

Subdivision Ordinance
Town of Oakland

(as amended December 12, 2001)

(as amended April 27, 2022)

Section 1 General

- A. **Title:**
This Ordinance shall be known as the Town of Oakland Subdivision Ordinance and will be referred to as this Ordinance.
- B. **Authority:**
This Ordinance has been prepared in accordance with the provisions of Title 30 - A, M.R.S.A. Section 4403.
- C. **Purpose:**
The purposes of this Ordinance are :
- To provide for an expeditious and efficient process for the review of proposed subdivisions.
 - To clarify the approval criteria of the State Subdivision Law, found in Title 30 -A, M.R.S.A. Section 4404.
 - To preserve and enhance the character of the community.
 - To assure the safety, health, and welfare of the people of the Town of Oakland.
 - To protect the natural and cultural resources of the Town of Oakland.
 - To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures.
 - To promote the development of an economically sound and stable community.
 - To minimize the potential impact from new subdivision on neighboring properties and on the municipality.
- D. **Applicability:**
The provisions of this Ordinance shall apply to all development considered to be a subdivision as defined by Title 30 -A, M.R.S.A Section 4401 and this Ordinance.
- E. **Effective Date:**
The effective date of this Ordinance shall be the date of the adoption by the Town Council on:
- F. **Conflicts with other Ordinances:**
Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation or statute, the more restrictive provision shall control.
- G. **Validity and Severability:**
Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.
- H. **Availability:**
A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost to be charged to the person making the request. Notice of availability of this Ordinance shall be posted in the Town Office.
- I. **Application Forms:**
The Town of Oakland Planning Board shall develop application forms to be used by all applicants seeking

subdivision approval.

J. Application Fee:

All applications for subdivision approval shall be accompanied by the fees as established by the Town Council. All fees are non-refundable and shall be paid to the Town of Oakland upon filing the appropriate subdivision application.

K. Amendments:

Amendments to this Ordinance may be initiated by a majority vote by the Town Council, Planning Board, or by written petition by number of voters equal to at least 10% of the number of votes cast in the municipality in the last gubernatorial election.

An amendment to this Ordinance may only be adopted by a majority vote of a Town Council. The Planning Board shall conduct a public hearing on any proposed amendments prior to submittal to the Town Council for consideration.

Section 2 Definitions

Abutter: The owner of any property with one or more common boundaries, or across the road or stream, from the property involved in an application.

Aggrieved Party: An owner of land whose property is directly or indirectly affected by the granting, or denial of a permit under this Ordinance; a person whose land abuts land for which a permit has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of a permit.

Agriculture: The production, keeping, or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products.

Applicant: The person applying for subdivision approval under this Ordinance.

Archeological or Historic Resource: Areas identified by the Maine Historic Preservation Commission as having significant value as an historic or archeological resource and areas listed on the National Register of Historic Places.

Complete Application: An application shall be considered complete upon submission of the required fee, all materials required by this ordinance or a waiver request form. The Code Enforcement Officer will make sure that the submission is complete. It is the responsibility of the Planning Board to decide if the application materials are adequate and if the proposal conforms with the review criteria.

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the pond through sheet or concentrated flow without first passing through an upstream pond or river.

Final Plan: The final drawings and other required materials on which the applicant's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be recorded at the registry of Deeds.

Major Subdivision: A major subdivision shall be considered a subdivision proposal consisting of 6 or more lots and/or units, or which involve any private or public road or any public improvement.

Minor Subdivision: A minor subdivision shall be considered a subdivision proposal consisting of no more than 5 lots and/or units and which do not involve the construction of any private or public road, or any other public

improvement.

Person: includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

Preliminary Plan: The preliminary drawings and other required materials indicating the proposed layout of the subdivision to be submitted to the Planning Board for consideration.

Property Owner: The owner of land shall be determined to be that person listed as the current owner of record on the Town of Oakland property tax assessment records.

Public Improvements: The term shall include all roads proposed for public acceptance; fire protection structures and ponds; any structure or land proposed to be dedicated to the Town; any land or structure which is offered as an easement to the Town; and, all storm drainage structures which are designed to allow water to flow outside the property of the subdivision.

River, Stream, or Brook: Means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics:

- It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5 minute series topographic map, or if that is not available, a 15 minute series topographic map.
- It contains or is known to contain flowing water continuously for a period of at least 3 months of the year in most cases.
- The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

River, stream or brook does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining storm water or a grassy swale.

Significant Wildlife Habitat : Areas identified by the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals.

Sketch Plan: Conceptual maps, renderings and supportive data describing the project proposed by the applicant for initial inquiry and review prior to submitting an application for subdivision approval.

Subdivision: As defined in Title 30 - A, M.R.S.A. Section 4401.

Unique Natural Area. Areas identified by the Maine Department of Conservation Natural Areas program as having significant value as a natural area.

Unsuitable for Development: Areas that contain one or more of the following: wetlands, rivers, streams, brooks, ponds, stormwater drainage features, public and private rights-of-way, land zoned as Resource protection, significant natural resources as identified by the Department of Inland Fisheries and Wildlife, and identified archeological and historic resources as identified by the Maine Historic Preservation Commission.

Waterbody: Any great pond, river, stream, brook or wetland.

Wetland: Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, river, stream or brook. Wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

Section 3 Review Criteria

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

- A. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
- The elevation of the land above sea level and its relation to the floodplain,
 - The nature of the soils and subsoils and their ability to adequately support waste disposal,
 - The slope of the land and its effect upon effluents, and,
 - The applicable state and local health and water resources rules and regulations.
- B. The proposed subdivision has sufficient water available for the reasonable needs of the subdivision.
- C. The proposed subdivision will not cause an unreasonable burden on an existing water supply.
- D. The proposed subdivision will not cause unreasonable soil erosion, unmitigated stormwater runoff, or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
- E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe intersections or other conditions with respect to the use of the highways or public roads existing or proposed.
- F. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are used.
- G. The proposed subdivision will not cause an unreasonable burden on the town's ability to dispose of solid waste, if Town services are used.
- H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, archeological sites, significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the Town, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- I. The proposed subdivision conforms with the all the applicable standards and requirements of this Ordinance, the comprehensive plan, and other local ordinances. In making this determination, the Planning Board may interpret these ordinances and plans.
- J. The subdivider has adequate financial and technical capacity to meet all the Review Criteria and the standards and requirements contained in this Ordinance.
- K. 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, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
- M. Based on 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 100-year flood elevation and flood hazard boundary 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 the lowest floor, including the basement, at least one foot above the 100-year flood elevation.
- N. All fresh water wetlands within the proposed subdivision have been identified and delineated on any maps submitted as part of the application, regardless of the size of these wetlands. All wetlands shall be preserved to the greatest extent practicable.
- O. The proposed subdivision will provide for adequate storm water management.

- P. The long term cumulative effects of the proposed subdivision will not increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

Section 4 Administration and General Procedures

A. Administration:

1. The Planning Board shall administer this Ordinance and review all subdivision applications according to the applicable review criteria and standards.
2. The Planning Board shall provide the Code Enforcement Officer a copy of its decision on a subdivision application including all application materials.

B. Decisions:

1. The Planning Board shall make the final determination as to whether the subdivision application is complete before it makes a final decision on the application.
2. After review of a complete application the Planning Board shall determine whether or not the application meets the Review Criteria contained in Section 3 of this Ordinance. The Planning Board shall make a written finding of fact to support its decision and vote to approve the application, deny the application, or approve the application with conditions.
3. If in its findings, the Planning Board determines that the application may not meet the review criteria, and that additional actions by the applicant will be sufficient to meet them, it may require such actions, as conditions of approval. The conditions may set forth requirements in addition to those set forth in the Ordinance only when the Planning Board finds it necessary to further the purposes of this Ordinance. Each condition approved by the Planning Board shall be listed along with the reasons for these conditions in the Planning Board's decision. Each condition shall also be listed on the final subdivision plan.
4. Each waiver approved by the Planning Board shall list along with the reasons for these waivers in the Planning Board's decision. Each waiver shall also be listed on the final subdivision plan..

C. Burden of Proof:

1. The applicant shall have the burden of proof to show the proposed subdivision application meets the applicable review criteria and standards contained in this Ordinance.

D. Additional Studies:

1. The Planning Board may require the applicant, to perform additional studies or pay for the services of a consultant to review the entire or portions of the subdivision application. The cost to perform additional studies or pay for the services of a consultant shall be borne by the applicant. The Planning Board may require the applicant to deposit with the Town the estimated cost of any consultant or additional study which shall be placed in an escrow account. The Town shall pay for the services rendered and reimburse the applicant, if funds remain after payments are completed. The applicant shall place additional funds into the escrow account in order to meet expenses.

E. Rights Not Vested:

1. The submittal of a sketch plan or a preliminary plan to the Planning Board to review for a complete application shall not be considered the initiation of the review process for the purposes of bringing the application under the protection of Title 1, M.R.S.A., Section 302. The formal review process shall begin upon written notification to the applicant that a complete application has been received.

F. Site Inspection:

1. The Planning Board may schedule an on-site inspection of the proposed project. The Planning Board shall post the date, time and place of the site inspection at the Town Office.
2. The purpose of the site inspection is for the Planning Board to obtain knowledge about the site and surrounding area. The Planning Board shall not discuss the merits of the application or render any decision concerning the application during the site inspection.

G. Waivers:

1. The Planning Board may vote to waive any of the review criteria and/or ordinance performance standards when it finds one of the following:
 - a. One or more of the review criteria and /or Ordinance performance standards are not applicable to the proposal due to the size of the project, circumstances of the site, design of the project, or unique features of the proposal.
 - b. The applicant has proposed an alternative design that meets or exceeds the requirements set forth in the performance standards.
2. The applicant shall submit information and materials that support the waiver request with the application.
3. The Planning Board may only consider a waiver request when the applicant has submitted a written waiver request in the application. The first item of the application review shall be a consideration of any waiver request. The Planning Board shall review the request and if it meets the criteria for a waiver, shall approve the request. If the Planning Board finds that the request does not meet the waiver criteria, the Board shall deny the request. The applicant shall amend the application as required if the waiver is not approved by the Board. The Planning Board may vote to suspend review of the application until such time that the applicant provides any information necessary as a result of not obtaining the waiver. In no case shall the Planning Board make a final decision upon the application until the applicant supplies any additional information to the satisfaction of the Board.

H. Subdivision Review Process:

1. All subdivision applicants shall be required to follow a three tier review process which shall include: Sketch Plan Review; Preliminary Plan Review and Final Plan Review. The Planning Board may vote to allow Minor Subdivisions to submit a final plan for review directly after the Sketch Plan Review meeting. The Planning Board shall make this decision after reviewing the sketch plan proposal.

I. Revisions to Approved Plans

1. An application for a revision to a previously approved plan shall be submitted to the Planning Board at least 7 days prior to a scheduled meeting of the Planning Board. If the revision involves a modification to a condition imposed by the Planning Board; the addition of additional units; the addition of new lots; or an expansion of the subdivision, then the procedure for a new application shall be followed. If the revision only involves minor modifications to the plan, the Planning Board may consider the request at

the meeting. The Planning Board may vote to hold a public hearing on the proposed revision.

2. The Planning Board's scope of review shall be limited to those portions of the plan which are proposed to be revised or that are adversely impacted by the proposed revision.
3. The applicant shall submit a copy of the approved plans and 8 copies of the revised portions of the plans. The application shall include enough supporting data to allow the Planning Board to make a decision that the proposed revision meets the review criteria.
4. The Planning Board shall vote to approve the revision, deny the revision or approve the revision with conditions. The Planning Board may vote to require that additional information be submitted in order to ensure that the review criteria are met.
5. The applicant shall record any subdivision plan revision approved by the Planning Board according to Title 30-A MRSA section 4407.

J. Appeals :

1. An aggrieved party may appeal the Planning Board's decision on the final plan within 30 days of the date the Planning Board issues a written order of its decision. The appeal shall be limited to issues of ordinance interpretation. The Board of Appeals shall make a decision on the appeal within 5 working days of the close of the hearing. An appeal may be taken within 30 days by an aggrieved party, including the Planning Board, to Superior Court in accordance with the Maine Rules of Civil Procedure.

K. Public Hearing Requirements:

1. The Planning Board may hold a public hearing on a plan application submitted for preliminary or final review.
2. The public hearing notice shall be made as follows:
 - a. The Planning Board shall hold a public hearing within 30 days after receiving a complete application. A notice of the date, time and place of the public hearing shall be:
 - (1) Published, at least two times, in a newspaper having general circulation in the municipality. The date of the first publication shall be at least 7 days before the hearing.
 - (2) Mailed by first class mail to the applicant, at least 7 days prior to the public hearing.
 - (3) Mailed by first class mail to all property abutters, at least 7 days prior to the public hearing. The Planning Board shall maintain a list of all property abutters and record the date the notice was mailed. Failure of an abutter to receive a notice shall not invalidate the public hearing, nor shall it require the Board to schedule a new public hearing.
3. The Planning Board may vote to continue the public hearing in order to receive additional public comment or information concerning the application. The Board is not required to meet the notice requirements listed above for the continued public hearing.

L. Joint Meetings:

1. If any portion of a proposed subdivision crosses municipal boundaries, the Planning Board shall follow the notice, meeting, and review requirements specified in Title 30-A, M.R.S.A., Sections 4401- 4407.

M. Performance Guarantee:

1. A performance guarantee shall be required for all public improvements proposed for the subdivision. The applicant shall submit a proposal for the performance guarantee at the time of submission of the

Final Plan. A detailed list of all proposed public improvements including the cost for each shall be submitted with the performance guarantee.

2. The performance guarantee may include one or more of the following:
 - a. A certified check, in an amount equal to the expense of installing the public improvements, made payable to the Town.
 - b. A performance bond, in an amount equal to the expense of installing the public improvements, made payable to the Town, issued by a surety company.
 - c. A conditional agreement with the Town, whereby no lot in the subdivision may be sold and no building permit issued until the applicant installs all public improvements.
 - An irrevocable letter of credit from a bank or other lending institution which shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan
3. The Applicant, prior to approval of the final plan, shall consult with the Town Manager on the terms proposed by the applicant for the performance guarantee. The Town Manager shall decide on the amount of the certified check, performance bond letter of credit or the terms of the performance guarantees . The terms established by the Town Manager for the performance guarantee shall be provided in writing to the Planning Board and included as a condition for approval of the subdivision application..
4. Prior to the release of the performance guarantee, the Town Manager shall determine that the proposed improvements meets the design and construction requirements specified in this ordinance and the subdivision plans. The Town Manager shall base its decision upon the inspection reports filed by the Code Enforcement Officer, other Municipal Officials or other designated inspector.
5. If the Code Enforcement Officer, or other designated inspection official finds that any of the public improvements have not been constructed in accordance with the plans and specifications filed as part of the application, they shall report this condition to the Town Manager. The Town shall take any steps necessary to preserve the Town's rights.

N. Inspection Requirements:

1. The Code Enforcement Officer shall be responsible for conducting and/or coordinating all inspections with other municipal officials. The following municipal officials shall perform the following inspections:
 - a. The Road Commissioner or his designee shall inspect all roads, lanes, common driveways and driveways including roads to be considered for public acceptance and private roads and associated drainage systems.
(All roads proposed for public acceptance shall also be inspected by a professional engineer as per the road performance standards contained in the Town's Road Ordinance)
 - b. The Local Plumbing Inspector shall inspect the installation of all subsurface waste water treatment systems.
 - c. The Code Enforcement Officer or his designee shall inspect all erosion control measures, stormwater management features, and all other site features.
2. The applicant shall be responsible for scheduling all inspections with the Code Enforcement Officer . The Code Enforcement Officer and all other inspection officials shall keep a record of all inspections and all deficiencies. It shall be the responsibility of the Code Enforcement Officer to notify the applicant in writing that a deficiency exist and the steps necessary to remedy the situation. The Code Enforcement Officer shall notify the Town Manager whenever the applicant fails to remedy a deficiency. Upon completion of the subdivision and/or consideration of release of the performance guarantee, all inspection reports shall be made available to the Town Manager .

Section 5 Sketch Plan Review

A. Purpose:

The purpose of the sketch plan submittal is for the applicant to present general information regarding the proposed subdivision to the Planning Board and to receive the Planning Board's comments prior to the expenditure of substantial sums of money for developing the subdivision plan.

B. Procedure:

1. The applicant shall submit a complete sketch plan application to the Planning Board at a scheduled meeting of the Planning Board.
2. The applicant shall present the sketch plan application to the Planning Board and make a verbal presentation regarding the site and the proposed subdivision.
3. Following the applicant's presentation, the Planning Board may ask questions and make suggestions to be incorporated by the applicant into the application.

C. Submissions:

1. The sketch plan shall show in simple sketch form the proposed layout of roads, lots, buildings, and other features in relation to existing site conditions. The sketch plan does not have to be an engineered plan and may be a free-handed penciled sketch.

Section 6 Preliminary Plan Review

A. Procedure:

1. The applicant shall submit a complete plan application to the Code Enforcement Officer. The applicant shall be issued a dated receipt.
2. The application shall consist of 8 complete copies including all maps and related attachments. One copy shall be placed in the Town Office for public review.
3. As soon as possible, after the receipt of the plan application, the Town shall notify by first class mail all abutters to the proposed subdivision that an application for a subdivision has been submitted to the Planning Board, specifying the location of the proposed subdivision and including a general description of the project. The notice shall also indicate that a copy of the application is available for public review at the Town Office. The Town shall maintain a list of all abutters notified by first class mail, specifying the date the notice was mailed.
4. The Code Enforcement Officer shall place the application on the Planning Board agenda within 30 days or no later than the next monthly meeting of the Board after the receipt of the preliminary plan application. The Planning Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Planning Board shall notify the applicant of the specific material needed to complete the application.
5. The Planning Board shall schedule a meeting or a public hearing within 30 days, or no later than the next monthly meeting after determining that it has received a complete application.

6. Within 30 days of the meeting or public hearing, or within another time period as may be mutually agreed to by the Board and the applicant, the Planning Board shall make a decision on the application.
7. Upon approval of the preliminary plan, the applicant is eligible to submit a final plan to the Planning Board for consideration. The approval of the preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to preparation of the final plan. The final plan shall be submitted for consideration upon fulfillment of the requirements of this Ordinance and conditions of preliminary approval, if any.

B. Preliminary Plan Submissions:

1. The applicant is responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria, and requirements and performance standards contained in this Ordinance. The preliminary plan submissions shall consist of the following:
 - a. A receipt from the Town indicating that the application fee has been paid.
 - b. A plan application form and all required attachments and maps.
 - c. Waiver request form, if applicable.
 - d. A location map, drawn at an appropriate scale to show the relationship of the proposed subdivision to adjacent properties, The map shall show the following:
 - (1) Existing subdivisions abutting the proposed subdivision.
 - (2) Locations and names of existing and proposed roads.
 - (3) Boundaries and designations of all shoreland zoning and other land use districts.
 - (4) An outline of the proposed subdivision and any remaining portion of the owner's property if not included in the subdivision proposal.
 - e. The following general information:
 - (1) Name and address of the applicant and applicant's agent.
 - (2) Verification of right ,title or interest in the property.
 - (3) A copy of the most recently recorded deed for the parcel.
 - (4) A copy of all existing and proposed, deed restrictions, rights-of-way, or other encumbrances affecting the property.
 - (5) The book and page and Map and lot information of the property.
 - (6) The name and address of all property owners abutting the property.
 - (7) Acreage of the proposed subdivision and acreage of any land not included in the subdivision to be retained by the owner,
 - f. A subdivision plan consisting of one or more maps drawn to a scale of not more than 100 feet to the inch. The plan shall show the following:
 - (1) Name of the subdivision.
 - (2) Number of lots.
 - (3) Date, north point, graphic scale.
 - (4) Proposed lot lines with dimensions.
 - (5) A survey of the perimeter of the tract, giving complete descriptive data by bearing and distances, signed and sealed by a Professional Land Surveyor. The corners of the tract shall be located on the ground and marked by permanent markers. The plan shall indicate the type of permanent marker proposed to be set or found at each lot corner.
 - (6) Contour intervals as specified by the Planning Board.
 - (7) The location of all wetlands regardless of size.
 - (8) The location of all rivers, streams, brooks and ponds within or adjacent to the subdivision.
 - (9) The location of all slopes in excess of 20% slope.
 - (10) The number of acres within the subdivision, location of property lines, existing

- buildings, vegetative cover type, and other essential existing features.
- (11) The location of any significant sand and gravel aquifers,
- (12) The boundaries of any flood hazard areas and the 100-year flood elevation as depicted on the Town's most recent FIRM Map.
- (13) The boundaries of all shoreland zoning districts.
- (14) The location and boundaries of any significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife.
- (15) The location of any site or structure listed on the National Register of Historic Places or any archeological site identified by the State Historic Preservation Commission.
- (16) The location of all Unique Natural Areas.
- (17) The location of all subsurface wastewater disposal system test pits/test boring and test data and appropriate documentation.
- (18) The location of all existing and proposed wells and appropriate documentation. The applicant shall submit documentation from a Hydrologist or a Well Driller familiar with the area, stating that adequate water is available to supply the subdivision.
- (19) All temporary and permanent erosion control features proposed for the site.
- (20) All stormwater control hydrology and mitigation design features proposed for the site.
- (21) All parcels of land proposed to be owned or held in common or joint ownership by the subdivision or individual lot owners. All land proposed to be offered for public acceptance to the Town.
- (22) Phosphorus control measures, if the subdivision is located within the direct watershed of a great pond.
- (23) Road plans and specifications and appropriate documentation.
- (24) Traffic access data for the site including an estimate of the amount of vehicular traffic to be generated on a daily basis.
- (25) The type and location of any proposed fire control features, including fire ponds, and appropriate documentation.
- (26) A list of all proposed deed covenants and restrictions on the plan.
- (27) The location of all existing trails to be retained on the site by the developer.
- (28) A detailed list of all proposed public improvements including the cost of each item.
- g. A statement indicating how the solid waste from the subdivision will be handled .
- h. Documentation indicating that the applicant has the financial and technical capacity to meet the requirements of this Ordinance.
- i. Any other data necessary in order to meet the requirements of this Ordinance.

Section 7 Final Plan Review

A. Procedure:

1. The applicant shall submit a complete plan application to the Code Enforcement Officer. The applicant shall be issued a dated receipt.
2. The application shall consist of 2 stable-based transparencies and 3 paper copies. The Planning Board shall receive 2 original transparencies, and two paper copies. One paper copy shall be placed in the Town Office for public review.
3. Within 30 days or no later than the next monthly meeting of the Board, after the receipt of the plan application, the Planning Board shall place the application on the meeting agenda for review. The Planning Board shall first determine whether the application is complete. If the application is not complete, the Planning Board shall notify the applicant of the specific material needed to complete the application.
4. Within 30 days of the meeting, or within another time period as may be mutually agreed to by the

Board and the applicant, the Planning Board shall make a decision on the application.

5. Upon voting to approve the final plan, the Planning Board shall sign the 2 stable -based transparencies. The Planning Board shall retain one copy and the other shall be provided to the applicant. The applicant shall file the approved final subdivision plan with the Register of Deeds, within 90 days of the date upon which the plan is approved. Failure to file the plan with the Register of Deeds, within 90 days, shall make the plan null and void. Final Plans not filed in the appropriate time period shall be re-submitted to the Board according to the requirements of Section 7 of this Ordinance.

B. Final Plan Submissions:

1. The applicant is responsible for supplying all the necessary information to show that the proposed subdivision is in compliance with the review criteria and requirements and performance standards contained in this Ordinance. The final plan submissions shall consist of the following:
 - a. A receipt from the Town indicating that the application fee has been paid.
 - b. A plan application and all required attachments and maps.
 - c. All the submission materials required for a preliminary plan.
 - d. All conditions and modifications approved by the Planning Board for the preliminary plan shall be contained on the final plan.
 - e. All waivers approved by the Planning Board shall be shown on the final plan.
 - f. All additional studies and/or materials required by the Planning Board, as applicable.
 - g. A signature block shall be provided on the final plan.
 - h. A performance guarantee, if applicable.
 - I. The location and type of all permanent markers set at all lot corners.
 - j. If the subdivision contains any private roads, the plan shall contain a statement as follows: The subdivision roads are designed as private roads and are not eligible for acceptance by the Town of Oakland, unless the road is improved to meet the appropriate standards for road acceptance.
 - k. Written copies of any documents of land dedication, and written evidence that the Town Council are satisfied with the legal sufficiency of any documents accomplishing such land dedication.
 - l. Any conditions placed on the final plan by the Planning Board shall be clearly listed on the plan. Planning Board imposed conditions shall be listed separately from any covenants or restrictions placed on the subdivision by the applicant.

Section 8 Performance Standards

- A. The performance standards contained in this section shall apply to all subdivision proposals in the Town of Oakland.

B. General Lot Requirements:

1. All subdivision lots shall conform to the following dimensional requirements as applicable:
 - A Single family dwelling lots served by private sewage disposal system:
 - Minimum lot size is 30,000 square feet
 - Minimum road frontage is 150 feet

 - Single family dwelling lots served by a public sewage system and public water services.
 - Minimum lot size is 20,000 square feet
 - Minimum road frontage is 100 feet

 - B Multi-family housing lots served by a private sewage disposal system:
 - Developments must be located on a lot of a minimum size and frontage which is greater and in the same proportion as the requirements of single family housing listed above. For purposes of computing such proportions, the amount of sewage generated by the waste disposal requirement of such activities or land uses shall be deemed to be:

- Single family housing = 300 gallons per day
- Multifamily housing unit = 120 gallons per bedroom

C If a multifamily lot on private sewer does not confirm with the above standard, a State of Maine variance can be submitted to Maine DHHS CDC for approval. If approved by the state a variance will be allowed by the Oakland Planning Board if the lot meets the Town of Oakland minimum lot size. Which includes 150' road frontage and 30,000 square feet. The variance application is attached to Oakland Subdivision Ordinance.

Required lot size: 20,000 square feet for every 300 gallons of effluent.
 120 gallons per bedroom per day
 300 gallons per 20,000 sq.ft.
 43560 is sq.ft. in an acre.

Example 5-unit 2 bedroom each
 5x2=10 bedrooms
 10X 120=1200 gallons. Divided by 300 for every 20,000 sq.ft. 1200/300=4
 4X20,000=80,000 square feet of property
 80,000/43560=1.836 acres needed.

Multi Family housing lots served by a public sewage disposal system and public water services:
 Minimum lot size is 7,500 square feet per unit
 Minimum road frontage is 50 lineal feet per unit
 (The Planning Board may limit the road frontage requirement not to exceed 200 feet if it finds that no hazard to traffic is created.

D Commercial and industrial developments served by a private sewage disposal system:
 Minimum lot size is 30,000 square feet
 Maximum lot coverage for all buildings and impervious areas is 80%

Commercial and industrial developments served by a public sewage system and public water service:
 No minimum specified
 Maximum lot coverage for all buildings and impervious areas is 80%

E Mobile home parks served by a private sewage disposal system:
 Minimum lot size is 20,000 square feet per unit
 Minimum road frontage is 100 feet

Mobile home parks served by public sewage disposal system and public water services:
 Minimum lot size is 6,500 square feet
 Minimum road frontage is 50 feet.

F Any lot proposed with a Shoreland Zone shall be subject to the provisions of the dimensional requirements of the Town of Oakland Shoreland Zoning Ordinance

2 The minimum lot area for each proposed subdivision lot shall include a contiguous parcel of land that is suitable for development.

The following areas shall be deemed unsuitable for development: wetlands; rivers; streams; brooks; ponds; stormwater drainage features; public and private rights-of-way; land zoned as resource protection; significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife; and identified archeological and historic resources as identified by the Maine Historic Preservation Commission.

C. Monuments:

1. Monumentation as required by the Maine Board of Registration of Land Surveyors shall be installed at the following:
 - a. At all road intersections and points of curvature, but no farther than 750 feet apart along road lines without intersections or curves.
 - b. At all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less.
 - c. At all other subdivision boundary corners and angle points as well as lot boundary corners and angle points.

D. Water Supply:

1. Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of pollution. The lot design shall permit the placement of wells, subsurface wastewater disposal systems and reserve areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.
2. The water supply for the subdivision and each lot shall be adequate to supply all the potable, and other water requirements of the development.
3. The applicant shall submit a letter from the appropriate utility or water district when water is to be supplied by a public water source. The letter shall indicate that an adequate supply of water is available to serve the subdivision.

E. Fire Protection:

1. The subdivision shall be designed so that the Town of Oakland Fire Department shall have unrestricted access to all developed areas within the subdivision and adequate provisions are made for a supply of water for fire suppression. The applicant shall obtain a signed form (provided by the town) from the Fire Chief indicating that the fire protection measures proposed for the subdivision have been reviewed and shall include, as applicable, suggestions and/or recommendations. This statement shall be submitted with the preliminary plan application.
2. The Fire Chief in making his/her review of the proposed fire protection measures shall consider the following:
 - a. The road is adequate for the passage of fire equipment.
 - b. An adequate water supply is available near or within the subdivision to serve the density of the development.The Fire Chief shall review the fire protection measures proposed for the subdivision and may make suggestions for including the installation of fire ponds or other similar features .

F. Subsurface Wastewater Disposal Systems:

1. The applicant shall submit evidence of site suitability for subsurface wastewater disposal system prepared by a Licensed Site Evaluator in compliance with the Subsurface Wastewater Disposal Rules of the State of Maine, or the latest revision to date. All test pit/test boring locations shall be shown on the subdivision plan and be accompanied by a HHE-200 Form or other format which shows the appropriate soils data. Test pit/test boring locations shall also be marked on the site.
2. The applicant shall submit the test pit/test boring data to the Town of Oakland LPI for review. The LPI shall review the data for conformance with State Law and this Ordinance and issue the applicant a written statement . The LPI shall state whether that the data submitted is sufficient to make a reasonable determination that the soils will accommodate a subsurface system or indicate if additional

data or site analysis is needed. The applicant shall submit the LPI's statement with the preliminary plan application.

3. In no instance shall a disposal area for a lot or structure require a New System Variance from the Subsurface Wastewater Disposal Rules. The subdivision shall provide for adequate sewage disposal.

G. Public Sewer

1. The applicant shall obtain a letter from the Town Manager stating that the proposed subdivision sewers including the connections to the municipal system are adequate and meet all Town standards.

H. Easements

1. The Planning Board may require easements for sewers, stormwater systems, or other utilities

I. Erosion Control:

1. All activities which involve filing, grading, excavation or other similar activities which result in unstabilized soil conditions shall comply with the following:
 - a. The site shall be developed so as to prevent soil erosion from entering waterbodies, wetlands, stormwater drainage features, and adjacent land. All temporary and permanent erosion control measures shall be designed in accordance with the current edition of "Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environment Protection, March 1991, or the latest revision.
 - b. All temporary and permanent erosion features shall be shown on the subdivision plan. Provisions for the maintenance of both temporary and permanent measures shall be included on the plan.

J. Phosphorus Control:

1. The following standards for phosphorus shall apply to all subdivisions located in the direct watershed of a great pond.
2. A phosphorus control plan shall be developed in accordance with the design criteria contained in the current edition of "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development", published by the Maine Department of Environmental Protection, revised September, 1992.

K. Stormwater Control:

1. All construction and development shall be designed to minimize storm water runoff from the site. Where possible existing natural runoff control features shall be retained in order to reduce runoff and encourage infiltration. A storm water control plan shall be developed for the site according to the following standards:
 - a. A storm water control plan shall be developed to limit peak discharges from the site to predevelopment levels through a system of swales, culverts, and best management practices equivalent to those described in the current edition of "Stormwater Management for Maine: Best Management Practices", published by the Maine Department of Environmental Protection, 1995.
 - b. Peak discharges shall be limited to the predevelopment levels for the 2-year, 10-year and 25-year frequency, 24-hour duration storm.

- c. A storm water control plan that is developed according to the requirements of the Department of Environmental Protection Regulations, Chapter 500, Stormwater Management and Chapter 502, Direct Watersheds of Waterbodies Most at Risk from New Development shall be deemed to be a suitable equivalent to these standards.
- d. Road culverts shall be designed to handle a 25 to 50 year storm frequency.
- e. The size and location of proposed developed and disturbed sites on each lot shall be shown on the plan based upon the phosphorus and stormwater control plan for the subdivision.

L. Waterbody Protection:

- 1. The locations of all rivers, streams, brooks, and wetlands shall be identified on the subdivision plan. This shall include all perennial and intermittent streams and forested and non-forested wetlands.
- 2. Appropriate documentation from the Department of Environmental Protection or other applicable State or Federal Agency shall be provided with the Final Plan Application for any proposed disturbance to any waterbodies indicated on the subdivision plan.

M. Ground Water:

- 1. Any development proposed within a Sand and Gravel Aquifer as identified in the Town's Comprehensive Plan, shall be designed and constructed according to a plan which takes into account the impact of the development upon the aquifer.
- 2. The Planning Board may require the applicant to have the plan developed by a geologist which shows that the proposed development will not have an adverse impact upon the aquifer. The Planning Board, in making the determination that a plan be required, shall consider the density of the development, and existing conditions or problems within the area .

N. Historic, Archeological, Wildlife Habitat, and Unique Natural Areas:

- 1. The subdivision plan shall show the locations of any historic and archeological sites, wildlife habitat, and unique natural areas. If any of these areas are located on the site, a protection plan shall be developed in accordance with the following:
 - a. If any portion of the site is designated as a significant archeological or historic site by the Maine Historic Commission, or listed on the National Register of Historic Places, the applicant shall develop appropriate measures for the protection of these resources according to local, state and federal regulations.
 - b. If any portion of the site is located within an area designated as a unique natural area by the Maine Natural Areas Program, the applicant shall develop appropriate measures for the preservation of the values which qualify the site for such designation.
 - c. If any portion of the site is within a wildlife habitat area, the applicant shall consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and develop measures to protect these areas from environmental damage and habitat loss. Wildlife habitat areas shall include the following:
 - (1) habitat or endangered species appearing on the official state or federal list of endangered or threatened species.
 - (2) High or moderate value waterfowl and wading bird habitats as defined by the Maine Department of Inland Fisheries and Wildlife.

- (3) Deer wintering areas as identified by the Maine Department of Inland Fisheries and Wildlife.

O. Financial and Technical Capacity:

1. The applicant shall submit evidence that he/she has adequate financial and technical capacity to design and construct the development in accordance with all applicable local, state and federal laws and regulations. Evidence of adequate financial and technical capacity may consist of some of the following:
 - a. A list of all technical and professional staff involved with the proposal and preparation of the application including their qualifications and past experience with projects of similar size.
 - b. A list of all persons with inspection and oversight responsibilities for the development and if available, the persons selected to construct the project, including their qualifications and past experience with projects of similar size and scale.
 - c. A letter from a financial institution such as a bank or other lending institution that states that the applicant has the necessary funds available or a loan commitment from this institution to complete the proposed development within the time period specified by the applicant.

P. Conformity With All Other Applicable Local Ordinances:

1. The applicant shall show that the subdivision meets all other applicable local ordinances including but not limited to ,Shoreland Zoning and Floodplain Management.

Q. Open Space Provisions

1. The Planning Board may require that a proposed subdivision include a landscape plan that will show the preservation of existing trees (10 inches or more in diameter) the replacement of trees and vegetation, graded contours, streams, and the preservation of scenic, historic or environmentally desirable areas. The street and lot layout shall be adapted to the topography. Excessive grading and filing shall be avoided as much as possible.
2. Where the proposed subdivision abuts a lake, pond , river or perennial stream, the Planning Board may require that the subdivider reserve an area of land abutting the waterbody or watercourse as an open space and/or recreational area for use by property owners in the subdivision. The instruments of conveyance from the subdivider to the property owner is reserved land. The cost of maintenance and development of the reserved land shall be borne by the property owners of the subdivision. The manner providing for the cost of the development and /or maintenance of the reserved open space shall be included in the instrument of conveyance to each property owner of the subdivision .

R. Road and Access Provisions for Subdivision Lots

- 1 All proposed subdivision lots shall have a suitable access to a road. All roads shall meet the applicable requirements of “ Chapter 23, Oakland Street Requirements, Oakland Revised Ordinances”.
- 2 All roads shall have adequate drainage which shall be designed in accordance with the stormwater and erosion control standards specified in this Ordinance.
- 3 All roads to remain private shall be designated as such in a note on the final plan and in the property deed of each subdivision lot. The applicant shall provide to the Planning Board a proposal for the on-going repair and improvement of the private road. Mandatory membership in the road maintenance association shall be included in the property deed of each subdivision lot.
- 4 The Planning Board may require all subdivisions consisting of more than 5 lots contain provisions for vehicular connections to future projects on adjacent properties or the same lot whenever feasible and to the maximum extent possible.

- 5 The road providing access to the subdivision and any other road that can be expected to carry traffic for the subdivision shall have an adequate traffic carrying capacity to accommodate the proposed use. The road shall be improved as necessary to accommodate the traffic requirements of the subdivision. All necessary improvements shall be made at the expense of the subdivider.
6. The road access shall be located and designed in profile and grading to provide the required sight distance measured in each direction. Sight distance shall be measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of the shoulder, with the height of the eye 3 ½ feet, to the top of an object 4 ½ feet above the pavement. A minimum sight distance of 10 feet for each mile per hour of posted speed limit shall be provided.
- 7 All roads shall comply as applicable with the Maine Department of Transportation (MDOT) design requirements. The applicant shall submit a letter from the Department as necessary showing that all roads conform to all applicable MDOT requirements.

SECTION 9. ENFORCEMENT

- A. It shall be the responsibility of the Code Enforcement Officer to enforce the provisions of this Ordinance.
- B. No plan of a division of land within the Town which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Planning Board in accordance with this Ordinance.
- C. A person shall not convey, offer to convey any land in a subdivision which has not been approved by the planning Board and recorded in the Registry of Deeds.
- D. A person shall not sell, lease, offer or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
- E. No public utility, water district, sanitary district, or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.
- F. Development of a subdivision without Planning Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land, or lots, or construction of buildings, which require a plan approved as provided in this Ordinance and recorded in the Registry of Deeds.
- G. No lot in a subdivision may be sold, leased or otherwise conveyed before the road upon which the lot fronts is completed in accordance with this Ordinance up to and including the entire frontage of the lot.
- H. Violations of the above provisions of this section are a nuisance and shall be punished in accordance with the provisions of Title 30-A, M.R.S.A. ss.4452.

DEFINITION OF SUBDIVISION

From Title 30-A, Section 4401

§4401 Definitions

4. Subdivision. “Subdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. “Person related to the donor” means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than ½ the assessed value of the real estate.

D-5. A division accomplished by a gift to a municipality if that gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor

is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

(1) Expands the definition of subdivision to include the division of a structure for commercial or industrial use: or

(2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of subdivision except as provided in this chapter.

This paragraph is repealed October 1, 2002.

I. The grant of a bona fide security in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

MINIMUM LOT SIZE RULES

10-144 CMR Ch. 243

SUMMARY

These rules describe the requirements for minimum lot sizes and for waivers to the Minimum Lot Size Law, 12 MRSA § 4807.

BASIS STATEMENT: These Rules provide minimum State requirements for minimum lot sizes for developments using onsite subsurface wastewater disposal to assure environmental sanitation and safety. These Rules are intended to complement municipal planning, zoning, and land use control.

EFFECTIVE DATE: August 1, 2005

AUTHORITY: Title 12 MRSA § 4807

Department of Health and Human Services
Maine Center for Disease Control and Prevention
Division of Environmental Health
11 State House Station
Augusta, Maine 04333-0011
Telephone (207) 287-5689

Appropriation 014-10A-2426-012-2658

Nondiscrimination Notice

In accordance with Title VI of the Civil Rights Act of 1964, as amended by the civil Rights Restoration Act of 1991 (42 U.S.C. 1981, 2000e *et seq.*) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and Title IX of the Education Amendments of 1972, the Maine Department of Human Services does not discriminate on the basis of sex, color, national origin, disability or age in admission or access to or treatment or employment in its programs and activities

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CHAPTER 243 MINIMUM LOT SIZE RULES

SUMMARY: These rules describe the requirements for minimum lot sizes and for waivers to the Minimum Lot Size Law, 12 MRSA § 4807.

1. Definitions
 - A. Code. Rules for Waivers to the Minimum Lot Size Law (CMR 243).
 - B. Department. The Department of Health and Human Services Maine Center for Disease Control and Prevention, Division of Environmental Health.
 - C. Engineered disposal system. Any subsurface wastewater disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of wastewater per day or more; or any system designed to be capable of treating wastewater with significantly higher BOD₅ and total suspended solid concentrations.
 - D. First time disposal system. The first system designed to serve a specific structure; a new system.
 - E. Multiple unit housing. "Multiple unit housing" shall mean a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.
 - F. Other land use activity. "Other land use activity" includes any commercial or industrial uses or combination of such uses.
 - G. Person. "Person" means any individual, corporation, firm, partnership, municipality, quasi-municipal corporation, state or federal agency or any other legal entity.
 - H. Single family residential unit. "Single family residential unit" means any structure of any kind, including mobile homes, used or designed to house a single family, and shall include those structures used permanently and seasonally.

- I. Shoreland Zoning. The shoreland zone of major waterbodies/courses (as defined in Title 38 MRSA §435).
- J. Subsurface waste disposal. "Subsurface waste disposal" means any system for disposing of wastes or wastewaters on or beneath the surface of the earth including, but not limited to, holding ponds, surface spraying, septic tanks, drainage fields and wells, but shall not include any discharge or the waste treatment system related thereto licensed under Title 38, section 413 or any discharge into a municipal or quasi-municipal sewer system.
- K. Waste. "Waste" means any liquefied sewage, garbage, sewage sludge, chemical, biological or radiological materials, human body wastes, or any other refuse or effluent in a liquid form generated from domestic, commercial or industrial activities, except any wastes containing insufficient liquid to be free flowing and wastes generated from agricultural activities or animal husbandry.

SECTION 1000.0 MINIMUM LOT SIZE LAW

1000.1 Scope: This Chapter governs the administration of the Minimum Lot Size Law, 12 MRSA §4807 *et seq.* Other regulations exist pertaining to minimum lot size in Shoreland Zoning for modular home parks.

1000.1.1 Local Plumbing Inspector

Approval: "A lot of less than the size required in §4807-A may be used for subsurface wastewater disposal if approved in writing by the duly appointed Local Plumbing Inspector for that municipality or unorganized territory, providing that the lot in question:

- a) has a current Application for Subsurface Wastewater Disposal (HHE-200) form, or equal, pursuant to rules of the Department, and
- b) can meet the provisions of a "First Time" subsurface

wastewater disposal system,
requiring no variances, and

- c) the system is not an
engineered disposal system.

1000.1.2 Department approval:

If the lot in question does not meet the criteria listed in Section 10001.1, then the Department shall be the approving body provided the subsurface wastewater disposal system is in compliance with CMR 241 Maine Subsurface Wastewater Disposal Rules.

1000.2 Review fees. The Department or the municipality may charge a review fee not to exceed \$50.

1000.3 Intent: This Chapter sets forth the provisions for approval of subsurface wastewater disposal on lots which do not comply with 12 MRSA 4807-A and are not exempted by 12 MRSA § 4807-D.

1000.4 Single family lots of record: This Code shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous undeveloped lots in the same ownership on or after October 3, 1973 shall be considered as one lot for purposes hereof.

1000.5 Other lots of record: Undeveloped lots where the use will be other than single-family residential are not exempt from the provisions of this Code.

1000.6 Existing structures: This Code does not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface wastewater disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed in Section 1001.1. The division of a lot upon which a number of such structures existed on or before October 3, 1973, into a number of lots not exceeding the number of structures, with one or more structures on each new lot is not subject to this Code, if the size of the lot, and/or the frontage has not been reduced since October 3, 1973.

1000.7 Public sewers: This Code does not apply to lots served by a municipal or quasi-municipal sewer system.

SECTION 1001.0: MINIMUM LOT SIZE AND FRONTAGE REQUIREMENTS

1001.1 Minimum requirements: No person shall dispose of wastewater by means of a subsurface wastewater disposal system, unless the lot meets the minimum lot size and frontage requirements in this Code.

1001.1.1 Single-family dwelling units: A lot on which a single-family dwelling unit is located shall contain at least 20,000 square feet. If the lot abuts a lake, pond, stream, river, or tidal area, it shall have a minimum frontage of 100 feet on the water body and any greater frontage required by local zoning. For purposes of this Code, a single-family residential unit shall be determined to be 300 gallons per day of wastewater.

1001.1.2 Other land use activities: Other land uses that generate wastewater shall require a lot containing at least 20,000 square feet and 100 feet of frontage for every 300 gallons per day of wastewater generated by the use. For wastewater generated in excess of 300 gallons per day the lot shall be in the proportion of 20,000 square feet and 100 feet of frontage for every 300 gallons per day. Determine the minimum lot size and frontage required based on the requirements in this Section.

1001.1.2.1 Multiple unit housing: For multiple unit housing, calculate the daily wastewater flows based on 120 gallons per bedroom per day.

1001.1.2.2 Other new land uses: For other new land use activities, calculate the daily wastewater flows based on the design flow requirements prescribed in Table 1.

1001.1.2.3 Other existing land uses: For other existing land use activities, calculate the daily wastewater flows based on the design flow requirements prescribed in Table 1 or actual water meter readings as set forth in Section 1002.0.

Section 1002.0: WATER USE RECORDS

1002.1 Water meter records: The design flow may be calculated by actual water meter readings, provided the following procedures are used:

1002.1.1 Acceptable records: Copies of billing records of the service provider or from water

meters certified to be accurate within 2% by the water district;

1002.1.2 One year minimum: Continuous records over the period of at least one year (or other period acceptable to the Department);

1002.1.3 Like establishments: Records from the applicant's demonstrated use of the facilities or from two or more like establishments.

1002.2 Adjustments for peak days: The average daily flows shall be adjusted for peak flow days as follows:

1002.2.1 Daily monitoring: If water meter records are recorded on a daily basis, the day with largest recorded wastewater flow shall be used for the design flow. If an applicant believes that the day with the highest flow is inappropriate, supporting data shall be submitted to the Department for review and approval.

1002.2.2 Weekly monitoring: If water meter records are recorded on a weekly basis, the design flow shall be calculated by dividing the highest weekly flow by the number of days the facility was in use during the week with the highest flow and then multiplying by 1.2. If an applicant believes a 1.2 multiplying factor is inappropriate, supporting data shall be submitted to the Department for review and approval.

1002.2.3 Monthly monitoring: If water meter records are recorded on a monthly basis, the design flow shall be calculated by dividing the highest monthly flow by the number of days the

facility was in use during the month with the highest flow and then multiplying by 1.5. If an applicant believes a 1.5 multiplying factor is inappropriate, supporting data shall be submitted to the Department for review and approval.

1002.2.4 Quarterly monitoring: If water meter records are recorded on a quarterly basis, the design flow shall be calculated by dividing the highest quarterly flow by the number of days the facility was in use during the quarter with the highest flow and then multiplying by 2.0. If an applicant believes a 2.0 multiplying factor is inappropriate, supporting data shall be submitted to the Department for review and approval.

1002.3 Adjustments for Nonresidential Effluent Quality: Facilities other than residential, using water records to determine design flows must also comply with Section 1002.3.

1002.3.1 General: When, as a result of an approved pretreatment technique, the wastewater entering an onsite sewage disposal field has a combined 5-day biochemical oxygen demand (BOD⁵) and total suspended solid (TSS) concentration of less than 175 milligrams per liter, the lot size required may be adjusted by multiplying by the adjustment factors prescribed in Table 2. When the combined BOD⁵ and TSS are greater than 320 milligrams per liter, the size of the lot shall be adjusted, again using Table 2.

TABLE 1
Design flows for nonresidential facilities

NOTE: The design flows calculated in this table represent the design flow **solely** for purposes of determining the minimum lot size requirements for uses other than single family residences

Important: See note 1 at end of Table 1.

Type of facility	Design flow per user or unit
Airports	5 gpd per passenger plus 15 gpd per employee [1]
Assembly areas	2 gpd per seat
Bakery	100 gpd per bakery plus 15 gpd per employee [1]
Barber shop	100 gpd per chair
Beauty salon	100 gpd per chair
Bed and breakfast	225 gpd per establishment and 75 gpd per rental room
Boarding houses with meals	225 gpd per house plus 50 gpd per boarder
Bottle club	10 gpd per seat
Bunkhouses	20 gpd per bed
Bus service areas	5 gpd per passenger plus 15 gpd per employee [1]
Butcher shop or department	100 gpd per shop plus 15 gpd per employee [1]
Cafeteria, open general public	30 gpd per seat plus 15 gpd per employee [1]
Cafeteria, private	15 gpd per seat plus 15 gpd/employee [1]
Campground sites served by central toilets	60 gpd per site and includes dump station
Campground sites served by individual water and sewer hookups	75 gpd per site
Campground dump station	10 gpd per site for each trailer site not served by individual water and sewer hookups
Campground park model trailer sites	125 gpd per site
Children's camps, day use only	15 gpd per camper plus 15 gpd per staff person
Children's camps, day and night	20 gpd per camper plus 15 gpd per staff person
Churches	4 gpd per seat for general seating and 8 gpd per seat for seats in a dining area
Dance hall	5 gpd per attendee plus 15 gpd per employee [1]
Day care facilities serving meals	15 gpd per child plus 15 gpd per adult
Day care facilities not serving meals	10 gpd per child plus 15 gpd per adult
Eating Places:	
Delicatessen, food prepared and no seats	100 gpd per deli or 1 gpd per meal served plus 15 gpd per employee [1] (whichever is larger)
Delicatessen, no food prepared and no seats	50 gpd per deli plus 15 gpd per employee [1]
Drive-in, no full meals and no china service	30 gpd per car space plus 15 gpd/ employee [1]
Eating place, fast food, no seats, no full meals, and no china service	100 gpd or 1 gpd per meal served plus 15 gpd per employee [1] (whichever is larger)
Eating place, fast food, no full meals, and no china service	20 gpd per inside seat plus 7 gpd per outside seat plus 15 gpd/ employee [1]
Ice Cream Stands, ice cream only with no seats	150 gpd per stand plus 15 gpd per employee. [1]
Restaurant, one or two meals per day (e.g. breakfast and lunch)	20 gpd per indoor seat plus 7 gpd/outdoor seat plus 15 gpd per employee [1]
Restaurant, three or more meals per day (e.g. breakfast, lunch, and dinner)	30 gpd per indoor seat plus 10 gpd per outdoor seat plus 15 gpd/employee [1]
Employees at place of employment with no showers	15 gpd per employee [1]
Employees at place of employment with showers	20 gpd per employee [1]

MINIMUM LOT SIZE RULES

Type of facility	Design flow per user or unit
Fairgrounds	2 gpd per attendee based on average daily attendance
Gyms, not associated with schools	10 gpd per participant plus 3 gpd per spectator plus 15 gpd per employee [1]
Health clubs	10 gpd per participant plus 3 gpd per spectator plus 15 gpd per employee [1]
Hospitals	150 gpd per bed plus 15 gpd per employee [1]
Hotels and motels with shared baths	80 gpd per bedroom plus 15 gpd per employee [1]
Hotels and motels with private baths	100 gpd per bedroom plus 15 gpd per employee [1]
Laundry, self-service	600 gpd per machine plus 15 gpd per employee [1]
Marina	100 gpd plus 10 gpd per slip or mooring (clothes washers are not included; design flow for clothes washers shall be calculated separately)
Medical offices, clinics, and dental offices	80 gpd per medical staff plus 5 gpd per patient plus 15 gpd/office employee [1]
Nursing Homes	150 gpd per bed plus 15 gpd per employee [1]
Parks and picnic areas, public rest rooms and no showers	5 gpd per attendee plus 15 gpd per employee [1]
Parks and picnic areas, public rest rooms and showers	10 gpd per attendee plus 15 gpd per employee [1]
Rooming houses, no meals	180 gpd per house plus 30 gpd per roomer
Rental cabins and cottages	50 gpd per bed plus 15 gpd per employee [1]
Rental cabins, housekeeping	50 gpd per cabin, plus 50 gpd per bed
School, elementary	7 gpd per student plus 15 gpd per teacher and other employees [1]
School, junior high	9 gpd per student plus 15 gpd per teacher and other employees [1]
School, high	12 gpd per student plus 15 gpd per teacher and other employees [1]
School, boarding	75 gpd per student plus 15 gpd per teacher and other employees [1]
Service stations	500 gpd per 1st set of fuel pumps plus 300 gpd per each additional set of fuel pumps plus 15 gpd per employee [1]
Shopping centers or stores, public rest rooms and showers	400 gpd per water closet plus 20 gpd per shower plus 15 gpd per employee [1] Design flows for any eating places or butcher shops shall be determined and added to total design flow.
Shopping centers or stores, no public rest rooms	1 gpd per parking space plus 15 gpd per employee [1] Design flows for any eating places or butcher shops shall be determined and added to total design flow. NOTE: Title 22 M.R.S.A. §270 requires a public rest room for shopping centers containing 6 or more separate retail establishments
Sports Bars	20 gpd per seat plus 15 gpd per employee [1]
Taverns/Bars (including but not limited to, pubs, billiard halls, etc.)	10 gpd per seat plus 15 gpd per employee [1]
Tennis and racquetball courts	300 gpd per court plus 15 gpd per employee 1 Design flows for any eating places shall be determined and added to the total design flow
Visitors center	6 gpd per visitor plus 15 gpd/ employee (This includes libraries, museums, similar uses) [1]

NOTES:

[1.] The design flow for employees is based on the total number of employees present in any 24-hour period.

**TABLE 2
ADJUSTMENT FACTOR FOR WASTEWATER STRENGTHS DIFFERENT
FROM TYPICAL DOMESTIC WASTEWATER**

Strength of wastewater entering the disposal field (BOD5 plus TSS)	Adjustment factor (AF)
30 or less milligrams/liter	0.5
52	0.6
82	0.7
122	0.8
175	0.9
240	1.0
320	1.1
420	1.2
530	1.3
660	1.4
810	1.5
985	1.6
1180	1.7
1400	1.8
1645	1.9
1920	2.0

Section 1003.0: WAIVER APPLICATIONS

1003.1 Application required: An application for a minimum lot size waiver is required for any subsurface wastewater disposal system on a lot not meeting the minimum area or frontage requirements of this Code unless grandfathered pursuant to Section 1000.6.

1003.2 Application form: The application for a minimum lot size waiver shall be on the form prescribed by the Department (HHE-236). A completed application shall include the following:

1003.2.1 A signed and dated application form;

1003.2.2 A completed HHE-200 form for an onsite sewage disposal system meeting First Time System criteria of the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules (CMR 241) in effect at the time of application; and

1003.2.3 A review fee of \$50.00.

Section 1004.0 MEANS OF APPEAL

1004.1 Scope: This Section governs the means of appealing either a municipal or Departmental

decision made by the Department pertaining to a minimum lot size reduction request or a Code interpretation. The means of appealing a decision made by the local plumbing inspector acting on behalf of the Municipality will be initially in accordance with the land use procedures of the municipality, with judicial review of municipal decisions through rule 80B of the Maine rules of Civil Procedure.

1004.1.1 Appellant: For the purpose of this Chapter, the “appellant” is any affected party wishing to contest a decision by the Department on a Minimum Lot Size Law waiver request or code interpretation, or a person lawfully acting on the behalf of an appellant.

1004.1.2 Grounds for appeal: For the purpose of this Chapter, the grounds for appeal are limited to: (1) violation of the law or rules; (2) misapplication of the law or rules; or (3) a factual mistake that is likely to affect the decision, including a statement specifying what the violation, misapplication and/or factual mistake is.

1004.1.3 Settlement: Parties to a Formal Conference or a Formal Administrative Hearing may negotiate a mutually acceptable settlement at any point during the proceedings.

1004.1.4 Stopping Work: A formal, written request for a Formal Conference or Formal Administrative Hearing shall be cause for the Local Plumbing Inspector (LPI) to be notified by the Department to issue a Stop Work Order pending completion of the review process.

1004.2 Notice Procedure: The Department shall inform the appellant and any entitled abutters, in writing, of its intention to grant, deny, terminate, or suspend a variance or waiver issued pursuant to this code or code interpretation.

1004.2.1 Written Decision: Granting or denial of a variance, waiver or the issuance of a code interpretation shall be provided in writing.

1004.3 Appeal Procedure: The appeal procedure shall consist of three (3) levels of appeals. It shall proceed in the following sequence:

1004.3.1 Step 1: A formal conference;

1004.3.2 Step 2: A formal administrative hearing; and

1004.3.3 Step 3: A judicial review.

1004.4. Appeal Fee: An administrative appeal fee for a formal conference or a formal administrative hearing shall be levied as follows:

1004.4.1 Formal conference fee: An administrative appeal fee of \$50.00.

1004.4.2 Formal administrative hearing fee: An administrative appeal fee of \$75.00; and

1004.4.3 Judicial review fee: Subject to judicial procedures.

1004.4.4 Exemption: Individuals who can prove they are qualified to receive public benefits, such as Medicaid or AFDC are exempt from the administrative fees listed in 1004.4.1, "Formal conference fee", and 1004.4.2, "Formal administrative hearing fee". Procedures for demonstrating eligibility shall be consistent with those utilized in the benefit programs. The Commissioner of the Department of Health and Human Services may grant a fee exemption when it is determined to be appropriate.

1004.4.5 Administrative Fee Payment: A check for the appropriate amount shall be made out for the "Treasurer of State". The check shall be sent to: Department of Health and Human Services, Division of Environmental Health, Subsurface Wastewater Program. Payment

shall be made prior to scheduling any Formal Conference or Administrative Hearing.

1004.5 Request for Formal Conference: To appeal a decision of the Department, the appellant shall submit a written request for a formal conference. The appellant shall submit the request to the Department within thirty (30) days of the date of the Department's written decision. The request shall include the following:

1004.5.1 Intention: The intended/requested appeal action;

1004.5.2 Reason(s): The reasons that support the intended action, including: (1) violation of the law or rules; (2) misapplication of the law or rules; and/or (3) factual mistake that is likely to affect the decision;

1004.5.3 Affected Party: A description of the manner in which the appellant is harmed or otherwise affected by the decision; and

1004.5.4 Limiting the issues: Before the formal conference, the appellant shall raise all issues upon which he or she appeals the decision.

1004.6 Formal Conference: This section sets forth the procedures to be used for formal conferences.

1004.6.1 Written request: The written request must be mailed to:

Director, Division of Environmental Health
11 State House Station
Augusta, Maine 04333-0011

1004.6.2 Scheduling the conference: As soon as practicable, the Department shall notify the appellant of the date, time, and place of the formal conference.

1004.6.3 Conference officer: The formal conference will be conducted by the Director of the Division of Environmental Health, or his or her designee.

1004.6.4 Conference Location: The Conference Officer shall schedule a conference in Augusta, Maine.

1004.6.5 Representation: At the formal conference, the appellant may be represented by legal counsel or any other representative on his or her behalf.

1004.6.6 Disputed issues: The appellant or representative shall raise all issues about which he or she disagrees with the Department's decision. he or she may present new evidence or information or otherwise present arguments

in response to the Department's intended action. Failure to raise any issues at the formal conference shall be deemed a waiver of any appeal rights on those issues.

1004.6.7 Written decision: Following the formal conference, the Director shall issue a written decision to the appellant which shall affirm, modify, or revoke the initial and intended decision of the Department.

1004.7 Formal Administrative Hearing: This section sets forth the procedures to be used for formal administrative hearings.

1004.7.1 Hearing request: If the appellant is dissatisfied with the written decision of the formal conference, he or she may appeal that decision by submitting a written "Request for Administrative Hearing" within thirty (30) days of the date of the written formal conference decision to:

Chief Hearings Officer
Office of Administrative Hearing
11 State House Station
Augusta, Maine 04333-0011

1004.7.2 Request: The request to the office of Administrative Hearings shall be accompanied by a copy of the fair hearing report.

1004.7.3 No Request: If the appellant does not request the hearing within the thirty (30) day time period absent good cause, the hearing may be denied by the Office of Administrative Hearings.

1004.7.4 Issues on appeal: The request shall state the specific issues being appealed. If the appellant does not set forth the issues, the request for hearing may be denied by the Office of Administrative Hearings.

1004.7.5 Hearing officer: An impartial hearing officer shall conduct the administrative hearing.

1004.7.6 Representation: At the hearing, the appellant may be represented by legal counsel or any other representative on his or her behalf.

1004.7.7 Hearing conduct: The hearing will be conducted pursuant to the rules of the Office of Administrative Hearings, as set forth in the Administrative Hearing Manual, and in conformity with the administrative procedure action 5 MRSA §8001, *et seq.*

1004.7.8 Hearing location and date: A notice will inform the appellant of the time, date, and place of the hearing. The hearing will be held in Augusta, Maine unless otherwise noted. The hearing date will be at least twenty (20) days

following the date of the notice of the administrative hearing.

1004.7.9 Decision: The Commissioner may reserve jurisdiction to issue the final decision. The Hearing Officer shall submit recommended findings of facts and a recommended decision to the Commissioner. Parties have twenty (20) days to file written exceptions and responses with the Office of the Commissioner.

1004.8 Judicial review: Any person or party dissatisfied with the hearing officer's decision has the right of judicial review under the Maine Rules of Civil Procedure, Rule 80C.

1005.0 VIOLATIONS

1005.1 Violations: Each day of violation of any provision of this chapter or the rules enacted under this chapter is considered a separate offense. Alternatively, and in addition to being an offense, any use of land in violation of this chapter is considered to be a nuisance and the Department may seek an injunction to prevent or abate a violation of this chapter or rules adopted under this chapter.

MINIMUM LOT SIZE RULES

Department of Health and Human Services
Division of Environmental Health
#11 State House Station
Augusta ME 04333
Tel: (207)287-5689
Fax: (207) 287-3165

\$50.00 REVIEW FEE
Make check payable to:
"Treasurer of State"
Appropriation #
014-10A-2426-01-2615

**APPLICATION FOR
VARIANCE TO THE MINIMUM LOT SIZE LAW REQUIREMENTS
(12 MRSA §4807-B, 4807-C)**

PLEASE TYPE OR PRINT:

Name of Applicant: _____

Address: _____

Telephone Number: _____

Local Agent (Name, Address and Tel. #) _____

LOT LOCATION

Name of Project: _____

Street or Route Number: _____

Municipality or Township: _____

County: _____

By signing this application, the applicant certifies that he/she has (1) sent a copy of the notice form to the owners of property abutting the land upon which the project is located; (2) sent a copy of the public notice form to the chief municipal officer, chairperson of the municipal planning board and the Local Plumbing Inspector, and (3) filed a duplicate of this application in the municipal office.

DATE: _____

Signature of Applicant

MINIMUM LOT SIZE RULES

(If signature is other than the applicant,
attach letter of agent authorization.)

Print name and title

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PROJECT SUMMARY - MINIMUM LOT SIZE

1. Size of lot: _____ square feet or acres.
2. Dimensions of lot: _____ ' X _____ ' X _____ ' X _____ '.
3. Is the lot owner the owner of adjacent property? (check one) [] YES [] NO
4. If the answer to question No. 3 is "YES":
 - (a) Give dimensions of total parcel owned, which includes the lot being applied for:
 _____ X _____ X _____ X _____
 - (b) Give description of present use of adjacent property:

 - (c) Attach a plan showing ENTIRE parcel owned, including lot described in 1 & 2 above, if the entire parcel is not described on the licensed site evaluator's report (HHE-200 form).
 - (d) Give plans for future use, of any adjacent land owned:

5. Attach a copy of deed, lease, option or other legal document establishing applicant's title, right or interest in the land described in 1, 2 and 4 above.
6. Is this lot a part of a subdivision? (check one) [] YES [] NO
7. If the answer to Question No. 6 is "YES" give name of subdivision, date plan filed, and registry location:

MINIMUM LOT SIZE RULES

16. The applicant shall submit copies of any reports or studies pertaining to the lot or the project prepared by any engineer, soil scientist, geologist, licensed site evaluator, or other person for the applicant or owner, referring to possible subsurface wastewater disposal or its impact on the environment.

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NOTE: Use this form or one containing identical information:

NOTICE

(to owners of abutting property, municipal officials, and local plumbing inspector)

Please take notice that _____
(Name of Applicant)

(Address of Applicant)

is filing an application for a Waiver of Minimum Lot Size Law Requirements with the Department of Health & Human Services, Division of Environmental Health pursuant to the provisions of 12 MRSA Sections 4807-B and 4807-C for permission to

(State specifically what is to be done)

MINIMUM LOT SIZE RULES

will be filed for public inspection at the Department's office in Augusta and at the municipal offices of

_____ on _____
_____. (Name of Municipality) (Date of Filing)

Written comments from any interested persons must be sent to the Division of Environmental Health #11 State House Station, Augusta, Maine 04333 within 14 days of filing of the application to receive consideration.