenance remaining with the property owner or a lot owners association.
 - c. Common ownership of open space by a lot owners association which prevents future structural development and subsequent subdivision of the common open space, and assumes full responsibility for its maintenance.
 - d. Ownership by a single landowner, provided that deed covenants are recorded that are sufficient to ensure the purposes of Section 10.25,S.

[This was a recommendation from the facilitated stakeholder meetings in the subdivision rule review process.]
 - e. ~~d.~~—Any other mechanism that fully provides for the permanent protection or conservation of the common open space and that is acceptable to the Commission.
2. **Qualified Holders.** The following ~~entitites~~entities are qualified to own, preserve, and maintain common open space:
 - a. “A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
 - b. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological, or cultural aspects of real property.” 33 M.R.S.A. §476, ~~sub~~§2
3. **Uses of Common Open Space.** Common open space may be usable for low-intensity non-commercial recreation or for purposes intended to conserve land and preserve important natural features of the site. Uses within the common open space may be limited or controlled by the Commission at the time of approval, as necessary, to protect natural resources and adjacent land uses. Specifically, common open space lots are subject to subdivision and other permit conditions prohibiting residential, commercial, industrial or other structures and uses.
4. **Lot Owners Association By-laws.** If any or all of the common open space is to be reserved for common ownership by the residents of the subdivision, documents necessary for establishing the association shall be drafted and implemented. The documents shall provide for mandatory lot owner membership, lot owner rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover any initial operating costs, and the subdivision

~~developer's responsibilities, if any; the bylaws of the proposed lot owners association shall specify responsibilities and methods for maintaining the open space~~ and shall prohibit all residential, commercial, industrial or other structures and uses within the designated common open space.

5. **Separate Lot of Record.** ~~Common o~~Open space shall be dedicated as a separate lot of record with no further subdivision or conversion of use of that lot allowed. Such a lot shall be clearly shown and labeled on the subdivision plat with a notation thereof to indicate that no further subdivision or conversion of use is allowed, and that the common open space land is permanently reserved for open space purposes. The notation shall further describe the allowable use or uses; ownership; management; method of preservation, including the book and page of any conservation easements or deed restrictions required to be recorded to implement the reservations or restrictions; and the rights, if any, of the owners in the subdivision to such land or portions of that land.

[The revisions in the paragraph above add language to this section consistent with the conceptual standard for maintenance of common infrastructure, and open space.]