

**SUBDIVISION ORDINANCE  
OF THE  
TOWN OF MOUNT DESERT**

**EFFECTIVE MARCH 4, 1990**

**ADOPTED MARCH 4, 1991**

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<b>PREAMBLE</b> .....	<b>1</b>
<b>1. PURPOSE</b> .....	<b>2</b>
<b>2. AUTHORITY AND ADMINISTRATION</b> .....	<b>2</b>
<b>3. DEFINITIONS</b> .....	<b>2</b>
<b>4. PROCEDURES FOR SUBDIVISION REVIEW</b> .....	<b>3</b>
4.1    Pre-Application Procedures .....	3
4.2    Formal Application Procedures .....	4
4.2.2    Information on Parcel to be Subdivided .....	5
4.2.3    Information on Subdivision .....	6
4.3    Issuance of Dated Receipt .....	7
4.4    Completeness Review .....	7
4.5    Public Hearing .....	8
4.6    Submission of Final Plat Plan .....	8
4.7    Notification of Completed Subdivision Application including Final Plat Plan .....	9
4.8    Board Decision on Application .....	9
4.9    Inspections .....	10
<b>5. GENERAL REQUIREMENTS</b> .....	<b>10</b>
5.1    Buffer Strip .....	10
5.2    Conformance with other Laws, Regulations .....	11
5.3    Construction Prohibited .....	11
5.4    Ditches, Catch Basins .....	12
5.5    Easements .....	12
5.6    Dedication for Year-round housing .....	12
5.7    Lots and Density .....	12
5.8    Sewage Disposal .....	13
5.9    Land not Suitable for Development .....	13
5.10    Open Space Provisions .....	13
5.11    Wells .....	14
5.12    Performance Bond .....	14
5.13    Plan Revisions After Approval .....	15

5.14	Street Design and Construction . . . . .	16
5.15	Access to Direct Sunlight . . . . .	17
5.16	Cluster and Workforce Subdivision . . . . .	17
5.17	Affordable Housing Density Bonus. . . . .	22
6.	WAIVER AND MODIFICATIONS OF THIS ORDINANCE . . . . .	26
7.	SALE OF APPROVED SUBDIVISION AND/OR LOTS . . . . .	26
8.	VALIDITY, EFFECTIVE DATE, AND CONFLICT OF ORDINANCES . . . . .	27
9.	AMENDMENTS . . . . .	27
10.	APPEALS . . . . .	28
11.	ENFORCEMENT AND PENALTIES . . . . .	28

**PREAMBLE  
TO THE  
SUBDIVISION ORDINANCE  
OF THE  
TOWN OF MOUNT DESERT**

A subdivision is the division of a tract or parcel of land into 3 or more lots within any 5-year period, which period begins after September 22, 1971, whether accomplished by sale, lease, development, buildings or otherwise provided that a division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, or a gift to a municipality, unless the intent of the gift is to avoid the objectives of this section, or by transfer of any interest in land to the owner of land abutting thereon, shall not be considered to create a lot or lots for the purposes of this section.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel, unless otherwise exempted herein, shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein, shall be considered to create a third lot, unless both those dividings are accomplished by a subdivider who shall have retained one of the lots for his own use as a single family residence, or for open space land as defined in Title 36 Section 1102, for a period of at least 5 years prior to that 2<sup>nd</sup> dividing. Lots of 40 or more acres shall be counted as lots in all districts.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.\*

Any person intending to subdivide or to develop a subdivision should be aware that Maine State law provides heavy penalties (up to \$1,000 per day) for violations. Attention is directed to Section 11, Penalties, in the Subdivision Ordinance.

\* Maine State Subdivision Law, Maine Revised Statutes Annotated, Title 30-A, Section 4401.6 as of May 4, 1989 or as later amended.

## **1. PURPOSE**

The purpose of this Ordinance shall be to assure the comfort, health, safety, and general welfare of the people, to protect the environment, and to provide for the orderly development of a sound and stable community in accordance with the Comprehensive Plan of the Town of Mount Desert.

## **2. AUTHORITY AND ADMINISTRATION**

**2.1 Authority** These regulations are adopted pursuant to and consistent with the home rule power granted to all municipalities under the Maine Constitution, Article VIII-Part 2, Sect. 1, and Title 30-A., M.R.S.A. Section 3001 as amended.

### **2.2 Administration**

**2.2.1** The Board for the Town of Mount Desert shall administer this Ordinance.

**2.2.2** The provisions of this Ordinance shall apply to all of the land area of all proposed subdivisions, as defined herein, located in the Town of Mount Desert.

**2.2.3** This ordinance shall be administered in full compliance with the Land Use Zoning Ordinance (LUZO) of the Town of Mount Desert (TMD), which is incorporated, by reference, herein in its entirety.

### **2.3 Expenses and Fees**

**2.3.1** \$100 with application plus \$50 per lot (or unit)

**2.3.2** All expenses in excess of the fee set forth in Section 2.3.1 which are incurred by the Town of Mount Desert incidental to processing an application shall be borne by the applicant.

## **3. DEFINITIONS**

**3.1 Subdivision** A subdivision shall mean the division of a tract or parcel of land as defined in Title 30-A M.R.S.A., Section 4401.4, as amended; but shall include lots of any size in all districts. The term

subdivision shall also include such developments as mobile home parks, multiple family dwelling(s), shopping centers, condominiums, industrial parks and planned unit development, multi-unit and multi-building projects, commercial or residential whether for sale or lease, and which include 3 or more countable lots or units created within a 5 year period.

**3.1.1 Road Standard Review.** When the development of a lot involves access over a private road that will serve more than 2 lots, such development may be submitted for approval as a Road Standard Review, provided that the development does not otherwise require approval as a Subdivision.

**3.2 Board** Whenever used in this Ordinance shall mean the Planning Board.

**3.3 Developable Land** All land in the Town of Mount Desert shall be developable, except land located on Hydric Soils, defined by the Hancock County Soil Conservation Service, and land with slope in excess of 20%. This definition shall only apply to PUDs.

**3.4 Functional Land Division** A functional land division is the division of a lot of land resulting in the distinct, separate, historical residential uses of the property into separate non-conforming lots. A functional land division into three (3) or more lots and upon each of which lots permanent dwelling units previously existed is not a subdivision. See LUZO Sections 2.3 and 4.10.

#### **4. PROCEDURES FOR SUBDIVISION REVIEW**

**4.1 Pre-Application Procedures** Prior to submitting an application for subdivision approval, the subdivider or his authorized agent shall appear at a regular meeting of the Board to discuss the proposed subdivision.

**4.1.1** The subdivider shall present to the Board, for informal review and comment, a sketch plan of the proposed subdivision. The sketch plan shall consist of a rough outline of the proposed subdivision, and may be a freehand, penciled sketch of the parcel showing the proposed layout of streets, lots, and other features which may be of assistance to the Board in evaluating the proposal. If the proposed

development is limited to a Road Standard Review, the Board may require the Applicant to provide any information the Board feels necessary to determine whether the private road to be used for access meets the requirements of the Street Design and Construction standards of Section 5.14 and/or whether any waiver of such requirements is appropriate. The Board may then make its determination and communicate its decision to the Code Enforcement Officer. No further proceedings or action are necessary for a Road Standard Review under this Ordinance.

**4.1.2** No commitments shall be made between the subdivider and the Board at this stage. The purpose of the pre-application procedures is solely to facilitate an understanding of what is proposed, what may be possible, and what may be acceptable.

**4.1.3** In order for the Board to be more fully informed about the site, the subdivider shall arrange an inspection of the site, with the Board, or individuals appointed by the Chairman to act as the Board's representatives for the inspection. The on-site inspection may be conducted at or shortly after the time of submission of the sketch plan. The pre-application phase will not be considered complete until such inspection has been made.

**4.1.4** The pre-application procedures shall not be construed as representing either the pendency or the commencement of the application process per se.

**4.2** **Formal Application Procedures** An application for subdivision approval shall be submitted in a form approved by the Board and shall include information as set forth in subsections 4.2.1, 4.2.2, and 4.2.3 below. In addition, a preliminary plot plan shall be submitted with the application and shall conform to standards established by the Board. Said plan shall be at least 8 1/2" by 11" and drawn to a scale of not greater than 1" = 50' nor less than 1"=400'. Ten<sup>1</sup> copies of the application and preliminary plat plan shall be provided by the subdivider.

**4.2.1 Information on the Applicant:**

1. Name of applicant (owner)

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<sup>1</sup>Administrative change: Eight changed to Ten per Planning Board vote March 8, 2004

2. Name of agent (if other than owner) with attached authorization for agent by owner.
3. If Applicant is a corporation, state whether the corporation is licensed to do business in Maine, and attach copy of Secretary of State's Registration.
4. Name of Applicant's authorized representative and authorization.
5. Name, address, and number of Registered Professional Engineer, Land Surveyor, or Planner.
6. Address to which all correspondence from the Board should be sent.
7. What interest does the Applicant have in the parcel to be subdivided (option, land purchase contract, record ownership, etc.)?
8. What interest does the applicant have in any property abutting parcel to be subdivided?
9. State whether preliminary plat plan covers entire, contiguous holdings of owner.

#### **4.2.2**

##### **Information on Parcel to be Subdivided:**

1. Location of property: Map and Lot (from Town Tax Maps.)
2. Survey maps of tract to be subdivided, as well as contiguous property of the owner of the tract, certified by a Registered Land Surveyor, tied to established reference points (attach to application).
3. Current zoning district(s) of property.
4. Acreage of parcel to be subdivided.
5. An SSWD, by a licensed soil engineer identifying soil types and a map showing the location of soil test areas, unless the parcel will utilize public sewer. Based on soil test results, certain modifications of the Preliminary Plat Plan may be required (attach copy of soils report to application). There shall be at least one satisfactory soil test per lot.
6. Names of property owners within 1,000 feet from the parcel to be subdivided, and on opposite side of any road from parcel to be subdivided (show on Plat).
7. Any restrictive covenants to be placed on the deeds.
8. Proposed soil erosion and sedimentation control
9. Water supply.



**4.2.3 Information on Subdivision:**

1. Proposed name of subdivision
2. Number of lots
3. Date, north point, graphic map scale (show on Plat).
4. Proposed lot lines with approximate dimensions and suggested location where known of buildings, subsurface sewage disposal systems, and wells (show on Plat).
5. Location of temporary markers so located as to enable the Board readily to locate lots and appraise basic lots layout in the field (show on Plat)
6. Location of all parcels to be dedicated to public use, the conditions of such dedication, as well as the location of all natural features of site elements to be preserved (show on Plat).
7. A location map, consisting of a USGS Topographical Map, showing the relation of the proposed subdivision to adjacent properties and to the general surrounding area. The location map shall show all the area within 2000 feet of any property line of the proposed subdivision and shall be attached to application.
8. Location and size of existing buildings and other essential existing physical features (show on Plat).
9. Location of all wetlands, regardless of size, all water bodies and areas within the State Shoreland Zone (show on Plat).
10. Location of all drains which shall provide adequate storm water management.
11. Location and size of any existing and proposed sewers and water mains, and culverts and drains.
12. Location, names, and widths of existing and proposed streets, highways, easements, building lines, parks, and other open spaces (shown on Plat).
13. Names of abutters (show on Plat).
14. The Subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps, whether the subdivision is in a flood prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision.
15. Other information not indicated above, as specified by the Board.

**4.2.4 Information Showing Compliance with LUZO and Subdivision Ordinances** – The applicant shall submit evidence to the Board to show compliance with:

- a. Section 5 of this Ordinance
- b. Section 6 of the LUZO
- c. Such other regulations and ordinances referred to in Section 5.2 of this Ordinance as the Board may require.

**4.3 Issuance of Dated Receipt** Upon receipt of the Preliminary Plat Plan and the Application, the Code Enforcement Officer shall issue the subdivider a dated receipt and notify all abutters (including those across any roads) that the application has been filed. This receipt is for administrative purposes only and does not mean the application is complete or pending under the provisions of Title 1 MRSA, Section 302. Application pendency will occur only after Board review and determination that the application is complete with the exception of the Final Plat Plan. (See section 4.4.1. below).

**4.4 Completeness Review**

**4.4.1** Within 30 days of the date of issuance of the dated receipt, the Board shall review the application for completeness in accordance with the requirements of 4.2.1, 4.2.2, and 4.2.3 and shall notify the subdivider in writing that:

a. In addition to the submission of a Final Plat Plan, there are a number of specific additional materials, which will have to be submitted to constitute a complete application. The Board shall list the specific additional items that must be submitted in order to make the application complete except for the Final Plat Plan; or

b. With the exception of the submission of a Final Plat Plan, the application is a complete application, is **now pending**, and a public hearing is required.

**4.4.2** The Board shall now begin review of the application against the standards.

**4.4.3** The Board shall maintain a permanent record of its deliberations and any action taken with regard to the application.

## **4.5 Public Hearing**

**4.5.1** The Board shall hold a public hearing within 45 days of having received a complete subdivision application, and shall cause notice of the date, time and place of such hearing to be given to the subdivider and to be published in a newspaper of general circulation in the Town at least two times; the date of the first publication shall be at least 14 days prior to the hearing. The Board shall send notice of such public hearing by First Class Mail to all owners of property within 1000 feet of any boundary of the proposed subdivision.

**4.5.2.1** If the Board determines that there are apparent deficiencies in connection with the proposal, which should be corrected before submission of the Final Plat Plan, the Board shall indicate to the applicant in writing the nature of these deficiencies. Submission of the Final Plat Plan without correcting these deficiencies shall be grounds for disapproval of the application. In all instances the burden of proof of compliance shall rest with the applicant.

## **4.6 Submission of Final Plat Plan**

**4.6.1** Within 2 months of the date of the end of the Public Hearing in 4.5 above, the subdivider shall submit the Final Plat Plan to the Board. Failure to submit the Final Plat Plan within the designated time period shall require the submission of a new subdivision application, unless such delay is caused by the applicant complying with Section 5.2.

**4.6.2** The Final Plat Plan shall consist of 1 original transparency (Mylar) and 8 copies of one or more maps or drawings similar to those prepared for preliminary plat submission. In addition to all of those items required on the preliminary plat, unless otherwise indicated by the Board, the following items shall be required as part of the Final Plat Plan submission.

1. Registered Land Surveyor. The name, registration number, and seal of the registered land surveyor who prepared the final Plat (show on Plat).
2. Road(s) and Rights of Way
3. Open Spaces. The designation of all easements, areas

- reserved for or dedicated to, public use, and areas reserved by the subdivider.
4. Lots. The location, bearing, and length of every line, with all lots to be numbered in accordance with local practices.
  5. Permanent Reference Monuments. The location of permanent markers to be set at lot corners, as shown on the plat.
  6. Performance Bond. A performance bond to secure completion of all public improvements required by the Board, and written evidence that the municipal officers are satisfied with the legal sufficiency of such bond.
  7. Land Dedication. Written copies of any documents of land dedication, and written evidence that the municipal officers are satisfied with the legal sufficiency of any documents conveying such land dedication.
  8. Approval Space. Suitable space to record on the approved plat plan the date and conditions of approval, if any. This space shall be similar to the following example:

Approved: Town of Mount Desert Planning Board  
(space for all members to sign)

Date of Approval \_\_\_\_\_

Conditions \_\_\_\_\_

Waivers \_\_\_\_\_

**4.7 Notification of Completed Subdivision Application including Final Plat Plan** After the Board has received the final Plat Plan and all of the information required to be submitted with it, the Board shall notify the subdivider in writing that a completed subdivision application has been filed.

**4.8 Board Decision on Application**

**4.8.1** The Board shall, within 30 days of the completion of a public hearing, or within 60 days of having received a completed application, whichever is later, or within such other time limit as may be mutually agreed to, issue an order denying or granting approval of the proposed subdivision, or granting approval on such

terms and conditions as it may deem advisable to satisfy the criteria contained in this Ordinance and in Title 30-A, MRSA, Section 4404, as amended, and to preserve the public's health, safety, and general 4.8.1 welfare. In all instances, the burden of proof shall be upon the subdivider. In issuing a negative decision, the Board shall make findings of fact establishing that the proposed subdivision does not meet the provisions of this Ordinance, Title 30-A, MRSA Section 4404, as amended, the Town's Comprehensive Plan or Land Use Zoning Ordinance.

- 4.8.2** Upon approval of the Application, the Board shall execute four copies of the Plan. One copy shall be retained by the subdivider, one copy shall be retained by the Board. The original Mylar and required copies shall be filed by the applicant with the Registry of Deeds, within 90 days of the date of approval. If this filing is not accomplished within 90 days, the subdivision plan and Board approval thereof shall be null and void.

## **4.9 Inspections**

- 4.9.1** At least five days prior to commencing construction of required improvements, the subdivider shall:
1. Notify the Code Enforcement Officer in writing and give an approximate timetable for completion.
  2. Pay an inspection fee as shall be determined from time to time by the Board of Selectmen.

## **5. GENERAL REQUIREMENTS**

- 5.1 Buffer Strip** Buffering elements or screening in the form of architectural and/or landscape design are required to preserve the character and stability of allowed uses in adjoining areas, to enhance the visual and aesthetic image of the District, and to minimize negative impacts between uses. Buffers may be used for passive recreation and may contain pedestrian trails, provided that each use does not compromise its primary function. Screening may consist of a natural area of trees or shrubs or a planted evergreen belt or any combination of the two which meets the following Performance Standard. The natural area or planted belt shall contain a sufficient number and species, selected and planted according to generally accepted horticultural practices, to

yield an effective screen within 4 years. A fence, berm, wall or other such construction may be included in such screens.

Buffers shall be considered in or for the following areas and purposes among others:

1. Along property lines, to shield various uses from each other;
2. Along interior roads running parallel to roads exterior to the site, to prevent confusion, particularly at night;
3. Outside storage: All outside storage areas, loading docks, storage tanks, garbage collection areas, electrical transformers, service areas, and similar functions shall be screened from public view. Walls, fencing, screening, dense plant materials, or a combination of material can be used to achieve this intent.
4. To block prevailing wind patterns and to stop wind-borne debris from leaving the site.

Driveway accesses shall be designed so as to minimize the visual interruption of the buffer areas.

**5.2 Conformance with other Laws, Regulations** The proposed subdivision shall be in conformance with all pertinent local, State, and Federal Ordinances, statutes, laws, and regulations. If the proposed subdivision meets the definition of a subdivision as defined in the Site Location Act, Title 38, MRSA, Section 482, the subdivider must secure the approval of the State Board of Environmental Protection as well as the Board. When a proposed subdivision requires approval of the Board and the Board of Environmental Protection, each review may be conducted independently, and the Board may deny approval of the subdivision even though the Board of Environmental Protection has granted an approval under the provisions of the Site Location Act.

**5.3 Construction Prohibited** No utility installations, no ditching, grading or construction of roads, no grading of land or lots, and no construction of buildings shall be commenced on any part of the proposed subdivision until a Final Plat Plan of the subdivision has been prepared, submitted, reviewed, approved, and endorsed as provided by this Ordinance, nor until an attested copy of the Final Plat Plan so approved and endorsed has been recorded by the

subdivider in the Registry of Deeds. Plans for road construction, grading and ditching shall be reviewed by the Board. Construction of improvements necessary to ensure compliance with requirements of the Subdivision Ordinance may be permitted upon written approval of the Planning Board.

**5.4 Ditches, Catch Basins** The Board may require the installation of ditches, catch basins, piping systems, and other appurtenances for the conveyance, control, or disposal of surface waters. Any culverts shall be at least 15" in diameter. Adequate drainage shall be provided so as to reduce the danger of flooding and erosion.

**5.5 Easements** The Board may require easements for sewerage, drainage, utilities, or public access.

**5.6 Dedication for Year-round housing**  
Reserved

**5.7 Lots and Density**

**5.7.1** The lot size, width, depth, frontage, shape and orientation and the minimum setback lines shall be in accordance with the Land Use Zoning Ordinance.

**5.7.2** Where individual, on-site sewage disposal systems are to be utilized, the size of each lot shall be based on soil characteristics, and shall, as a minimum, conform to M.R.S.A. Title 12, Section 4807- A as amended.

**5.7.3** The Planning Board shall determine if a division of land will be reviewed as a Cluster, a Workforce or a Conventional subdivision.

In order to conform to Section V of the Comprehensive Plan, special consideration shall be given to the preservation of open space and the character of the community in which the development is proposed.

1. Land Subdivisions: Density requirements shall be in accordance with Land Use Zoning Ordinance, Section 3.5 Dimensional Requirements for Districts. Dimensional requirements remain as stated in the Land Use Zoning

Ordinance, Section 3.5.

2. Non-land subdivisions (multiple units within a single structure): Overall net density shall be in accordance with Land Use Zoning Ordinance, Section 3.5 Dimensional Requirements for Districts.
3. Overall net density shall be determined by the total number of proposed dwelling units and the total acreage (including open spaces and recreational areas) within the subdivision.

**5.8 Sewage Disposal**

**5.8.1** Where any part of a proposed subdivision is located within 1500 feet of a public sanitary sewer line, the subdivider shall connect with such sanitary sewer line by means of a main not less than 8 inches in diameter, provided however, that the appropriate municipal agencies shall first have certified that extending the services will not be an excessive burden on the system.

**5.8.2** Where private subsurface sewage disposal is to be utilized, the subdivider must conform to all State of Maine Plumbing Code and LUZO requirements. Furthermore:

1. Disposal sites shall be totally contained within the lot being serviced.
2. Systems shall be designed to the highest standards for the specified use.
3. There shall be no contamination of existing or proposed wells, or any other water source.

**5.9 Land not Suitable for Development** The Board shall not approve such portions of any proposed subdivision that are located on land below sea level, within the 100 year frequency flood plain, or on land which must be filled or drained or on land created by diverting a water course. In no instance shall the Board approve any part of a subdivision located on filled tidal land or filled or drained Great Ponds.

**5.10 Open Space Provisions**



**5.10.1** The Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees (10" 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. Extensive grading and filling shall be avoided.

**5.10.2** The Board may require that the subdivider reserve an area of land as an open space and/or recreational area for use by property owners in the subdivision.

1. The property owners may enter into a written agreement with the Selectmen for development and/or maintenance of the reserved land, but all costs of development and maintenance shall be borne by the property owners of the subdivision. The method for apportioning the cost as between individual property owners shall be subject to approval of the Town Selectmen.
2. The obligation to provide for the cost of development and/or maintenance of the reserved open space shall be included in the conveyance of each parcel of the subdivision to its rightful owner.

**5.11 Wells**

**5.11.1** Because they are difficult to maintain in a sanitary condition, dug wells may be permitted only if it is not technically feasible to develop other ground water sources.

**5.11.2** The applicant may be required to show the availability of adequate potable water. A test well may be required, if a public water system is not utilized.

**5.12 Performance Bond**

**5.12.1** The Board may require that the subdivider file with the Board at the time of submission of the Final Plan a performance guarantee in an amount sufficient to defray all expenses of the proposed improvements. This may be tendered in the form of a certified

check payable to the Treasurer of the Town, or a performance bond running to the Town and issued by a surety company acceptable to the Town Treasurer or a letter of credit satisfactory to the Town Treasurer. The conditions and amount of such certified check or performance bond shall be determined by the Board of the Town with the advice of the municipal officers. The amount shall be at least equal to the total cost of furnishing, installing, connecting, and completing all of the street grading, paving, storm drainage and utilities or other improvements specified on the Final Plat Plan within two years of the date of the certified check or performance bond, or such other period of time as the Board may require.

**5.12.2** The Board may recommend a maximum extension of 12 months to the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board and the municipal officers, good cause for such extension. Such recommendation shall be referred to the municipal officers for official action.

**5.12.3** Before a subdivider may be released from any obligation requiring his guarantee of performance, the Board will require certification from the appropriate municipal officers to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards (State, Federal, and local codes, Ordinances, laws, and regulations).

**5.12.4** The Board may, at its discretion, waive the requirement of a performance bond and recommend a properly executed conditional agreement with the Town. Such agreement, if executed with the Town, shall be noted in writing on the Final Plat Plan and shall provide that the Board may approve the Final Plan or any part thereof, on the condition that no lot in the subdivision may be sold and no permit shall be issued for the construction of any building or any lot on any street in the subdivision until it shall have been certified in the manner set forth in paragraph 5.12.3 above that all improvements have been made within 2 years or such other period of time as the Board may require of the date of executing such conditional agreement.

## **5.13 Plan Revisions After Approval**

**5.13.1** No changes, erasures, modifications, or revisions shall be made in

any Final Plat Plan after approval has been given by the Board and its written endorsement has been recorded on the Plan, unless the Plan is first resubmitted and the Board approves any modifications. In the event that the Final Plat Plan is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the Plat Plan stricken from the records of the Town and the Registry of Deeds.

**5.13.2** Applicants for revisions shall submit at least eight (8) copies of any proposed revision. If the revision involves the creation of additional lots or units, or extends the boundaries of the subdivision, a public hearing shall be required. Otherwise the Board shall determine if a public hearing is required.

**5.13.3** The revised Plan shall refer to the original Plan (and any other revisions) and state the specific nature of the revision.

## **5.14 Street Design and Construction**

**5.14.1** Widths of rights-of way for road construction shall be not less than fifty (50) feet. The design and construction of all streets and roads shall be in accordance with the State Aid Road Specifications of the State of Maine Department of Transportation. Where an access road from a public road or highway is required to serve 3 or more lots, said access road shall be in accordance with the standards given below:

### Street Construction Standards:

Minimum Right of Way Width	50 ft
Minimum road Width	16 ft
Maximum Grade*	12%
Minimum Centerline Radius	150 ft
Minimum Tangent between Curves of reverse alignment	50 ft
Roadway Crown	1/4 in/ft
Minimum Angle of street intersection** (degrees)	75°
Maximum Grade within 75 ft of intersection	2%
Minimum curb radii at intersections	14 ft
Minimum width of shoulders (each side)	3 ft
Minimum thickness of material after compaction	18 in

### Street Materials:

Aggregate Sub-base Course	(Maximum Sized Stone 4 in)
Crushed Aggregate Base Course	3 in

\* Maximum grade may be exceeded for a length of 100 feet or less, upon approval of the Planning Board

\*\* Street intersection angles shall be as close to 90 degrees as feasible but no less than the listed angle.

**5.14.2** Dead End Streets In addition to the design standards above, dead end streets shall be constructed to provide cul-de-sac turn-around with the following minimum requirements for radii:

Property line	65 ft
Outer edge of road	50 ft
Inner edge of road	30 ft

Where the cul-de-sac is in a wooded area prior to development, a stand of trees shall be maintained within the center of the cul-de-sac. The Board may require the reservation of a twenty foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Board may also require the reservation of a fifty-foot easement in line with the street to provide continuation of the road where future subdivision is possible.

**5.14.3** The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Mount Desert of any street, road, or right-of-way.

**5.15 Access to Direct Sunlight** The Board may, for purposes of protecting and assuring access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and setback requirements or other forms of permissible forms of land use controls.

**5.16 Cluster and Workforce Subdivision**

**5.16.1** Purpose: The purpose of the cluster and workforce subdivision standards is to encourage new concepts of cluster housing with

maximum variations of design that will result in:

1. permanently protected open space and recreational areas;
2. a pattern of development that preserves the natural beauty of the site, trees, outstanding natural topography, wildlife habitat, and to prevent soil erosions;
3. an environment in harmony with surrounding development and/or the traditional community characteristics;
4. a more creatively designed development than would be possible through strict application of other sections of the Land Use Zoning Ordinance;
5. uses of land that promote efficiency in public services and facilities with small networks of utilities and streets;
6. development of housing that is more economically viable for the year-round working community.

#### **5.16.2. Plan Design Requirements**

1. Permitted Zones and Uses: Cluster and Workforce Subdivisions are permitted in all Zones except for Shoreland, Conservation, and Resource Protection Zones.
2. Density:
  - a. The density of the subdivision shall not exceed the density requirements of the zone in which it is located. Density is calculated by applying the minimum lot sizes to the developable portion of the parcel (i.e. not wetland or steep slope). For the purpose of calculating density for subdivisions that include Workforce Housing, the area of the entire parcel may be used (i.e. including wetland and steep slopes). Workforce Housing will use the entire parcel. Density requirements and density bonuses for workforce housing shall be calculated from lines (A) and (B) of the minimum lot size standards in the LUZO Dimensional Requirements Section 3.6.

b. Multiple Zoning Districts: If the parcel being subdivided is located in more than one zoning district, the overall density of the subdivision shall not exceed the combined density requirements of the districts in which the subdivision is located.

c. Workforce Housing Density Bonuses: Projects that include covenants held by a qualified workforce housing entity may receive density bonus as follows:

1. An increase of up to 50% in the gross residential density of the site may be permitted if at least 50% of the residential units are conveyed with covenants designed to benefit the creation and preservation of workforce housing.
  2. An increase of up to 75% in the gross residential density of the site may be permitted if 100% of the residential units are conveyed with covenants designed to benefit the creation and preservation of workforce housing.
3. Open Space requirements: The cluster subdivision must include open space that meets the following requirements:
- a. The total area dedicated for open space must equal or exceed the sum of the area by which the building lots are reduced below the minimum lot size otherwise required for the respective zone (i.e. the non-cluster subdivision minimum lots size). Open Space requirement for Workforce Housing: When calculating the open space requirement for qualified workforce housing development, the density bonus units shall be excluded.
  - b. The open space shall be accessible to the residents of the development.
  - c. The open space may be used for low-intensity recreation, subsurface wastewater disposal, agriculture, or other passive outdoor living purposes and for preserving the

natural features of the site. The open space shall not include rights-of-ways, parking areas, tennis courts, swimming pools, or other areas of impervious surface, or similar recreational development. The use of open space may be further limited or controlled at the time of final subdivision approval if necessary to limit impact to adjacent properties.

d. Whenever possible, some portion of the open space must be located adjacent to the existing public road(s) serving the development so as to preserve a rural or traditional appearance from such roads.

e. The open space shall be protected by a legal instrument satisfactory to the Planning Board, sufficient to assure its maintenance and preservation for its intended purpose. The legal arrangements shall specify ownership of the open space area, responsibility for maintaining the limitation on the uses, payment of taxes, insurance and other fees, and any other specifications deemed necessary by the Planning Board. Any association or entity formed to own or maintain the open space shall not be dissolved without the consent of the Planning Board.

f. The open space may not be further subdivided, except:

1. part or all of the common open space may be conveyed for public ownership with approval by the Town; or
  2. easements may be granted for underground utilities.
4. Development Layout: Each lot or building must be an element of an overall plan for the entire parcel. When the development consists of the creation of lots, the plan shall establish a building envelope for each lot within which the buildings will be located. When the development involves the construction of multiple buildings on one (1) or more lots, the plan shall show the general location of each building. The plan shall show the location and size of all building envelopes, roads, utility easements, common areas,

common structures, parking areas, footpaths, and private yard space related to individual residential units. The placement of buildings and treatment of spaces shall reflect the purpose of this section and meet all other relevant requirements of this Ordinance.

5. Road frontage requirement: Only the lot over which the main access road lies shall meet the required road frontage for the zone in which it is located. Other lots may have less or no road frontage, as determined by the Planning Board.
6. Setbacks: The Planning Board may reduce the side and rear setback requirements for the internal lot lines of the project, but not the setbacks from the boundaries with adjacent parcels.
7. Public land and facilities: The Town must approve any provisions for the maintenance and upkeep of public land and facilities within subdivision.
8. Protection of natural and scenic features: building envelopes, proposed buildings, roads, or other improvements shall be located to preserve the existing scenic and natural features of the property to the greatest extent practicable.
9. Streets: access from public ways, internal circulation, and parking shall be designed to provide for vehicular and pedestrian safety and convenience, emergency and fire equipment, snow removal, street maintenance, refuse collection, and other delivery and collection services.
10. Drainage: adequate provision shall be made for management of storm water runoff and erosion control.
11. Sewage Disposal: The subdivision shall be served by public sewer or shared subsurface systems, unless the Planning Board finds that these systems are not practicable or permissible under the State of Maine Plumbing Code.
12. Water Supply: The subdivision shall be connected to a



common water supply and distribution system unless the Planning Board finds that:

- a. Adequate ground water is available at all locations proposed for individual water systems, and;
  - b. the ground water source (s) proposed for the individual water systems is safe from both on-site and off-site contamination.
13. Utilities: all utilities shall be installed underground unless specifically waived by the Planning Board. Transformer boxes, pumping stations, and meters shall be screened from view from public locations.
14. Buffering: forest management, planting, landscaping, disposition and form of buildings, fencing, and screening shall be used to integrate the proposed development with the landscape and the character of any surrounding development.

## **5.17 Affordable Housing Density Bonus**

### **5.17.1 Purpose.**

This section provides for a density bonus for the creation of affordable dwelling units pursuant to 30-A M.R.S. § 4364. Applicants can either use Section 15.17 or Section 15.16. They cannot use both.

### **15.17.2 Applicability**

For projects that choose to use the provisions of Section 15.17, the standards of Section 15.16 do not apply.

### **15.17.3 Definitions.**

1. Affordable Housing Development. A development composed of single-family dwellings, two-family dwellings, or multi-family dwellings and,
  1. For rental housing, in which a household whose income does not exceed 80% of the area median income can afford 51% or more of the units in the development without

spending more than 30% of the household's monthly income on housing costs;

2. For owned housing, in which a household whose income does not exceed 120% of the area median income can afford 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs.
  3. For purposes of this definition, "housing costs" means: (a) for a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and (b) for an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.
2. Area Median Income. For the purposes of this definition, "area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing and Urban Development ("HUD"). For purposes of this definition, "region" is considered Hancock County.
  3. Base Density. The maximum number of units allowed on a lot not used for affordable housing based on the dimensional requirements listed for the zone(s) in which the lot is located. This does not include any other density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

#### 15.17.4 Affordable Housing Density Bonus.

A residential or mixed-use development shall be allowed a maximum dwelling unit density of up to 2.5 times the base density permissible in the underlying land use district if, after completion of the project, more than half of the total dwelling units, existing and new, on the same lot are affordable (as defined above) for a period of at least 30 years.

The density bonus may not be applied to non-conforming lots. If a fraction results when calculating the density bonus, the number of units shall be rounded down to the nearest whole number.

#### 15.17.5 Location.

An affordable housing development must be located in a Growth Area defined in the Town's most recently adopted Comprehensive Plan, or served by a public, special district, or other centrally managed water system and a public, special district, or other comparable/engineered sewer system. Notwithstanding the foregoing requirement, the Town has no obligation to provide, install, or extend public sewer or water to any development.

#### 15.17.6 Water and Wastewater Requirements.

1. The applicant must provide written verification that each proposed unit within the affordable housing development will be connected to adequate water and wastewater services.
2. The applicant must make adequate provision for the long-term maintenance, repair, and improvement of any (i) individual private septic system, (ii) comparable/engineered sewer systems, (iii) individual private wells, and (iv) public water systems proposed to serve the units within the affordable housing development, including a process of collection and enforcement to obtain capital improvement funds from the developer (for rental housing) or the unit owners (for owned housing).

#### 15.17.7 Minimum Lot Sizing for Septic.

The subject property complies with minimum lot size requirements in accordance with 12 M. R. S. Chapter 423-A, as amended, if subsurface wastewater disposal is proposed.

#### 15.17.8 Parking.

No more than 2 off-street parking spaces are required for every 3 units.

#### 15.17.9 Long-Term Affordability.

More than half of the total dwelling units in the affordable housing development must be designated as affordable rental units or affordable homeownership units. The owner of the affordable housing development must execute a restrictive covenant, in form acceptable to the Planning Board and for the benefit of and enforceable by the Town or a third party acceptable to the Planning Board, recorded in the Hancock County Registry of Deeds, to ensure that for at least 30 years after completion of construction, occupancy of all of the dwelling units designated affordable in the affordable housing development remains limited to households at or below 80% (for rental housing) or 120% (for owned housing) of the local area median income at the time of initial occupancy. The restrictive covenant must run with the land and encumber the affordable housing development, be binding upon the developer (for rental housing) or the unit owners (for owned housing) and their successors and assigns and inure to the benefit of and be enforceable by the Town and a third party acceptable to the Planning Board.

#### 15.17.10 Phase Project.

For phased projects, the Town may issue Certificates of Occupancy for dwelling units in a phase of a project only if a sufficient number of affordable dwelling units, subject to an affordable housing agreement consistent with 15.17.8 above, are included in the phase so that more than one-half of the total number of dwelling units that will be approved for occupancy, as evidenced by Certificates of Occupancy, at the end of the phase constitute affordable dwelling units.

#### 15.17.11 Shoreland Zoning.

An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, Chapter 3, and municipal shoreland zoning ordinances.

## **6. WAIVER AND MODIFICATIONS OF THIS ORDINANCE**

**6.1** Where the Board finds that there are special circumstances of topography, seasonal or similar limited uses, regarding traffic access and safety, neighborhood aesthetics or environmental concerns, or that extraordinary hardships may result from strict compliance, the Board may waive provisions of this ordinance provided that such waiver does not have the effect of nullifying the purpose of this Ordinance, the Comprehensive Plan, or the Land Use Zoning Ordinance of the Town.

**6.1.1** Where the Board finds that a private road providing access to a lot or lots cannot meet the Street Design and Construction standards of Section 5.14 because (a) the application of land use restrictions would prevent the work required to bring an existing road into compliance or (b) physical conditions of the site render strict compliance impossible, then the Board may waive such standards. However, in all such cases, the Board must find that (a) the proposed plan brings the road into compliance as much as is feasible, (b) the proposed plan will provide safe access to and from the property, and (c) the proposed plan will allow for access to the site for emergency vehicles.

**6.2** In granting any waiver, the Board may stipulate the substitution of such other conditions as, in its judgment, are necessary to safeguard the objectives of the requirements so waived.

**6.3** Any waivers granted shall be noted on the Final Plat Plan.

## **7. SALE OF APPROVED SUBDIVISION AND/OR LOTS**

**7.1** **For Development by New Owner** No subdivision approval granted by the Board after October 1, 1988 may be transferred to another developer or subdivider without the prior approval of the Board. Any developer or subdivider wishing to acquire the development rights to a property to which a subdivision approval has already been granted must first demonstrate to the Board that he is properly qualified both technically and financially to complete the project.

To that end, any acquiring subdivider must provide the Board with

all of the information set forth in Section 4.2.1 plus such other data as the Board may request.

The new owner shall also demonstrate to the Board, full and complete knowledge of all improvements required by the developer in accordance with this ordinance and the approved plans for the subject subdivision. No further development of the subdivision shall be conducted and no sale or lease of the lots in the subdivision shall be made unless the Board finds that the new owner has the necessary financial and technical capacity to complete the project as originally approved. In the event of a negative finding by the Board, the original approval of the subdivision shall become null and void. A copy of the Board's decision shall be recorded in the Registry of Deeds.

- 7.2** No lot or unit in a subdivision may be sold, leased, or otherwise conveyed before the improvements upon which the lot depends to be fully serviced ( e.g. sewer, road, water, etc.) are completed in accordance with the provisions of the Ordinance up to and including the entire frontage of the lot.

## **8. VALIDITY, EFFECTIVE DATE, AND CONFLICT OF ORDINANCES**

- 8.1** 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 this Ordinance, and to this end, the provision of this Ordinance are hereby declared to be severable.

- 8.2** The effective date of this Ordinance, as amended, is March 4, 1990.

## **9. AMENDMENTS**

- 9.1** **Amendments of this Ordinance** may be made only by a majority vote of the eligible voters present at any regular or special Town Meetings or by other methods of amendment provided in State law.

- 9.1.1** The Board shall have held a public hearing on the proposed

change not less than 10 days after public notice in a newspaper with local circulation.

**9.1.2** The Board shall have reported in writing to the Selectmen its opinion as to the desirability of the proposed change, which opinion shall represent the vote of the majority, but not less than 3 members of the Board. If the Board has not submitted its report within 30 days following the public hearing, its concurrence with the proposed change shall be assumed.

**9.1.3** The Planning Board may, after a public hearing, adopt, amend, or repeal additional reasonable regulations, which shall control until amended, repealed or replaced by regulations adopted by the next Town Meeting.

## **10. APPEALS**

An appeal may be taken, within 30 days from the Planning Board's decision on the Final Plat Plan, by any party to Superior Court in accordance with Rule 80B of the Rules of Civil Procedure.

## **11. ENFORCEMENT AND PENALTIES**

**11.1** Any person, firm, corporation, or other legal entity, including any agent or employee thereof, who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land in a subdivision which has not been approved as required by this Ordinance shall be punished by a fine of not more than one thousand (\$1000) for each such occurrence. Each day during which a violation occurs constitutes a separate offense. (Title 30-A Section 4452) In addition, the Town or the appropriate municipal officers may recover their attorney's fee incurred in enforcing this Ordinance.