Sub-Chapter III

LAND USE STANDARDS

1. GENERAL CRITERIA FOR APPROVAL OF PERMIT APPLICATIONS

In approving applications submitted to it pursuant to 12 M.R.S. §685-A(10) and §685-B, the Commission may impose such reasonable terms and conditions as the Commission may consider appropriate in order to satisfy the criteria of approval and purpose set forth in these statutes, rules and the Comprehensive Land Use Plan.

* 1. Criteria for Approval of All Permit Applications

1. “The commission may not approve an application, unless:

Adequate technical and financial provision has been made for complying with the requirements of the State’s air and water pollution control and other environmental laws, and those standards and regulations adopted with respect thereto, including without limitation the minimum lot size laws, [12 M.R.S.] Sections 4807 to 4807-G, the site location of development laws, Title 38, sections 481 to 489-E, and the natural resource protection laws, Title 38, sections 480-A to 480-Z, and adequate provision has been made for solid waste and sewage disposal, for controlling of offensive odors and for the securing and maintenance of sufficient healthful water supplies;

Adequate provision has been made for loading, parking and circulation of land, air and water traffic in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;

Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.

(1) In making a determination under this paragraph regarding whether an applicant has made adequate provision for fitting the proposal harmoniously into the existing natural environment, the commission may consider the effect of at least 1.5 feet of sea level rise by 2050 and 4 feet of relative sea level rise by 2100 as specified by the Commission by rule adopted pursuant to section 685-A, subsection 3.

(2) In making a determination under this paragraph regarding development to facilitate withdrawal of groundwater, the Commission shall consider the effects of the proposed withdrawal on waters of the State, as defined by Title 38, Section 361-A, subsection 7; water-related natural resources; and existing uses, including, but not limited to, public or private wells, within the anticipated zone of contribution to the withdrawal. In making findings under this subparagraph, the Commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

(3) In making a determination under this paragraph regarding a community-based offshore wind energy project, the commission shall consider the project’s effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

(4) In making a determination under this paragraph regarding a wind energy development, as defined in Title 35-A, section 3451, subsection 11, that is not a grid-scale wind energy development, that has a generating capacity of 100 kilowatts or greater and that is proposed for a location within the expedited permitting area, the commission shall consider the development’s or project’s effects on scenic character and existing uses relating to scenic character in the manner provided for in Title 35-A, section 3452;

C-1.With respect to a wind energy development that has a generating capacity of 100 kilowatts or greater, the person proposing the development has received certification from the Department of Environmental Protection in the manner provided under [Title 35-A, section 3456](http://www.mainelegislature.org/legis/statutes/35-A/title35-Asec3456.html);

The proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site;

The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto; and

In the case of an application for a structure upon any lot in a subdivision, that the subdivision has received the approval of the commission.

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public’s health, safety and general welfare will be adequately protected. The commission shall permit the applicant and other parties to provide evidence on the economic benefits of the proposal as well as the impact of the proposal on energy resources.” 12 M.R.S. §685-B(4)

In addition, the applicant must demonstrate “evidence of sufficient right, title or interest in all of the property that is proposed for development or use.” 12 M.R.S. §685-B(2)(D)

1. Pursuant to 12 M.R.S. Section 685-B,(4) in making a decision on an application for a community-based offshore wind energy project, the commission may not consider whether the project meets the specific criteria designated in 12 M.R.S. Section 1862, Subsection 2, paragraph A, subparagraph (6), divisions (a) to (d). This limitation is not intended to restrict the commission’s review of related potential impacts of the project as determined by the commission.
   1. Criteria for Permit Applications InVOLVING SPECIAL EXCEPTIONS

The following criteria apply to permit applications for uses allowed by special exception in accordance with Sub-chapter II. The applicant must show by substantial evidence that:

1. there is no alternative site that is suitable to the proposed use and reasonably available to the applicant;
2. the use can be buffered from uses within the area likely to be affected by the proposal with which it is or may be incompatible;
3. such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan;
4. there is sufficient infrastructure to accommodate the additional traffic and activity generated by the use; and that surrounding resources and uses that may be sensitive to such increased traffic and activity are adequately protected;
5. the project will not result in traffic safety or capacity deficiencies in the vicinity of the project site;
6. the proposed use:
   1. will not unreasonably obstruct navigation channels or unreasonably preclude boating support facilities elsewhere in the harbor;
   2. is designed and located, to the extent feasible, so that it does not significantly interfere with the needs of the local fishing industry; and
   3. if not a water-dependent use, will not replace an existing water-dependent use; and will not substantially reduce existing public access to coastal wetlands;
7. either the use is integral to the business, or the use legally existed as of May 9, 2016;
8. the proposed use will not pose an unreasonable risk to a valuable groundwater resource and the P-AR subdistrict in which the use is proposed does not protect a sole source aquifer;
9. upon decommissioning of the facility all structures and materials associated with the development will be removed, and affected prime farmland soils will be replaced or restored to a state such that they could be utilized for active agricultural production; and
10. residential uses will not adversely affect permitting commercial uses within the subdistrict with which it is incompatible.
11. 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 are prohibited.

Nothing in this section precludes 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.

* 1. Review Standards for Areas Adjacent to Lakes

For the purposes of this section, “areas adjacent to lakes” means areas within 250 feet of bodies of standing water greater than 10 acres in size, except i) where a water body related subdistrict extends to 500 feet, one-quarter mile, or one-half mail (e.g., the P-AL, P-GP2, and water body related P-RR subdistricts), or ii) where provisions regarding lake management classification dictate otherwise (e.g., MC1, MC3, and MC6 lakes).

* + 1. **General Land Use Standards**

The standards set forth below must be met for all subdivisions and commercial, industrial, and other non-residential structures and uses proposed on land adjacent to lakes. These standards must also be considered in applying the criteria for adoption or amendment of land use district boundaries, as provided in Section 10.08, to proposed changes in subdistrict boundaries adjacent to lakes.

In applying the standards set forth below, the Commission must consider all relevant information available including the Maine Wildlands Lake Assessment Findings (Appendix C of this chapter), and relevant provisions of the Comprehensive Land Use Plan.

* + - 1. Natural and cultural resource values. The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment (Appendix C of this chapter).
      2. Water quality. The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;
      3. Traditional uses. The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;
      4. Regional diversity. The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;
      5. Natural character. Adequate provision has been made to maintain the natural character of shoreland;
      6. Lake management goals. The proposal is consistent with the management intent of the affected lake’s classification; and
      7. Landowner equity. Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.
    1. **Lake Management Classification Standards.**

Unless otherwise provided, the following standards apply to changes to subdistrict designations, development, and uses based on the lake management classifications as indicated on the Commission’s *Land Use Guidance Maps*.

* + - 1. Management **Class 1 Lakes.**
         1. Areas within one-quarter mile of the normal high water mark of these lakes are not eligible to be rezoned to D-RB or D-RF subdistricts.
      2. Management **Class 2 Lakes.**
         1. Applications proposing single family dwellings within 500 feet of the normal high water mark of these lakes within the D-ES, D-GN, D-GN2, D-GN3, D-RB, D-RS, D-RS2, or D-RS3 subdistricts must not result in an average density per landownership of more than one dwelling unit per shore mile.
         2. Applications proposing one or more development units within 500 feet of the normal high water mark of these lakes within the D-RF subdistrict must not result in more than one dwelling unit per shore mile.
      3. Management Class 3 Lakes. (Lakes potentially suitable for development)

(1) P-GP2 subdistricts within 500 feet of the normal high water mark, measured as a horizontal distance, of Aziscohos Lake within Lincoln Plantation, Oxford County; or Lower Richardson Lake, Township C, Oxford County, the following apply:

**(a) Allowed Densities**

Parcels within the P-GP2 subdistrict that are in existence as of January 1, 2001 and that have more than 200 feet but less than 400 feet of shore frontage must be allowed one dwelling unit provided that other applicable requirements are met.

All parcels within the P-GP2 subdistrict that have more than 400 feet of shore frontage may be further developed subject to the following requirements:

(i) Maximum density of building units. Overall density within each lot must be no greater than 1 dwelling unit, principal building, or rental cabin for every 400 feet of shoreline up to a maximum density of 13 units per mile of shoreline.  
  
If physical constraints restrict the development potential of more than 50% of the shore frontage of a parcel, the maximum allowable number of building units per mile of shoreline are reduced to one per 200 feet of shoreline that is not constrained. Constraints include slopes greater than 15%; wetlands; wildlife habitat such as deer wintering areas, eagle or loon nesting areas; habitat for rare or endangered plant and animals; unique natural communities and natural areas; and historic and archeological resources.

(ii) Building units and density. For the purpose of determining density the following structures count as individual building units:

(aa) single family seasonal dwelling units;

(bb) rental cabins associated with campgrounds, sporting camps, or other commercial recreational facilities;

(cc) sporting camp lodges or other commercial recreational base lodge facilities containing three or fewer rental rooms; and

(dd) campgrounds.

Individual campsites, public and private trailered ramps, permanent docking facilities and water-access ways, and non-commercial structures for scientific, educational and/or nature observation purposes do not count as building units for the purposes of calculating allowable densities. Each set of up to three additional rental rooms, at sporting camp lodges or other commercial recreational base lodge facilities with more than three rental rooms, count as an additional unit.

(iii) Phosphorous control. All development must be designed in accordance with the Maine Department of Environmental Protection’s “Maine Stormwater Best Management Practices Manual, Volume II, Phosphorous Control in Lake Watersheds: A Technical Guide to Evaluating New Development.” Development density must conform to the requirements of this manual.

(iv) Extent of shoreline to be conserved. Within subdivisions, at least 50 percent of a landowner’s ownership on a shoreline must be conserved to a depth of 500 feet or the depth of the lot, whichever is less, and set aside as open space according to the provisions of Section 10.25,S. The area to be conserved must be located so that it will create large and contiguous blocks of open space and/or to conserve sensitive resources and areas used traditionally by the public. This conservation of shoreline does not affect the amount of development allowed under the maximum density provision above.

(v) Build-out rate. No more than 20 individual units may be constructed in any ten-year period per lot of record as of the date of adoption of these rules, except that credit for unbuilt units may be carried over to the following time period where a maximum of 40 building units in any 10-year period may be developed.

(vi) Required buffer. No structural development will be allowed within a ¼ mile radius of any commercial sporting camp, campground, or group of rental cabins associated with a commercial sporting camp or campground. Individual campsites are excluded from this buffering requirement.  
  
The buffer must extend from the edge of the principal building, dwelling unit, rental unit, or campsite that is closest to any adjacent use.

* + - 1. Management **Class 4 Lakes.**
         1. Proposals within 250 feet of the normal high water mark of these lakes involving any of the following situations must indicate future plans for other undeveloped shorelands adjacent to the lake of the same ownership:

subdivisions and commercial, industrial, or other non-residential structures or uses within the D-CI, D-ES, D-GN, D-GN2, D-RB, D-RS, D-RS2, or D-RS3 subdistricts;

any nonresidential structure or use within the D-GN3 subdistrict;

any recreation day use facility or recreation supply facility in the D-RD subdistrict; and

subdivisions and recreation facilities, recreational lodging facilities, and other non-residential structures or uses within the D-RF subdistrict;

* + - * 1. The future plans will be considered part of the proposal and any changes will be subject to approval of an application to amend the original proposal. An applicant’s proposed future plans must address, at a minimum, the next 10 years, and must include, but not be limited to, the following information regarding the applicant's land ownership on the lake:

ownership area and shoreline length;

potential suitability for development based on an appropriate inventory of soils and significant natural and cultural resources; and

proposed or anticipated development, if any.

* + - 1. Management **Class 5 Lakes.**

(1) Subdivisions within 250 feet of the normal high water mark of these lakes within the D-ES, D-GN2, D-RS2, or D-RS3 subdistricts, must be designed in accordance with Section 10.25,Q,4,b.

* + - 1. Management **Class 6 Lakes.**
         1. Areas within one-half mile of the normal high water mark of these lakes are not eligible to be rezoned to D-RB or D-RF subdistricts.
    1. **Water Quality Limiting Lakes Standards.**

The methodology used to identify water quality limiting lakes is shown in Appendix A of this chapter.

Water quality limiting lakes include those bodies of standing water 10 acres or greater in size where the Commission determines that the maximum number of allowable dwelling units would give rise to a significant risk of increasing the phosphorus concentration of the water by 5 parts per billion or more. Such Commission determination must be based on available information and according to minimum shoreline frontage requirements.

With respect to future development near a water quality limiting lake, the Commission may impose more protective standards and dimensional requirements to reasonably assure that the maximum allowable change in phosphorus concentration for the waterbody is not exceeded.

* 1. REVIEW STANDARDS FOR SUBDISTRICTS IN PROSPECTIVELY ZONED AREAS

These standards apply only in areas that have been prospectively zoned and for all the subdistricts listed. Prospectively zoned areas are identified in Section 10.08 of these rules.

Dimensional Standards.

* + - 1. Road frontage requirements: See Section 10.26,C.
      2. Building setbacks from roads: See Section 10.26,D.
      3. Lot coverage requirements: See Section 10.26,E.
      4. Structure height: See Section 10.26,F.
    1. Buffering Standards. These standards complement the existing standards for clearing contained in Section 10.27,B.
       1. All principal and accessory buildings in the D-GN, D-GN2, D-GN3, D-RS, D-RS2, D-RS3, D-ES, and D-CI subdistricts shall be visually screened by a vegetative buffer made up of native trees and shrubs, except as provided in Section 10.25,B,2,c below. Wooded buffers shall be comprised of both under- and overstory material that can be either maintained using existing vegetation or established where no such buffer exists.
       2. Minimum widths for the vegetated buffer are as follows:

**Width of Vegetative Buffer (feet)**

D-GN D-GN2 D-GN3 D-RS D-RS2 D-RS3 D-ES D-CI

Roadway 25 25 25 30 50 50 75 75

Side & rear property lines 15 15 15 15 15 15 15 15

Subdistrict boundary NA NA NA NA NA NA 50 50

Table 10.25,B-1. Width of vegetative buffers.

The Commission may require buffer widths exceeding the minimum width, along with other screening as necessary, in order to ensure that unsightly uses such as junkyards and automobile graveyards are completely screened from view.

* + - 1. Exceptions to the buffering requirements are allowed under the following circumstances:
         1. Property line buffer from adjacent development that is of a similar type, use, and intensity where adjacent landowners provide written agreement that a property line buffer is not needed;
         2. Existing development where extensive clearing already exists at the time of adoption of these rules January 1, 2001;
         3. New development where the establishment of buffers would eliminate or interfere with existing scenic views;
         4. In a “Main Street” setting, that is defined as an area where 80% of a street is developed with buildings, where side and rear property line buffers would interfere with pedestrian circulation or access; and
         5. Buffer for a D-ES and D‑CI subdistrict boundary where adjacent uses are compatible.

Building Layout in the D-GN, D-GN2, D-GN3, D-RS, and D-RS2 Subdistricts.

* + - 1. New commercial, institutional, and multi-family residential development shall be substantially similar in building height, bulk, and roof lines to neighboring development.
      2. New commercial, institutional, and multi-family residential development shall be configured to facilitate pedestrian access between adjacent sites and any nearby residential neighborhoods.
      3. The street side of commercial structures that are visible from a public road shall contain the principal windows of the structure. The structure shall be designed such that windowless walls do not face a street or road.
      4. Where new development is adjacent to existing development in a “Main Street” setting where at least 80% of a street is comprised of buildings other than parking lots, buildings must be configured so that 80% of the street frontage to be developed remains devoted to buildings, and both automobile and pedestrian access are facilitated.

* 1. TECHNICAL AND FINANCIAL CAPACITY

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

* + 1. The applicant shall retain qualified consultants, contractors and staff to design and construct proposed improvements, structures, and facilities in accordance with approved plans. In determining the applicant's technical ability, the Commission shall consider the size and scope of the proposed development, the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations or previous approvals granted to the applicant.
    2. The applicant shall have adequate financial resources to construct the proposed improvements, structures, and facilities and meet the criteria of all state and federal laws and the standards of these rules. In determining the applicant's financial capacity, the Commission shall consider the cost of the proposed subdivision or development, the amount and strength of commitment by the financing entity, and, when appropriate, evidence of sufficient resources available directly from the applicant to finance the subdivision or development.

* 1. VEHICULAR CIRCULATION, ACCESS, AND PARKING
     1. General Circulation. Provision must 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 must 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 must 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:
        1. The number and width of entrances and exits onto any roadway must be limited to that necessary for safe entering and exiting.
        2. Access must be designed such that vehicles may exit the premises without backing onto any public roadway or shoulder.
        3. Shared road access must be implemented wherever practicable.
        4. Access between the roadway and the property must intersect the roadway at an angle as near to 90 degrees as site conditions allow, but in no case less than 60 degrees.

90 degree >60 degree

intersection intersection

Roadway

Figure 10.25,D-1. Intersection angle.

* + - 1. 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.
    1. 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:
       1. Sufficient parking must be provided to meet the parking needs of the development. The minimum number of parking spaces required are:

(1) One parking space plus one additional parking space per 300 square feet of floor area for retail stores and services;

(2) One parking space plus one additional parking space per four seats for eating and drinking establishments;

(3) One parking space per dwelling unit or rental unit for multi-family dwellings and lodging establishments, excepting recreational lodging facilities;

(4) Adequate capacity for all other activities not listed above based on parking generation rates determined in accordance with standard engineering practices; and

(5) The minimum number of accessible parking spaces must meet the “2010 Americans with Disabilities Act (ADA) Standards for Accessible Design.” U.S. Department of Justice. (September 15, 2010).

* + - 1. In cases where the applicant demonstrates that a particular structure can be occupied or a use can be carried out with a different number of parking spaces than required, the Commission may reduce or increase the number of required parking spaces upon finding that the proposed number of parking spaces will meet the parking needs of the development and will not cause congestion or safety problems.
      2. Parking areas and access roads must 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 must be constructed to collect sediment before the runoff water is discharged.
      3. **On-street parking.**  In areas where on-street parking already exists, new development must 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. When an approaching vehicle is within 200 feet of a parking space, it must have a clear view for 300 feet beyond the parking space.
      4. **Off-street Parking for Commercial, Industrial and Other Non-residential Development.**
         1. Where practicable, off-street parking must be located to the side or rear of the principal structure.
         2. The minimum dimensions for individual parking spaces are 10 feet by 20 feet, except that the minimum dimensions for individual accessible parking spaces must meet the “2010 Americans with Disabilities Act (ADA) Standards for Accessible Design. U.S. Department of Justice. (September 15, 2010). The Commission may reduce the minimum dimensions for standard individual parking spaces provided that the proposed dimensions will meet the parking needs of the development and will not cause congestion or safety problems.
         3. Off-street parking areas must have a minimum travel lane width of 20 feet.
         4. 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.
         5. Off-street parking must not be directly accessible from any public roadway. Ingress and egress to parking areas must be limited to driveway entrances.
         6. Off-street parking areas with more than two parking spaces must be arranged so that each space can be used without moving another vehicle.
      5. Parking spaces must not be placed in the required roadway vegetative buffer. However, a “sight triangle” must 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, only low growing shrubs are allowed and must be maintained to be no more than 30 inches in height above the driveway elevation.

Roadway

50’ Vegetative buffer

25 feet

Sight Triangle

25 feet

Parking lot

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

* + - 1. Except for sight triangles, parking areas for commercial, industrial or other non-residential development must 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.
      2. When parking areas associated with commercial, industrial or other non-residential development are adjacent to residential structures or uses, landscaping and/or architectural screens must be used to provide an effective visual buffer and separation between property lines and the edge of the parking area.
      3. For parking areas associated with commercial, industrial or other non-residential development that are greater than one acre in size, a landscaping plan must be developed and implemented that indicates planting locations, type and maintenance. The plan must include the following:
         1. Parking areas must have landscaped strips along the perimeter, as well as landscaped islands within the parking area.
         2. Expanses of parking area must 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, must be used to ensure sufficient space for root growth and vegetative survival.
    1. Subdivision and Development Roadway Design Specifications. The following standards apply to Level B and Level C road projects:
       1. **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.
       2. **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.
       3. **Roadway Design.**
          1. To the fullest extent practicable, roadways must be designed to first fit the natural topography of the land such that cuts and fills are minimized, and then to minimize the overall length, minimize the use of ditching, and protect scenic vistas while preserving the scenic qualities of surrounding lands.
          2. Roadways in towns and plantations within the Commission’s service area that are proposed to be dedicated to the town or plantation shall also comply with the town’s or plantation’s roadway construction and design standards. The applicant shall clearly specify the ownership of all roadways proposed to be dedicated and shall submit a maintenance plan that includes roadway construction and design standards in accordance with the Commission’s standards.
          3. Roadways shall adhere to the applicable standards of Section 10.27,D and Section 10.27,H and the roadway specifications outlined in Table 10.25,D-1, below, unless the applicant utilizes site-specific best management practices and the Commission determines that proposed alternative roadway specifications will meet the needs of the development and will not cause erosion or safety problems.  
               
             Maximum sustained grade for Class 1 roadways may be increased by up to five percent over that specified in Table 10.25,D-1 below, if no other option is practicable, provided that the roadway portion exceeding the maximum sustained grade standard is no longer than 300 feet in length and is greater than 150 feet from the next down-hill road intersection, and the Commission determines that the proposed alternative grade will not cause unreasonable drainage, erosion or public safety impacts.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **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.

* + - * 1. 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.
      1. **Additional Subdivision Road Standards.**
         1. Emergency Egress. All subdivisions that include a new interior road exceeding one-quarter mile in length must include provisions for all lot owners to have at least two ways of emergency egress from the development. Emergency egress may include: (i) egress by water for subdivisions on water bodies, provided there is a legally enforceable right of egress off the water body such as a public boat ramp or dock, and (ii) may include existing motorized trails maintained for public access, provided all lot owners have a legally enforceable right to access the trail.
         2. New Entrances. Subdivision access must be limited to no more than two new entrances onto an existing roadway within any one-half mile section of the existing road. Also, where practicable for the proposed development site, subdivision roads must be designed such that new entrances onto existing roads are located directly across from existing entrances on the roadway, allowing for safe cross movement of traffic at the intersection.
         3. Future Connectivity.

Whenever there is remaining land on a parcel proposed for subdivision that is not included in the subdivision layout and design, the subdivision design must include provisions for future access to the remaining land to accommodate and minimize conflicts between proposed and future uses such as timber harvests, further lot development, or recreation.

Right-of-way widths for internal subdivision roads must include sufficient room for future expansion unless demonstrated that future expansion is not technically feasible. Rights-of-ways must be at least 50 feet in width.

* + - * 1. Road and Infrastructure Maintenance.

Subdivision designs must include a plan for long-term maintenance of the subdivision access roads and common infrastructure, including but not limited to maintenance of drainage structures, water crossings, and road grading or resurfacing. The plan must include a list of inspection and maintenance tasks, recommended task frequency, and a responsible party.

If an association is proposed for maintenance of roads and common infrastructure, documents necessary for establishing the association must be created. The documents must require lot owner or lessee membership, lot owner or lot lessee rights and privileges, association responsibilities and authority, operating procedures, proper capitalization to cover operating costs, and the subdivision developer’s responsibilities until development sufficient to support the association has taken place. Responsibilities of the association must include the maintenance of common property, infrastructure, or facilities; assessing annual charges to all owners or lessees to cover expenses; and the power to place liens on property of members who fail to pay assessments. The following governmental entities are not required to be members of road associations: the State; executive branch agencies of the State; counties; municipalities, townships, or plantations; or the federal government. Those governmental entities, however, should work with associations to create an agreement through which, subject to allocation by the Maine Legislature or applicable budgetary authority, the governmental entity would contribute a fair percentage of the minimum maintenance and repair costs through financial contributions or in-kind services.

* 1. Natural CHARACTER AND CulTURAL RESOURCES

Scenic Character.

* + - 1. 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, with attention to designated scenic byways; major water bodies; coastal wetlands; permanent trails; or public property.
      2. 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, with attention to designated scenic byways, major water bodies, coastal wetlands, permanent trails, or public property.
    1. 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.
       1. **Exceptions.** The hillside resources standards in Sections 10.25,E,2,c through f do 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 located within three miles of the project boundary. 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. In cases where the Commission determines the development will be visually intrusive or where there is a particularly sensitive resource more than three miles away, the Commission may increase the distance for determining applicability of the hillside standards.
       2. **Stormwater Management.** The proposal must 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.
       3. **Ridgeline Protection.** The development must be designed to ensure buildings, structures, and other improvements will not extend above the existing ridgeline or otherwise alter the ridge profile significantly when viewed from existing roadways, major water bodies, coastal wetlands, permanent trails, or public property.
       4. **Vegetative Clearing.** The proposal must 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 must 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. For example, an applicant may propose that any trees removed for views will not exceed a 25-foot width of clearcutting and extend, outward 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.
       5. **Structural Development.**  The development must 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).
       6. **Construction Materials.** The development must 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, is 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.
       7. **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).
       8. **Lighting.** All lighting for the development must comply with the standards of Section 10.25,F.
    2. Historic Resources. 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.

* 1. NOISE AND LIGHTING

Noise.

* + - 1. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any commercial, industrial and other non-residential development shall be as established by the time period and type of land use subdistrict listed below. Sound pressure levels shall be measured at all property boundary lines, at a height of at least 4 feet above the ground surface. The levels specified below may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes per day.

**Subdistrict (Category) 7:00 AM to 7:00 PM 7:00 PM to 7:00 AM**

D-CI, D-MT, D-RB (*Category 3*),

and D-ES 70 dB(A) 65 dB(A)

D-GN, D-GN2,  
D-RB (*Categories* 1 & 2), D-RF, and D-RD 65 dB(A) 55 dB(A)

D-PD, D-PR As determined by the Commission.

All Other Subdistricts 55 dB(A) 45 dB(A)

Table 10.25,F-1. Sound pressure level limits.

* + - 1. The following activities are exempt from the requirements of Section 10.25,F,1,a:
         1. Sounds emanating from construction-related activities conducted between 7:00 A.M. and 7:00 P.M.;
         2. Sounds emanating from safety signals, warning devices, emergency pressure relief valves, and other emergency activities; and
         3. Sounds emanating from traffic on roadways or other transportation facilities:
      2. Control of noise for a wind energy development as defined in 35-A M.R.S. §3451(11), with a generating capacity greater than 100 kilowatts is not governed by Section 10.25,F, and instead is governed solely by the provisions of 12 M.R.S. §685-B(4-B)(A).

Lighting standards for exterior light levels, glare reduction, and energy conservation.

* + - 1. All residential, commercial and industrial building exterior lighting fixtures will be full cut-off, except for incandescent lights of less than 160 watts, or any other light less than 60 watts. Full cut-off fixtures are those that project no more than 2.5% of light above the horizontal plane of the luminary’s lowest part. Figure 10.25,F-1 illustrates a cut-off fixture as defined by the Illuminating Engineering Society of North America (IESNA).

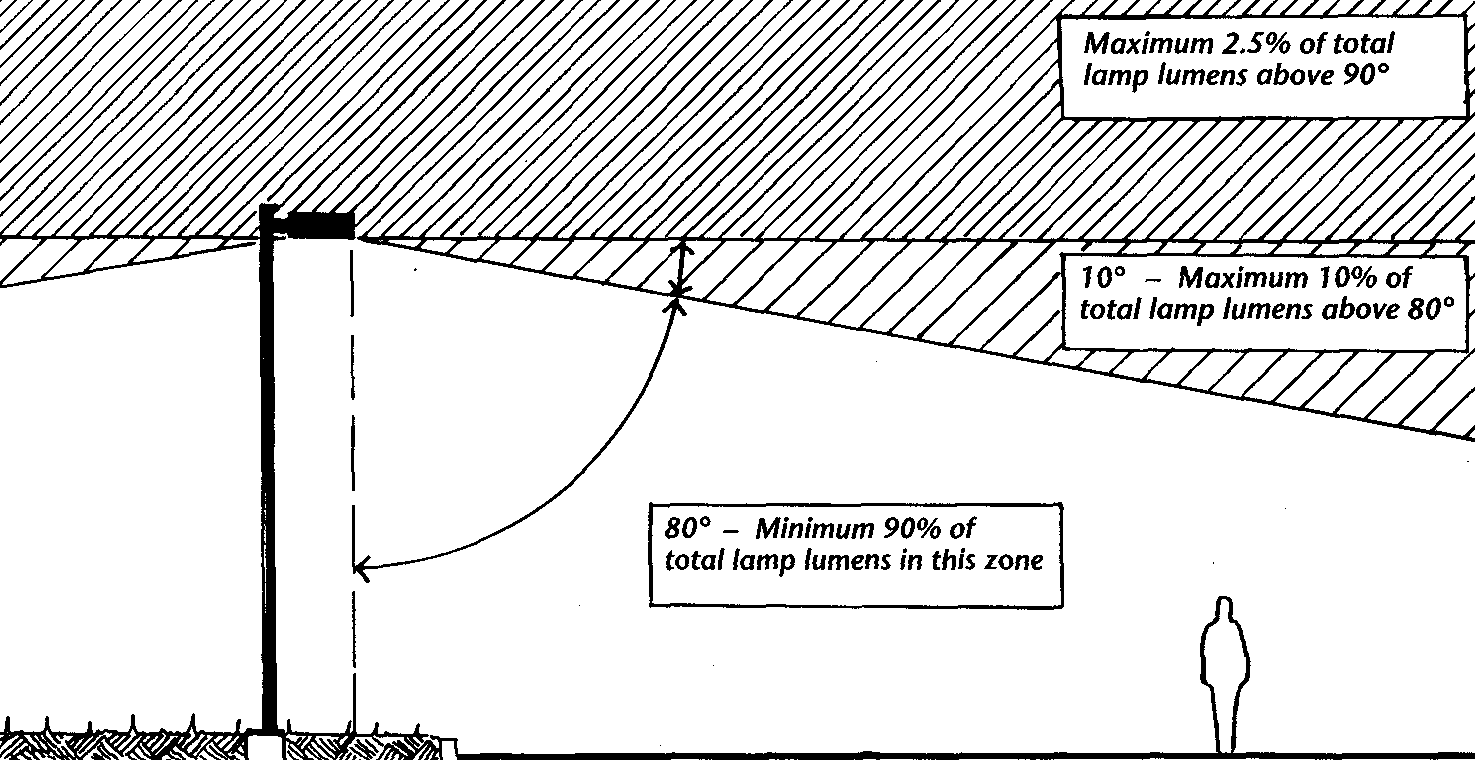


Figure 10.25,F-1. Cut-off fixture as defined by IESNA.

Light fixtures mounted on gasoline station or convenience store canopies shall be recessed so that fixtures are flush with the canopy. Alternatively, canopies may be indirectly lit using light beamed upward and then reflected down from the underside of the canopy. In this case light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy.

* + - 1. All exterior lighting shall be designed, located, installed and directed in such a manner as to illuminate only the target area, to the extent practicable. No activity shall produce a strong, dazzling light or reflection of that light beyond lot lines onto neighboring properties, onto any water bodies with a significant or outstanding scenic resource rating, or onto any roadway so as to impair the vision of the driver of any vehicle upon that roadway or to create nuisance conditions.
      2. For commercial, industrial and other non-residential development, all non-essential lighting shall be turned off after business hours, leaving only the minimal necessary lighting for site security. The term “non-essential” applies, without limitation, to display, aesthetic and parking lighting.
      3. In addition to the lighting standards in Section 10.25,F,2, lighted signs shall also comply with the standards in Section 10.27,J.
      4. The following activities are exempt from the lighting standards of Section 10.25,F,2,a through d:
         1. Roadway and airport lighting, and lighting required by the Federal Aviation Administration for air traffic safety;
         2. Temporary fair, event, or civic uses;
         3. Emergency lighting, provided it is temporary and is discontinued upon termination of the work;
         4. Lighting that is activated by motion-sensors; and
         5. Lighting that was in place on April 1, 2004.

Lighting standards for non-residential greenhouses.

* + - 1. Greenhouse lighting must be fully shielded between sunset and sunrise and must not illuminate exterior areas or otherwise make the greenhouse appear to glow.

* 1. SOIL SUITABILITY

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

* + 1. Soil types are determined by a site-specific soil survey, according to the “Guidelines for Maine Certified Soil Scientists for Soil Identification and Mapping” Maine Association of Professional Soil Scientists, 2009. The soil survey class must be determined as follows, unless the Commission finds that a lower intensity soil survey will provide the information necessary or a higher intensity soil survey class is needed for the Commission’s review:
       1. For all subdivisions, a Class B high intensity soil survey must be used to identify soils within the proposed building envelopes and other disturbed areas, aside from proposed access roads, driveway locations, and utility lines. The Class B survey for this purpose must be completed with a minimum delineation of one acre for similar soils and one-quarter acre for dissimilar soils. For proposed access roads, driveway locations and utility lines, a Class L soil survey must be used. A Class C soil survey may be used to identify soils elsewhere within the project area.
       2. For new commercial, industrial and other non-residential development, a Class A high intensity soil survey shall be used to identify soils within any proposed disturbed area. A Class C soil survey may be used to identify soils elsewhere within the project area.
       3. For linear projects or project components that involve soil disturbance, such as road construction, fairway construction or trail construction and that have little or no adjacent development, a Class L soil survey shall be used.
       4. **Hydric Soils and Soils Potential Ratings.** Hydric soil map units, and map units with a low or very low development potential rating for low density development must be clearly identified on the soil survey map as being hydric soils or as having a low or very low development potential rating, respectively.
       5. **Exceptions.** The Commission may:
          1. Allow the use of U.S.D.A. Natural Resources Conservation Service (NRCS) Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c when the published mapping indicates the map unit(s) in the project area is rated with a medium or high potential for low density development.
          2. Allow the use of NRCS Soil Survey published mapping in lieu of any Class C soil survey required in Sections 10.25,G,1,a through c for areas within a development that will be preserved as undeveloped open space in accordance with Section 10.25,S.
          3. In lieu of a site-specific soil survey of any proposed disturbed area within a development, the Commission may allow use of a geotechnical investigation prepared for that area by a registered professional engineer and other licensed professionals, as appropriate, if the Commission determines that the geotechnical report will provide sufficient information.
          4. The Commission may waive one or more of the provisions of a Class A or B high intensity soil survey, including but not limited to the contour mapping requirement, where such provision is considered by the Commission unnecessary for its review.
    2. Determination of soil suitability shall be based on the NRCS soils potential ratings for low density development. Soils with a low or very low development potential rating shall not be developed unless the Commission determines that adequate corrective measures will be used to overcome those limitations that resulted in a low or very low rating.
    3. For all developments that include onsite subsurface wastewater disposal, a sufficient number of test pits must be provided within the footprints of all proposed wastewater disposal fields to adequately document that disposal fields can be installed entirely on soils and slopes in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241).
       1. At least one test pit shall be dug within the boundaries of each subdivision lot proposed to be served by a combined septic system. The applicant shall provide additional subsurface exploration data for certain soil conditions or disposal field designs, in accordance with the following requirements:
          1. Soil conditions AII and AIII (bedrock depth nine inches to 24 inches). A minimum of five subsurface explorations: one test pit is to be centrally-located within each disposal field footprint, plus a subsurface exploration at each disposal field corner which may consist of either a test pit, boring, or probe.
          2. Soil with profile 8- or 9-parent material (lacustrine/marine deposits). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.
          3. Soil condition D (limiting factor depth less than 15 inches). A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.
          4. Disposal field length of 60 feet or longer. A minimum of two test pits, one of which shall be in the area of the disposal field footprint where the most limiting condition is expected based on the best professional judgement of the Licensed Site Evaluator.
       2. For lots to be served by primitive and limited disposal systems, evidence must be submitted to show there are suitable locations on the lot for a grey water disposal field, any proposed pit privy (outhouse), and a backup system reserve area as required by and in compliance with the Subsurface Wastewater Disposal Rules (10-144A CMR 241,4,I). At least one test pit shall be dug within the boundaries of each proposed disposal area and the backup system reserve area on the lot.
       3. The location of such test pits shall be shown on the subdivision plat.
  1. SOLID WASTE DISPOSAL

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

* + 1. Provision shall be made for the regular collection and disposal of site-generated solid wastes at a state-approved landfill or transfer station.
    2. Provision shall be made for the legal disposal of all construction debris, stumps, brush, wood wastes, asphalt and pavement products.
  1. WASTEWATER DISPOSAL
     1. No permit will be issued for a project with subsurface wastewater disposal unless an acceptable plan to construct the absorption area is prepared. Where wastewater is to be disposed on-site by a subsurface wastewater system, the system must be designed by a licensed site evaluator or a Maine Licensed Professional Engineer, in accordance with the Subsurface Wastewater Disposal Rules, or must be licensed by the Maine Department of Environmental Protection pursuant to 38 M.R.S. §413(1-B)(A).
     2. The Commission will not require a permit for conversion from primitive to combined sewage disposal systems provided a subsurface wastewater disposal permit is obtained from the local plumbing inspector or the Maine Department of Health and Human Services, Division of Health Engineering, and provided there are no limitations on combined sewage disposal systems established by prior permit conditions. Otherwise, a permit from the Commission is required.
     3. Where wastewater is to be collected and treated off-site by a municipal or quasi-municipal sewage treatment facility, the applicant must demonstrate that there is adequate capacity in the collection and treatment systems to ensure satisfactory treatment, the facility is fully licensed by the Maine Department of Environmental Protection, and the facility agrees to accept these wastes.
     4. When private central or clustered wastewater disposal systems are proposed, adequate provision must be made for ongoing maintenance and repair of the system and for reserving an area adequate for a future replacement system, in accordance with the Maine Subsurface Wastewater Disposal Rules.
  2. WATER SUPPLY
     1. Individual wells shall be sited and constructed to prevent infiltration of surface water and contamination from subsurface waste water disposal systems and other known sources of potential contamination.
     2. Site design shall allow for placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal in compliance with the Maine Subsurface Waste Water Disposal Rules.
     3. Proposed activities involving sources of potential contamination, including junkyards, automobile graveyards, gas stations, and bulk storage of petroleum products, must be located at least 300 feet from existing private and public water supplies.
     4. For subdivisions and commercial, industrial and other non-residential development, the applicant shall demonstrate that there is sufficient healthful water supply to serve the needs of the project.
     5. When a project is to be served by a public water system, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the “Rules Relating to Drinking Water”, Maine Department of Health and Human Services, Chapter 231.
  3. SURFACE WATER QUALITY
     1. A development, or reasonably foreseeable consequences of a development, shall not directly discharge any water pollutants to a surface water body which cause the surface water body to fail to meet its state classification (38 M.R.S. §464 *et seq*.); which impart toxicity and cause a surface water body to be unsuitable for the existing and designated uses of the water body; or which otherwise would result in a violation of state or federal water quality laws.
     2. Appropriate best management practices of point and nonpoint sources of water pollutants shall be utilized, unless the Commission determines that alternative specifications will meet the needs of the activity and will cause no undue adverse impact to the surface water quality of the affected surface water body.

* 1. PHOSPHORUS CONTROL

The standards set forth below must be met for:

* + - 1. Subdivisions located within the direct watershed of a body of standing water 10 acres or greater in size; and
      2. Commercial, industrial or other non-residential development that creates a disturbed area of one acre or more within the direct watershed of a body of standing water 10 acres or greater in size.

General Standards.

* + - 1. Provision shall be made to limit the export of phosphorus from the site following completion of the development or subdivision so that the project will not exceed the allowable per-acre phosphorus allocation for the water body, determined by the Commission according to the “Maine Stormwater Best Practices Manual, Volume II, Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development” Maine Department of Environmental Protection, 2008, and hereafter cited as the Phosphorus Design Manual.
      2. **Impact Analysis.** The phosphorus impact analysis and control plan for a proposed subdivision or development on a water body shall be prepared using the procedures set forth in the Phosphorus Design Manual, including all worksheets, engineering calculations, and construction specifications and diagrams for control measures as may be required by the manual, except as allowed in Section 10.25,L,2,d, below.
      3. **Erosion Control.** All filling, grading, excavation or other similar activities that result in unstabilized soil conditions must meet the standards of Section 10.25,M.
      4. **Alternative Standard Option.** In lieu of meeting the general standard in Section 10.25,L,2,a, and conducting a phosphorus impact analysis according to Section 10.25,L,2,b, an applicant with a project that includes less than three acres of impervious area and less than five acres of developed area in a watershed of a body of standing water that is not severely blooming (as identified in 06-096 CMR 502, Appendix A), may choose to limit the export of phosphorus from the site by meeting the alternative buffer standard in Section 10.25,L,3. For the purposes of Section 10.25,L,2,d, developed area means all disturbed area, including, in the case of a subdivision, all proposed building envelopes, but excluding area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, provided the revegetated area is not mowed more than once per year.

Alternative Buffer Standard.

* + - 1. To meet the alternative standard, a project must include treatment measures that will provide for effective treatment of phosphorus in stormwater. This must be achieved by using vegetated buffers to control runoff from no less than 95 percent of the impervious area and no less than 80 percent of the developed area that is impervious, landscaped or otherwise disturbed, except as provided in Section 10.25,L,3,d below.
      2. **Vegetated Buffers.** Vegetated buffers for phosphorus control are undisturbed strips of dense vegetation located adjacent to and down gradient of developed areas, and that provide storage and treatment for stormwater that enters them in diffuse overland flow. Five types of vegetated buffers are allowed under the alternative standard as listed in Section 10.25,L,3,b,(1) through (5) below. All vegetated buffers must be appropriately used, located, designed, sized, constructed, and maintained as specified in the “Maine Stormwater Best Practices Manual, Volume III. BMP Technical Design Manual, Chapter 5. Vegetated Buffers” Maine Department of Environmental Protection, June 2010, and hereafter cited as the Technical Design Manual. Where the Technical Design Manual allows for a variation in the design specification with approval from the Department of Environmental Protection, approval from the Land Use Planning Commission is required for projects located in the unorganized and deorganized areas of Maine.
         1. Buffers adjacent to residential, largely pervious or small impervious areas;
         2. Buffers with stone bermed level lip spreaders;
         3. Buffers adjacent to the downhill side of a road;
         4. Ditch turn-out buffers; and
         5. Buffers down gradient of a single family residential lot.
      3. **Deed Restrictions and Covenants.** Areas designated as vegetated buffers, not otherwise protected as open space in accordance with Section 10.25,S, must be clearly identified on the subdivision plat and plans, and protected from alteration by deed restrictions and covenants.
      4. **Exception for Linear Portions of a Project.** For a linear portion(s) of a project, runoff control may be reduced to no less than 75 percent of the impervious area and no less than 50 percent of the developed area that is impervious, landscaped or otherwise disturbed.

Design and Maintenance Standards.

* + - 1. Phosphorus control measures and their maintenance shall meet the design criteria contained in the “Maine Stormwater Best Practices Manual, Volume III. BMP Technical Design Manual, Chapter 11. Designing for Operation and Maintenance” Maine Department of Environmental Protection, 2008, and hereafter cited as the Technical Design Manual.
      2. **Structural Measures.** High maintenance structural measures, such as wet ponds and runoff infiltration systems, shall not be used as part of any proposed phosphorus control plan unless:
         1. Other measures, such as increasing the width of vegetated buffers, greater limits on clearing, reducing road lengths, and clustering of lots to achieve less disturbed area are clearly demonstrated to be insufficient to allow the proposed development to meet the standards of Section 10.25,L; and
         2. The Commission finds that the applicant has the technical and financial capabilities to properly design, construct, and provide for the long-term inspection and maintenance of the facility in accordance with the procedures in the Technical Design Manual.

* 1. EROSION AND SEDIMENTATION CONTROL

The standards set forth below must be met for all development that involves filling, grading, excavation or other similar activities which result in unstabilized soil conditions.

General Standards.

* + - 1. Soil disturbance shall be kept to a practicable minimum. Development shall be accomplished in such a manner that the smallest area of soil is exposed for the shortest amount of time possible. Operations that result in soil disturbance shall be avoided or minimized in sensitive areas such as slopes exceeding 15% and areas that drain directly into water bodies, drainage systems, water crossings, or wetlands. If soil disturbance is unavoidable, it shall occur only if best management practices or other soil stabilization practices equally effective in overcoming the limitations of the site are implemented.
      2. Whenever sedimentation is caused by stripping of vegetation, regrading, or other construction-related activities, sediment shall be removed from runoff water before it leaves the site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands, or adjacent properties.
      3. Soil disturbance shall be avoided or minimized when the ground is frozen or saturated. If soil disturbance during such times is unavoidable, additional measures shall be implemented to effectively stabilize disturbed areas, in accordance with an approved erosion and sedimentation control plan.

Design Standards.

* + - 1. Permanent and temporary erosion and sedimentation control measures shall meet the standards and specifications of the “Maine Erosion and Sediment Control Practices Field Guide for Contractors”. Maine Department of Environmental Protection (2015) or other equally effective practices. Areas of disturbed soil shall be stabilized according to the “Guidelines for Vegetative Stabilization” (Appendix B of this chapter) or by alternative measures that are equally effective in stabilizing disturbed areas.
      2. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all sedimentation control devices have been installed and stabilized.
      3. Existing catch basins and culverts on or adjacent to the site shall be protected from sediment by the use of hay bale check dams, silt fences or other effective sedimentation control measures.
      4. If streams will be crossed, special measures shall be undertaken to protect the stream, as set forth in Section 10.27,D.
      5. Topsoil shall not be removed from the site except for that necessary for the construction of roads, parking areas, building excavations and other construction-related activities. Topsoil shall be stockpiled at least 100 feet from any water body.
      6. Effective, temporary stabilization of all disturbed and stockpiled soil shall be completed at the end of each workday.
      7. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.
      8. All temporary sedimentation and erosion control measures shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been implemented.

Erosion and Sedimentation Control Plan.

* + - 1. For development that occurs when the ground is frozen or saturated or that creates a disturbed area of one acre or more, the applicant must submit an erosion and sedimentation control plan for Commission approval in accordance with the requirements of Section 10.25,M,3,b.
      2. A Commission approved erosion and sedimentation control plan in conformance with these standards shall be implemented throughout the course of the project, including site preparation, construction, cleanup, and final site stabilization. The erosion and sedimentation control plan shall include the following:
         1. For activities that create a disturbed area of less than one acre:

A drawing illustrating general land cover, general slope and other important natural features such as drainage ditches and water bodies.

A sequence of construction of the development site, including clearing, grading, construction, and landscaping.

A general description of all temporary and permanent control measures.

Provisions for the continued maintenance of all control devices or measures.

* + - * 1. For activities that create a disturbed area of one acre or more:

A site plan identifying vegetation type and location, slopes, and other natural features such as streams, gullies, berms, and drainage ditches. Depending on the type of disturbance and the size and location of the disturbed area, the Commission may require a high intensity soil survey covering all or portions of the disturbed area.

A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

A detailed description of all temporary and permanent erosion and sedimentation control measures, including, without limitation, seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

Provisions for the continued maintenance and inspection of erosion and sedimentation control devices or measures, including estimates of the cost of maintenance and plans for meeting those expenses, and inspection schedules.

Inspection.

* + - 1. For subdivisions and commercial, industrial or other non-residential development that occurs when the ground is frozen or saturated or that creates a disturbed area of one acre or more, provision shall be made for the inspection of project facilities, in accordance with Section 10.25,M,4,a,(1) or (2) below:
         1. The applicant shall hire a contractor certified in erosion control practices by the Maine Department of Environmental Protection to install all control measures and conduct follow-up inspections; or
         2. The applicant shall hire a Maine Registered Professional Engineer to conduct follow-up inspections.
      2. The purpose of such inspections shall be to determine the effectiveness of the erosion and sedimentation control plan and the need for additional control measures.
      3. Inspections shall be conducted in accordance with a Commission approved erosion and sedimentation control plan and the following requirements.
         1. Inspections shall be conducted at least once a week and after each rainfall event accumulating more than ½ inch of precipitation, until all permanent control measures have been effectively implemented. Inspections shall also be conducted (a) at the start of construction or land-disturbing activity, (b) during the installation of sedimentation and erosion control measures, and (c) at the completion of final grading or close of the construction season.
         2. All inspections shall be documented in writing and made available to the Commission upon request. Such documentation shall be retained by the applicant for at least six months after all permanent control measures have been effectively implemented.
      4. Notwithstanding Section 10.25,M,4,a, development may be exempt from inspection if the Commission finds that an alternative, equally effective method will be used to determine the overall effectiveness of the erosion and sedimentation control measures.

* 1. GROUNDWATER QUALITY

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

* + 1. The development shall not pose an unreasonable risk that a discharge of pollutants to a groundwater aquifer will occur.
    2. The project shall not result in the groundwater quality becoming inferior to the physical, biological, chemical, and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S. §601. If the pre-development groundwater quality is inferior to the Maine State Drinking Water Regulations, the development shall not degrade the water quality any further.

* 1. AIR QUALITY

Commercial, industrial and other non-residential development (including but not limited to solid waste disposal facilities, crematories, wood products manufacturing, pulp and paper mills, rock crushing operations, and asphalt batch plants) must comply with all State and Federal air quality laws and standards.

* 1. Protected Natural Resources

Review Standards for Determinations of No Unreasonable Impacts.

The following standards apply to permit applications affecting protected natural resources as listed in Sections 10.25,P,2 and 3 and requiring determinations of no unreasonable impacts. For Tier 1 reviews, the applicable standards are limited to Sections 10.25,P,1,b, c, and e.

* + - 1. **Existing Uses.** The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.
      2. **Soil Erosion.** The activity will not cause unreasonable erosion of soil or sediment or unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
      3. **Harm to Habitats; Fisheries.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.  
           
         In determining whether there is unreasonable harm to significant wildlife habitat, the Commission may consider proposed mitigation if that mitigation does not diminish the overall value of significant wildlife habitat and species utilization of the habitat in the vicinity of the proposed activity and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity.  
           
         For purposes of Section 10.25,P,1,c, “mitigation” means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:
         1. Avoiding an impact altogether by not taking a certain action or parts of an action;
         2. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
         3. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
         4. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
         5. Compensating for an impact by replacing the affected significant wildlife habitat.
      4. **Interference with Natural Water Flow.** The activity will not unreasonably interfere with the natural flow of any surface or subsurface water.
      5. **Lower Water Quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.
      6. **Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
      7. **Sand Supply.**  If the activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system or unreasonably increase the erosion hazard to the sand dune system.
      8. **Outstanding River Segments.** If the proposed activity is a crossing of any outstanding river segment as identified in Section 10.23,I, the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.
      9. **Dredging.** If the proposed activity involves dredging, dredge spoils disposal or transporting dredge spoils by water, the applicant must demonstrate that the transportation route minimizes adverse impacts on the fishing industry and that the disposal site is geologically suitable.  
           
         In evaluating whether the applicant has made the required demonstration under Section 10.25,P,1,i, above, the Commission must request an assessment from the Commissioner of Marine Resources consistent with the assessment required by 38 M.R.S. §480-D(9), and take into consideration any assessment timely provided by the Commissioner in response to this request. Any permit issued by the Land Use Planning Commission must require the applicant to:
         1. Clearly mark or designate the dredging area, the spoils disposal route and the transportation route;
         2. Publish in a newspaper of general circulation in the area adjacent to the route the approved transportation route of the dredge spoils; and
         3. Publish in a newspaper of general circulation in the area adjacent to the route a procedure that the applicant will use to respond to inquiries regarding the loss of fishing gear during the dredging operation.

Water Bodies and Wetlands.

The following requirements apply to alterations of non-tidal water bodies, freshwater wetlands, and coastal wetlands, regardless of whether they are located in a P-WL subdistrict, for Uses Requiring a Permit and Special Exceptions in Sub-Chapter II. Except as hereinafter provided, water body or wetland alterations not in conformance with the standards of Section 10.25,P are prohibited.

* + - 1. **Procedural Requirements.**
         1. **Area of Project Alteration.**

If a proposed activity requires a permit and will alter 15,000 or more square feet of wetland area, or 1 acre or more of overall land area, the applicant must delineate on the ground and in a site plan all wetlands within the general project area using methods described in the "Corps of Engineers Wetlands Delineation Manual." U.S. Army Corps of Engineers. (1987) and the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region.” U.S. Army Corps of Engineers. (Version 2.0, January 2012).

In determining the area of wetland alteration or overall land alteration, all components of a proposed activity, including all phases of a multiphased project, are treated together as constituting one single and complete project.

* + - * 1. **Level of Permit Review.**

The level of permit review required depends upon the size of the proposed wetland alteration and the type of wetland involved. If any part of the overall project requires a higher level of review, then the whole overall project will be reviewed under that higher tier, unless otherwise authorized by the Commission:

Tier 1 reviews apply to projects altering 4,300 up to 15,000 square feet of P-WL2 wetlands, P-WL3 wetlands, or P-WL1 wetlands where the wetland is included as a P-WL1 wetland of special significance solely on the basis of its containing an S1 or S2 natural community.

Tier 2 reviews apply to projects altering 15,000 up to 43,560 square feet (one acre) of P-WL2 or P-WL3 wetlands.

Tier 3 reviews apply to projects altering any area of P-WL1 wetlands except as otherwise provided in Section 10.25,P,2,a,(2),(a), or one acre or more of P-WL2 or P-WL3 wetlands.  
  
Alterations of P-WL1 wetlands may be eligible for Tier 1 or 2 review if the Commission determines, at the applicant's request, that the activity will not have an unreasonable negative effect on the freshwater wetlands or other protected natural resources present. In making this determination, consideration shall include but not be limited to, such factors as the size of the alteration, functions of the impacted area, existing development or character of the area in and around the alteration site, elevation differences and hydrological connection to surface water or other protected natural resources.

For wetlands not located in a P-WL subdistrict, the level of permit review will be determined based on the type of wetland and consistent with the descriptions in Section 10.23,N,2,a.

* + - * 1. **Seasonal Factors.**

When determining the significance of a resource or impact from an activity, seasonal factors and events that temporarily reduce the numbers or visibility of plants or animals, or obscure the topography and characteristics of a wetland such as a period of high water, snow and ice cover, erosion event, or drought, are taken into account. Determinations may be deferred for an amount of time necessary to allow an assessment of the resource without such seasonal factors.

* + - 1. **General Land Use Standards.** The following standards apply to all projects dependent upon the required tier level of review.
         1. **Avoidance.**

Projects requiring Tier 1, Tier 2, or Tier 3 review must avoid alteration of wetland areas on the property to the extent feasible considering natural features, cost, existing technology and logistics based on the overall purpose of the project.

Projects requiring Tier 2 or Tier 3 review will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. Each Tier 2 and Tier 3 application must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.  
  
For an activity proposed in, on or over P-WL1 wetlands of special significance, a practicable alternative less damaging to the environment is deemed to exist and the impact is unreasonable, unless the activity is described in Section 10.25,P,2,b,(1),(b),(i) or (ii) below.

Certain types of projects. The activity is necessary for one or more of the purposes specified in the following subparagraphs aa through hh.

aa. Health and safety;

bb. Crossings by driveway, road, rail, trail or utility lines;

cc. Water dependent uses;

dd. Reconstruction or expansion of an existing developed area or related construction that cannot practicably be located elsewhere because of the relation to the existing developed area, if the existing developed area was created prior to August 18, 2005 (existing developed area includes structures, fill areas, and landscaped areas);

ee. Mineral excavation and appurtenant facilities;

ff. Walkways;

gg. Restoration or enhancement of the functions and values of the P-WL1 wetlands of special significance; or

hh. Shoreline stabilization.

Certain wetlands of special significance. The activity is for a purpose other than those specified in Section 10.25,P,2,b,(1),(b),(i) above, is located in a P-WL1 wetland with aquatic vegetation, emergent marsh vegetation or open water, and the activity:

aa. Is located at least 250 feet from aquatic vegetation, emergent marsh vegetation or open water; and

bb. Does not unreasonably adversely affect the functions and values of the aquatic vegetation, emergent marsh vegetation or open water, or the functions and values of the freshwater wetlands that are enhanced or served by the aquatic vegetation, emergent marsh vegetation or open water.

* + - * 1. **Minimal Alteration.** Projects requiring Tier 1, Tier 2, or Tier 3 review must limit the amount of wetland to be altered to the minimum amount necessary to complete the project.
        2. **Compensation.** Compensation is the off-setting of a lost wetland function with a function of equal or greater value. The goal of compensation is to achieve no net loss of wetland functions and values. Every case where compensation may be applied is unique due to differences in wetland type and geographic location. For this reason, the method, location and amount of compensation work necessary is variable.  
             
           In some instances, a specific impact may require compensation on-site or within very close proximity to the affected wetland. For example, altering a wetland that is providing stormwater retention that reduces the risk of flooding downstream will likely require compensation work to ensure no net increase in flooding potential. In other cases, it may not be necessary to compensate on-site in order to off-set project impacts. Where wetland priorities have been established at a local, regional or state level, these priorities should be considered in devising a compensation plan in the area to allow the applicant to look beyond on-site and in-kind compensation possibilities.

Functional Assessment. For projects requiring Tier 2 or Tier 3 review, applicant must conduct a functional assessment unless exempt from this requirement under Section 10.25,P,2,b,(3),(f) or granted a waiver under Section 10.25,P,2,b,(3),(g). A functional assessment must be conducted in accordance with Section 10.25,P,2,f,(2) and be sufficient to allow the Commission to evaluate whether the proposed wetlands alteration will cause a loss or degradation of wetland functions.

When compensation is required. For Tier 2 or Tier 3 projects, unless exempt under Section 10.25,P,2,b,(3),(f) or granted a waiver under Section 10.25,P,2,b,(3),(g), if the Commission determines that a wetland alteration will cause a wetland function or functions to be lost or degraded, the applicant must provide compensation for the wetland impacts.

Location of compensation projects. The compensation must take place in a location:

On or close to a project site, if determined necessary and appropriate by the Commission, to off-set direct impacts to an aquatic ecosystem;

Otherwise, compensation may occur in an off-site location where it will satisfy wetland priority needs as established at the local, regional or state level to achieve an equal or higher net benefit for wetland systems, if approved by the Commission.

Types of compensation. Compensation may occur in the form of:

Restoration of previously degraded wetlands;

Enhancement of existing wetlands;

Preservation of existing wetlands or adjacent uplands where the site to be preserved provides significant wetland functions and might otherwise be degraded by unregulated activity; or

Creation of wetland from upland.

More than one method of compensation may be allowed on a single project. Preference is generally given to restoration projects that will off-set lost functions within, or in close proximity to, the affected wetland. However, other types of compensation may be allowed by the Commission if the result is an equal or higher overall net benefit for wetland systems.

Compensation amounts. The amount of compensation required to replace lost functions depends on a number of factors including: the size of the alteration activity; the functions of the wetland to be altered; the type of compensation to be used; and the characteristics of the compensation site. Compensation shall be performed to meet the following ratios at a minimum, unless the Commission finds that a different ratio is appropriate to directly off-set wetland functions to achieve an equal or higher net benefit for wetlands:

1:1 for restoration, enhancement or creation to compensate for impacts in wetlands not of special significance;

2:1 for restoration, enhancement or creation to compensate for impacts in wetlands of special significance; and

8:1 for preservation, including adjacent upland areas, to compensate for impacts in all wetlands.

Exceptions. Neither a functional assessment nor compensation is required for the following single, complete projects:

Freshwater wetlands

aa. Alterations of less than 500 square feet in a freshwater wetland of special significance provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values, significant wildlife habitat, or imperiled or critically imperiled communities due to the activity;

bb. Alterations of less than 15,000 square feet in a freshwater wetland not of special significance, provided that the Commission determines that there will be only a minimal effect on freshwater wetland functions and values due to the activity;

cc. Alterations in a freshwater wetland for a road, rail or utility line crossing of a flowing water for a distance of up to 100 feet from the normal high water mark on both sides, measured perpendicular to the thread of the flowing water, provided: (i) Any affected freshwater wetland does not contain significant wildlife habitat or a critically imperiled or imperiled community; and (ii) The total project affects 500 square feet or less of the channel.

Coastal Wetlands. A coastal wetland alteration that does not cover, remove or destroy marsh vegetation, does not fill more than 500 square feet of intertidal or subtidal area, and has no adverse effect on marine resources or on wildlife habitat as determined by the Department of Marine Resources or the Department of Inland Fisheries and Wildlife as applicable.

Bodies of Standing Water. An alteration of a body of standing water that does not place any fill below the normal high water mark, except as necessary for shoreline stabilization projects, and has no adverse effect on aquatic habitat as determined by the Department of Inland Fisheries and Wildlife or the Department of Environmental Protection.

Flowing Water. An alteration of flowing water that does not affect more than 150 feet of shoreline for a private project or more than 300 feet of shoreline for a public project.

Walkways/Access Structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or to comply with the Americans with Disabilities Act.

Waiver. The Commission may waive the requirement for a functional assessment, compensation, or both. The Commission may waive the requirement for a functional assessment if it already possesses the information necessary to determine the functions of the area proposed to be altered. The Commission may waive the requirement for compensation if it determines that any impact to wetland functions and values from the activity will be insignificant.

* + - * 1. **No Unreasonable Impact.** The following standards apply only to applications requiring Tier 2 or Tier 3 review:

Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the review standards of Section 10.25,P,1 will not be met. In making this determination, the Commission shall consider:

The area of wetland that will be affected by the alteration and the degree to which the wetland is altered, including wetland beyond the physical boundaries of the project;

The functions and values provided by the wetland;

Any proposed compensation and the level of uncertainty regarding it; and

Cumulative effects of frequent minor alterations on the wetland.

Activities may not occur in, on or over any wetland of special significance containing threatened or endangered species unless the applicant demonstrates that:

The wetland alteration will not disturb the threatened or endangered species; and

The overall project will not affect the continued use or habitation of the site by the species.

When considering whether a single activity is reasonable in relation to the direct and cumulative impacts on the resource, the Commission shall consider factors such as the degree of harm or benefit to the resource; the frequency of similar impacts; the duration of the activity and ability of the resource to recover; the proximity of the activity to protected or highly developed areas; traditional uses; the ability of the activity to perform as intended; public health or safety concerns addressed by the activity; and the type and degree of benefit from the activity (public, commercial or personal).

* + - 1. **Wetland Compensation Standards.**

Where compensation is required, the following standards apply:

* + - * 1. **Expertise.**  The applicant shall demonstrate sufficient scientific expertise to carry out the proposed compensation work.
        2. **Financial Resources.** The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions.
        3. **Persistence.** For restoration, enhancement and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions after a period of three years unless otherwise approved by the Commission. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the Commission may require additional monitoring and corrective action, or additional wetland restoration, enhancement or creation in order to achieve the compensation ratio as originally approved.
        4. **Monitoring.** The applicant shall set forth a plan for interim reporting and remediation measures during monitoring of the restored or created wetland over a minimum of five years, which shall include contingency plans for replanting, contouring or other corrections if the project fails to meet project goals during that time.
        5. **Maintenance.** A compensation project that will naturally maintain itself without active intervention is preferred. However, the permittee may be required to conduct activities to assure continuation of the wetland, or the accomplishment of compensation goals, after a compensation project has been technically completed. Such activities may include, but are not limited to, water level manipulations and control of non-native plant species.
        6. **Protection.**

A compensation project involving restoration, enhancement or creation must provide for deed covenant and restriction or a conservation easement conveyed to a qualified holder that requires maintenance of the area as a coastal wetland, freshwater wetland or body of standing water in perpetuity. The conservation easement must list the Department of Agriculture, Conservation, and Forestry as an enforcing agent. Regardless of the size of the compensation area, any future alterations in, on or over the area must be approved by the Commission.

A compensation project involving preservation must provide for a conservation easement conveyed to a qualified holder or deed covenant and restriction so that the parcel will remain undeveloped in perpetuity. The easement must list the Department of Agriculture, Conservation, and Forestry as an enforcing agent. Compensation areas may be deeded to local or state conservation groups or agencies, but any land management practices must be approved by the Commission.

* + - * 1. **Source of Water (Creation Only).** For a creation project, the Commission prefers that the created wetland be located adjacent to an existing wetland or waterbody.
        2. **Implementation Schedule.**  A schedule for implementing the compensation plan must be submitted. Generally, compensation will be required to be completed prior to, or concurrent with, the permitted alteration. For on-going or long-term alterations, such as mining, compensation must be completed no later than within the first year of operation unless otherwise approved by the Commission.
      1. **Mitigation Banking.**
         1. **Purpose.**  A public or private entity may apply to the Commission to undertake wetland compensation projects for the purposes of off-setting one or more alteration projects proposed at that time or in the future. The ratios set forth in Section 10.25,P,2,b,(3),(e) will be used as guidance to determine the amount of credit required for any proposed alteration.
         2. **Location.** Compensation work must take place in the same watershed, biophysical region or in the project vicinity of the future alteration work, if feasible. Otherwise, the work must occur as close to the wetland alteration site or sites as feasible.
         3. **Effectively Functioning.** A project to be used for compensation credit must be functioning as proposed in the mitigation banking application, as demonstrated by an updated functional assessment, in order to quality as an off-set to a proposed activity.
         4. **Limitation.** No person may use mitigation banking to compensate for more than 25 acres of wetland alteration statewide in any one-year period.
         5. **Expertise.** The applicant is required to show a combination of expertise, experience and resources sufficient to undertake and maintain land placed in mitigation banking.
      2. **Terms and Conditions.** The Commission may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will meet the standards of Section 10.25,P,1, such as:
         1. Design changes to help insure the success of the project;
         2. Buffer requirements;
         3. Project supervisory requirements;
         4. Monitoring requirements;
         5. Mid-course correction or maintenance capability;
         6. Bonding or other assurances of continued financial resources to complete compensation requirements; and
         7. Timing requirements for all or portions of a project.
      3. **Submission Requirements.**
         1. **Alternatives Analysis.** If required by Section 10.25,P,2,b,(1),(b), an alternatives analysis must be conducted that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:

Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;

Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;

Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and

Demonstrating the need, whether public or private, for the proposed alteration.

* + - * 1. **Functional Assessments.**  If required by Section 10.25,P,2,b,(3),(a), a functional assessment must be conducted of the wetland to be altered, that analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The functional assessment must be conducted by a qualified professional(s) using an acceptable methodology approved by the Commission. If other than an established methodology is proposed, the applicant must submit documentation describing how the methodology was developed, how the wetland functions and values are determined using the methodology, and how much field testing the technique has undergone.  
             
           In cases where the size of the wetland alteration or other factors make the use of an established assessment methodology impracticable or inappropriate, the Commission may instead accept the best professional judgment of a qualified professional. The applicant must notify the Commission if he or she intends to use best professional judgment.

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.

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 must 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 community or species for such designation.

Coastal Sand Dune Systems. (Reserved)

Community Public Water System Primary Protection Areas. (Reserved)

Significant Wildlife Habitat. (Reserved)

* 1. SUBDIVISION AND LOT CREATION

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

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

* + - 1. **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:

# Original Parcel

Retained

Parcel

Retained

Parcel

**New**

**Lot #1**

**New**

**Lot #1**

Retained

Parcel

**New**

**Lot #2**

Example 1

Example 2

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

* + - 1. **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.
      2. **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. Chapter 206-A.
      3. **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.
      4. **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-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.
      5. **Existing parcels.** For the purposes of the definition of subdivision in 12 M.R.S. §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.
      6. **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. 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:

The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;

The lot is at least 40 acres in size;

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. §436-A;

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

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. §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. §682-B(4).

* + - * 1. 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:

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

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.

* + - * 1. 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:

lots that are part of a subdivision approved by the Commission;

a land division certified by the Commission as qualifying under 12 M.R.S. §682-B; or

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.

* + - * 1. Divisions by Inheritance, Court Order, or Gifts. Divisions of land accomplished solely by inheritance or by court order 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 five years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within five years from the date of division. 12 M.R.S. §682-B(1)

* + - * 1. 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:

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

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. §682-B(3)

* + - * 1. 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:

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

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. §682-B(2)

* + - * 1. 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.
        2. 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:

Approval of the subdivision under 12 M.R.S. §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;

A building permit for the lot or parcel was denied by the Commission under 12 M.R.S. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;

The Commission has filed a notice of violation of 12 M.R.S. §685-B with respect to the subdivision in the appropriate registry of deeds; or

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. §682-B(5).

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

General Standards for All Subdivision Layouts.

* + - 1. **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. Commercial, Industrial, and Residential Subdivisions. All subdivisions must be designed consistent with Table 10.25,Q-1, Location and Layout Overview.

**Table 10.25,Q-1. Location and Layout Overview**

| **Commercial, Industrial, and Residential Subdivisions**[[1]](#footnote-1) | **Allowed Subdivision Layouts** | | | | |
| --- | --- | --- | --- | --- | --- |
| Basic | | Clustered | FlexDesign | Rural Lot |
| *High- and Moderate-Density* | | | | *Low-Density* |
| Inland | Yes | Yes | | Yes | Yes |
| Shoreland with Heavy Development  (Lakes exceeding CLUP density guidelines[[2]](#footnote-2),[[3]](#footnote-3)) | No | Yes | | Yes | No |
| Shoreland within 250 feet of  Management Class 4 Lakes | No | Yes | | Yes | No |
| Shoreland within 250 feet of all other major water bodies and coastal wetlands | Yes | Yes | | Yes | No |
| **General Management Subdivisions** | | | | | |
| Inland | Yes | Yes | | Yes | No |

* + - * 1. General Management Subdivisions. Any subdivision that meets all of the criteria in Section 10.25,Q,3,a,(2),(a) through (g) 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:

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;

Occupies an aggregate land area of less than 30 acres;

Is located within a primary location and wholly located within one-half mile of a public roadway;

Is located more than one-half mile from a major water body;

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;

Is a high-density or moderate-density subdivision as defined in Chapter 2 of the Commission’s rules, and is designed consistent with Table 10.25,Q-1, Location and Layout Overview; and

Is in a location where the county, nearby municipality, or other service provider is willing to and will be able to provide fire and ambulance services consistent with Section 10.08,B,2,a.

* + - * 1. Maple Sugar Processing Subdivisions. Subdivisions containing lots created by lease for the purpose of establishing and operating commercial maple sugar processing operations that meet all of the following criteria are maple sugar processing subdivisions:

The maximum number of leased lots shall be no more than one per every 300 acres of the lot or parcel being subdivided[[4]](#footnote-4);

The maximum size of each leased lot shall be no more than 4 acres;

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;

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

< 1,000 feet

< 1,000 feet

> 1,000 feet

> 1,000 feet

> 1,000 feet

> 1,000 feet

***Set of lots***

***Set of lots***

***Set of lots***

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

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 h for subdivision layouts do not apply to maple sugar processing subdivisions.

* + - 1. **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:

Commercial uses must fit the size, scale, and intensity of the surrounding residential uses; and

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.

* + - 1. **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:

In groups, allowing for larger open areas between groups of building envelopes;

To avoid placement along ridgelines, 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

To maximize privacy afforded to each dwelling unit, such as providing sufficient buffering vegetation and staggering building envelopes.

* + - 1. **Common Open Space.**
         1. Unless another configuration better achieves the Commission’s natural and cultural resource goals listed in Chapter 1 of the Comprehensive Land Use Plan, any common open space proposed for the subdivision must 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.

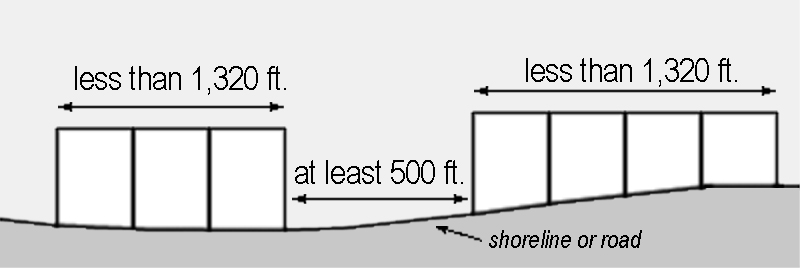


Figure 10.25,Q-3. Grouping of subdivision lots along a roadway or shoreline.

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 one-quarter mile of the parcel, the Commission may allow subdivision designs without common open space for wildlife passage.

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.

* + - * 1. In cases where an existing recreational resource managed for public access, such as a motorized or non-motorized trail, or boat launch, is located in or within 1,000 feet of the project boundary, the subdivision design must include provisions to ensure lot owners or lessees in the subdivision will not cause undue adverse impacts to intervening landowners from informal trail building. If access to the recreational resource is provided for lot owners or lessees that access must be legally enforceable by the lot owners or lessees.
        2. Common open space within the subdivision shall be preserved and maintained in accordance with the Commission’s Chapter 10 rules, Section 10.25,S.
        3. 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.
      1. **Shoreland Development.**
         1. Shoreland 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:

Non-waterfront lots that equal or exceed the number of waterfront lots in the layout;

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

A non-linear design that incorporates a majority of the waterfront in common ownership.

* + - * 1. 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.
        2. Shoreland subdivisions with shoreline frontage 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 not be located in open space designated for habitat protection or wildlife passage.
        3. Proposed permanent docks, trailered ramps, hand-carry launches or water-access ways shall comply with the requirements of Section 10.27,L,2.
        4. Designs shall include and provide for maintenance of best management practices for control of phosphorus in accordance with Section 10.25,L.
      1. **Legal Right of Access to Subdivision Lots.** Any lot in a subdivision created after June 17, 2019 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:

Abuts a public road; or

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 legal access provided 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.

* + - * 1. 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. Additionally provided, when the subdivision land will be accessed by boat from a private boat launch, all lot owners will have a legally enforceable right to use and ensure continued maintenance of the boat launch.
        2. 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 for fair market value consideration, and where both the lessor and lessee have the legal right to not renew the lease, subject to applicable statutory notice requirements, regardless of cause. However, as part of the sale of any such leased lot in a subdivision created after June 17, 2019, the seller shall grant the buyer a legal right of access that satisfies Section 10.25,Q,3,f,(1) or (2).
      1. **Emergency Services Waiver.** For all proposed subdivisions located in subdistricts for which an emergency services waiver was granted by the Commission, the applicant must demonstrate that sufficient notice of the absence of emergency services will be provided to all subsequent owners of property within the subdivision, including use of a specific note on the plat and any deed for a lot within such a subdivision.
      2. **Recreational Resource Capacity for Recreation-based Subdivisions.** A recreation-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 proposal 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.

Layout Specific Standards.

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

* + - 1. **Basic Subdivision Layouts.**  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:

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

Abuts or is located within one-quarter mile of permanently conserved land, or

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.

Common Open Space Percentage. For recreation-based subdivisions, the total common open space must include at least 40 percent of the net developable land area and 40 percent of the net developable shorefront area for shoreland developments.

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 not be located in common open space designated for habitat protection or wildlife passage.

* + - 1. **Clustered Subdivision Layouts.** 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. 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 Chapter 2 of the Commission’s rules.

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.

In addition, the Commission may reduce dimensional requirements of Sections 10.26,A through E, in the aggregate, provided:

Dimensional requirements, in the aggregate, are not reduced by more than 50 percent, except that consistent with Section 10.26,G,2 shoreline setback requirements must not be reduced;

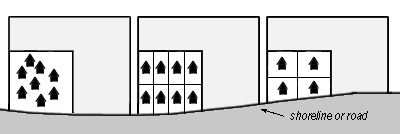
Site conditions are suitable for more concentrated development on some portions of a site and such concentrated development will not adversely affect resources; and

The specific benefits afforded by the cluster approach will prevent the loss of or enhance the conservation of important natural features.

* + - * 1. Common Open Space.

Clustered subdivisions shall be designed to protect developable land as common open space through (i) clusters of dwellings on commonly-owned land; (ii) creation of individual lots with reduced lot size, reduced road frontage or, within shoreland developments, reduced shoreline frontage as permitted under these rules; or (iii) 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.



Common Open Space Percentage. The total designated common open space must include at least 50 percent of the net developable land area and 50 percent of the net developable shorefront area for shoreland developments.

The Commission may allow subsurface wastewater disposal systems in designated common open space, provided there is no other practicable alternative, 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.

* + - * 1. 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 (Sections 10.25,Q,3,e,(1) and (2)).
      1. **Rural Lot Subdivision Layouts.**  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 one-quarter 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.
      2. **FlexDesign Subdivision Layouts.** 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:

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.

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.

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.

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.

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.

* + - * 1. Subdivision Design. The development of the sketch plan for FlexDesign subdivisions shall be consistent with the following design approach:

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 viewsheds and providing solar access, and meet the applicant’s design goals for the subdivision.

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 edges[[5]](#footnote-5) 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.

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.

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.

* + - * 1. 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 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.
        2. Common Open Space.

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.

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.

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 must be at least 50 percent of the net developable land area, and 50 percent of the net developable shorefront area for shoreland developments.

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.

The Commission may allow subsurface wastewater disposal systems in common open space, provided there is no other practicable alternative, legal provisions are made for maintenance, access, and replacement; and the systems are not located in areas designated for wildlife passage or habitat protection.

Common open space shall be labeled as such on the subdivision plat, and preserved and maintained in accordance with Section 10.25,S.

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.

* + - * 1. 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.

Procedural Requirements.

* + - 1. **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.

* + - 1. **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)
      2. **Conveyance of Lots or Dwelling Units.**
         1. Certificates of Compliance. The conveyance of lots or dwelling units in any subdivision approved by the Commission may not proceed until a certificate of compliance has been issued. A certificate of compliance requires that:

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)

Signed plats have been filed with the appropriate county Registry of Deeds.

Project construction has been completed, including but not limited to all common infrastructure and improvements, such that all subdivision lots or dwelling units 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.

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.

* + - * 1. 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:

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 dwelling units or proposed for use by lot or unit owners in that portion of the project, such that all lots or dwelling units 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.

All open space proposed for wildlife habitat and wildlife passage has been preserved in accordance with Section 10.25,S.

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 the definition for substantial completion in Chapter 2.

* + - * 1. Monumentation. All subdivision and lot boundary corners and angle points must be marked by suitable, permanent monumentation in accordance with rules adopted by the Board of Licensure for Professional Land Surveyors, 02-360 CMR 90, Standards of Practice.
        2. Maple Sugar Processing Subdivisions.

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.

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.

* + - * 1. 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.
      1. **Recording of Large Lot Land Divisions.**
         1. When 3 to 10 lots each containing at least 40 acres are created within a five-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 third 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 must determine whether the plan qualifies under 12 M.R.S. §682-B, ordinarily within 15 days of receipt of a complete 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. §682-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 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. §682-B

* 1. (RESERVED)

* 1. Common OPEN SPACE

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

* + 1. Preservation and Maintenance of Common Open Space. Common open space must 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:
       1. Conveyance of common open space to a qualified holder, as defined under Section 10.25,S,2.
       2. 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 homeowners association.
       3. Common ownership of open space by a homeowners association which prevents future structural development and subsequent subdivision of the common open space, and assumes full responsibility for its maintenance.
       4. Ownership by a single landowner, provided that deed covenants are recorded that are sufficient to ensure the purposes of Section 10.25,S.
       5. 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 entities are qualified to own, preserve and maintain common open space:
       1. “A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
       2. 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. §476(2)
    3. Uses of Common Open Space. Common open space may be usable for low-intensity non-commercial recreation, for purposes intended to conserve land, or to preserve important natural or cultural 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, and industrial structures and uses; and other structures and uses not specifically authorized by the subdivision permit.
    4. 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 or lessee membership, lot owner or lessee 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; and shall prohibit all residential, commercial, and industrial structures and uses within the designated open space; and prohibit other structures and uses in that space that have not specifically been authorized by the subdivision permit.
    5. Separate Lot of Record. Common 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 must 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.
  1. ACTIVITIES IN FLOOD PRONE AREAS

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

Procedural Requirements.

* + - 1. Where a special flood hazard area is indicated solely by a P-FP subdistrict, the area will be regulated according to standards applicable to the A zone.
      2. Determinations of base flood elevations (bfe) in P-FP subdistricts and A zones and flood prone areas shall be made in a consistent manner, according to methods outlined in the document “Dealing with Unnumbered A Zones in Maine Floodplain Management,” Maine Floodplain Management Program. (September 25, 2013).
      3. Base flood elevations for A1-30, AE and VE zones shall be those determined by FEMA in a Flood Insurance Study, where available.
      4. If P-FP zones and A1-30, AE, A, or VE zones apply to an area where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) to an applicant determining that the structure or property is not located in the area of special flood hazard, the requirements of Sections 10.23,C and 10.25,T, shall not apply to the structure or property specified in the LOMA or LOMR.
      5. Applicants shall notify adjacent towns, plantations and townships in writing prior to any alteration or relocation of a watercourse when project applications propose alterations or relocations of flowing waters in a Flood Prone Area Protection (P-FP) Subdistrict or FEMA zone.

Development Standards.

* + - 1. Development in flood prone areas, including areas of special flood hazard, shall:
         1. Be designed or modified and adequately anchored to prevent flotation (excluding floating piers and docks), collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
         2. Use construction materials that are resistant to flood damage;
         3. Use construction methods and practices that will minimize flood damage; and
         4. Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
      2. **Water Supply.** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
      3. **Sanitary Sewage Systems.** All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
      4. **On-Site Waste Disposal Systems.** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
      5. **Watercourse Carrying Capacity.** All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
      6. **Residential Structures.** New construction or substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, and when located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
      7. **Nonresidential Structures.** New construction or substantial improvement of any nonresidential structure shall:
         1. Have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or
         2. Together with attendant utility and sanitary facilities:

Be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 10.25,T. Such certification shall be provided with the application for any permit and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

* + - * 1. When located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
      1. **Manufactured Homes.** New manufactured homes or substantial improvements of any manufactured home must:
         1. Be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
         2. Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
         3. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by

Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

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

* + - * 1. When located within Zone VE, meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
      1. **Recreational Vehicles.** Recreational vehicles shall either:
         1. Be on the site for fewer than 90 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
         2. Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in Section 10.25,T,2,h.
         3. When located within Zone VE, be on the site for fewer than 90 consecutive days and be fully licensed and ready for highway use, or meet the requirements for Coastal Floodplains in Section 10.25,T,2,p.
      2. **Accessory Structures.** Accessory structures, as defined, located within Zones A1-30, AE, and A, shall be exempt from the required elevation criteria if all other requirements of Section 10.25,T and the following are met. Exempt accessory structures shall:
         1. Be 500 square feet or less and have a value less than $3,000;
         2. Have unfinished interiors and not be used for human habitation;
         3. Have hydraulic openings, as specified in Section 10.25,T,2,l,(2), in at least two different walls of the accessory structure;
         4. Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,k;
         5. When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
         6. Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.
      3. **Development in Floodways.**
         1. In Zones A1-30 and AE adjacent to areas of flowing water, encroachments, including fill, new construction, substantial improvement and other development shall not be permitted within a regulatory floodway which is designated on the township’s, plantation’s, or town’s “Flood Insurance Rate Map” or “Flood Boundary and Floodway Map,” unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the township, plantation, or town during the occurrence of the base flood discharge.
         2. In Zones A1-30, AE, and A adjacent to areas of flowing water, for which no regulatory floodway is designated, encroachments, including without limitation fill, new construction, substantial improvement and other development shall not be permitted in the floodway as determined in Section 10.25,T,2,k,(3) below unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

Will not increase the water surface elevation of the base flood more than one foot at any point within the township, plantation, or town; and

Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors. FEMA. (37/ January 1995).

* + - * 1. In Zones A1-30, AE, and A adjacent to areas of flowing water for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other flowing water and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
      1. **Enclosed Areas Below the Lowest Floor.** New construction or substantial improvement of any structure in Zones A1-30, AE, and A that meets the development standards of Section 10.25,T, including the elevation requirements, and is elevated on posts, columns, piers, piles, stilts, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
         1. Enclosed areas are not basements as defined in Section l0.02;
         2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:

Be engineered and certified by a registered professional engineer or architect; or

Meet or exceed the following minimum criteria:

A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;

The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and

Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

* + - * 1. The enclosed area shall not be used for human habitation; and
        2. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
      1. **Bridges.** New construction or substantial improvement of any bridge shall be designed such that:
         1. When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
         2. A registered professional engineer shall certify that:

The structural design and methods of construction shall meet the elevation requirements of Section 10.25,T,2,m,(1) above and the floodway standards of Section 10.25,T,2,k; and

The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

* + - 1. **Containment Walls.** New construction or substantial improvement of any containment wall shall:
         1. Have the containment wall elevated to at least one foot above the base flood elevation;
         2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
         3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 10.25,T. Such certification shall be provided with the application for a permit.
      2. **Commercial Wharves, Piers and Docks.** A registered professional engineer shall develop or review the structural design, specifications, and plans for the new construction or substantial improvement of commercial wharves, piers, and docks.
      3. **Coastal Floodplains.**
         1. All development shall be located landward of the reach of mean high tide except for wharves, piers and docks or as provided in Section 10.25,T,2,p,(6) below.
         2. New construction or substantial improvement of any structure located within Zone VE shall:

Be elevated on posts or columns such that:

The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;

The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and

Water loading values used shall be those associated with the base flood. Wind loading values used shall be those contained in the “Coastal Construction Manual” (FEMA P-55). Federal Emergency Management Agency (August 2011).

Have the space below the lowest floor:

Free of obstructions; or

Constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or

Constructed with non-supporting breakaway walls which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.

Require a registered professional engineer or architect to:

Develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the “Coastal Construction Manual” (FEMA-P55) Federal Emergency Management Agency (August 2011); and

Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Section 10.25,T,2,p,(2).

* + - * 1. The use of fill for structural support in Zone VE is prohibited.
        2. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
        3. Enclosed areas below the lowest floor may be used solely for parking vehicles, building access, and storage.
        4. Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement only if permitted as a special exception, and if all the following requirements and those of Section 10.25,T,2,a,k, and l are met:

The special exception shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.

The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

The structure will not adversely increase wave or debris impact forces affecting nearby buildings.

The structure shall have unfinished interiors and shall not be used for human habitation.

Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.

All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

* 1. AFFORDABLE HOUSING

The following requirements and standards apply to affordable housing in all subdistricts where dwelling units are allowed.

* + 1. Dimensional Requirements. The Commission may reduce dimensional requirements for dwelling units in order to accommodate proposals to provide affordable housing opportunities. The minimum lot size may be reduced to 20,000 square feet per dwelling unit or less than 20,000 square feet per dwelling unit for proposals utilizing subsurface wastewater disposal in accordance with 12 M.R.S. §4807, and to less than 20,000 square feet per dwelling unit for proposals utilizing public sewer systems, and other dimensional requirements may be modified to the minimum extent necessary to accommodate the proposed units where the applicant demonstrates there will be no undue adverse effect on existing uses and resources in the area likely to be affected by the proposal.
    2. Income Restrictions. Affordable housing lots or dwelling units allowed under Section 10.25,U shall be sold or rented to lower or moderate income buyers or renters. The Commission may waive the limit on percentage of household income spent on housing in those housing markets where, in its judgment, after consultation with the Maine State Housing Authority, elevated local housing costs limit affordable housing opportunities.
    3. Maintenance of Long-term Affordability. Affordable housing covenants shall run with the land and comply with the provisions of 33 M.R.S. §122 regarding creation, conveyance, acceptance and duration. Affordable housing covenants for sale and rental properties shall be recorded in the County Registry of Deeds, either concurrently with the recording of the subdivision plat or upon the conveyance of the residential lots or units.

Affordable housing lots or dwelling units allowed under Section 10.25,U shall be maintained as affordable housing by any of the following mechanisms or combinations thereof:

* + - 1. **Sales.** Restricting in perpetuity title to the lots and to the dwelling units by an affordable housing covenant attached to the deed requiring that if the owner sells the lot or dwelling unit that the sale price must remain affordable to lower or moderate income households and be in accord with the method for limiting the sale price as specified in the covenant;
      2. **Rentals.** Limiting annual rent increases for lower or moderate income households to changes in the rental market, such as, but not limited to, changes in the area fair market rents published by HUD for the HMFA/County, and providing that no rent increase may take effect until approved by a qualified housing entity, as defined in Section 10.25,U,4; or
      3. **Other mechanisms.** Providing for and maintaining affordable housing through affordability mechanisms as provided for in 33 M.R.S. §124 or any other mechanisms substantially equivalent to a and b above and acceptable to the Commission.
    1. Qualified Housing Entities. A qualified housing entity acceptable to the Commission must oversee initial sales or rentals of affordable housing lots or dwelling units allowed under Section 10.25,U in order to ensure that housing lots or dwelling units remain affordable and that buyers or renters qualify as lower or moderate income households. Such oversight must also apply to subsequent sales or rentals and must continue for the term of the housing’s required affordability as required by subsection 10.25,U,3.
       1. The following housing entities, upon approval by the Commission, are qualified to hold or maintain affordable housing lots or units allowed under Section 10.25,U: A governmental entity empowered to hold an interest in real property under the laws of this State or the United States or a nonprofit organization whose purposes include providing affordable housing or increasing affordable housing opportunities for lower income or moderate income households.
       2. The Commission will require a back-up qualified housing entity for an approved nonprofit organization. The back-up qualified housing entity shall have the right to enforce the terms of the covenant and shall have all the rights of the primary qualified housing entity, in the event the primary qualified housing entity ceases to exist or fails to undertake monitoring, enforcement and other holder responsibilities under the covenant.
       3. Transfer of the rights of the qualified housing entity or back-up qualified housing entity requires Commission approval.
    2. Affordable Housing Agreement Documentation. The applicant shall submit for Commission review and approval documentation by the qualified housing entity which must include at least the following:
       1. Identification of the qualified housing entity and of the back-up qualified housing entity acceptable to the Commission that will be overseeing the affordable housing lots and dwelling units and be responsible for implementing and enforcing the affordable housing covenant(s);
       2. The agreement between the qualified housing entity and the back-up entity;
       3. An effective method to maintain long-term affordability to lower or moderate income buyers or renters according to the requirements of 10.25,U,3;
       4. A process for screening and selecting lower or moderate income households allowed to buy or rent lots or dwelling units;
       5. A right of first refusal giving the qualified housing entity the right to purchase the affordable lots or units at the sale price limitation contained in the affordable housing covenant if no qualified lower or moderate income buyers apply at the affordable price within a specified time period;
       6. An option to return affordable lots or units, whether for sale or rent, to market rates only if there are no qualified lower or moderate income household buyers or renters within a specified time period of the property being on the market and a method to return profits in excess of the sale price limitation contained in the affordable housing covenant to the qualified housing entity for purposes of providing affordable housing if the lots or units are returned to market rates;
       7. When an applicant requests that the Commission waive the limit on the percent of household income spent on housing, documentation of housing market conditions that establish the need for the waiver; and
       8. A requirement for the submission of annual reports by the qualified housing entity to the Commission documenting that the terms of items 5,a through f above, as applicable, are being met.

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. This category includes, but is not limited to, Management Class 5 lakes. [↑](#footnote-ref-3)
4. Calculated by dividing the total acreage of the lot or parcel being subdivided by 300 and rounding down to the nearest whole number. [↑](#footnote-ref-4)
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.” [↑](#footnote-ref-5)