

12. Land Divisions

12. LAND DIVISIONS

In response to our discussion with LUPC Staff on the topic of land division, the Concept Plan has been revised to eliminate the traditional 2-in-5 exemption to subdivision reviews, thereby eliminating the threat of unplanned development throughout the life of the Plan. The Plan has also been revised to make certain divisions more efficient by providing that the sale of all or part of development areas, the sale or expansion of camp lots, and the development of specified remote rental cabins, remote campsites, and publicly accessible water access sites shall not require subdivision approval. In addition, the Plan has been revised to require certain declaration elements to be recorded in the deeds for Plan parcels that advise the public of the application of the Concept Plan.

- **Text Changes in the Concept Plan**

- **On page 22, add a new paragraph after what is currently E,4,e:**

- f. **Lot Creation:** The Concept Plan substantially revises the lot creation rules to eliminate the potential for haphazard, unplanned development through use of the traditional exception allowing the creation of two lots every five years without subdivision approval. The new rules eliminate the two-in-five exemption, as well as some of the other traditional exemptions, by redefining a subdivision for purposes of the Concept Plan as the division of an existing parcel into two or more lots, whether by platting, sale, or lease. See Sub-Chapter I, Section 10.02,202; Sub-Chapter III, Section 10.25,Q,1; and Sub-Chapter IV, Section 10.33.

- **Insert a new Appendix at 3,D:**

MINIMUM MANDATORY DECLARATION ELEMENTS

A. Mandatory Declaration Language

1. The mandatory declaration shall provide at a minimum:

- a. The following statement: “All or a portion of this land is subject to the Fish River Chain of Lakes Resource Protection Plan (P-RP) Subdistrict pursuant to Maine Land Use Planning Commission (“LUPC”) Zoning Petition ZP 768 dated _____, as may be amended from time to time, recorded in the Aroostook County Registry of Deeds in Book _____, Page _____. A copy of ZP-768 is also available at the LUPC offices in Ashland and Augusta. The Concept Plan is scheduled to expire on _____, unless otherwise amended, extended, or renewed.”; and
- b. A description of the deeded road access rights to the lot or parcel, as approved in advance by the Commission.

2. Mandatory Declaration Elements

The mandatory declaration language set forth in this appendix applies to lands within development areas. Nothing herein shall be construed as limiting the Commission’s authority to require the same or similar declarations to be recorded in connection

with permit approvals for other forms of development consistent with the Concept Plan and applicable law.

Prior to or concurrent with the sale or other transfer of interest of any portion of any development area, owner shall record all Mandatory Declaration Elements against such property.

Mandatory Declaration Elements may not be modified or omitted from Declarations, except as follows:

- a. Changes made to the Mandatory Declaration Elements to correct scrivener's errors, adjust numbering, supplement with subdivision- or development-specific references, or re-order terms shall be permitted without approval of the Commission.
- b. Terms may be added to Declarations so long as they are not inconsistent with the Mandatory Declaration Elements and the terms of the Concept Plan. Other than those transfers of interest that are exempt from Commission subdivision review pursuant to Section II, Sub-Chapter III, 10.25,Q,1 and Section 10.33 of the Concept Plan, any such additional terms must be submitted to the Commission for review and approval as part of a subdivision permit application in order for the Commission to determine their consistency with the Mandatory Declaration Elements, the terms of the Concept Plan and any other terms and conditions of permits issued by the Commission.

- ***Text Changes to Chapter 10***

- **Revise 10.02,202 as follows:**

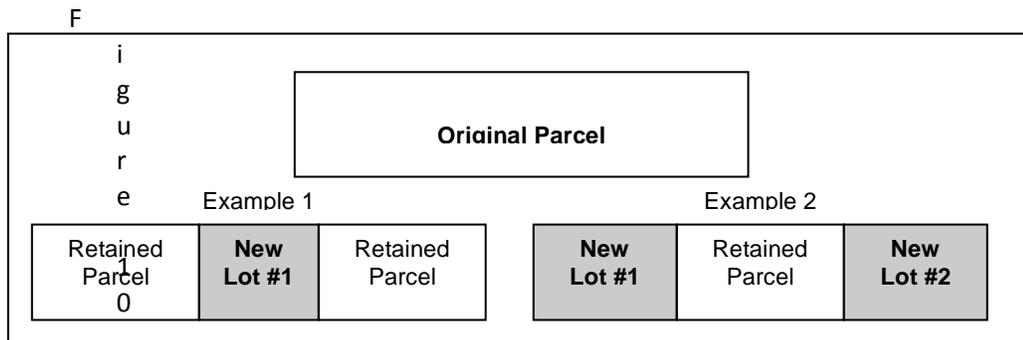
- **Subdivision:**

For purposes of this Concept Plan, additional limitations on the subdivision of land within the Concept Plan Area apply beyond those set forth in 12 M.R.S.A. §682(2-A) and §682-B. Specifically, for the term of this Concept Plan, except as provided in Section II, Sub-Chapter III, 10.25,Q,1 of this Concept Plan, "subdivision" means a division of an existing parcel of land into 2 or more parcels or lots, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing; "subdivision" also means the division, placement or construction of a structure or structures on any tract or parcel of land resulting in 1 or more dwelling units. ~~Except as provided in 12 M.R.S.A. §682-B, "subdivision" means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. The term "subdivision" also includes the division, placement or construction of a structure or structures on a tract or parcel of land resulting in 3 or more dwelling units within a 5-year period. 12 M.R.S.A. §682(2-A).~~ Refer to Section 10.25,Q, "Subdivision and Lot Creation" and Section 10.33 for additional criteria on types and numbers of lots that are included or are exempt from this definition.

Level 1 subdivision: Any subdivision that does not meet the criteria of a level 2 subdivision is considered a level 1 subdivision.

Level 2 subdivision: Any subdivision that meets the criteria of Section 10.25,Q,2 is considered a level 2 subdivision.

- **Amend 10.21,C,3,c, 21 as follows:**
Subdivisions: Residential subdivisions, and commercial and industrial subdivisions for uses permitted within this subdistrict, and in accordance with Section 10.33;
- **Amend 10.21,C,d,9 as follows:**
In the CD-2 Development Area, Multi-Family Dwellings for Affordable Housing, and in accordance with Section 10.33;
- **Amend 10.21,K,3,c,18 as follows:**
Subdivisions: Residential subdivisions for uses permitted in this subdistrict, and in accordance with Section 10.33;
- **Amend Section 10.25,Q,1 as follows:**
This section governs the division of lots and the creation of subdivisions.
 1. **Counting Parcels, Lots, or Dwelling Units Under the Definition of Subdivision.**
 - a. **Lots Created by Dividing a Parcel.** When a parcel is divided, the land retained by the person dividing land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Section 10.25,Q,1,g below. This figure illustrates two examples:



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

- b. **Subdivision Created by the Placement of Dwelling Units.** The placement of three or more dwelling units on a single lot within a five-year period creates a subdivision. The division of one lot into two parcels coupled with the placement of one or two dwelling units on either or both lots does not create a subdivision.
- ~~c. **Parcels Originally Part of a Subdivision.** A lot or parcel which, when sold, leased or developed, was not part of a subdivision but subsequently became part of a subdivision by reason of another division by another landowner is counted as a lot under the subdivision definition. The Commission, however, will not require a subdivision permit be obtained for such lot, unless the intent of such transfer or development is to avoid the objectives of 12 M.R.S.A. §206-A.~~
- d. **Remote Rental Cabins.** See Section 10.33. In order to foster primitive recreational opportunities on large tracts of land, up to eight remote rental cabins within a single contiguous ownership larger than 5,000 acres within a township shall be

~~allowed without subdivision review. Placement of more than eight remote rental cabins within such an ownership requires subdivision review by the Commission.~~

- e. Renewal of Leases.** For the purpose of counting lots under the Commission’s definition of subdivision, the renewal of a lease or license within a Commission approved subdivision shall not be counted as the creation of a lot. For the renewal of leases or licenses in other than Commission approved subdivisions, a lease, as is enumerated in Section XXXX, that is renewed within two (2) years of its expiration shall not be counted as the creation of a lot. Renewal of leases or licenses in other circumstances shall be counted as the creation of a lot.
- f. Existing parcels.** For the purposes of the definition of subdivision in 12 M.R.S.A. §682(2) and in these rules, an “existing parcel” shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership.
- g. Exempt lots.** The following divisions are exempt when counting lots for purposes of subdivision, unless the intent of such transfer is to avoid the objectives of 12 M.R.S.A. Chapter 206-A:
- (1) Transfer of Lots for Forest Management, Agricultural Management or Conservation of Natural Resources. ~~See Section 10.33,B,1,f. A lot or parcel is not considered a subdivision lot if the following conditions are met:~~
 - (a) ~~The lot is transferred and managed solely for forest management, agricultural management or conservation of natural resources;~~
 - (b) ~~The lot is at least 40 acres in size;~~
 - (c) ~~If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S.A. §436-A;~~
 - (d) ~~The original parcel from which the lot was divided is divided into an aggregate of no more than 10 lots within any 5-year period; and~~
 - (e) ~~When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S.A. §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S.A. §682-B(4).~~
 - (2) Retained Lots. A lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:
 - (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
 - (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Only one retained lot exempt under this Section 10.25,Q,1,g,(2) may be created from any one existing parcel.

- (3) Transfers to an Abutter and Contiguous Lots. A lot transferred to an abutting owner of land is not counted as a lot for the purposes of subdivision provided the transferred property and the abutter's contiguous property is maintained as a single merged parcel of land for a period of 5 years. Where a lot is transferred to an abutter, or two or more contiguous lots are held by one person, the contiguous lots are considered merged for regulatory purposes except for:
- (a) lots that are part of a subdivision approved by the Commission;
 - (b) a land division certified by the Commission as qualifying under 12 M.R.S.A. §682-B; or
 - (c) as provided in Section 10.11.

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

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

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

- (5) Conservation Lots. ~~See Section 10.33,B,1,g. A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:~~
- ~~(a) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation; and~~
 - ~~(b) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity. 12 M.R.S.A. §682-B(3)~~
- (6) Transfer to Governmental Entity. ~~See Section 10.33,B,1,h. A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State, or an agency of the Federal government is not considered a subdivision lot if the following conditions are met:~~
- ~~(a) The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer; and~~
 - ~~(b) At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection. 12 M.R.S.A. §682-B(2)~~

- (7) Large Lots Managed for Forest or Agricultural Management Activities or Conservation. ~~See Section 10.33,B,1,i. A lot transferred or retained following transfer containing at least 5,000 acres is not counted as a lot for the purposes of this subsection, provided the lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years. Nothing in this paragraph, however, shall be construed to prohibit public outdoor recreation on the lot.~~
- (8) Unauthorized Subdivision Lots in Existence For at Least 20 Years. A lot or parcel that when sold or leased created a subdivision requiring a permit under this chapter is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years. A lot or parcel is considered a subdivision lot and is not exempt under this subsection if:
- (a) Approval of the subdivision under 12 M.R.S.A §685-B was denied by the Commission and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (b) A building permit for the lot or parcel was denied by the Commission under 12 M.R.S.A. §685-B and record of the Commission’s decision was recorded in the appropriate registry of deeds;
 - (c) The Commission has filed a notice of violation of 12 M.R.S.A. §685-B with respect to the subdivision in the appropriate registry of deeds; or
 - (d) The lot or parcel has been the subject of an enforcement action or order and record of that action or order was recorded in the appropriate registry of deeds. 12 M.R.S.A §682-B(5).

- **Add a new Section 10.33:**
10.33 LOT CREATIONS AND TRANSFERS

In addition to the provisions contained in Section 10.25,Q,1 the following provisions apply to all land within the Concept Plan area:

A. Recorded Transactions

All land divisions, subdivisions, and transfers that are recorded shall include the following as part of the recorded transaction, as further described in Appendix 3(D):

1. Clear enumeration of the specific development rights where limited to a specific number, responsibilities, and allocations as provided by the Plan, as applicable including but not limited to: the number of lots, units, and water access sites; phosphorus allocations; and dedicated road access; and
2. Reference to, and required compliance with, the terms and restriction of the Concept Plan.

B. Limitations on Lot Creation

1. Lot Divisions

Upon notice in accordance with Section 10.33,D, the following land divisions are allowed without subdivision approval:

- (a) Land covered by the Fish River Chain of Lakes Conservation Easement
The transfer of any parcel of land covered by the Fish River Chain of Lakes Conservation Easement (“Easement”) shall be governed by the terms and conditions of the Easement. Any divisions of the land covered by the Easement

that occur subsequent to the effective date of this Concept Plan and are accomplished pursuant to the terms and conditions of that easement shall be exempt from Commission subdivision review.

(b) Development Areas

The transfer of any of the 15 development areas, individually or collectively, in part or in whole;

(c) Existing Camp Lots

The existing camp lots may be expanded and sold in accordance with this Plan. The maximum number of lots shall be distributed as follows.

<u>Lake</u>	<u>Maximum Number of Lots</u>
<u>Cross Lake</u>	<u>237</u>
<u>Long Lake</u>	<u>150</u>
<u>Mud Lake / Cross Lake Thoroughfare</u>	<u>19</u>
<u>Square Lake</u>	<u>19</u>

(d) Remote Campsites and Remote Rental Cabins. The maximum number of lots shall not exceed one lot per site, 13 in total, as listed in Section 1,E,1,d of the Concept Plan.

(e) Water Access Sites which are not related to development areas. The maximum number of lots shall not exceed one lot per site, 3 in total, as listed in Section 10.27,L,1,b of the Concept Plan.

(f) Transfer of Lots for Forest Management, Agricultural Management or Conservation of Natural Resources. A lot or parcel is not considered a subdivision lot if the following conditions are met:

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

(2) The lot is at least 40 acres in size;

(3) If the lot is less than 1,000 acres in size, no portion of the lot is located within 1,320 feet of the normal high water mark of any great pond or river or within 250 feet of the upland edge of a coastal or freshwater wetland as these terms are defined in 38 M.R.S.A. §436-A;

(4) The original parcel from which the lot was divided is divided into an aggregate of no more than 5 lots; and

(5) When 3 to 10 lots each containing at least 40 acres in size are created within any 5-year period, a plan is recorded in accordance with 12 M.R.S.A §685-B(6-A). Any subsequent division of a lot created from the original parcel within 10 years of the recording of the plan in the registry of deeds or any structural development unrelated to forest management, agricultural management or conservation creates a subdivision and may not occur without prior commission approval. 12 M.R.S.A §682-B(4).

- (g) Conservation Lots. A lot or parcel transferred to a nonprofit, tax-exempt nature conservation organization qualifying under the United States Internal Revenue Code, Section 501(c)(3) is not considered a subdivision lot if the following conditions are met:
- (1) For a period of at least 20 years following the transfer, the lot or parcel must be limited by deed restriction or conservation easement for the protection of wildlife habitat or ecologically sensitive areas or for public outdoor recreation;
 - (2) The lot or parcel is not further divided or transferred except to another qualifying nonprofit, tax-exempt nature conservation organization or governmental entity, 12 M.R.S.A. §682-B(3);
 - (3) The lot or parcel is at least 20 acres; and
 - (4) No more than 5 such lots or parcels are transferred during the term of the Concept Plan.
- (h) Transfer to Governmental Entity. A lot or parcel transferred to a municipality or county of the State, the State or an agency of the State, or an agency of the Federal government is not considered a subdivision lot if the following conditions are met:
- (1) The lot or parcel is held by the governmental entity for the conservation and protection of natural resources, public outdoor recreation or other bona fide public purposes and is not further sold or divided for a period of 20 years following the date of transfer;
 - (2) At the time of transfer the transferee provides written notice to the commission of transfer of the lot or parcel, including certification that the lot or parcel qualifies for exemption under this subsection, 12 M.R.S.A. §682-B(2);
 - (3) The lot or parcel is at least 20 acres; and
 - (4) No more than 5 such lots or parcels are transferred during the term of the Concept Plan.
- (i) Large Lots Managed for Forest or Agricultural Management Activities or Conservation. A lot transferred or retained following transfer containing at least 5,000 acres is not considered a subdivision lot if the following conditions are met:
- (1) The lot is managed solely for the purposes of forest or agricultural management activities or conservation and the lot is not further divided for a period of at least 5 years; and

(2) No more than 3 such lots or parcels are transferred during the term of the Concept Plan.

2. Subdivision

Upon Commission approval, subdivisions in the development areas shall be allowed up to the following maximum numbers of lots.

(a) In addition to the limits set below, each development area shall be allowed additional lots that if created shall be transferred and used only for development related administrative purposes (e.g., subdivision roads, septic systems, common lot, open space, water access site, etc.). The following limits relate to, and correspond with, Section 10.28 (i.e., one lot per unit) and Section 1, Table 6 of the Concept Plan.

<u>Development Area</u>	<u>Maximum Number of Lots</u>	<u>Lake Lot Cap</u>
<u>Cross Lake A</u>	<u>30</u>	
<u>Cross Lake B</u>	<u>30</u>	
<u>Cross Lake C</u>	<u>30</u>	<u>125</u>
<u>Cross Lake D</u>	<u>35</u>	
<u>Cross Lake E</u>	<u>60</u>	
<u>Long Lake A</u>	<u>50</u>	
<u>Long Lake B</u>	<u>15</u>	<u>75</u>
<u>Long Lake C</u>	<u>25</u>	
<u>Square Lake East</u>	<u>85</u>	
<u>Square Lake West</u>	<u>30</u>	<u>130</u>
<u>Square Lake Yexas</u>	<u>67*</u>	
<u>CD-1</u>	<u>30</u>	
<u>CD-2</u>	<u>5</u>	
<u>CD-3</u>	<u>2</u>	<u>na</u>
<u>CD-4</u>	<u>6</u>	

* No more than 50 of these new lots may be in recreational lodging facilities.

C. Lot Transfers

For purposes of this Concept Plan, lots or parcels located within a development area may be divided and transferred without prior Commission subdivision approval only under the following circumstances. Such transfers shall include the statements provided in Appendix 3(D) of the Concept Plan.

1. In accordance with Section 1,G of the Concept Plan;
2. Intercompany transfers. One or more lots or parcels transferred from a parent company to a subsidiary, from a subsidiary to its parent, or between affiliate entities which are ultimately owned by a common parent.

D. Notice

1. Prior to any lot divisions or the transfer of any lands within the Plan Area, as specified above, the property owner shall submit a written Notice of Planned Activities to the Commission. Such notice shall be filed with the Commission at least 14 days prior to the transfer or division and shall set out the nature of the activities proposed, their extent, and their location within the Plan Area. Furthermore, such notice shall include affirmative statements by the property owner that the proposed

activity complies with all criteria for such activities; and a draft plat that is consistent with the Commission's Specifications for Subdivision Plats.

2. Commission staff, upon receipt of such notice shall, within 14 working days of the date the notice was received, review the proposal and notify the owner in writing of any proposed activities determined to require subdivision approval from the Commission or additional or revised statements to be included as part of the recorded transaction.
3. The property owner may proceed with the activity without subdivision approval in conformity with the Plan and all applicable standards 14 days after the notification is received by the Commission, unless within such time period the staff disapproves the activity or requests additional information needed for adequate review.