

Subdivision Rules Stakeholder Meeting 2

Background information

December 3, 2014, Jeff's Catering, Brewer

This document will provide background information to assist the participants in the December 3 subdivision rules stakeholder meeting. In addition, please see two additional documents that are provided separately due to file size: one contains excerpts of the Commission's statute and rules that pertain to residential subdivisions, and the other contains excerpts from a 1992 guidance document. The December 3 meeting will cover three main topic areas, as described below.

In providing background information, the role of Commission staff is to inform participants of current regulatory requirements and, where known, the reasons those requirements were enacted. The staff role is also to provide information about planning principles and practices more broadly. Staff wish to encourage stakeholders to have a full discussion of the issues, and do not expect to take a position in the stakeholder meetings as to whether specific recommendations should be enacted.

Part I: Types of Residential Subdivision

See Appendices A (Level 2 Subdivision Basis Statement addendum) and D (CLUP excerpts) for background materials.

The following chart is provided to compare the current types of residential subdivision permits that are available, and to spur participants' thinking about whether any changes or additional permit types would be beneficial.

	Level 1	Level 2	New Level?
Maximum lots	Any	15	
Minimum lots	-	-	
Maximum acres	Any	20 (30 if clustered) excluding open space	
Clustering required?	Only for Class 4 or 5 lakes	Yes, if 6-15 lots or dwellings or Class 4 or 5 lakes	
Open space required?	Only in P-GP2 or if clustered	Only if clustered	
Layout and design standards apply?	Yes	Yes	
Road standards apply?	Yes	Yes	
Subdistricts where allowed	D-GN, D-GN2, D-PD, D-RS, D-RS2, D-RS3, P-GP2	D-GN, M-GN, D-RS, d-PD but no Level 2 in Rangeley prospective zoning area	
Which townships?	Any	List of 42 (10.25,Q,2)	
Within 1 mile of similar, compatible development.	At rezoning phase, not permit	Required at permit phase because no rezoning	
Distance from public road	Any	Up to 1000'	
Pre-application meeting required?	No	No	
DEP permit?	Only if triggers Site Law	Only if triggers Site Law	
Formal phasing process available?	No	No	
Plat required?	Yes (statute)	Yes (statute)	
Certificate of Compliance required?	Yes	Yes	

Key questions:

1. Which aspects of the level 2 subdivision regulations should be changed to encourage this type of subdivision in appropriate locations?
2. Should there be a provision for small, Level 3 subdivisions with reduced submission/review provisions and, if so, what size and where should they be allowed?
3. The Commission's current policies "discourage unnecessarily large lot sizes." (CLUP, Chapter 1,C,3) This policy is related to the issue of making sure that areas with high resource values, such as shorelines or hillsides, are used efficiently and so that public costs are minimized. It also relates to ensuring that large blocks of land are available for forestry and agriculture into the future. Are there circumstances where it would be appropriate to allow large lot subdivisions? If so, where and what size?
4. Are there other adjustments needed?

Part II – Subdivision Layout and Design

See Appendix B (Excerpts from publications about subdivision regulation and design), and separately provided excerpts from past guidance documents for background materials.

Chapter 10.25,Q, subsection 3 of the Commission's rules provides standards for subdivision layout and design that are intended to promote a good fit between the subdivision and the surrounding community and landscape, especially where house lots are proposed along roadways and shorelines. The layout and design standards also are intended to ensure efficient use of land over the long term. The rules encourage house lots to be gathered around a center point rather than spread out in a linear fashion. If a subdivision applicant must arrange the lots in a linear fashion due to site constraints, then this subsection requires that such lots be arranged in small linear groupings (combined maximum frontage of 1,320 feet per group) with significant undeveloped frontage (minimum 500 feet) in between groups.

Key questions:

1. The site analysis method presented at the Commission workshop and the past guidance publications provide flexibility in layout and design, but may not be as predictable for landowners. This is the primary reason why design standards were implemented in 2004. What is the right balance of ability to flex to meet site conditions and predictable, but less flexible, standards?
2. What are some broad groupings of areas that might require their own subdivision layout and design standards? (e.g. island communities, heavily developed lakes, very rural non-waterfront areas, hillside areas)
3. When should a community center or gathering place be a required part of subdivision design?
4. Linear lot placements tend to use up the available shorefront or road frontage very quickly, leading to an inefficient use of land and difficulty in developing the backland so as to be an attractive option for buyers. It can also have impacts on lake resources. Are there any circumstances where a linear lot layout would be the best design option, if so what are they?
5. Should there be a process for allowing phased design or development approvals that reduce up-front costs? If so, what level of detail should be required at the start vs. in later phases?
6. Road setbacks generally address the safety of people and property, accommodation for future widening or utilities, and buffering for visual and community character purposes. Should road setbacks be reduced in some subdivisions? Under what circumstances? Common considerations for appropriate setbacks are:
 - a. speed limit

- b. whether the road is a through road
 - c. the placement of the right of way
 - d. types of utilities
 - e. density
 - f. setbacks of other structures in the immediate area
 - g. existing buffers
 - h. limitations on future widening or lengthening.
7. Should road design standards be flexible in some subdivisions? What are the important factors?
 8. Shared driveways and shared access roads are currently required for subdivisions. This is generally aimed at reducing impacts such as traffic entrances, phosphorous exports, and neighborhood character. In what circumstances should shared driveways and roads be required, encouraged, or discouraged?
 9. Are there other standards that should be different for subdivisions vs. single-lot development?

Part III – Cluster Development and Open space

See Appendices C (excerpts about cluster design) and D (CLUP excerpts) for background materials.

Cluster Development

Cluster development is currently required within 250' of heavily developed lakes and for level 2 subdivisions between 6 and 15 lots. It is also available as an option to landowners who wish to take advantage of the reduced dimensional requirements that can be obtained through clustering.

The main provisions of cluster development are:

- Reserving at least 50% of net developable land
- Reserving at least 50% of net developable shorefront
- Lot size, road frontage or shore frontage may be reduced for individual lots
- In certain circumstances, lot size, road frontage or shore frontage may be reduced in the aggregate as well

Some of the provisions that staff feel could be worded more clearly are:

- The methods of calculating net developable land and shorefront
- For land in common ownership (condo arrangements) how to interpret the lot size provisions
- Whether a single subdivision that extends beyond 250' must be clustered for its entirety or if it may be part clustered and part not clustered
- Whether road setbacks may be reduced

Key questions:

1. What are the positive/negative effects of clustering? Do they change based on the setting?
2. Where should it be allowed?
3. Where should it be required?
4. What technical provisions should be changed?

Open space provisions

Open space standards describe what type of lands and uses qualify as open space, and who may hold the interest in those lands. This applies to land that is required to be held in open space – for example as part of a cluster development; a P-GP2 subdivision; or if a subdivision

has part of its land area in a subdistrict that does not allow subdivision, such as the P-GP, it may include that land as protected open space. Please see section 10.25,S for key provisions. The intent behind these standards is to ensure the availability of these lands into the future, whether for agricultural, recreation or conservation purposes as specified by the holder.

Key Questions:

1. Where should open space be allowed?
2. Where should it be required?
3. Are there changes needed to the holder provisions?
4. Should paying a fee to be used on larger conservation projects be an option instead of on-site open space requirements in some circumstances? What would be the appropriate mechanism for this?
5. What other technical provisions should be changed?

Appendix A: Level 2 subdivision basis statement addendum

A POLICY STATEMENT ON THE COMMISSION'S LEVEL 2 SUBDIVISION PROGRAM

An Addendum to the Basis Statement for the Subdivision and Development Rule and Policy Changes

February 11, 2004

Introduction

As part of the enactment of LD 1198 (“An Act to Refine the Subdivision and Redistricting Authority of the Maine Land Use Regulation Commission”) during the First Regular Session of the 120th Legislature, the Land Use Regulation Commission was asked to examine its subdivision review process and find mechanisms to reduce processing time, reduce cost, and increase predictability of agency decisions. In response, the Commission drafted a report in December of 2002 summarizing recommendations of ways to improve the agency’s subdivision review procedures.

One of the recommendations endorsed by the Commission was to adopt rules for a two-tier subdivision review process. The main objective of adopting such rules was to simplify the permitting process for petitioners of small-scale subdivisions and concurrently guide new development to appropriate locations within the jurisdiction. This policy statement serves to document the major features of the planning process and the underlying principles utilized in developing rules for a two-tier review process for subdivisions within the Commission’s jurisdiction.

Summary of Planning Efforts

One of the more challenging parts of the traditional subdivision review process is the rezoning component. The Commission’s zoning framework places lands into three broad land use categories – management, development, and protection subdistricts. This zoning is sometimes based on the identification of existing land use patterns rather than the selection of areas most appropriate for particular land uses. As a result, the Commission’s usual approach to new zoning is often on a case-by-case basis to accommodate particular projects. Subdivision proposals have required rezoning of land to a development subdistrict.

This reactive approach to new zoning proposals can result in zoning decisions being driven by individual landowner initiatives rather than by Commission goals regarding the most suitable areas for development. In partial response to this problem, the new subdivision rules list certain small-scale subdivisions, referred to as level 2 subdivisions, as permitted uses in the General Management (M-GN) subdistrict and in other appropriate development subdistricts. These subdivisions, however, are only permissible if they are sited within specific areas of the jurisdiction.

In determining which parts the jurisdiction are most appropriate for level 2 subdivisions, the Commission considered the larger issue of where development is most appropriate within the jurisdiction as a whole. Specifically, the Commission evaluated the suitability of various towns, plantations and townships for future growth based on their locations relative to population and job centers and the availability of roads and infrastructure. Consequently, 42 minor civil divisions were identified as areas suitable for level 2 subdivisions (see the table, below). These locales are either recognized by the Commission as “areas with special planning needs,”¹ or border a regional service center². Areas that have been prospectively zoned by the Commission were specifically excluded from this analysis because a plan has already been implemented by the Commission to guide new development to appropriate locations within these areas.

¹ “Areas with special planning needs” are identified in the Commission’s Comprehensive Land Use Plan (p. 110-113) as those regions within the jurisdiction that have either experienced rapid growth and possess concentrations of high-value natural resources or have characteristics that make significant future growth likely.

² Service centers are municipalities identified by the State Planning Office according to a methodology that includes criteria for the level of retail sales, ratio of jobs-to-workers, amount of federally assisted housing, and volume of service sector jobs. These municipalities generally serve as regional centers of commerce and account for a majority of Maine’s jobs, retail sales and social services.

Certain elements of the Commission’s statutory rezoning criteria were also integrated into the level 2 subdivision standards in order to limit the extent of development within the 42 minor civil divisions. Traditionally, zoning resulting in new development subdistricts (with the exception of Planned Development subdistricts) may be approved only when the Commission finds that the following statutory criteria are met: The change must (1) be consistent with the Comprehensive Land Use Plan, (2) satisfy a demonstrated need in the community or area, and (3) have no undue adverse impacts on resources or uses (12 M.R.S.A. §685-A(8-A) of the Commission’s statutes). A key component of demonstrating that a rezoning proposal is consistent with the Comprehensive Land Use Plan is to establish that the proposed development is located near an existing, compatible pattern of development. In general keeping with this criterion, level 2 subdivisions have been limited to areas that are within one road-mile from existing compatible development. In addition, level 2 subdivisions are restricted to areas located along public roadways in order to minimize the fragmentation of undeveloped back-country areas.

Implementation and Periodic Updates

To ensure that this two-tier review process for subdivisions responds to the changing needs and trends of the jurisdiction, it is the Commission’s intention that the impacts of this process be monitored and that its level 2 subdivision rules be periodically updated. The Commission anticipates evaluating the effects of this program approximately one year after its implementation. The impacts will be examined by tracking the prevalence and location of level 2 subdivisions, and by comparing development trends of areas with and without level 2 subdivisions as well as past trends of subdivision activity in the same areas. Updates to the relevant rules should occur concurrently with the periodic revision of the Comprehensive Land Use Plan and as otherwise needed to address changing circumstances and trends. Since the permissible locations of level 2 subdivisions are largely tied to the State Planning Office’s list of regional service centers, the Commission anticipates re-evaluating its list in tandem with changes made to the service centers list as well.

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

Minor Civil Divisions where Level 2 Subdivisions are permitted. Towns, plantations and townships marked with a carrot (^) are located adjacent to a regional service center and connected to that service center via public road. Towns, plantations and townships marked with an asterisk (*) are areas with special planning needs, as outlined in the Commission’s *Comprehensive Land Use Plan* (p. 110-113).

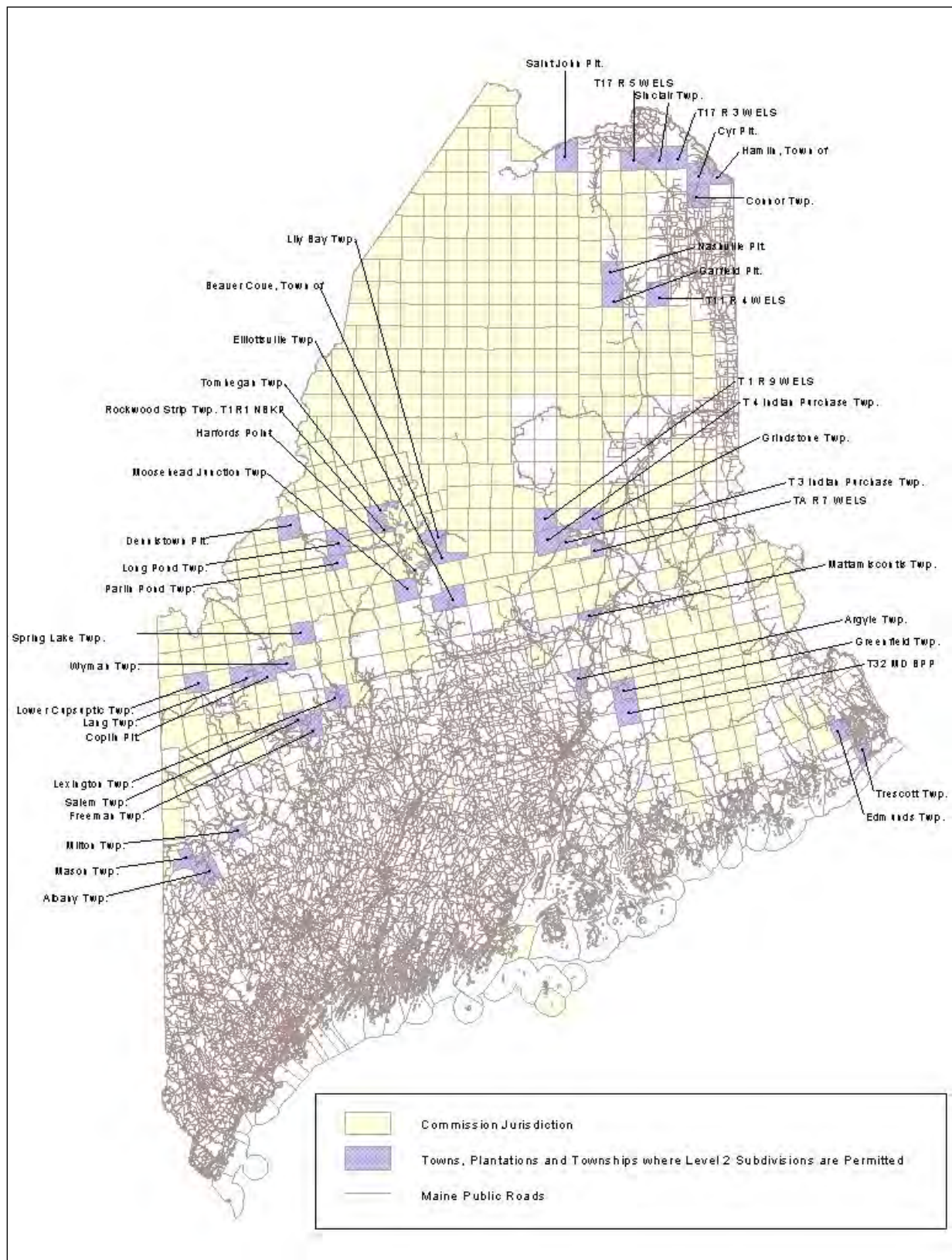


Figure 1. Map of minor civil divisions where Level 2 subdivisions are permitted.

Appendix B: Subdivision Regulation and Design Excerpts

These excerpts are provided to give some initial background. Any positions or recommendations advanced in the text are not necessarily those of the staff.

James A. Coon Local Government Technical Series

Subdivision Review in New York State



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Revised 10/13

Part I: Subdivision Review Process Objectives

This publication describes the subdivision review process in New York. Subdivision review is a technique that controls how a parcel of land is divided into smaller lots, how those lots are laid out, how the infrastructure serving the lots is installed and how any parks or open spaces are situated on the tract. In New York, the subdivision of land is primarily regulated at the local level.

In the 1920s, municipalities in New York were statutorily authorized to review and control the subdivision of land.¹ Since that time, countless subdivisions have been reviewed by planning boards and many court decisions about subdivisions have been rendered. In the early 1990's, the State Legislature authorized the Joint Legislative Commission on Rural Resources to develop recommendations for recodifying the State laws dealing with zoning and planning in light of changing times and precedential court decisions. In 1992, the provisions concerning subdivision review in the Town Law and the Village Law were substantially revised as a result.² Three years later, the State Legislature enacted similar legislation for cities.³

Subdivision of land is often the engine that drives development in a community. The purpose of subdivision control is "to provide for future growth and development, afford adequate facilities for housing, transportation, distribution, comfort, convenience, safety, health and welfare of its population."⁴ Whether subdivisions will be pleasant places to live, have parks, playgrounds or other recreational areas, have adequate streets and sidewalks for residents is within the purview of the planning board's review of subdivision plats.

Subdivision and Zoning

It is important to distinguish subdivision approval from the other major land use control - zoning. While zoning and subdivision control are entirely separate and distinct parts of the planning implementation process, they complement each other, and taken together can ensure well-ordered development. Both are exercises of a municipality's "police power." **Zoning** has as its principal purpose the prescription of **what land may be used** for. Zoning accomplishes this by establishing different districts and providing for permissible uses in each (e.g., residential, commercial, industrial). **Subdivision control**, however, is concerned with **how land is used** - i.e., it attempts to ensure that when development does occur, it will be accompanied by adequate services and facilities.

The Appellate Division has spelled out the dichotomy between the two land use techniques: Subdivision control attempts to guide the systematic development of a community or area while "encouraging the provision of adequate facilities for the housing, distribution, comfort and convenience of local residents" (Matter of Golden v. Planning Board of Town of Ramapo, supra, 30 N.Y.2d at 372, 334 N.Y.S.2d 138, 285 N.E.2d 291). It "reflects a legislative judgment that the building up of unimproved and undeveloped areas ought to be accompanied by provision for roads and streets and other essential facilities to meet the basic needs of the new residents of the area" (Matter of Brous v. Smith, 304 N.Y. 164, 169, 106 N.E.2d 503). Subdivision control is aimed at protecting the community from an uneconomical development of land, and assuring persons living in the area where the subdivision is sought that there will be adequate streets, sewers, water supply, and other essential services (2 Anderson, New York Zoning Law and Practice §21.91, at 64 [3rd Ed]).

On the other hand, the primary goal of municipal zoning is the development of a balanced, cohesive community which efficiently uses the municipality's available land.

1 Cities, L.1926, c. 690; villages L.1926 c. 719 and towns L.1927, c. 175.

2 L.1992, c. 727.

3 L.1995, c. 423.

4 Town Law §278(1), Village Law §7-738(1), General City Law §37(1).

One of the basic purposes of zoning is to provide in an orderly fashion for the residents' need for various types of residential, commercial and industrial structures. The concern is whether the municipality as a whole will be a balanced and integrated community (see, Berenson v. Town of New Castle, 38 N.Y.2d 102, 109, 378 N.Y.S.2d 672, 341 N.E.2d 236). However, zoning "has proven characteristically ineffective in treating with the problems attending subdivision", and thus the need for the planning board and its power to regulate subdivisions (Matter of Golden v. Planning Board of Town of Ramapo, supra, 30 N.Y.2d at 372, 334 N.Y.S.2d 138, 285 N.E.2d 291).⁵

While the two controls can work together, and probably should, for maximum benefit to the municipality, it is permissible under the statutes to have either without the other.

The Importance of Good Design

New York State contains a tremendous diversity of people and geography and a remarkably varied economy. Municipalities may contain special features such as natural landscapes (mountains, rivers, lakes, fields), architecturally interesting buildings (residences, apartments, commercial, religious, civic, social), quality business districts, historic features and parks, and a pedestrian network connecting to the surrounding community. These community differences are a source of the State's strength. Good planning allows new developments to blend into or build upon the best aspects of a community. Ideally, subdivision development will satisfy the developer, incoming residents, and the community at large.

The State's land use statutes permit cities, villages and towns (and in certain cases, county and regional planning boards) to review subdivisions to see that good subdivision design is obtained. Today, many municipalities are trying to bring back "traditional neighborhoods" through subdivisions featuring mixed land uses, interconnected streets, diverse architectural styles and pedestrian-friendly features like sidewalks, pathways and street trees. In addition, local governments can ensure that streets meet local standards and that recreation areas are suitably located, thus assuring the taxpayer that the new development will be an asset and not a liability to the community. Future services, safety, health and fiscal considerations need to be examined in connection with approval of the subdivision plat.

Importantly, a subdivision development can change the character of the community. Once land is divided into lots and streets are laid out, development patterns are set. Review of subdivision plats is often the community's only opportunity to ensure that new neighborhoods are properly designed. For this reason, well-designed and properly administered subdivision regulations can be very useful in the orderly development of a community.

The goal of good subdivision design is to ensure that all development is well built, attractively designed and integrated with the greater community. In the past, there was less emphasis on how subdivisions fit into the community, which contributed to suburban sprawl and higher public utility and service costs. Today, there is more focus on how better planned subdivision designs can improve the quality of life in metropolitan areas by creating compact, attractive communities and conserving shrinking open space. A network of streets, sidewalks and paths can tie the community together.

In small towns and villages, the importance of good subdivision regulations cannot be over emphasized. Where land is still plentiful and community character not entirely settled, well-drafted subdivision regulations can wisely guide the decisions of local governments and developers when laying out lots and installing facilities in a residential tract. Attractive and livable subdivisions may well influence where people choose to live and where businesses are established. Well-drafted subdivision regulations can ensure that new development in the municipality will be compatible with desired traditional building patterns in one part of the community, and that they will reinforce the "sense of place" and neighborhood feeling experienced in traditional neighborhoods. The regulations can control the location, scale and physical character of such new development, as well

.....
5 See Marx v. Zoning Bd. of Appeals of Village of Mill Neck, 137 A.D.2d 333, 336-337 (2nd Dept. 1988).

as the manner in which they would fit into the existing pattern of woods, open space and developed areas. The accepted standards will be set forth in the subdivision regulations as minimum criteria for new developments.

Good subdivision design can create functional, well balanced and aesthetically pleasing neighborhoods. Some subdivisions accommodate diverse housing lifestyles that include high density attached dwellings near employment centers and lower density housing with significant open space in outer lying areas. Subdivisions may also be built which assist in combating the effects of climate change by: using green building materials; using advanced energy and environmental design standards; decreasing the amount of impervious paved surfaces or replacing them with porous materials; and/or reusing pre-existing structures where available.

By contrast, poor subdivision designs can negatively affect the community by increasing traffic and storm-water drainage on existing roads and streets, thereby enlarging the need for additional public facilities. Excessive or overly rapid subdivision development in a particular area, coupled with the inadequate provision of street improvements, transportation options, public facilities and services, and open space, can cause serious long-term problems, such as substandard development, wasted land, and even “dead” subdivisions, if there proves to be no market for the new lots created.⁶ Failure to plan for the subdivision of land is felt by the local government in many areas such as tax burdens, the high cost of extending utilities, street and traffic problems, health hazards caused by waste water treatment systems unsuited to a particular area, and a loss of a sense of community.

This publication endeavors to set out good subdivision design principles that can be adapted to any type of municipality.

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⁶ See *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359 (1972).



**PLANNING & ZONING WORKSHOP:
SUBDIVISION REGULATIONS & INFRASTRUCTURE**

prepared by

**Local Planning Assistance Office
Tennessee Department of Economic and Community Development**

Second Edition, April, 2005

Foreword

This document supplements the *Tennessee Planning Commissioner Handbook*, Local Planning's training manual for its contract communities and others. The *Handbook* has been used to provide training to Planning Commissioners in Local Planning's contract communities, and was followed by *A Closer Look at Zoning*, developed to continue the comprehensive planning discussion by detailing implementation tools. *Subdivision Regulations & Infrastructure* adds detail to the *Handbook's* description of the land subdivision process and the subsequent impact on communities and the services they provide. Read in conjunction with the other materials mentioned above, the reader should be able to see how the planning process is used to formulate and establish community goals and policies, and how those goals and policies are enforced, reviewed, and amended on a day-to-day basis through implementation tools such as zoning and subdivision regulations. These materials provide a starting point for further research on the readers' part, but on their own, offer good information on how communities grow over time and why buildings, streets, and other uses and structures are built how and where they are.

We certainly hope each reader will find something of value here, since those of us involved in its preparation have benefited by our own research. We look forward to your feedback.

Tim Roach, Regional Director
Local Planning Office, Southeast Tennessee Region
Editor
April 2005

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CHAPTER 1

PURPOSE OF SUBDIVISION REGULATIONS

Introduction

Regulating the subdivision of property is a common and essential method for implementing a community's comprehensive planning program. "Subdivision" in this context is not simply the residential development you live in. It is how communities grow and develop over time. It involves the process of dividing raw land into lots, streets, parks and the other spaces that together form the underlying development pattern and structure of a community. Regulating this process is critical to any community that is interested in planning for its future. Once an area has been divided into lots, the street system has been established, and utilities have been installed, a development pattern has been established that is unlikely to be changed. The quality and design of each new subdivision will permanently affect its future occupants and the surrounding area. The application of well-crafted subdivision regulations to this process provides a community with its only opportunity to ensure that newly developed neighborhoods and other areas are properly designed, constructed, and integrated into the surrounding area.¹

History of Subdivision Controls

Early Beginnings of Subdivision Control

The history of governmental regulation and control over the subdivision process in the United States is not a new one. Many of this country's first towns were founded and physically laid out according to royal directives brought from Europe by their settlers. The original colonial assemblies and the early state legislatures continued this method of creating new towns and settlements. These initial efforts at controlling the pattern of development were further expanded as some state legislatures authorized larger, rapidly growing cities to plan and map proposed streets and to require individual property owners to follow these street plans as they divided their property.² These early efforts focused on direct governmental involvement with the creation of towns and their physical pattern of development.

Platting Requirements and Early Street System Design

During the 19th century, state and local governments began to experience the effects of significant population growth and expanding settlement activities. The increasing pace of this growth and expansion of settlement in the country created problems with land records and the coordination of street systems as development expanded. The division and transfer of property at this time was done by "metes and bounds" deed description. The metes and bounds system relied on verbal description and approximate measures of property boundaries. Deeds of this type often refer to natural features, large rocks, trees, and rough distance or area measures when describing a piece of property. This system of land

description proved to be both inaccurate and inconsistent. It created poorly defined property records that in turn led to disputes and difficulties with land taxation. The use of metes and bounds description, combined with a general lack of development coordination between properties, also led to increasingly disconnected development patterns. The need to coordinate the logical extension of street systems became a particular concern for local governments. As new properties were being subdivided communities needed to ensure that new streets were being properly connected to the existing street systems.³

In response to these growing problems many state legislatures enacted legislation that required subdivisions to be accurately surveyed and mapped or “platted”. The resulting laws established uniform survey methods, required that local officials review the platted subdivisions and that the plats be officially recorded prior to lots being sold. State legislatures also passed laws allowing local governments to require that all new streets be properly coordinated with their existing street systems. These laws allowed local governments some control over the placement and alignment of new streets, enabled them to control the width of streets as they were extended, and to require that new streets be dedicated to the public. The platting process was used as the enforcement mechanism for these new controls over private subdivision activity.⁴ In both instances the governmental role in controlling subdivision development shifted from the direct creation of towns to regulating the activities of private land developers. This shift and the resulting laws enacted by state governments began the evolution of modern subdivision regulations.

Subdivision Regulations and the Comprehensive Plan

By the early part of the 20th century, state and local governments were again suffering the negative effects of rapid, largely uncoordinated growth. Initial attempts to simply mitigate the impacts of subdivision activity through platting requirements and street system design controls had failed to keep pace with the growing effects of urbanization. Uncontrolled subdivision and urban expansion had left many communities without adequate streets, public facilities, and utilities. Local governments and utility systems were forced to extend services into areas without any control over how they developed. This often led to poorly designed public infrastructure and facilities that proved inadequate to serve the areas population. As a result, many developing areas became characterized by disorderly chaotic growth and eventually depressed economic values.⁵

The modern era of comprehensive planning and subdivision regulation began in 1928 with the Standard City Planning Enabling Act (SCPEA). This act was published by the US Department of Commerce to promote the development and implementation of comprehensive plans. The enabling act recognized the pressing need for public sector comprehensive planning and the role that subdivision regulations could play in controlling development. Many state legislatures, including Tennessee, subsequently passed their own enabling acts based on the SCPEA model.

Under the SCPEA model and the state enabling laws that followed, local governments were granted the authority to engage in broad-based comprehensive planning. The comprehensive plan in this context is a long-range policy plan that is intended to guide the physical

development of a community. It describes how, when, where, and why to build, rebuild, or preserve areas within a community. It addresses the many physical elements that allow a community to grow and function properly, including transportation systems, utilities, land use development patterns, public open spaces and environment quality, housing, and community facilities.⁶ The model legislation recognized the role that subdivision regulations could play in implementing a community's comprehensive planning program, and expanded the regulatory reach of subdivision regulations accordingly. Under the new enabling laws, local governments were able to craft regulations that better controlled how new subdivisions were developed and integrated into the surrounding community. This new regulatory authority could be used to prevent the creation of inadequate streets and traffic congestion, undersized utilities, and small or poorly designed building lots.⁷ It allowed local governments the ability to better control the design of streets in relation to existing or planned streets, to coordinate utility extensions, relieve congestion and provide for adequate access to developing areas. Open space and areas needed for new roads, parks, and schools could be required through public dedication. Finally, local governments were for the first time given the authority to control the premature subdivision of land in order to eliminate wasteful development practices and inefficient public expenditures.⁸

Planning and Subdivision Authority in Tennessee

Introduction

The State of Tennessee enacted its planning legislation in 1935, based on the federal Standard City Planning Enabling Act. Tennessee's legislation was drafted by Alfred Bettman, a noted attorney and planner from Cincinnati, who was hired as a consultant by the Tennessee Valley Authority. The 1935 legislation fully embraces the concept of comprehensive planning and the use of subdivision regulations as an implementation tool for planning. The legislation is purely enabling, in that it provides planning authority for local governments in the state. The legislation provides for the creation of local planning commissions, the authority to engage in long range comprehensive planning, and it enables these planning commissions and their local governments to implement plans through the adoption of subdivision regulations and zoning. Title 13 of the Tennessee Code (TCA) grants these powers to local governments and their planning commissions.

Municipal and Regional Jurisdiction

Tennessee's planning and subdivision control legislation is organized into two broad authorities, municipal planning authority and regional planning authority. The municipal statutes are located in TCA Title 13, Chapter 4 while the regional statutes are located in Chapter 3. Together, these statutes provide for the creation of four separate types of planning commissions and define their overall planning jurisdictions. Under these statutes it is the planning commission that is granted the authority to engage in comprehensive planning and to adopt subdivision regulations, not the local government's legislative body.

Appendix C: cluster benefits excerpts

These excerpts are provided to give some initial background. Any positions or recommendations advanced in the text are not necessarily those of the staff.

A few links you may want to look at:

<http://www.useful-community-development.org/cluster-housing.html>

<http://urbanext.illinois.edu/lcr/cluster.cfm>

http://www.strafford.org/factsheets/fs_osccd_benefits.pdf

James A. Coon Local Government Technical Series

Subdivision Review in New York State



New York Department of State
One Commerce Plaza, 99 Washington Avenue
Albany, Ny 12231-0001

www.dos.ny.gov

Revised 10/13

Part IV: The Three Cs of Subdivision: Conventional, Cluster and Conservation Plats

Planning boards and local officials now realize that there is a wide range of available options for achieving attractive subdivisions. The State Enabling Acts encourage creative approaches to subdivision design, subject only to the need to preserve the integrity of the community's comprehensive plan. The most familiar types of subdivisions are conventional subdivisions, cluster subdivisions and conservation subdivisions. Recently, the mixing of small scale commercial uses into residential subdivisions has become popular. These mixed use subdivisions can be used with conventional, cluster or conservation subdivisions to create residential neighborhoods with appropriate retail uses to serve the residents.

Each type of subdivision discussed here must comply with the basic requirements of the applicable zoning regulations as well as the State Subdivision Enabling Statutes for giving public notice, holding public hearings, adhering to submission requirements, making county and inter-municipal referrals and adopting written decisions supported by written findings. The planning board's action of modifying the zoning requirements to permit cluster subdivision takes place simultaneously with the action of approving the subdivision plat.

Conventional Subdivisions

A conventional subdivision plat shows the division of land into residential lots and streets laid out in strict accordance with the minimum zoning and subdivision regulations and other applicable regulations. The plat usually indicates the approximate dimensions, key plan, topography and drainage of the tract, including all proposed facilities at suitable scale and in such detail as local regulations may require. Conventional subdivisions are often placed on undeveloped land and converted agricultural or forested lands, or other open space.

After World War II, the conventional subdivision style formed the foundation of the developed suburban landscape. Courts found a legitimate purpose in land use regulations aimed at achieving a homogeneous, traditional single-family neighborhood. "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs," according to the U.S. Supreme Court in *Village of Belle Terre v. Boraas*.¹³¹ The "American Dream" of owning a home in the suburbs is exemplified by the conventional subdivision.

Recent planning history shows that many conventional subdivisions were created using the basic application of the subdivision statutes and zoning regulations. They commonly exhibit lot patterns of nearly equal area with uniform road frontage and setbacks from roads or neighboring property owners. The conventional subdivision pattern is the result of local zoning codes that require low to moderate densities and separation of uses. Streets consume a large fraction of the land. These subdivisions are often criticized for producing monotonous, uninteresting developments that lacked trees, sidewalks or play areas for children. Residents without these community amenities often turned to their local governments to provide safe walkways and play areas.

In recent years, conventional subdivisions have been criticized as creating homogenous residential land uses which utilize all available land, emphasize the use of the automobile, lower residential densities and lack physical connections to nearby developments and the greater community. In short, they have been cited as the cause of "suburban sprawl."

Cluster Subdivisions

"Cluster subdivision" is a technique authorized by State Statute whereby the local legislative body empowers the planning board, when approving subdivision plats, to modify the dimensional requirements of the zoning law to group or "cluster" structures or lots at a higher density on the most

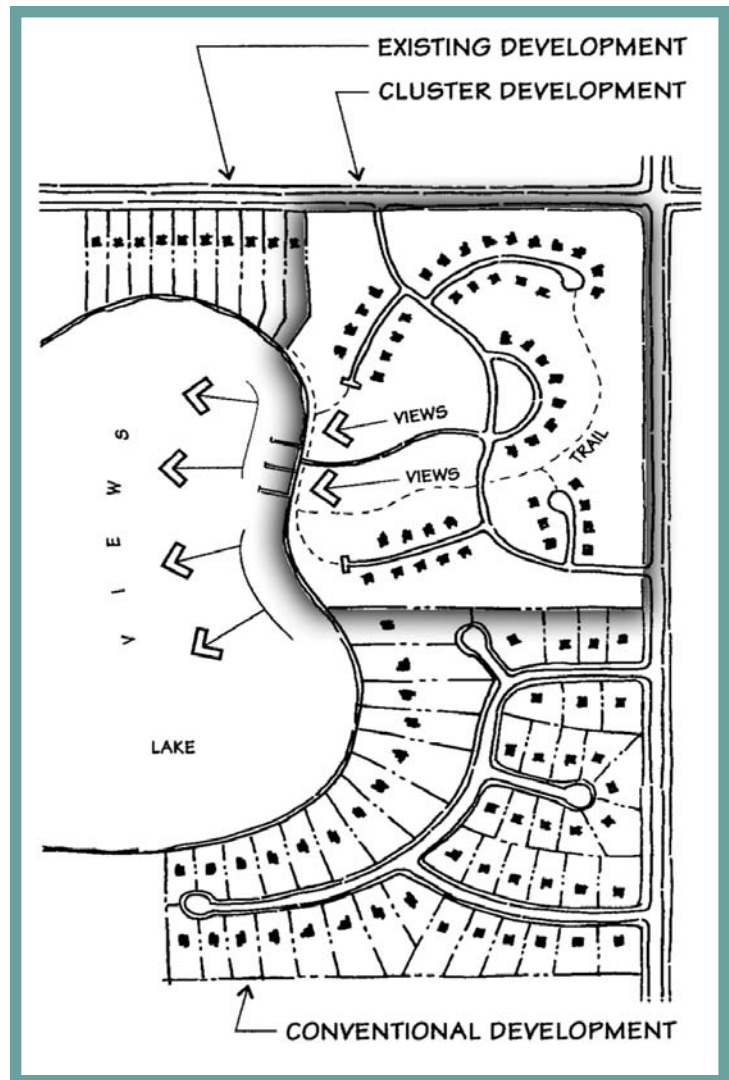
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131 416 U.S. 1, 9 (1974).

suitable portion of the land, leaving other areas open “to preserve the natural and scenic qualities of open lands.”¹³² While adding greater flexibility in the overall subdivision design, the statutes provide that the number of lots or dwelling units in a cluster subdivision cannot exceed the number which would, in the planning board’s judgment, be permitted on a conventional plat meeting the minimum lot size and density requirements of the zoning regulations.¹³³

Cities, towns and villages have the authority to enact local laws or ordinances that provide for cluster subdivision.¹³⁴ In administering this technique, the planning board can approve a subdivision where the lots do not strictly comply with the area requirements of the applicable zoning regulations.

The technique allows the developer to distribute the units on the most buildable portion of the site and to economically reduce the construction and maintenance costs for roadways, sewer lines, and other infrastructure.¹³⁵ Attractive developments, some including retail stores, can be fashioned in ways not possible using conventional subdivision, thereby increasing the profitability of the units.

The benefits of open space on the residents of a clustered development cannot be evaluated merely in quantitative terms. Residents of the clustered subdivision can enjoy common access to expanses of open land such as hiking paths, ball fields, fishing ponds and wooded areas. In this way, open space is an asset that has been recognized as enhancing property values as well as the enjoyment of residents.



Source: Southeastern Wisconsin Regional Planning Commission

Figure 3: CLUSTER SUBDIVISION

Cluster subdivision, authorized by state statute, allows local governments to modify the dimensional requirements of the local zoning regulations, to group structures or lots at a higher density on the most suitable portion of land. This land use technique does not allow any additional units than are allowed in a conventional subdivision. It adds flexibility to existing zoning regulations and encourages innovative design to keep more open space and preserve the area’s natural and scenic resources such as the view of the lake, in the sample cluster subdivision. In the illustration above, one hundred percent of the units in the cluster subdivision have views and access to the lake, whereas in the conventional development in the lower half of the illustration, only twenty six percent of the lots have views and access to the lake. This cluster subdivision also provides trails and more open space for residents as compared to conventional subdivisions.

132 Town Law §278(2)(b), Village Law §7-738(2)(b), General City Law §37(2)(b).

133 Town Law §278(3)(b), Village Law §7-738 (3)(b), General City Law §37(3)(b).

134 Town Law §278, Village Law §7-738, General City Law §37. A clustered development is defined as “a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.” Id. at paragraph 1(a).

135 See Randall G. Arendt, *Conservation Design for Subdivisions*, pp. 6-7 (Island Press 1996).

By clustering a new subdivision, certain community planning objectives can be achieved. Municipalities wishing to preserve their natural and scenic resources also gain from the reservation of open lands in the cluster subdivision process, without added cost to the public. In contrast with conventional subdivisions, cluster subdivisions are recognized as combating sprawl.¹³⁶

To use this technique, the local legislative body must first enact a local law or ordinance granting the planning board power to review a cluster subdivision. Once authorized, the planning board can, when approving a subdivision plat, modify the applicable zoning requirements (lot area, front and side yard depth, frontage, building height and coverage) to allow all of the development that could occur on the entire parcel of land to be developed on only a portion of the parcel. The cluster subdivision technique can also be used to alter the height of buildings, even when the height significantly exceeds the applicable zoning restrictions.¹³⁷ However, the planning board may not modify the use restrictions of the zoning regulations and may not, consistent with State law, permit a total overall density greater than that allowable under the zoning regulations applicable to that district.

Cluster development can be authorized either at the developer's option (discretionary cluster) or at the municipality's option (mandatory cluster).¹³⁸ In order to require clustering, the planning board needs additional local legislative authorization. With both options, the procedures for submission, approval and filing of plats for cluster development are the same as those required for conventional subdivisions.

In *discretionary cluster*, the developer voluntarily chooses to use the cluster process. Some municipalities offer incentives - such as allowing higher densities - to encourage developers to submit clustered subdivision plats. To use discretionary cluster, a developer submits a written application to the planning board requesting use of the cluster subdivision procedure and submits both a conventional plat approvable by the planning board and a cluster subdivision plat. The conventional plat is used to calculate lot yield and becomes a tool for comparison. The planning board has discretion to determine if the cluster subdivision would benefit the municipality.¹³⁹ If not, the planning board is free to deny the applicant the use of cluster, and require submission of a conventional subdivision plat.

In *mandatory cluster*, the subdivider is required to submit a clustered subdivision application to the planning board "subject to criteria contained in the local law or ordinance authorizing cluster development."¹⁴⁰ At a minimum, the mandatory cluster criteria should designate the zoning districts subject to mandatory review, the open space requirements, and the permitted uses of the open space. Other considerations might be the size of the entire undivided tract to which lot count will apply. Usually, mandatory cluster is often required for larger subdivisions. For example, cluster could be mandated for parcels exceeding 15 acres in size or where more than 15 residential lots are proposed.

Whether cluster subdivision is discretionary or mandatory, several important issues should be considered, including:

- Designating or mapping the areas subject to cluster subdivision
- Computing lot count
- Establishing the minimum amount of open space
- Ensuring adequate infrastructure to serve the cluster subdivision
- Establishing the amount by which minimum lot sizes may be reduced
- Providing for mixed uses and different housing types
- Establishing permitted open space uses

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136 William H. Whyte, Cluster Development (American Conservation Association 1964).

137 Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Board, 253 A.D.2d 342 (4th Dept. 1999).

138 Town Law §278(3)(a), Village Law §7-738(3)(a), General City Law §37(3)(a).

139 Id.

140 Id.

These issues will be discussed in greater detail, below.

Designating or Mapping the Areas Subject to Cluster Subdivision

Many municipalities, when authorizing cluster subdivision, have included specific minimum gross acreage for the entire project or select zoning districts. In the Town of Newstead, the cluster technique is “restricted to tracts of no less than 10 acres.”¹⁴¹ The local cluster enactment may also specify which zoning districts or areas of the community qualify for the cluster procedure. For example, the Town of Cortlandt, in authorizing cluster subdivision, allows its application in “any R (Residential) Zoning District or any CC (Community Commercial) Zoning Districts.”¹⁴²

Computing Lot Count

An important issue for the developer and the community deals with the number of lots or units - variously termed lot count or lot yield - which the developer will be able to build on the clustered plat. Clustering is intended to be density neutral. The overall number of lots in a cluster subdivision should be the same as for conventional subdivisions in the applicable zoning district. The State cluster statutes limit the lot yield to a:

“number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board’s judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements.”¹⁴³

The starting point for computing the lot count in a cluster subdivision begins with a conventional subdivision plat. An applicant for cluster subdivision must first provide the municipality with a conventional subdivision arrangement showing maximum usage of the property in accordance with applicable zoning and other lawful restrictions. As one land use expert succinctly stated:

A conventional subdivision layout...must be approved in order to establish the appropriate density for a cluster development. “The [[conventional] plat must result in a standard layout that, consistent with applicable zoning regulations and practical considerations, could be approved by a planning board.” It must depict lots which comply with all requirements of the zoning law and must consider environmental constraints on development as well as roads, parks and other attributes which would reduce the development yield of the property.¹⁴⁴

After submitting a conventional plat showing, where appropriate, roads, parklands, lots meeting the minimum lot size and setback requirements, and lots laid out to ensure safe, buildable sites, the resulting number of dwelling units on the conventional plat would be the lot yield or lot count that may be clustered.¹⁴⁵ *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Board*¹⁴⁶ is an illustrative case. There, the Appellate Division invalidated a cluster subdivision approval because the Planning Board did not subtract from the lot density calculation all land identified on the conventional plat for roads and streets nor subtract other land found unsuitable for development.

141 Newstead Town Code §450-54 (B) (2010 edition).

142 Cortlandt Town Code §307-19 (2010 edition).

143 Town Law §278(3)(b), Village Law §7-738(3)(b), General City Law §37(3)(b).

144 Terry Rice, 1998-1999 Survey of New York Law: Zoning and Land Use, 50 Syracuse Law Review 917, 944-945 (2000).

145 Density is usually determined by preparation of a conventional plat. See *New Scotland Ave. Neighborhood Ass’n v. Planning Bd. of City of Albany* 142 A.D.2d 257, 535 N.Y.S.2d 645 (3rd Dept. 1988).

146 253 A.D.2d 342 (4th Dept. 1999)

Under the statutory provision, regardless of the form a cluster development may take -- multifamily, town house, single family homes on smaller lots, or other non-residential building clusters -- the maximum number of units allowed on the parcel may be no greater than that which would be allowed under a conventional subdivision layout. The Appellate Division has held that the determination of lot count for a conventional subdivision is merely a preliminary step in the approval process for a cluster development and is not a final determination subject to judicial review and SEQRA is not required to be undertaken prior to ascertaining the lot yield from a conventional plat.¹⁴⁷

Some communities seek to attract developers of cluster developments by offering them density bonuses to increase the number of lots or units in the development over the lot yield allowed in a conventional subdivision. Density bonuses are often keyed to the creation of affordable housing units, retention of active farms or addition of more open space. The local legislative body may wish to provide for density bonuses through a special permit application process.

The Town, Village and General City Law statutes clarify how a municipality may tally lot yield when a proposed cluster subdivision straddles two or more zoning districts. In those instances, the lot yields may be added together. The statutes state:

*"[W]here the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts."*¹⁴⁸

The planning board can therefore permit the cluster development to occur anywhere on the plat, without regard to the density limitations of the zoning district in which it is situated.

Establishing the Minimum Required Amount of Open Space

The percentage of the cluster subdivision that will be devoted to open space should ideally be specified by the local legislative body in the cluster regulations to guide both the applicant and the planning board. Absent such a provision, the planning board must determine an appropriate amount of open space based on the characteristics of the site and particularly when environmentally sensitive areas, such as wetlands, ponds or steep slopes are on the site. The overall size of the open space should be significant because below a certain size, the benefits to be gained by the community in open space may not equal the financial burdens that may be imposed in terms of maintenance costs and supervision. In the Town of Rhinebeck, the cluster provisions provide a range of minimum required open space set asides, from 80% open space on a tract in a RA10 (Rural Agricultural) district to 20% open space on a tract in non-residential districts.¹⁴⁹

Ensuring Adequate Infrastructure to Serve the Cluster Subdivision

Developers often find the clustering technique financially advantageous because infrastructure costs associated with road construction, utility installation and drainage systems can be greatly reduced and yet the same number of units can be built and sold. Clustered subdivision may also result in fewer impervious surfaces and more natural drainage which in turn will reduce storm water run-off, flooding and soil erosion. Cluster subdivisions have many of the same requirements for providing water and sanitary waste treatment services as other subdivisions (discussed in Part V), however the installation and maintenance costs may be less due to the compact nature of the cluster development.

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¹⁴⁷ *Maor v. Town of Ramapo Planning Board*, 44 A.D.3d 665, 843 N.Y.S.2d 163 (2nd Dept. 2007).

¹⁴⁸ *Id.*

¹⁴⁹ Rhinebeck Town Code §125-43 (H) (2010 edition).

Establishing the Amount by Which Minimum Lot Sizes May Be Reduced

There is no rule of thumb that can be applied to the question of lot size reduction. The statutes recognize that units of detached or attached housing in a cluster development may be situated on smaller lots than the underlying zoning authorizes. Thus, the amount of reduction in lot size that may be permitted will vary widely from one community to another. For example, Town Code of the Town of Newstead §450-54 (C) provides "Reduction of lot area shall not exceed 50% in cluster subdivisions. Reductions in lot width and other bulk dimensions shall not exceed 33%." Land costs, the type, intensity and quality of existing development and the availability of various public and private facilities are all factors that will influence the reduced lot size. The nature of the soil, the topography, and the quality and quantity of available water also enter into the picture. This is particularly crucial in areas without public water and sewers.

Providing for Mixed Uses and Different Housing Types

The State Subdivision Enabling Statutes apply to all kinds of subdivisions including residential, commercial and mixed use subdivisions. Where the zoning district permits both residential use and retail uses to serve them, a mixed use subdivision is possible.

Mixed use subdivisions can create traditional neighborhoods of attached or detached residences with well integrated retail establishments centered around a common area like a park. Such development can provide the inclusiveness, safety and attractiveness that future residents desire. Communities that incorporate residences and shops can also address many of the needs of the aged and disabled populations by decreasing the need for driving and making vital services more accessible. Highly detailed subdivision regulations are essential to create a well-designed mixed use subdivision.

A developer of a mixed use subdivision that utilizes the cluster technique can realize an immediate benefit in reduced cost for the installation of infrastructure, such as roads and water and sewer lines, as a result of the concentration of development in a smaller area. Cluster development with streetscapes and pedestrian scale buildings can make a community more attractive and enhance property values.

To create a mixed use subdivision, the underlying zoning regulations must be configured to permit a combination of residential and appropriate retail uses. Amending the zoning requires legislative action by the local legislative body.

A cluster subdivision may contain a variety of housing types and living environments for people with a wide range of incomes. The planning board has discretion to permit many housing types other than single family detached houses. State law provides that, in the case of a residential plat or plats in a cluster subdivision, "the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures."¹⁵⁰ A planning board is therefore authorized to approve a clustered subdivision comprising multi-family residential uses, although the zoning district only permits single family houses; thus, the planning board has the limited ability to change the uses, and not merely the area standards, allowed by the zoning.

Permitted Open Space Uses

The cluster technique can assist a municipality to achieve planning goals that call for protection of open space and scenic quality. Indeed, protecting open space can achieve several community objectives concurrently. For example, the same green area may serve as a recreation field, a scenic foreground to another vista, a buffer to a stream, a connector in a system of walking and bike trails, and a venue for community events.

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150 Town Law §278(3)(d), Village Law §7-738(3)(d), General City Law §37 (3)(d).

Clustering of homes can direct development away from environmentally and culturally sensitive areas. Imaginatively used, the cluster subdivision technique can serve many open space goals. As discussed in Part IV, the planning board may, as a condition of plat approval, impose binding controls and restrictions over the “ownership, use and maintenance” of the open areas to preserve them for their intended purposes.

In the residential community, open space is often used to fulfill the needs of residents for active or passive recreation. Activities such as tennis, baseball and hiking can rarely be carried out in private back yards.

A clustered development can avoid developing natural areas and environmentally sensitive areas on-site by incorporating them into its common open space. By clustering a subdivision, natural features of significance can be preserved, steep slope areas can be avoided, and large sections of undeveloped open space can be retained.

In those communities where agriculture is a significant resource, the goal of land preservation may be realized by permitting its continued use for farming. The Town of Southold provides that “[a]ctive agricultural land with farm/agricultural support buildings may be used to meet the minimum required open space land”¹⁵¹ in a cluster subdivision.

Conservation Subdivisions

A conservation subdivision, a type of cluster subdivision, is designed to permanently protect a large portion of a site with important environmental areas or cultural features, while clustering compact building lots on the remainder of the land. Conservation subdivision generically refers to the practice of compacting subdivision residential subdivision development whereby half or more of a parcel is set aside for open space or parkland¹⁵². In New York State, conservation subdivisions are achieved through the cluster subdivision process; State statutes do not specifically mention conservation subdivisions.

As with cluster subdivisions, conservation subdivisions typically result in more compact development and can reduce the cost to the developer of installing and maintaining roadways, sewer lines, and other infrastructure. The approach to creating a conservation subdivision is one of building within and around the natural landscape rather than building on top of it. The environmental benefits of a conservation subdivision - where, for example, stream corridors, woodlands, fields, wildlife habitat, steep slopes and/or wetlands, are protected and storm water is managed - can be significant.

Noted land use planner Randall Arendt, an authority on conservation subdivision, states that this type of subdivision focuses first on preserving the important resource value of the land to be subdivided.

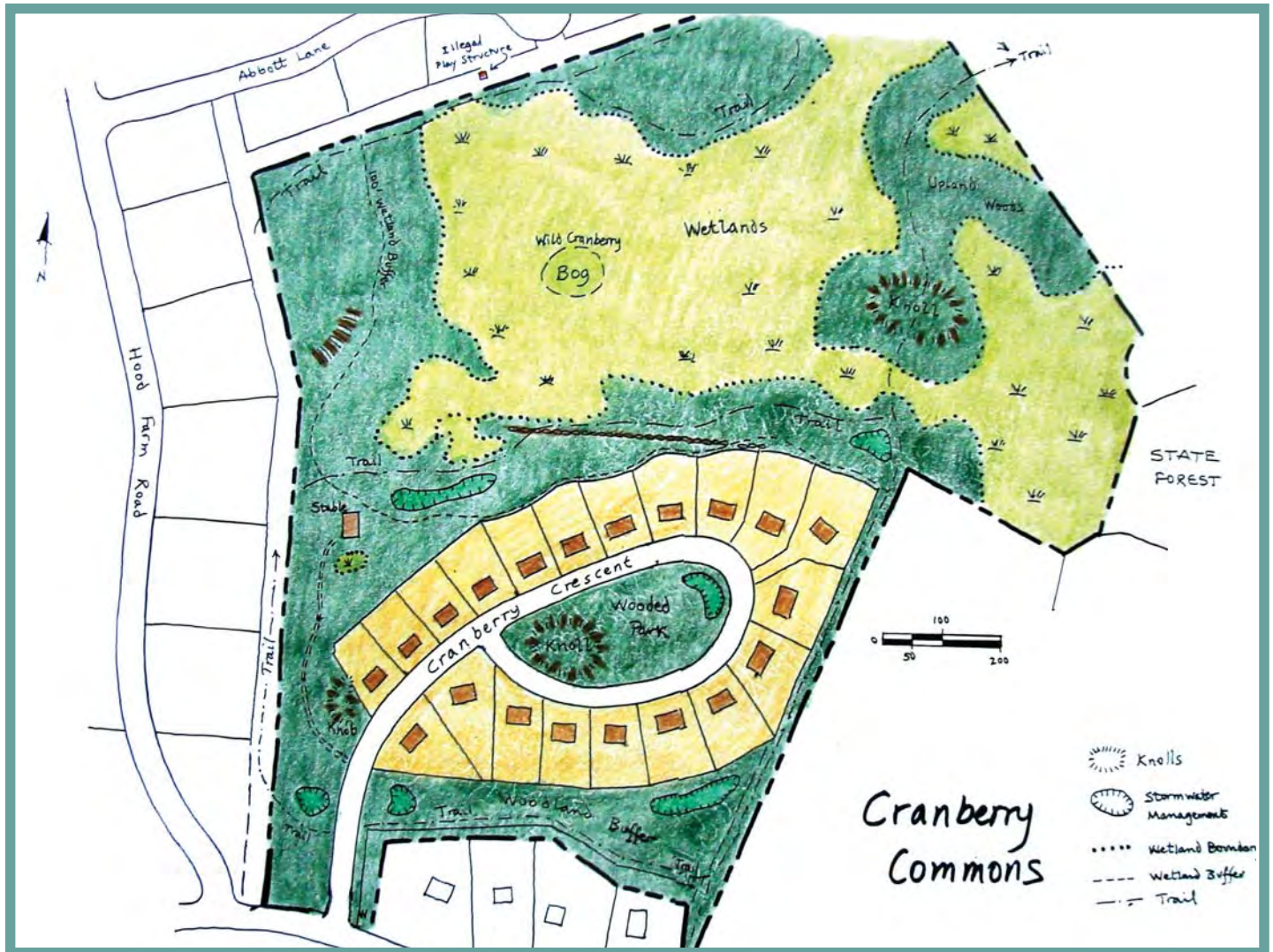
Conservation subdivisions are specifically designed around each site’s most significant natural and cultural resources, with their open space networks being the first element to be “green-lined” in the design process. This open space includes all of the “Primary Conservation Areas” (inherently unbuildable wetlands, floodplains, and steep slopes), plus 30-80% of the remaining unconstrained land, depending upon zoning densities and infrastructure availability.

* * *

A four-step process then ensues, Step One separating the site’s resources into two categories. The first, Primary Conservation Areas (PCAs), are limited to inherently unbuildable wetlands, floodplains, and steep slopes (25%). Secondary Conservation Areas (SCA) are comprised of “the best of the rest.” Because the PCAs would be off-limits to development in conventional developments in any event, they are not counted toward the minimum required open space percentages of conservation subdivisions. Therefore, 30-80% of the buildable land is usually designated as SCAs, depending on density (as noted above). Step Two consists of locating house sites in relation to the protected open space,

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151 Southold Town Code §240-43 (2010 edition).

152 See Randall G. Arendt, Conservation Design for Subdivisions, pp. 6-7 (Island Press 1996).



Source: Randall Arendt: now called Partridgeberry Place, Ipswich, MA.

Figure 4: CONSERVATION SUBDIVISION

This conservation subdivision protects an unbuildable wetland and bog as well as unconstrained open space such as grassland, woodland and trails for hiking and horseback riding. Other features that can be protected through conservation subdivision include stream corridors, fields, wildlife habitat, steep slopes, scenic vistas, and farmland. Conservation subdivision is a type of cluster subdivision that commonly sets aside 50 percent or more of the land to remain in harmony with nature and undeveloped in perpetuity. The number of residential units are compacted on a portion of the property, but cannot exceed the number allowed if the property were developed as a conventional subdivision.

to add livability, marketability, and value to the homes. Step Three is to “connect the dots” with streets and trails. Step Four consists simply of drawing in the lot lines. This process works best when guided by a landscape architect or physical planner, collaborating with a civil engineer. The creative skills of a landscape architect or physical planner are essential, balancing the technical training of engineers whose expertise lies principally in streets and drains.¹⁵³

A sound open space planning process can lay the foundation for a community’s application of conservation subdivision regulations. Foundations of the plan include:

153 Randall G. Arendt, *Conservation Subdivision Design: A Brief Overview*, http://www.landchoices.org/conservationsubs/consubs_pdfs/csd_overviewweb.pdf

Inventory of natural and scenic resources for preservation - This may include identification of resources by the community through meetings, surveys or planning charettes; the inventory of environmental resources (such as significant wetlands and stream corridors); and integration of resource information identified by state or regional agencies into the local system (such as flood plains and productive agricultural lands).

Open space plan or component of comprehensive plan - This includes the development of an open space plan and its components, which may include a community vision plan, recreation plan, bikeway plan, and farmland preservation plan.

Recreation and trail planning - This includes the development of a recreational lands master plan, a recreational access plan for the disabled, a recreational facilities plan for a neighborhood, or a system of trails (both intra- and inter-community). It may also include the assessment of the impact of new development on such resources, the development of strategies for obtaining land or easements on land for recreation and trail purposes.

For further information about such planning, the publication Local Open Space Planning Guide may be downloaded at the Department of State website:
http://www.dos.ny.gov/LG/publications/Local_Open_Space_Planning_Guide.pdf



Appendix D: 2010 Comprehensive Land Use Plan Excerpts

Page 6:

I. Development Goals and Policies

A. LOCATION OF DEVELOPMENT

(See Chapter 4)

Goal: Guide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.

Policies regarding the location of development on a jurisdiction-wide level:

1. Provide for a sustainable pattern of development, consistent with historical patterns, which directs development to suitable areas and retains the principal values of the jurisdiction, including a working forest, integrity of natural resources, and remoteness.
2. Guide development to areas near existing towns and communities and in other areas identified as appropriate development centers.
 - a. Identify areas which are the most appropriate for growth when considering: (1) proximity and connectivity by public road to economic centers, organized towns and well established patterns of settlement; (2) compatibility of natural resources with development; (3) demonstrated demand for and public benefit from development; and (4) availability of public infrastructure, facilities and services.
 - b. Outside of areas identified as the most appropriate for growth, identify other areas that are appropriate for some less intensive development or as smaller development centers and encourage compact patterns of development around these areas.
 - c. Guide the location of different types of residential development according to potential impacts, infrastructure needs and the potential for conversion to a more intensive type of residential use.
3. Discourage growth which results in scattered and sprawling development patterns.
4. Guide proposals for new waste disposal and similar facilities to locations near organized communities that have good existing road access, low natural resource values, and are separate from incompatible uses.

Policies regarding the location of development on a community or regional level:

5. Undertake prospective zoning within certain areas of the jurisdiction where there is a need to achieve balance between expected development pressures and high resource values in order to provide greater regulatory predictability.
6. In communities or areas without prospective zoning, encourage orderly growth within and proximate to existing, compatibly developed areas — i.e. existing development of similar type, use, occupancy, scale and intensity to that being proposed, or a village center with a range of uses for which the proposed development will provide complementary services, goods, jobs and/or housing.
7. In areas that are not appropriate as new development centers, allow for (a) planned developments which depend on a particular natural feature, subject to site plan review, and (b) other development, subject to concept plan review.
8. Permit subdivision for the purpose of development only in areas zoned for development or in areas that meet the criteria for Level 2 subdivisions.

B. ECONOMIC DEVELOPMENT

(See Chapter 4)

Goal: Encourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction's principal values.

Policies:

1. Encourage forest, recreation and other resource-based industries and enterprises which further the jurisdiction's tradition of multiple use without diminishing its principal values.
2. Encourage economic development in those areas identified as the most appropriate for future growth.
3. Provide for expansion needs of intensive developments where such expansion will not have an undue adverse impact on the resources of the area.
4. Allow new or emerging technologies, but limit the scale or application of these technologies where necessary to allow time for the Commission to evaluate the technology and its impacts.
5. Continuously review permitting procedures to identify means to expedite the permitting process while accomplishing the agency's purposes.

C. SITE REVIEW

(See Chapter 4)

Goal: Assure that development fits harmoniously into the existing communities, neighborhoods and the natural environment.

Policies:

1. Require that provision be made for fitting development harmoniously into the existing natural environment, including:
 - a. Requiring the use of buffers, building setbacks, height restrictions, design and materials standards, lighting standards, and landscaping to minimize the impacts of land use activities upon one another and to maintain the scenic quality of shorelines, hillsides, ridgelines, and roadways;
 - b. Requiring that developments provide for adequate parking and traffic circulation; and
 - c. Limiting the number and size of signs in order to prevent undue visual impacts or hazardous conditions.
2. Prevent the degradation of natural and cultural values resulting from cumulative impacts of incremental development.
3. Encourage site designs which have a minimal impact on the principal values of the jurisdiction, including clustering or open space preservation, and discourage unnecessarily large lot sizes.
4. Provide an educational program to guide land development in a manner consistent with the goals and policies of this Plan and regulations promulgated pursuant to this Plan.
5. Provide incentives for lot owners to bring nonconforming uses and structures into compliance or closer to conformance with the Commission's regulations.
6. Limit expansions of nonconforming uses and structures.

D. INFRASTRUCTURE

(See Chapter 4)

Goal: Ensure that infrastructure improvements are well planned and do not have an adverse impact on the jurisdiction's principal values.

Policies:

1. Consider the capacity of existing infrastructure and services to accommodate proposed development, as well as the costs associated with the provision of these services to proposed development.
2. Discourage the construction or establishment of major new public roads that would degrade the natural character of remote areas.
3. Require that new utility lines, pipelines and associated facilities be (a) located or co-located within or adjacent to existing utility or public road rights of way to the extent practicable; (b) constructed and landscaped so that they do not degrade natural values; and (c) located so as not to inappropriately encroach upon or change the character of remote areas, or produce an intensity of use that is inappropriate for a particular area.

4. Monitor the installation of new road networks in order to anticipate and plan for future growth and public access and use in appropriate areas.
5. Require that highly visible facilities such as communication towers be dismantled and removed from the site when they are unused for an extended period of time.
6. Require that communication towers be made available for other users where feasible in order to limit the number of such towers.

E. DEVELOPMENT RATE, DENSITY AND TYPE

(See Chapter 4)

Goal: Ensure that development is of a rate, density and type conducive to maintaining the jurisdiction's principal values.

Policies:

1. Monitor the rate and location of development throughout the jurisdiction to ensure it remains at a reasonable pace, particularly outside areas identified as the most appropriate for growth.
2. Establish appropriate guidelines for development (such as density or similar standards) in areas where necessary to prevent the adverse cumulative impacts of incremental development on the principal values of the jurisdiction.
3. Limit development to low-impact structures in areas where the principal values of the jurisdiction are threatened by more intensive development.
4. Limit conversion of low-intensity uses in remote areas to more intensive uses where such conversion would have an undue adverse impact on the principal values of the jurisdiction.
5. Encourage development that is energy efficient and that incorporates best practical technologies to conserve energy.
6. Limit development types and densities on the basis of soil suitability and other site limitations.

F. AFFORDABLE HOUSING

(See Chapter 4)

Goal: Facilitate the provision of affordable housing in appropriate locations to households with a full range of incomes.

Policies:

1. Ensure that dimensional requirements and land use standards for residential structures and subdivisions do not contain unnecessary barriers to the creation of affordable residential lots and construction of affordable dwelling units.

2. Require that permitted affordable housing is overseen by experienced local or regional housing groups or agencies that can assure it is maintained as affordable housing over the long term.
3. Ensure that permitted housing affordable to households with varied incomes is interspersed within residential projects and development subdistricts, as appropriate.
4. Work with local and regional housing groups, plantation and town officials and regional planning agencies to identify the need and appropriate locations for affordable housing.

G. LAND CONSERVATION

(See Chapter 4)

Goal: Encourage the long-term conservation of select areas of the jurisdiction that are particularly representative of its cultural and natural values, including working forests, high-value natural resources and recreational resources.

Policies:

1. Encourage conservation efforts that protect one or more of the following: working forest or farmland; landscape features of statewide, regional or local significance; public access to lakes, rivers or ocean waters; high-value recreational resources; high-value natural resources; and undeveloped, multiple use lands in high-growth areas.
 - a. In areas distant from population centers and infrastructure, encourage conservation of large, landscape-level areas of the jurisdiction, particularly those that allow continued use of the forest for wood products and recreation. Work cooperatively with landowners and conservation organizations to encourage the designation of large tracts of land with these values for limited or no development.
 - b. In areas proximate to population centers and infrastructure, encourage targeted conservation that protects high-value natural and recreational resources, open space and rural character.

4.3.D SUBDIVISION STANDARDS

The Commission adopted subdivision design and layout standards in 2004. These standards were created based on the need identified in the 1997 Comprehensive Land Use Plan to provide staff and applicants with clear guidance on how development can best meet the Commission's standards. These standards clarify permitting requirements for certain types of development, facilitate residential development in certain areas deemed appropriate for it, and promote good subdivision design and layout. They seek to facilitate the process of designing subdivisions that embody sound planning principles. The subdivision design standards specify that new subdivisions must expand existing neighborhoods or create new community centers, and must avoid linear lot configurations along roads and shorelines.

The Commission also revised its regulations to allow residential subdivisions in the General Management (M-GN) Subdistrict in 42 MCDs, provided the subdivisions meet certain criteria regarding number of lots, total acreage, proximity to roads and compatible development, and natural resource limitations. These subdivisions — referred to in rule as level 2 subdivisions — and those allowed in the P-GP2 subdistrict, are the only subdivisions allowed outside of development subdistricts.

Level 2 subdivisions were created to simplify the permitting process for small-scale subdivisions while guiding new development to appropriate locations in the jurisdiction. The 42 MCDs generally border organized towns, but also share important characteristics that make them particularly suitable for future development, including their connection to an adjacent service center by a major state route or to areas recognized by the Commission as having special planning needs. Level 2 subdivisions are not allowed in areas prospectively zoned by the Commission because these areas are already governed by a plan to guide new development to appropriate locations.

Since level 2 subdivisions are a relatively new planning tool, the Commission expects to monitor their effectiveness and revise the rules as needed to address changing circumstances and trends.

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Section 4.8,C

Guide Development at the Jurisdiction Level

While applying prospective zoning at the local or regional level shows great promise, especially in balancing growth and conservation in high-growth, high-value areas, it has several limitations.

First, the process is time consuming and expensive, and, at 2009 staffing and resource levels, it may take several years to comprehensively inventory and zone a single region. By the time the Commission has applied this approach to a relatively small portion of the jurisdiction, a significant amount of additional growth may have occurred in other areas of the jurisdiction, some of it in inappropriate areas.

Second, the process focuses on individual communities or regions, and does not consider the larger issue of where development is most appropriate in the jurisdiction as a whole. The principal values of the jurisdiction differ significantly from MCD to MCD and from region to region, but no specific guidance exists on where development can occur with the least overall impact on these values. Beyond those areas identified as most appropriate for prospective zoning, there are other communities on the edge of the jurisdiction where development could be accommodated without significant impacts on the jurisdiction's principal values. Yet under the jurisdiction's one-size-fits-all approach, development in these areas is treated in a fashion similar to that in high-value interior areas.

In order for the Commission to effectively plan for future growth and ensure the long-term protection of the jurisdiction's principal values, it will consider improvements to its overall approach in guiding growth on a jurisdiction-wide basis over the next ten years. The Commission will evaluate the suitability of different towns, plantations and townships for future growth based on their locations relative to population and job centers, the availability of roads and infrastructure, the demand for development, and the type and extent of principal values that they possess.

This broadening in focus will recognize that MCDs bordering organized areas are not all alike and are not equally suitable for growth. It will also recognize that areas within a single MCD may have varying suitability for development depending on conditions of access, natural resource sensitivity, economic value for other purposes, recreational values and other factors. Developing an approach that recognizes these differences is fundamental.

The Commission believes that the success of any effort to better guide development at the jurisdiction level will depend on support among diverse interests and strong participation by landowners. The vast areas of the jurisdiction remaining in unified ownerships offer considerable opportunities for promoting a growth pattern that preserves development opportunities and equity while assuring the long-term protection of principal values. Considerable opportunities may also exist for nonregulatory, voluntary approaches that provide landowners with flexibility and incentives to protect the principal values while achieving reasonable economic returns.

The Commission will consider incentives for promoting growth in the areas determined to be most suitable and disincentives for development in areas deemed least suitable. There are many potential strategies for accomplishing this. Some of the options are discussed below, although the list is by no means exhaustive. The Commission may consider the following:

- Undertaking a broader, jurisdiction-wide prospective zoning process for areas suitable and/or unsuitable for growth;
- Exploring tools such as transfer of development rights programs;
- Facilitating development in areas suitable for growth by exploring the expansion of tools such as level 2 subdivisions;
- Exploring ways to minimize new public infrastructure such as roads; and
- Reviewing the type of residential development allowed in different zones or areas of the jurisdiction. As the Commission moves toward a more refined approach to guiding growth, it must refine, modify and integrate the adjacency principle into its new approach.

As part of efforts to guide development to appropriate locations, the Commission will discourage development in areas that are not appropriate for growth. One of the Commission's goals is to maintain the forest resource, particularly those lands that are well-suited to natural resource-based uses, in a way that preserves its important values. These values include large-scale commercial forestry, ecological diversity and recreation in remote settings. The Commission will encourage the protection from intensive development those areas of the jurisdiction that are particularly representative of the jurisdiction's principal values, especially lands valued for their remote and relatively undeveloped condition.

The Commission also recognizes the unique "quality of place" associated with certain areas that have particularly high natural resource values. Some of these areas are experiencing considerable growth pressure because of their attractiveness. The Commission will encourage conservation in some of these areas to protect their unique qualities. The purpose of conservation will be to protect the character and natural values of these areas in the face of increasing development pressure, without unduly limiting development opportunities where appropriate. The Commission will encourage private and public conservation, and will explore regulatory measures to promote protection of open space.