

Subdivision Rule Revision Memo July 3, 2014

Attachment B

## Title 12

### 12 § 682. Definitions

- 2-A. **Subdivision.** Except as provided in section 682-B, “subdivision” means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing.

The term “subdivision” also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period.

### 12 § 682-B. Exemption from subdivision definition

A division accomplished by the following does not create a subdivision lot or lots unless the intent of the transfer is to avoid the objectives of this chapter.

1. **Gifts to relatives.** A division of land accomplished by gift to a spouse, parent, grandparent, child, grandchild or sibling of the donor of the lot or parcel does not create a subdivision lot if the donor has owned the lot or parcel for a continuous period of 5 years immediately preceding the division by gift and the lot or parcel is not further divided or transferred within 5 years from the date of division.
2. **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 is not considered a subdivision lot if the following conditions are met:
  - A. The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and
  - B. At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection.
3. **Transfer to conservation organization.** A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:
  - A. For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
  - B. The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity.

4. **Transfer of lots for forest management, agricultural management or conservation of natural resources.** A lot or parcel is not considered a subdivision lot if the following conditions are met:
  - A. The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
  - B. The lot is at least 40 acres in size;
  - C. If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water line of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as defined in Title 38, section 436-A;
  - D. The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
  - E. When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with section 685-B, subsection 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.
5. **Unauthorized subdivision lots in existence for at least 20 years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
  - A. Approval of the subdivision under section 685-B was denied by the commission and record of the commission's decision was recorded in the appropriate registry of deeds;
  - B. A building permit for the lot or parcel was denied by the commission under section 685-B and record of the commission's decision was recorded in the appropriate registry of deeds;
  - C. The commission has filed a notice of violation of section 685-B with respect to the subdivision in the appropriate registry of deeds; or
  - D. The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds.
6. **Permit not required.** Nothing in this section requires a permit for, or restricts the use of property for, hunting, fishing or other forms of primitive recreation, use of motorized vehicles on roads and trails or snowmobiling as otherwise permitted by law.

**SUBCHAPTER 3: COMMISSION POWERS AND DUTIES****12 § 685-A. Land use districts and standards**

1. **Classification and districting of lands.** The commission, acting on principles of sound land use planning and development, shall determine the boundaries of areas within the unorganized and deorganized areas of the State that fall into land use districts and designate each area in one of the following major district classifications: protection, management and development. The commission, acting in accordance with the procedures set forth in Title 5, chapter 375, subchapter 2, shall adopt rules for determining the boundaries of each major type of district in accordance with the following standards:
  - A. Protection districts: Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State;
  - B. Management districts: Areas that are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional development are not presently formulated nor additional development anticipated; and
  - C. Repealed.
  - D. Development districts: Areas that are appropriate for residential, recreational, commercial or industrial use or commercial removal of metallic minerals and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.

In addition to delineating the major district classifications listed, the commission may delineate such subclassifications as may be necessary and desirable to carry out the intent of this chapter. The commission may delineate and designate planned subdistricts and establish standards unique to each to efficiently balance the benefits of development and resource protection.

- 8-A. **Criteria for adoption or amendment of land use district boundaries.** A land use district boundary may not be adopted or amended unless there is substantial evidence that:
  - A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
  - B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

**12 § 685-B. Development review and approval**

**1-B. Delegation to staff.** The commission may establish standards by which authority may be delegated to its staff, to approve with reasonable conditions or deny applications submitted. Any person aggrieved by a decision of the staff has the right to a review of that decision by the commission. A request for such a review must be made within 30 days of the staff decision.

**4-A. Subdivision of land subject to liquidation harvesting.** The commission may not approve an application for a subdivision if the commission determines that timber on the parcel proposed for subdivision has been harvested in violation of rules adopted pursuant to section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the commission must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The commission may request technical assistance from the Maine Forest Service to determine if a rule violation has occurred.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to section 8869, subsection 14.

**6. Recording of approved proposals.** A copy of each application, marked approved or disapproved, shall be retained in the commission files and shall be available to the public during normal business hours.

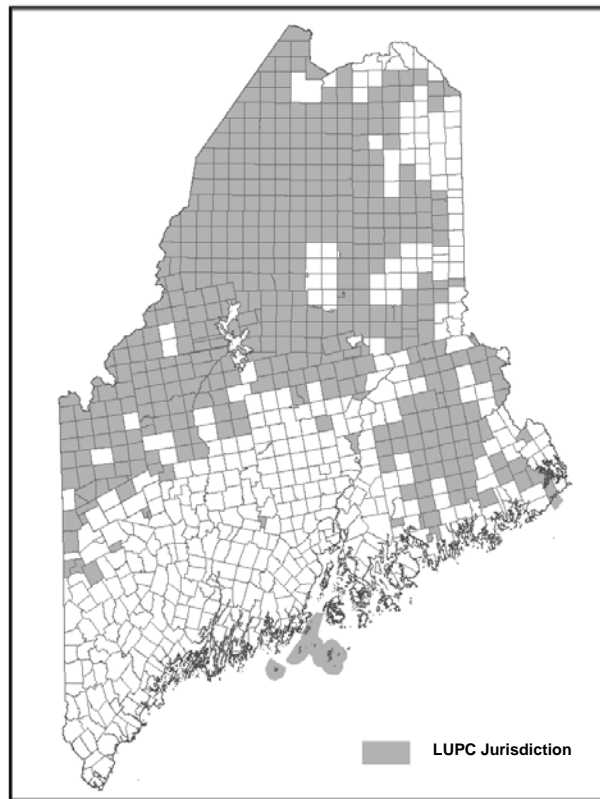
In the event the commission approves an application for subdivision approval, a copy of an approved plat or plan and a copy of the conditions required by the commission to be set forth in any instrument conveying an interest within the subdivision attested to by an authorized commission signature shall be filed with the appropriate registry of deeds in the county in which the real estate lies.

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.

The grantee of any conveyance of unrecorded subdivided real estate or subdivided real estate recorded in violation of this section may recover the purchase price, at interest, together with damages and costs in addition to any other remedy provided by law.

# LAND USE DISTRICTS AND STANDARDS

FOR AREAS WITHIN THE JURISDICTION OF THE  
MAINE LAND USE PLANNING COMMISSION



## CHAPTER 10 OF THE COMMISSION'S RULES AND STANDARDS

Initially Adopted January 12, 1977  
Latest Revision September 1, 2013

Note: In response to P.L. 2011, ch.599 (enacting LD 1739), in management and protection districts (except for development areas in Resource Plan Protection Subdistricts (P-RP)), the Commission no longer is responsible for regulating timber harvesting, land management roads, water crossings associated with land management roads, and gravel pits less than five acres in size. The regulation of these activities has been transferred to the Maine Forest Service.

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## 10.24 GENERAL CRITERIA FOR APPROVAL OF PERMIT APPLICATIONS

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In approving applications submitted to it pursuant to 12 M.R.S.A. §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.

Pursuant to 12 M.R.S.A. 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.A. 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.

“The commission may not approve an application, unless:

- A. 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.A.] Sections 4807 to 4807-G, the site location of development laws, 38 M.R.S.A. §481 to §490, and the natural resource protection laws, 38 M.R.S.A. §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;
- B. 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;
- C. Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure 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.

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 paragraph, the Commission shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals.

In making a determination under this paragraph regarding an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a community-based offshore wind energy project, the commission shall consider the development’s or project’s effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.

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 projects effects on

scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452;

- D.** 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;
- E.** The proposal is otherwise in conformance with this chapter and the regulations, standards and plans adopted pursuant thereto; and
- F.** 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. Except as otherwise provided in Title 35-A, Section 3454, 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.A. §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.A. §685-B(2)(D)



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**D. VEHICULAR CIRCULATION, ACCESS AND PARKING**

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1. **General circulation.** Provision shall be made for vehicular access to and within the project premises in such a manner as to avoid traffic congestion and safeguard against hazards to traffic and pedestrians along existing roadways and within the project area. Development shall be located and designed so that the roadways and intersections in the vicinity of the development will be able to safely and efficiently handle the traffic attributable to the development in its fully operational stage.
2. **Access management.** Access onto any roadway shall comply with all applicable Maine Department of Transportation safety standards. For subdivisions and commercial, industrial and other non-residential development, the following standards also apply:
  - a. The number and width of entrances and exits onto any roadway shall be limited to that necessary for safe entering and exiting.
  - b. Access shall be designed such that vehicles may exit the premises without backing onto any public roadway or shoulder.
  - c. Shared access shall be implemented wherever practicable.
  - d. Access between the roadway and the property shall intersect the roadway at an angle as near to 90 degrees as site conditions allow, but in no case less than 60 degrees, and shall have a curb radius of between 10 feet and 15 feet, with a preferred radius of 10 feet.
  - e. The Commission may require a traffic impact study of roadways and intersections in the vicinity of the proposed project site if the proposed development has the potential of generating significant amounts of traffic or if traffic safety or capacity deficiencies exist in the vicinity of the project site.
3. **Parking layout and design.** The following standards apply to all subdivisions and commercial, industrial and other non-residential development, except for parking areas associated with trailered ramps and hand-carry launches which are regulated under the provisions of Section 10.27,L:
  - a. Sufficient parking shall be provided to meet the parking needs of the development. The minimum number of parking spaces required shall be based on parking generation rates determined in accordance with standard engineering practices. In cases where it is demonstrated that a particular structure can be occupied or use carried out with fewer spaces than required, the Commission may reduce number of required spaces upon finding that the proposed number of spaces will meet the parking needs of the structure or use and will not cause congestion or safety problems.
  - b. Parking areas and access roads shall be designed such that runoff water is discharged to a vegetated buffer as sheet flow or alternatively collected and allowed to discharge to a concentrated flow channel, wetland or water body at a rate similar to pre-construction conditions. If runoff water is discharged to a concentrated flow channel, wetland or water body, a sediment basin shall be constructed to collect sediment before the runoff water is discharged.
  - c. **On-street parking.** In areas where on-street parking already exists, new development shall have on-street parking where practicable and if there are sufficient spaces available in the immediate vicinity. Otherwise, parallel or diagonal on-street parking is permitted where the

Commission finds that it will adequately meet the parking needs of the development and will not cause congestion or safety problems. Perpendicular on-street parking is prohibited.

- d.** Off-street parking for commercial, industrial and other non-residential development.
- (1) Where practicable, off-street parking shall be located to the side or rear of the principal structure.
  - (2) Notwithstanding the dimensional requirements of Section 10.26, the Commission may reduce the minimum road setback requirement by up to 50 percent for development utilizing on-street parking in accordance with Section 10.25,D,3,c or for development whose parking area is located to the rear of the principal structure, except where the Commission finds that such parking will cause an undue adverse impact to the natural resources or community character of the area.
  - (3) Off-street parking shall not be directly accessible from any public roadway. Ingress and egress to parking areas shall be limited to driveway entrances.
  - (4) Off-street parking areas with more than two parking spaces shall be arranged so that each space can be used without moving another vehicle.
- e.** Parking spaces shall not be placed in the required roadway vegetative buffer. However, a “sight triangle” shall be maintained 25 feet in length on each side of the intersection of the driveway and the roadway right-of-way, with the third side connecting the other two sides. Within each sight triangle, no landscape plants, other than low growing shrubs, shall be planted. These shrubs must be maintained to be no more than 30 inches in height above the driveway elevation.

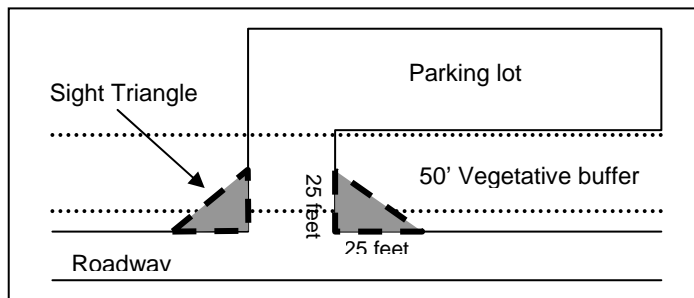


Figure 10.25,D-2. Sight triangle within a vegetative buffer.

- f.** Except for sight triangles, parking areas for commercial, industrial or other non-residential development shall be visually buffered from the roadway by planting and maintaining a vegetative buffer of trees and shrubs or by locating parking areas to the rear of the principal structure.
- g.** When parking areas associated with commercial, industrial or other non-residential development are adjacent to residential structures or uses, landscaping and/or architectural screens shall be used to provide an effective visual buffer and separation between property lines and the edge of the parking area.

- h.** For parking areas associated with commercial, industrial or other non-residential development that are greater than one acre in size, a landscaping plan shall be developed and implemented that indicates planting locations, type and maintenance. The plan shall include the following:
    - (1) Parking areas shall have landscaped strips along the perimeter, as well as landscaped islands within the parking area.
    - (2) Expanses of parking area shall be broken up with landscaped islands that include shade trees and shrubs. Where possible, the area of ground left uncovered around the base of a tree must be at least equal to the diameter of the branch area or crown at maturity. Where not possible, adequate measures, including but not limited to soil enhancement techniques and underground irrigation, shall be used to ensure sufficient space for root growth and vegetative survival.
- 4. Subdivision and development roadway design specifications.** The following standards apply to Level B and Level C road projects:
  - a. Classification of roadways.** The Commission shall determine which roadway classification is most appropriate for a particular project. For the purposes of Section 10.25,D,4, the following general criteria shall apply:
    - (1) **Class 1 Roadway.** Generally appropriate for most projects surrounded by a relatively compact development pattern, for high-intensity commercial or industrial projects, and for residential subdivisions with 15 or more lots.
    - (2) **Class 2 Roadway.** Generally appropriate for low-intensity commercial or industrial projects surrounded by a relatively sparse development pattern and for residential subdivisions with fewer than 15 lots surrounded by a relatively sparse development pattern.
    - (3) **Class 3 Roadway.** Generally appropriate for low-intensity, small-scale commercial projects surrounded by a relatively sparse development pattern or located on an island.
  - b.** In making its determination on the appropriate roadway classification, the Commission shall consider the following factors:
    - (1) The number of lots served by the roadway or projected level of use;
    - (2) The nature of roadways accessing the project site;
    - (3) Location in relation to surrounding patterns of development;
    - (4) The level of development within the vicinity of the project;
    - (5) Natural and imposed limits on future development;
    - (6) The type and intensity of the proposed use; and
    - (7) Service by utilities or likelihood of service in the future.
  - c.** Where practicable, roadways shall be designed to minimize the use of ditching, fit the natural topography of the land such that cuts and fills are minimized, and protect scenic vistas while preserving the scenic qualities of surrounding lands.

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

	<b>Class 1 Roadway</b>	<b>Class 2 Roadway</b>	<b>Class 3 Roadway</b>
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" fine gravel.
Maximum sustained grade	10%	15%	15%

Table 10.25,D-1. Roadway construction specifications.

- f. Roadways that will be co-utilized for forest management purposes shall include turnouts that are large enough to accommodate wood haulers and other large vehicles.

## Q. SUBDIVISION AND LOT CREATION

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

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

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

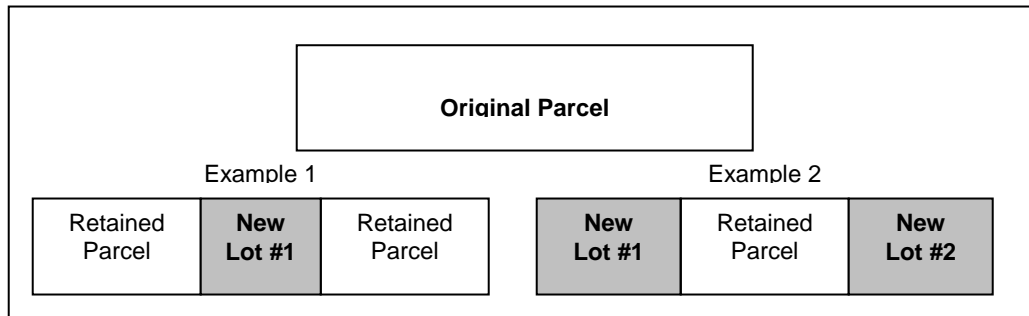


Figure 10.25,Q-1. Two examples where two new lot lines were drawn, each resulting in the creation of three parcels.

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

- g. Exempt lots.** The following divisions are exempt when counting lots for purposes of subdivision, unless the intent of such transfer is to avoid the objectives of 12 M.R.S.A. Chapter 206-A:
- (1) Transfer of Lots for Forest Management, Agricultural Management or Conservation of Natural Resources. A lot or parcel is not considered a subdivision lot if the following conditions are met:
    - (a) The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;
    - (b) The lot is at least 40 acres in size;
    - (c) If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S.A. §436-A;
    - (d) The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and
    - (e) When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S.A §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S.A §682-B(4).
  - (2) Retained Lots. A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
    - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
    - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

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

- (b) a land division certified by the Commission as qualifying under 12 M.R.S.A. §682-B; or
- (c) as provided in Section 10.11.

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

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

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

- (5) Conservation Lots. A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:
  - (a) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and
  - (b) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity. 12 M.R.S.A. §682-B(3)
- (6) Transfer to Governmental Entity. A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State, or an agency of the Federal government is not considered a subdivision lot if the following conditions are met:
  - (a) The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and
  - (b) At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection. 12 M.R.S.A. §682-B(2)

- (7) **Large Lots Managed for Forest or Agricultural Management Activities or Conservation.** A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot.
- (8) **Unauthorized Subdivision Lots in Existence For at Least 20 Years.** A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
  - (a) Approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;
  - (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;
  - (c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
  - (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S.A §682-B(5)

- 2. Level 2 Subdivision Identification Criteria.** Any subdivision that meets all of the criteria below is considered a level 2 subdivision. A level 2 subdivision:
- a. Is a division within any 5-year period of an existing parcel of land within a single contiguous ownership into (a) 5 or fewer lots or 5 or fewer dwelling units or (b) 6 to 15 lots or 6 to 15 dwelling units that meet the requirements of cluster development, Section 10.25,R;
  - b. Occupies an aggregate land area of (a) 20 acres or less or (b) 30 acres or less within a subdivision that meets the requirements of cluster development, Section 10.25,R. For purposes of this section, “aggregate land area” includes lots or parcels to be offered and all roads and other infrastructure associated with the subdivision, but excludes open space;
  - c. Is located within 1,000 feet of a public roadway;
  - d. Is located no more than one mile by road from existing compatible development;
  - e. Is located wholly on land within an M-GN subdistrict or within a development subdistrict where level 2 subdivisions are allowed, except that up to 10 percent of the aggregate land area may be designated or identified as a stream channel or wetland at the time of the filing of a subdivision application; and
  - f. Is located wholly in a township, plantation or town within the jurisdiction of the Commission listed in Table 10.25,Q-1, below.



<b>Aroostook</b>	Connor Twp Cyr Plt Garfield Plt Hamlin, Town of Nashville Plt Saint John Plt Sinclair Twp T11 R4 WELS T17 R3 WELS T17 R5 WELS	<b>Penobscot</b>	Argyle Twp Greenfield Twp Grindstone Twp Mattamiscontis Twp T3 Indian Purchase Twp T4 Indian Purchase Twp TA R7 WELS
<b>Franklin</b>	Coplin Plt Freeman Twp Lang Twp Salem Twp Wyman Twp	<b>Piscataquis</b>	Beaver Cove, Town of Elliottsville Twp Harfords Point Twp Lily Bay Twp Moosehead Junction Twp T1 R9 WELS
<b>Hancock</b>	T32 MD	<b>Somerset</b>	Dennistown Plt Lexington Twp Long Pond Twp Parlin Pond Twp Rockwood Strip T1 R1 NBKP Spring Lake Twp Tomhegan Twp
<b>Oxford</b>	Albany Twp Lower Cupsuptic Twp Mason Twp Milton Twp	<b>Washington</b>	Edmunds Twp Trescott Twp

Table 10.25,Q-1. Towns, plantations and townships where Level 2 subdivisions are permitted.

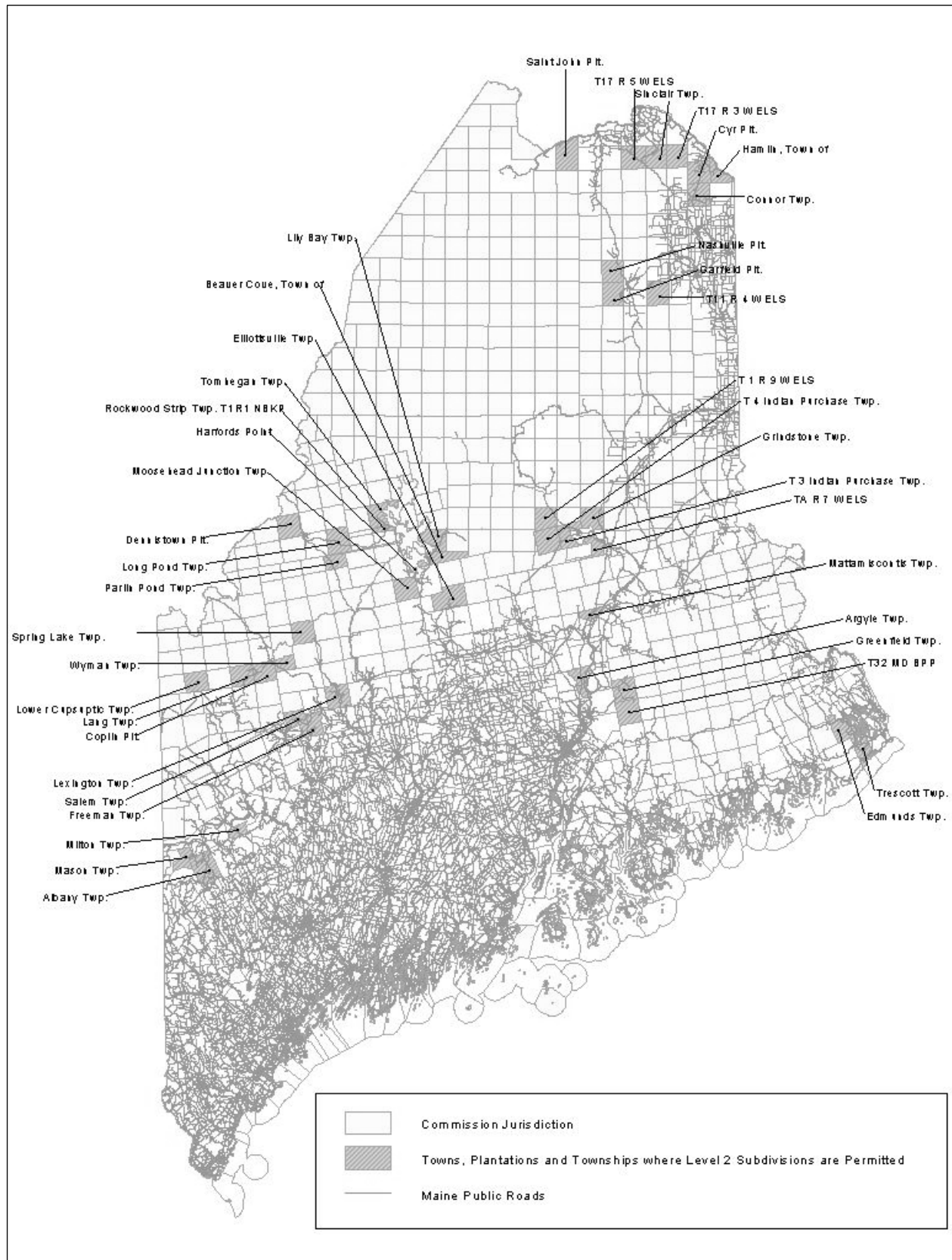


Figure 10.25,Q-2. Towns, plantations and townships where Level 2 subdivisions are permitted.

**3. Layout and Design for all Subdivisions.**

- a. 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.
- b. Subdivisions shall be designed to avoid the linear placement of lots and driveways along roadways or shorelines.

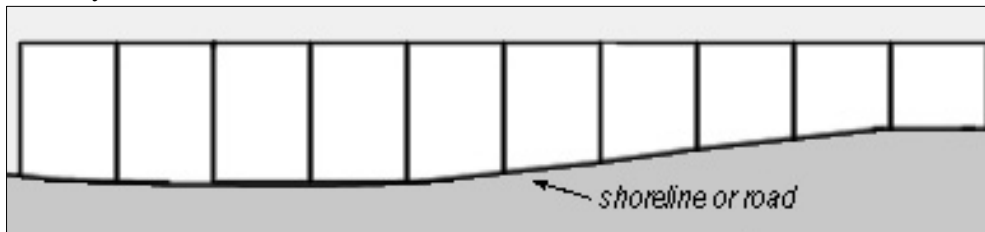


Figure 10.25,Q-3. Linear placement of lots along roadways or shorelines.

To the extent practicable, subdivision lots shall be placed so as to create a distinct community center or expand an existing neighborhood, as long as the expansion is no further than 1,320 feet from the center of the existing neighborhood.

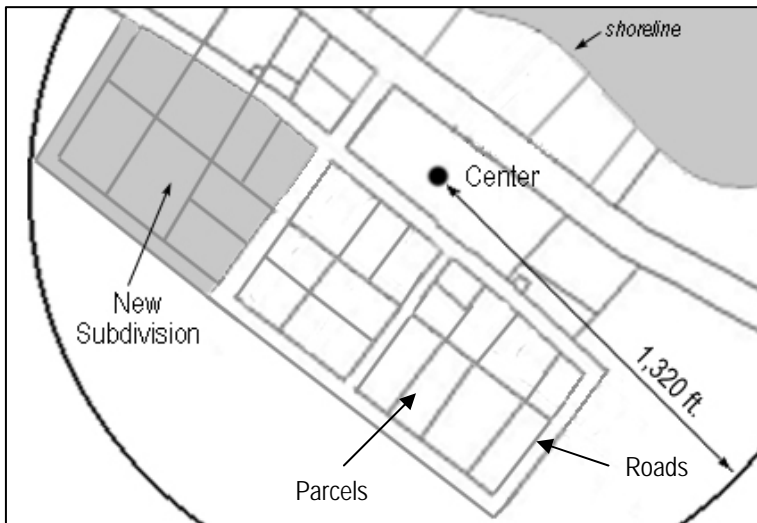


Figure 10.25,Q-4. Placement of subdivision lots within 1,320 feet of an existing neighborhood center.

Where such development is not practicable, lots shall be configured in such a manner so that groups of lots are separated by at least 500 feet of undeveloped land and the lots within a group do not extend more than 1,320 feet along any roadway or shoreline.

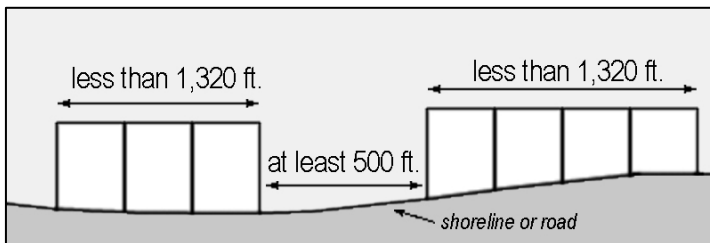


Figure 10.25,Q-5. Grouping of subdivision lots along a roadway or shoreline.

The provisions of this subsection, 10.25.Q.3.b., shall not apply to maple sugar processing subdivisions.

- c. To the extent practicable, subdivisions shall be designed to reduce the number of driveway access points onto roadways through the utilization of shared driveways and interior roads. Notwithstanding Section 10.26,C, the Commission may reduce the minimum road frontage for individual lots within subdivisions with shared driveways by up to 50 percent, as long as the Commission finds that reducing road frontage will not adversely affect resources or existing uses or that reducing road frontage will prevent the loss of important natural features.
- d. Building envelopes shall be marked and identified on the subdivision plat for each proposed lot in accordance with the following requirements:
  - (1) Building envelopes shall identify all areas within each subdivision lot where structural development may occur;
  - (2) Building envelopes shall be arranged to conform with the minimum water body, road and property line setback and maximum lot coverage requirements, as provided in Section 10.26; and
  - (3) Where practicable, building envelopes shall be arranged so as to avoid the placement of structures and driveways along ridge lines, on agricultural land, wetlands, slopes greater than 15%, or any other important topographic and natural features.
- e. Subdivisions proposed with mixed residential, commercial, or civic uses shall also meet the following requirements:
  - (1) Commercial uses must fit the size, scale and intensity of the surrounding residential uses; and
  - (2) 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.
- f. All subdivision and lot boundary corners and angle points shall be marked by suitable, permanent monumentation as required by the Maine Board of Registered Land Surveyors.
- g. Shorefront subdivisions with proposed permanent docks, trailered ramps, hand-carry launches or water-access ways shall comply with the requirements of Section 10.27,L,2.

#### **4. Spaghetti-lots.**

- a. 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.A. §682-A

#### **5. Subdivision Redistricting Considerations.**

Subdivisions are allowed only in appropriate subdistricts, as designated in Sub-Chapter II. However, the Commission may approve subdivisions which include land area designated as open space within subdistricts where subdivision is otherwise prohibited, provided the designated land area meets the requirements of Section 10.25,S.

## 6. Subdivision Filing with Registry of Deeds and Sale of Lots.

- a. Filing requirements.** Following the approval of any subdivision by the Commission, the applicant must file the subdivision plat signed by the Commission's Director with the County Registry of Deeds where the real estate is located.

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.A §685-B(6)

- b. Certificates of Compliance.** The sale of lots in any subdivision approved by the Commission may not proceed until a certificate of compliance has been issued. A certificate of compliance requires that, among other things, proposed deeds and plats be reviewed and approved by the Commission to ensure that permit conditions have been fulfilled. 12 M.R.S.A. §685-B(8)
- c.** 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.
- d.** For maple sugar subdivisions created after the effective date of this rule, 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.

## 7. Recording of Large Lot Land Divisions.

- a.** When 3 to 10 lots each containing at least 40 acres are created within a 5-year period and are located more than 1,320 feet from the normal high water mark of any great pond or river and more than 250 feet from the upland edge of a coastal or freshwater wetland as those terms are defined in 38 M.R.S.A. §436-A, a plan showing the division of the original parcel must be filed by the person creating the 3rd lot with the Commission within 60 days of the creation of that lot. The plan must state that the lots may be used only for forest management, agricultural management or conservation of natural resources. A "Guide to Certification of Plans for Large Lot Land Divisions" is available from the Commission that details submission requirements.
- b.** The Commission shall determine whether the plan qualifies under 12 M.R.S.A §682-B, ordinarily within 15 days of receipt of plan.
- c.** 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.A §685-B is evidenced on the plan. 12 M.R.S.A. §685-B(6-A)

Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds is considered a subdivision.  
12 M.R.S.A §682-B

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**R. CLUSTER DEVELOPMENT**

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**1. Applicability.**

- a.** The cluster development standards set forth below must be met for all subdivisions located within 250 feet of the normal high water mark of a Management Class 4 or 5 lake and for all level 2 subdivisions comprised of more than 5 lots or more than 5 dwelling units.
- b.** Other subdivisions located on land that could be developed under normal applicable standards may also be clustered, or portions of the subdivision may be clustered, if the subdivisions provide for the efficient use of land and the protection of a significant amount of open space, in accordance with the standards of Section 10.25,R and Section 10.25,S.
- c.** The cluster development standards may be waived for subdivisions located within 250 feet of the normal high water mark of a Management Class 4 or 5 lake, where the Commission finds that cluster development is clearly inappropriate due to physical site limitations. Such site limitations may include, without limitation, the presence of soils that are unsuitable for high density development or the size and configuration of a parcel that does not lend itself to clustering.

**2. Cluster Development Standards.**

- a.** Cluster subdivisions shall provide for a reasonable balance between development and conservation. Specifically, cluster subdivisions shall reserve no more than 50% of net developable land for development and, within shorefront subdivisions, shall reserve no more than 50% of net developable shore frontage for development.
  - (1) For the purposes of this section, “net developable land” is the area of a parcel which, as determined by the Commission, is suitable for development. The area shall be calculated by subtracting the following from the total acreage of the parcel:
    - (a) Portions of the parcel subject to rights-of-way and easements for vehicular traffic; and
    - (b) Unbuildable land which includes, without limitation, land that has a low or very low soil potential rating, in accordance with Section 10.25,G, or contains sensitive areas such as slopes exceeding 15%, water bodies or wetlands.
  - (2) For the purposes of this section, “net developable shorefront” is land that:
    - (a) Meets the minimum water body setback requirements of Section 10.26,D;
    - (b) Does not have a low or very low soil potential rating, in accordance with Section 10.25,G; and
    - (c) Contains land area at least 40,000 contiguous square feet in size that is not comprised of sensitive areas such as slopes exceeding 15%, water bodies or wetlands.

- b.** Cluster subdivisions shall be designed to protect developable land as open space through (1) clusters of dwellings on commonly-owned land; (2) creation of individual lots with reduced lot size, reduced road frontage or, within shorefront subdivisions, reduced shore frontage as permitted under these rules; or (3) a decrease in the number of individual lots that meet dimensional requirements.

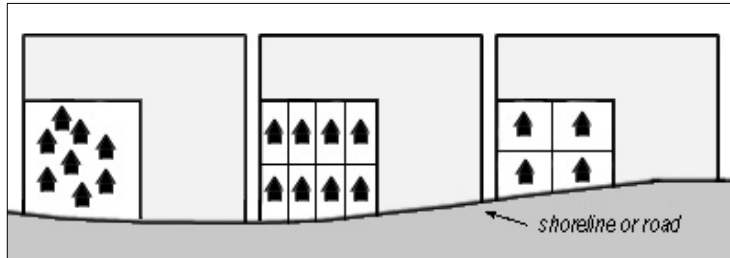


Figure 10.25,R-1. From left to right, (1) clustering on a commonly-owned parcel, (2) clustering on individual parcels with reduced lot size and frontage, and (3) clustering on individual parcels without reduced lot size or frontage.

- c.** Open space within cluster subdivisions shall be preserved and maintained in accordance with Section 10.25,S.
- d.** The Commission may reduce lot size, road frontage, or shore frontage for individual dwellings or lots in a cluster development, provided that, in the aggregate, dimensional requirements are met within the development.
- e.** Notwithstanding Section 10.25,R,2,d, the Commission may waive the provision that dimensional requirements for individual dwellings or lots in a cluster development be met, in the aggregate, where the following conditions are satisfied:
- (1) Dimensional requirements, in the aggregate, are not waived by more than 50%;
  - (2) Site conditions are suitable for more concentrated development on some portions of a site and such concentrated development will not adversely affect resources; and
  - (3) The specific benefits afforded by the cluster approach will prevent the loss of or enhance the conservation of important natural features.
- f.** No individual lot or dwelling unit for which road frontage has been reduced shall have direct vehicular access onto an existing roadway, unless the individual lot or dwelling unit uses a shared driveway.

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## S. OPEN SPACE

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

1. **Preservation and Maintenance of Open Space.** Open space may be owned, preserved and maintained as required by this section, by any of the following mechanisms or combinations thereof, listed in order of preference, upon approval by the Commission:
  - a. Conveyance of open space to a qualified holder, as defined under Section 10.25,S,2.
  - b. Dedication of development rights of open space to a qualified holder, as defined under Section 10.25,S,2 with ownership and maintenance remaining with the property owner or a lot owners association.
  - c. Common ownership of open space by a lot owners association which prevents future structural development and subsequent subdivision of open space and assumes full responsibility for its maintenance.
  - d. Any other mechanism that fully provides for the permanent protection or conservation of open space and that is acceptable to the Commission.
2. **Qualified Holders.** The following entities are qualified to own, preserve and maintain open space:
  - a. “A governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
  - b. A nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.” 33 M.R.S.A. §476, sub-§2
3. Open space may be usable for low-intensity non-commercial recreation or for purposes intended to conserve land and preserve important natural features of the site. Uses within the 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, open space lots are subject to subdivision and other permit conditions prohibiting residential, commercial, industrial or other structures and uses.
4. If any or all of the open space is to be reserved for common ownership by the residents of the subdivision, the bylaws of the proposed lot owners association shall specify responsibilities and methods for maintaining the open space and shall prohibit all residential, commercial, industrial or other structures and uses.
5. Open space shall be dedicated as a separate lot of record with no further subdivision or conversion of use of that lot allowed. Such lot shall be shown on the subdivision plat with a notation thereof to indicate that no further subdivision or conversion of use is allowed.



## D. ROADS AND WATER CROSSINGS

Roads and water crossings not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

The following road and water crossing requirements shall apply in P-WL1, P-WL2, P-SL, P-FP, P-GP subdistricts and all development subdistricts:

1. The following requirements shall apply to construction and maintenance of roads:
  - a. All cut or fill banks and areas of exposed mineral soil outside the roadbed within 75 feet of a flowing water, body of standing water, tidal water, or a wetland shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies or wetlands;
  - b. Road banks shall have a slope no steeper than 2 horizontal to 1 vertical;
  - c. Drainage ditches shall be provided so as to effectively control water entering and leaving the road area. Such drainage ditches will be properly stabilized so that the potential for unreasonable erosion does not exist;
  - d. In order to prevent road surface drainage from directly entering water bodies or wetlands, roads and their associated drainage ditches shall be located, constructed, and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the road and the normal high water mark of a surface water body or upland edge of a wetland:

<b>Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (Percent)</b>	<b>Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet Along Surface of the Ground)</b>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

Table 10.27,D-1. Unscarified filter strip width requirements for exposed mineral soil created by roads and their associated drainage ditches.

This requirement shall not apply to road approaches to water crossings or wetlands.

- e. Drainage ditches for roads approaching a water crossing or wetland shall be designed, constructed, and maintained to empty into an unscarified filter strip, of at least the width indicated in the table set forth in Section 10.27,D,1,d above, between the outflow point of the ditch and the normal high water mark of the water or the upland edge of a wetland. Where such filter strip is impracticable, appropriate techniques shall be used to reasonably avoid sedimentation of the water body or wetland. Such techniques may include the

installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed so as to reasonably avoid sedimentation of the water body or wetland;

- f.** Ditch relief (cross drainage) culverts, drainage dips and water turnouts will be installed in a manner effective in getting drainage onto unscarified filter strips before the flow in the road or its drainage ditches gains sufficient volume or head to erode the road or ditch.
- (1) Drainage dips may be used in place of ditch relief culverts only where the road grade is 10% or less;
  - (2) On roads having slopes greater than 10%, ditch relief culverts shall be placed across the road at approximately a 30 degree angle downslope from a line perpendicular to the center line of the road;
  - (3) Ditch relief culverts, drainage dips and water turnouts shall direct drainage onto unscarified filter strips as required in Section 10.27,D,1,d and e above;
  - (4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials; and
  - (5) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

<b>Road Grade</b> (Percent)	<b>Spacing</b> (Feet)
0-2	500-300
3-5	250-180
6-10	167-140
11-15	136-127
16-20	125-120
21+	100

Table 10.27,D-2. Spacing requirements for drainage dips and associated water turnouts.

- 2.** The following requirements shall apply to water crossings when surface waters are unfrozen:
  - a.** Bridges and culverts shall be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 ½ times the cross-sectional area of the stream channel.
  - b.** Culvert and bridge sizes may be smaller than provided in Section 10.27,D,2,a if techniques are employed such that in the event of culvert or bridge failure, the natural course of water flow is reasonably maintained and sedimentation of the water body is reasonably avoided; such techniques may include, but are not limited to, the effective use of any or all of the following:
    - (1) Removing culverts prior to the onset of frozen ground conditions;
    - (2) Using water bars in conjunction with culverts; or
    - (3) Using road dips in conjunction with culverts.

- c. Culverts utilized in water crossings shall:
- (1) Be installed at or below stream bed elevation;
  - (2) Be seated on firm ground;
  - (3) Have soil compacted at least halfway up the side of the culvert;
  - (4) Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
  - (5) Have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.
3. The design and construction of land management road systems through wetlands, other than those areas below the normal high water mark of standing or flowing waters, must avoid wetlands unless there are no reasonable alternatives, and must maintain the existing hydrology of wetlands.

To maintain the existing hydrology of wetlands, road drainage designs shall provide cross drainage of the water on the surface and in the top 12 inches of soil in wetlands during both flooded and low water conditions so as to neither create permanent changes in wetland water levels nor alter wetland drainage patterns. This shall be accomplished through the incorporation of culverts or porous layers at appropriate levels in the road fill to pass water at its normal level through the road corridor. Where culverts or other cross-drainage structures are not used, all fills shall consist of free draining granular material.

To accomplish the above, the following requirements apply:

- a. **Road construction on mineral soils or those with surface organic layers up to 4 feet in thickness.**
- (1) Fill may be placed directly on the organic surface compressing or displacing the organic material until equilibrium is reached. With this method, culverts or other cross-drainage structures are used instead of porous layers to move surface and subsurface flows through the road fill material.
    - (a) For road construction on mineral soils or those with surface organic layers less than 16 inches in thickness, culverts or other cross-drainage structures shall be appropriately sized and placed at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum intervals of 300 feet.
    - (b) For road construction on surface organic layers in excess of 16 inches but less than 4 feet in thickness, cross drainage must be provided by placing culverts at each end of each wetland crossing and at the lowest elevation on the road centerline with additional culverts at intermediate low points as necessary to provide adequate cross drainage. Culverts or other cross-drainage structures shall be placed at maximum 300-foot intervals. Culverts shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface.

- (c) Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the road centerline shall be constructed along the toe of the fill to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Unditched breaks shall be left midway between culverts to prevent channelization.
  - (2) Alternatively, a porous layer may be created to move surface and subsurface flows through the road fill materials. If a porous layer is used, geotextile fabric must be placed above and below fill material to increase the bearing strength of the road and to preserve the bearing strength of fill material by preventing contamination with fine soil particles.
- b. Road construction on soils with organic layers in excess of 4 feet in thickness.**
- (1) Such construction shall only take place under frozen ground conditions.
  - (2) Geotextile fabric shall be placed directly on the soil surface. Road fill or log corduroy shall then be placed on the geotextile fabric.
  - (3) Cross drainage shall be provided by either a continuous porous layer or appropriate placement of culverts or other cross-drainage structures and ditching as specified below:
    - (a) A continuous porous layer or layers shall be constructed by placement of one or more layers of wood corduroy and/or large stone or chunkwood separated from adjacent fill layers by geotextile fabric placed above and below the porous layer(s) such that continuous cross drainage is provided in the top 12 inches of the organic layer; or
    - (b) Cross drainage culverts or other cross-drainage structures shall be placed at points where they will receive the greatest support. Culverts or other cross-drainage structures shall be a minimum of 24 inches in diameter, or the functional equivalent, and buried halfway below the soil surface. Where necessary to maintain existing water flows and levels in wetlands, ditches parallel to the roadbed on both sides shall be used to collect surface and subsurface water, carry it through the culvert(s) and redistribute it on the other side. Such ditches shall be located three times the depth of the organic layer from the edge of the road fill. Unditched breaks shall be left midway between culverts to prevent channelization.
- 4. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads shall be maintained on a regular basis to assure effective functioning.**

5. Maintenance of the above required water control installations shall continue until the road is discontinued and put to bed by taking the following actions:

a. Water bars shall:

(1) Be constructed and maintained across the road at intervals established below:

Road Grade (Percent)	Distance Between Water Bars (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

Table 10.27,D-3. Spacing requirements for water bars.

- (2) Be constructed at approximately 30 degrees downslope from the line perpendicular to the center line of the road;
- (3) Be constructed so as to reasonably avoid surface water flowing over or under the water bar; and
- (4) Extend sufficient distance beyond the traveled way so that water does not reenter the road surface.

b. Any bridge or water crossing culvert in such road shall satisfy one of the following requirements:

- (1) It shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
- (2) It shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the stream channel; or
- (3) It shall be dismantled and removed in a fashion so as to reasonably avoid sedimentation of the water body.

6. Provided they are properly applied and used for circumstances for which they are designed, methods including but not limited to the following are acceptable to the Commission as means of calculating the 10 and 25 year frequency water flows and thereby determining crossing sizes as required in Section 10.27,D,2 and 5:

- a. The USDA Soil Conservation Service (SCS) Methods; specifically: "Urban Hydrology for Small Watersheds," June 1986 Soil Conservation Service Technical Release #55.
- b. The United States Geological Survey Series; specifically: U.S.G.S. Maine Water Science Office. 1999. "Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals." WRI 99-4008.

7. Extension, enlargement or resumption of use of presently existing roads, which are not in conformity with the provisions of Section 10.27,D, are subject to the provisions of Section 10.11.

8. Publicly owned roads may be constructed in a fashion that is not in strict conformity with the provisions of this section, provided that other measures are applied that are effective in reasonably avoiding sedimentation of surface waters.
9. Except that Section 10.27,D,10 below always applies, trail crossings of minor flowing waters shall be exempt from the standards of Section 10.27,D, provided such crossings are constructed in a manner that causes no disturbance to the stream bed, and no substantial disturbance to the banks or shoreland areas in the vicinity of the crossing, and provided such crossings do not impede the flow of water or the passage of fish. If properly undertaken, acceptable methods may include but not be limited to the laying of logs from bank to bank, or placement of bed logs and stringers with decking. This exemption shall not extend to the construction of abutments or piers.

Trail crossings not so exempted shall be subject to the water crossing standards of Section 10.27,D, including specifically Sections 10.27,D,2, 4, 5, 6, 10 and 11.

10. In addition to the foregoing minimum requirements, provision shall otherwise be made in the construction and maintenance of roads and water crossings in order to reasonably avoid sedimentation of surface waters.
11. Written notice of all road and water crossing construction activities, except level A road projects and exempt trail crossings as provided in Section 10.27,D,9 above, shall be given to the Commission prior to the commencement of such activities. Such notice shall conform to the requirements of Section 10.16 and shall state the manner in which the water crossing size requirements of this section will be satisfied.