

07-105 **STATE PLANNING OFFICE** (*obsolete; the rule chapter has been reassigned to 01 - Department of Agriculture, Conservation and Forestry*)

Chapter 203: SUBDIVISION ORDINANCE REVIEW CRITERIA RULE

SUMMARY: This Chapter establishes the criteria the State Planning Office uses to review municipal subdivision ordinances for consistency with the goals and guidelines of the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. §4312 *et seq.*). The office uses this rule to review the subdivision ordinance component of local growth management programs for which certification has been requested under §4348.

SECTION 1. PURPOSE

The primary purpose of this rule is to establish the criteria the State Planning Office (hereinafter "the office") uses to review municipal subdivision ordinances under the Comprehensive Planning and Land Use Regulation Act (30-A M.R.S.A. §4312 *et seq.*). The objective of the review is to judge whether a municipality's subdivision ordinance is consistent with the Act. If a municipality requests certification of its local growth management program under §4348 of the Act, the Office also uses this rule to review the subdivision ordinance component of that program.

SECTION 2. DEFINITIONS

The following definitions shall apply when interpreting the provisions in this chapter:

- A. **Act:** "Act" means the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. §4312 *et seq.*).

- B. **Comprehensive plan:** "Comprehensive plan" means a document or interrelated documents developed by a municipality in accord with the procedural provisions of §4324 of the Act and with the intent of complying with the substantive requirement of §4326, sub-§§ 1 to 4 of the Act. As used in this rule, a "comprehensive plan" or "plan" shall mean the municipal comprehensive plan which has been reviewed and commented on by the Office in accordance with the Act, and which is designated by the submitting municipality as the comprehensive plan upon which its subdivision ordinance and growth management program is based.

- C. **Subdivision Ordinance:** "Subdivision ordinance" means a land use ordinance of general applicability in a municipality which establishes the requirements for regulating subdivisions as defined in 30-A M.R.S.A. §4401(4) and is enacted in accordance with and is consistent with the provisions of 30-A M.R.S.A. §§ 4401-4407. Within the context of this rule, a subdivision regulation adopted by a municipality has the same meaning as a subdivision ordinance.

- D. **Unique natural areas:** "Unique natural areas" means, but is not limited to, any one of the following:

1. areas registered as a Critical Area pursuant to 5 M.R.S.A. §§ 13076-13078;
 2. areas designated as a National Natural Landmark pursuant to the National Park Service's National Natural Landmark Program;
 3. occurrences of endangered, threatened, or rare plants, animals, and natural communities identified by the Maine Natural Areas Program or the Department of Inland Fisheries and Wildlife; and
 4. "fragile mountain areas", as defined in the Natural Resources Protection Act (38 M.R.S.A. §480-B(3)).
- E. **Historic sites:** "Historic sites" means any site, structure, district or archaeological site included on or deemed eligible by the Maine Historic Preservation Commission for listing on the National Register of Historic Places; has been designated by municipal ordinance, or which is established by qualified testimony. (30-A M.R.S.A. §4404 (8))
- F. **Floodplain:** "Floodplain" means land having a one percent or greater chance of flooding in any given year, as specifically identified by the Federal Emergency Management Agency in its most-current "Flood Hazard Boundary Map" or "Flood Insurance Rate Map."
- G. **Transportation Demand Management:** Transportation Demand Management (TDM) is a transportation planning process aimed at relieving traffic congestion. TDM actions can be classified into three categories:
1. actions that promote alternatives to the automobile;
 - 2) actions that encourage more effective use of alternative transportation systems; and
 - 3) actions that discourage automobile use.

SECTION 3. CONSISTENCY WITH THE ACT

In order to be consistent with the Act, a subdivision ordinance must be determined to be:

- A. Consistent with the goals and guidelines of the Act (§4312(3) and §4326(3)); and
- B. Consistent with other state laws which may impose limitations on local land use authority. Such laws include, but are not limited to, the following:
 1. Subdivision Law (30-A M.R.S.A. §§ 4401-4407)
 2. Site Location of Development Act (38 M.R.S.A. §§ 481-490)
 3. Mandatory Shoreland Zoning Act (30-A M.R.S.A. §§ 435-449)
 4. Manufactured Housing Act (30-A M.R.S.A. §4358)
 5. Forest Practices Act (12 M.R.S.A. §§ 8867-8869)

SECTION 4. REQUIRED ELEMENTS OF THE SUBDIVISION ORDINANCE

(NOTE: The Office strongly advises municipalities to consult the Model Subdivision Regulations (March 1991 and as amended) prepared by the Southern Maine Regional Planning Commission as a guide in preparing local ordinances or regulations. Copies are available from the Department of Economic and Community Development and Regional Councils.]

- A. **Standard:** The subdivision ordinance must be internally consistent, sufficiently complete and contain provisions sufficient to allow the office to determine whether the ordinance will effectively promote the purposes and goals of 30-A M.R.S.A. §§4401-4407, the Act, and the municipality's comprehensive plan found by the Office to be consistent with the Act.
- B. **Elements Required:** In order to be consistent with the comprehensive plan, the subdivision ordinance must contain those provisions which, as specified in the plan, were to be included in the subdivision ordinance. The following elements must be contained within a municipal subdivision ordinance in order to be judged consistent with the Act:
1. Statement of purpose and authority
 2. Definition of terms unique to the subdivision ordinance
 3. Submittal and review requirements for preliminary and final subdivision plans
 4. Inspection and enforcement procedures
 5. Requirements for performance guarantees
 6. Performance standards for the following (appropriate review criteria in the Subdivision Law are referenced):
 1. Financial and technical capacity Standards ensuring that subdividers have adequate financial and technical capacity to meet all ordinance standards.
 2. Groundwater Protection & Drinking water supply Standards specifying that the development will not degrade the existing groundwater quality below levels outlined in the State of Maine Rules relating to drinking water, 10-144A CMA 231. If the existing groundwater quality is inferior to the standards provided in the Drinking Water Rules, the development will not further degrade the water quality. Adequate provision must be made to secure and maintain a healthful water supply without unreasonable adverse impact on the quantity or quality of groundwater or existing or potential drinking water supplies. (30-A M.R.S.A. §4404(2))
 3. Soil types and erosion and-sedimentation control Standards for employing best management practices as specified in the publication, Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices (March 1991), incorporated by reference,

unless alternate measures are approved by the municipality that meet the following standards.

Sediment must be removed from runoff before it leaves the development site. Suitable erosion control measures must be in place prior to any disturbance of soil. Any temporary or permanent structure designed to convey water must limit water flow to a non-erosive velocity. Exposed areas of disturbed land will be limited to the shortest time period possible. (30-A M.R.S.A. §4404(4))

4. Standards ensuring that subdivisions will be built on soil types which are suited to the proposed use of the subdivision.
5. Transportation and Traffic control Standards specifying that traffic patterns in the subdivision are safe and ensure adequate turning and maneuvering space and smooth traffic flow. Municipal standards for road design must be enacted. Standards should provide safe and convenient access by bicyclists and pedestrians. For subdivisions on existing or planned transit routes, the local ordinance should include standards for safe and convenient access by bicyclists and pedestrians to transit stops.

For subdivisions proposed in rural areas, standards to ensure that roads and intersections in the vicinity of the subdivision will handle, safely and conveniently, the traffic attributable to the proposed development, giving preference to Transportation Demand Management measures if congestion problems are anticipated. (30-A M.R.S.A. §4404(5))

6. Sewage disposal Standards specifying that if sewage is to be disposed of at a treatment facility, adequate capacity must be insured. Standards should also ensure that subdivisions will not cause an unreasonable burden on municipal services if they are utilized. If sewage is to be disposed on site, by a subsurface system, all provisions of the State Plumbing Code must be met and a permit obtained. (30-A M.R.S.A. §4404(6))
7. Solid waste Standards that require on-site disposal of demolition, construction and clearing debris meet applicable Maine Solid Waste Management Regulations, 06-096 CMR 400-409. Standards should ensure that solid waste will be disposed at a licensed facility. Standards should also ensure that subdivisions will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used. (30-A M.R.S.A. §4404(7))
8. Historic sites Standards that require that new subdivisions not adversely affect the preservation of historic sites. (30-A M.R.S.A. §4404(8))
9. Significant wildlife habitat, unique natural areas, streams, wetlands and surface waters. Standards that require significant wildlife habitat, unique natural areas, streams, wetlands and surface waters to be mapped.

Standards that ensure that the physical, biological, and chemical properties of coastal, forested and freshwater wetlands, great ponds, rivers, streams and brooks as defined in 38 M.R.S.A. §480-B will not be unreasonably degraded by the subdivision.

Standards, including per-acre phosphorous allocations, that ensure that the water quality of great ponds will be protected from long-term cumulative increases in phosphorous from subdivision development in great pond watersheds. Standards may allow phosphorous allocations in a community's growth area to be greater than allocations for the rural area.

Standards should ensure that significant wildlife habitat, unique natural areas, streams, wetlands and surface waters or other specified areas within or adjacent to proposed subdivisions are protected by natural buffer strips from sedimentation, siltation, non-point source and thermal pollutants, and stormwater runoff. Buffer strips must be of size and quality to protect aquatic and wildlife habitat. Standards must ensure that a subdivision will not adversely affect a unique natural area.

Standards must be established which require subdivision design to protect wildlife and fisheries by maintaining suitable and sufficient habitat. Proposed development and activities may not adversely affect wildlife and fisheries lifecycles. (30-A M.R.S.A. §4404 (8), (14), (15))

10. Outstanding River Segments Standards specified in 30-A M.R.S.A. §4404(11) must be met.
11. Floodplain management Standards that are consistent with or exceed the municipality's local flood hazard ordinance or current National Flood Insurance Program (NFIP) requirements, whichever is more restrictive, or standards prohibiting new subdivisions in floodplains. (30-A M.R.S.A. §4404(13))
12. Stormwater management Standards requiring that the slope of the land be mapped. Standards must require the stormwater management system to infiltrate, detain, or retain water of an intensity of a 25 year storm such that the rate of flow does not exceed the rate of outflow prior to development, or increase the peak discharge of receiving waters.

The physical, biological and chemical properties of the receiving waters may not be unreasonably degraded by stormwater runoff. The system must be designed to pass upstream flows generated by the design storm through the proposed development without overloading the system or flooding areas not specifically planned for such flooding. The development may not cause unreasonable alteration of existing drainage ways.

Provisions for the maintenance of the stormwater management system must be required. The stormwater management system must be designed by a Maine registered professional engineer or qualified person. Stormwater standards must provide for the use of Best Management Practices to protect water quality.

Stormwater standards should comply with and be no less restrictive than current local and federal National Flood Insurance Program (NFIP) flood hazard requirements. (30-A M.R.S.A. §4404(16))

13. Reservation or dedication and maintenance of open space, common land, facilities and services Standards that outline procedures to establish a system for the reservation, dedication, and maintenance of common space, facilities and services. For example, a homeowners' association. (As required by a consistent comprehensive plan and 30-A M.R.S.A. §4404(9)). Different standards may apply in growth and rural areas where appropriate.
14. The Protection and Preservation of scenic vistas Standards that outline procedures for the protection and preservation of scenic vistas must be contained. (30-A M.R.S.A. §4404(8)). Different standards may apply in growth and rural areas where appropriate.
15. The promotion and protection of the availability of outdoor recreation opportunities, including access to surface waters. Standards that promote and protect this access must be contained. Different standards may apply in growth and rural areas where appropriate. (As required by a consistent comprehensive plan and 30-A M.R.S.A. §4404(9))
16. Spaghetti-lots prohibited Standards ensuring that none of the lots created within subdivisions have a lot depth ratio to the shore frontage of a river, stream, brook, great pond or wetland greater than 5 to 1.

SECTION 5. SCOPE OF REVIEW

The scope of the Office's review, and of this rule, is limited to those aspects of the subdivision ordinance which are relevant to the goals and guidelines of the Act. It is not the purpose of the Office's review to provide a comprehensive determination of legal sufficiency. Outside of the purview of the office's review for consistency are a variety of provisions (penalty provisions, statement of statutory authority, severability clause, etc.) which may be necessary in order for the subdivision to be legally valid, but which are not directly related to the goals and guidelines of the Act and are less likely to have a direct bearing on the issue of effectiveness in implementing the policies and strategies in the plan. The municipality remains responsible for these matters of form and legal sufficiency and for the overall integrity and enforceability of the zoning ordinance.

Notwithstanding the Office's limited scope of review, extensive omissions and weaknesses which would affect the enforceability of the ordinance, and hence its effectiveness in implementing the plan, may provide a basis for a finding of inconsistency with the Act. In addition, the office in its findings may comment on any apparent omission, weakness or questionable provision, and may suggest that the municipality reconsider such provisions, or seek the advice of legal counsel.

EFFECTIVE DATE:

August 10, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 22, 1996

NON-SUBSTANTIVE CORRECTIONS:

December 2, 2010 – format, agency names, statutory citations