

## **250. SUBDIVISION OF LAND**

### **§250-1: Purpose.**

The purpose of these subdivision standards shall be to assure the comfort, convenience, safety, health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. Depending on the style of subdivision selected (i.e., Conservation, Clustered or Traditional), the purposes are to:

1. Promote clustering of houses and structures on less environmentally-sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for development.
2. Promote interconnected greenways and corridors throughout the community.
3. Provide a subdivision option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
4. Preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
5. Preserve scenic views both from within and outside the subdivision.
6. Preserve important historic and archaeological sites.
7. Preserve greenspace through the use of nonstructural storm water runoff and water protection measures.
8. Encourage interaction in the community by clustering and orienting houses closer to the street, providing public gathering places and encouraging the use of parks and community facilities as focal points in the neighborhood.
9. Encourage street designs that reduce traffic speeds and promote interconnectivity.
10. Promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
11. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in development.
12. Promote contiguous greenspace with adjacent municipalities.
13. Protect rural character and activities such as farming and forestry.
14. Protect water quality and aquifers.

## **250-2: Authority, title and applicability.**

### **A. Authority and title.**

(1) This chapter has been prepared in accordance with the provision of 30A M.R.S.A. § 4401 et seq.

(2) These standards shall be know and may be cited as the “Town of Cumberland Subdivision Ordinance.”

### **B. Administration and applicability.**

(1) The Planning Board of the Town of Cumberland, hereinafter called the “Board” shall administer this chapter.

(2) The provisions of this chapter shall pertain to all the land proposed for subdivision as herein defined within the boundaries of the Town of Cumberland.

## **250-2.5: Approval Criteria.**

The Planning Board shall consider the following criteria and before granting approval shall determine that:

- A.     Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
- (1)     The elevation of the land above sea level and its relation to the floodplains;
  - (2)     The nature of soils and subsoils and their ability to adequately support waste disposal;
  - (3)     The slope of the land and its effect on effluents;
  - (4)     The availability of streams for disposal of effluents; and
  - (5)     The applicable state and local health and water resource rules and regulations;
- B.     Sufficient water.** The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;
- C.     Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

- D. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- E. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed;
- F. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;
- G. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;
- H. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. Conformity with local ordinances and plans.** The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
- J. Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section;
- K. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore. The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be

based on a finding that existing development met the definition requirements of 30-A M.R.S.A. § 4401, Subsection 1, on September 23, 1983;

- L. Groundwater.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- M. Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the one-hundred-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation;
- N. Stormwater.** The proposed subdivision will provide for adequate stormwater management;
- O. Freshwater wetlands.** All potential freshwater wetlands, as defined in 30-A M.R.S.A. § 4401, Subsection 2-A, within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district; and
- P. River, stream or brook.** Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, Subsection 9.
- Q. Conservation subdivisions shall meet the following additional standards:**

  - (1) Applicability of regulations.** The conservation subdivision option replaces the cluster subdivision option in the Rural Residential 1 and Rural Residential 2 zoning districts. The applicant must comply with all other provisions of the zoning ordinance and all other applicable laws, except those that are incompatible with the provisions contained herein.
  - (2) Ownership of subdivision.** The land to be subdivided may be held in single and separate ownership or in multiple ownerships. If held in multiple ownerships, the site must be subdivided according to a single plan with common authority and common responsibility.
  - (3) Housing density determination.** The maximum number of lots in a conservation subdivision must be determined using the net residential acreage calculation. The

density within the conservation subdivision will be based on the zoning district lot size requirements.

**(4) Net residential acreage** must be determined by subtracting from gross acreage the following:

- (a) Roads and parking as shown on the proposed plan;
- (b) Slopes in excess of 20% sustained for 30,000 square feet or more;
- (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, as amended;
- (d) Land in the 100-year flood zone shown on FEMA Flood Insurance Rate Maps, as revised;
- (e) Lands in rights-of-way or easements, but not including land in open space easements; and
- (f) Lands in resource protection districts.

**(5) Development Standards.**

The following standards apply to development in conservation subdivisions in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located.

The following minimum lot standards are required in a conservation subdivision except that sheds and driveways are permitted to a minimum setback of 15 feet from the side and rear lot lines.

Minimum lot size	25,000 sq. ft.
Minimum front yard setback	50 ft.
Minimum side yard setback	20 ft. each side
Minimum rear yard setback	30 ft.
Minimum lot width	100 ft.
Minimum access easement to open space	10 ft.
Minimum open space area required	50% of the gross land area

**(6) Standards to determine open space.**

**(a) Minimum Open Space Requirement.**

The minimum restricted open space must comprise at least 50% of the gross subdivision area.

**(b) Primary Conservation Areas.**

The following are considered primary conservation areas and must be included within the open space, unless the applicant demonstrates to the satisfaction of the Planning Board that due to the unique circumstances of the parcel, a waiver may be granted.

- (i) The regulatory 100-year floodplain as shown on FEMA Flood Insurance Rate Maps, as revised;
- (ii) Buffer areas of at least 75 feet in width along all perennial and intermittent streams, as defined and regulated by Maine Department of Environmental Protection;
- (iii) Slopes above 25% of at least 5,000 square feet contiguous area;
- (iv) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, as amended;
- (v) Archaeological sites, cemeteries and burial grounds; and
- (vi) A buffer area of at least 75' in width between the subdivision and abutting tracts or parcels of land and between the subdivision and existing streets and roads adjoining or abutting the subdivision. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). The buffer shall consist of trees, open fields, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in the buffer areas.
- (vii). Existing trails that connect to neighboring areas.

**(c) Secondary Conservation Areas.**

The following are considered secondary conservation areas and may be included within the open space:

- (i) Habitats of endangered or threatened species;
- (ii) Significant wildlife habitats per the Maine Department of Inland Fisheries and Wildlife regulations as amended;
- (iii) Important historic sites as defined by the Maine Historic Preservation Commission;
- (iv) Existing healthy, native forests of at least one acre contiguous area;
- (v) Individual healthy trees with a caliper greater than eight inches as measured at 4.5 feet from the ground;
- (vi) Other significant natural features and scenic views such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
- (vii) Prime agricultural lands of at least five contiguous acres;
- (viii) Locations with scenic views.

**(d) Additional Considerations.**

- (i) Utility rights of way and areas of impervious surface may be included within the protected open space but cannot be counted towards the 50% minimum area requirement (exception: historic structures and existing trails may be counted).
- (ii) At least 75% of the open space must be contiguous, where possible, to another open space area. The open space should adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.
- (iii) All lots must be provided with safe, convenient access to the open space.

**(7) Permitted uses of open space.**

Uses of open space may include:

- (a) Passive recreation; such as hiking, walking, running, biking, snowshoeing, cross country skiing and bird watching and other low impact recreational activities that do not significantly alter the natural open space.
- (b) Operations of snowmobiles or ATVs on existing snowmobile or ATV trails.
- (c) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices as defined by the Manual of Best Management Practices for Maine Agriculture, dated January, 2007, as amended, are used to minimize environmental impacts;
- (d) Nonstructural stormwater management, such as rain gardens;
- (e) Easements for drainage, access, and underground utility lines; and
- (f) Other conservation-oriented uses, such as a community garden, compatible with the purposes of this ordinance as determined by the Planning Board in consultation with the Lands and Conservation Commission.

**(8) Prohibited uses in the open space.**

The following are prohibited in the open space:

- (a) Roads, parking lots and impervious surfaces, except as specifically authorized in this ordinance; and
- (b) Subsurface wastewater disposal systems and wells.
- (c) Dumping or disposal of any type of yard waste or other debris, organic or inorganic.

Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection, i.e., deed restrictions.

**(9) Ownership and legal protection for open space.**

The open space must be owned jointly by the owners of the residential lots within the subdivision. In the alternative, the open space lands may be permanently conveyed to a natural resources preservation organization or to a conservation land trust, with Planning Board approval. As a further alternative, open space lands preserved for agricultural activity may be leased for agricultural purposes or uses leased for agricultural purposes or used provided that all the agricultural



open space within the subdivision is leased to the same entity or individual. A deed restriction prohibiting further use and development of the open space parcel(s) beyond the specified agricultural use(s) and buildings shall be required. Allowance for modification of the uses within that deed restriction shall require a subdivision revision and Planning Board approval.

### **250-3 Definitions.**

In general, words and terms used in these standards shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follows:

**APPLICANT:** A property owner or any person or entity acting as an agent for the property owner in an application for a development proposal, permit, or approval.

**APPLICATION:** The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the Planning Board.

**AQUIFER:** A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

**BUFFER:** An area of a subdivision that shall remain free from the development of road and/or structures and which may or may not have visual screening, such as trees or fencing, within it.

**CLUSTERED SUBDIVISION:** A type of development where building lots are smaller, with lot frontages that are shorter than those in a traditional subdivision, and are grouped on certain portions of the site that are best suited for development and other areas remain open and free from development. The homes may or may not be connected to the public sewer system.

**COMMON OPEN SPACE:** Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation or accommodate support facilities related to the subdivision and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements.

**CONSERVATION SUBDIVISION:** A subdivision designed to preserve sensitive and/or valuable natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant views.

**CONSTRUCTION DRAWINGS:** Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts and underground telephone ducts, pavements, cross section of streets, miscellaneous structures, etc.

**DENSITY:** The number of dwellings or principal buildings or uses permitted per unit of land.

**EASEMENT**

The written authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

**ENGINEER**

The Municipal Engineer or consulting engineer licensed by the State of Maine.

**FINAL PLAN**

The final drawings on which the subdivider's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be filed for record with the Municipal Clerk and County Registry of Deeds.

**LEGISLATIVE BODY**

Cumberland Town Council.

**MUNICIPALITY**

Town of Cumberland.

**NET RESIDENTIAL ACREAGE**

Net residential acreage shall be determined by subtracting from gross acreage available the following:

- (a) Roads and parking as shown on the proposed plan.
- (b) Slopes in excess of 20% sustained for 30,000 square feet or more.
- (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, and as amended from time to time.
- (d) Land in the 100 year flood zone shown on FEMA Flood Insurance Rate Maps, as revised;
- (e) Land in rights-of-way or easements, but not including land in open space easements under Chapter **315**, Zoning, § **315-43**.
- (f) Lands in resource protection districts.

**OFFICIAL SUBMITTAL DATE:** The time of submission of a preapplication plan, preliminary plan, or final plan shall be considered the submission date of the application for such plan approval to the Board, complete and accompanied by any required fee and all data required by these standards.

**OFFICIAL ZONING MAP:** The most current Zoning Map adopted by the Town Council, as amended from time to time.

**PERSON:** Includes a firm, association, organization, partnership, trust, company or corporation, individual, or other legal entity.

**PRIME AGRICULTURAL LAND:** Land used for purposed of agriculture that contains prime agricultural soils of the first, second or third class.

**PLANNING BOARD:** Cumberland Planning Board

**PRELIMINARY PLAN:** The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

**RECREATION, ACTIVE:** Those recreational pursuits which require physical alteration to the area in which they are performed, examples include playgrounds, ball courts and swimming pools.

**RECREATION, PASSIVE:** Recreation that involves existing natural resources and has a minimal impact. Passive recreation includes but is not limited to hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, and bird-watching.

#### **REQUIRED IMPROVEMENTS**

The following are required improvements: monuments, street signs, streetlights, streets, sidewalks, water supply, sewage disposal and storm drainage, lighting and signing and pavement markings for traffic control, walking and biking trails, erosion control, or other improvements required by the Board, except where the Board may waive or modify such improvements in accordance with the provisions of these standards.

**REVISION TO AN APPROVED SUBDIVISION:** Any change to an approved subdivision that modifies a subdivision lot, restrictions, easements or open space.

**SKETCH PLAN:** A non-engineered plan based on topography, wetlands, steep slopes, water bodies, and appropriate septic locations, if applicable, and as further defined in § 250-7A of this chapter.

**STREET:** Public and private rights-of-ways such as alleys, avenues, boulevards, roads, and highways.

**STRUCTURE:** Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

**SUBDIVISION:** A subdivision shall be as defined by 30-A M.R.S.A. § 4401, as amended from time to time. Lots of 40 or more acres shall not count as lots for purposes of this chapter when the parcel of land being divided is located entirely outside any shoreland area as defined in 38 M.R.S.A. § 435, as amended from time to time.

**SUBDIVISION, MAJOR:** Any subdivision containing more than four lots or requiring new streets or private ways, or extensions of existing streets or private ways, or construction and/or extension of public utilities or any subdivision proposing that any of its lots not meet the minimum area or lot requirements of the zones in which they are located.

**SUBDIVISION, MINOR:** A subdivision containing not more than four lots and not otherwise requiring classification as a major subdivision, as defined in this section.

**TRADITIONAL SUBDIVISION:** A type of development where building lots are at least the minimum lot size for the district in which they are located. A small portion of the lot may remain open and free from development.

**WALKWAY:** A traffic way alongside or adjacent to one side of the paved portions of roads to be used by persons including, but not limited to, pedestrians, bicyclists, and handicapped persons operating motorized wheelchairs and which otherwise specifically excludes motorized vehicles, except as otherwise provided in this chapter or state law. Walkways include sidewalks, freewalks and paved shoulders.