

## ARTICLE 3 - DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, any word or term defined in the Baldwin Zoning Ordinance shall have the definition contained in that ordinance, unless defined differently below; other words and terms used herein are defined as follows:

**Affordable Housing:** Housing units which will meet the sales price and/or rental targets established by the comprehensive plan for housing affordability.

**Applicant:** The person applying for subdivision approval under these regulations.

**Average Daily Traffic (ADT):** The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

**Buffer Area:** A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

**Cluster Subdivision:** A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space.

**Common Open Space:** Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

**Complete Application:** An application shall be considered complete upon submission of the required fee and all information required by these regulations, or by a vote by the Board to waive the submission of required information. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

**Complete Substantial Construction:** The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements. ,

**Comprehensive Plan:** A document or interrelated documents adopted by the Legislative Body, containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

**Conservation Easement:** A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

**Density:** The number of dwelling units per acre of land.

**Developed Area:** Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

**1. Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**Direct Watershed of a Great Pond:** That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of these regulations, the watershed boundaries shall be as delineated in the comprehensive plan. Due to the scale of the map in the comprehensive plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a professional land surveyor showing where the drainage divide lies.

**Driveway:** A vehicular accessway serving two dwelling units or less.

**Dwelling Unit:** A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

**2. Dwelling unit.** "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**Engineered Subsurface Waste Water Disposal System:** A subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BOD, and total suspended solids concentrations than domestic waste water.

**2-B. Farmland.** "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or [PL 2009, c. 356, Pt. C, §1 (NEW).]

B. Used for the production of agricultural products as defined in Title 7, section 152, subsection 2. [PL 2009, c. 356, Pt. C, §1 (NEW).] [PL 2009, c. 356, Pt. C, §1 (NEW).]

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

**Freshwater 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, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

**2-A. Freshwater wetland.** "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. 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 [PL 1989, c. 404, §1 (NEW).]

B. Not considered part of a great pond, coastal wetland, river, stream or brook. [PL 1989, c. 404, §1 (NEW).]

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

[PL 1989, c. 404, §1 (NEW).]

**Great Pond:** Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**High Intensity Soil Survey:** A map prepared by a Certified Soil Scientist, identifying the soil types down to  $\frac{1}{8}$  acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

**100-Year Flood:** The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

**High Water Mark:**

**Inland Waters:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water.

**Level of Service:** A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 1991 edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

**Multifamily Development:** A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

**Municipal Engineer:** Any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis.

**Net Residential Acreage:** The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development as outlined in Section 12.10.C.3.

**Net Residential Density:** The average number of dwelling units per net residential acre.

**New Structure or Structures:** Includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

**5. New structure or structures.** "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**3. Principal structure.** "Principal structure" means any building or structure in which the main use of the premises takes place.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW); PL 1989, c. 497, §1 (RPR).]

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

**Planning Board:** The Planning Board of the Town of Baldwin

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

**Professional Engineer:** A professional engineer, registered in the State of Maine.

**Public Water System:** A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

**Recording Plan:** An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

**Reserved Affordable Housing:** Affordable housing which is restricted by means of deed covenants, financing restrictions, or other binding long term methods to occupancy by households making 80% or less of the area median household income.

**Sight Distance:** The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility,

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

**Street:** Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

**Street Classification:**

**Arterial Street:** A major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways shall be considered arterial streets: State Routes 5, 11, 107, 113 and The Douglas Hill Rd. and the River Road.

**Collector Street:** A street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

**Cul-de-sac:** A street with only one outlet and having the other end for the reversal of traffic movement.

**Industrial or Commercial Street:** Streets servicing industrial or commercial uses.

**Minor Residential Street:** A street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

**Private Right-of-Way:** A minor residential street servicing no more than eight dwelling units, which is not intended to be dedicated as a public way.

**Subdivision:** The division of a tract or parcel of land into 3 or more lots within any 5-year period, that begins 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.

**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.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel 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:

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:

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

*C. A lot of 40 or more acres must be counted as a lot, except:*

*(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance. [PL 2001, c. 651, §1 (AMD).]*

a. 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 or for open space land as defined in Title 36 M.R.S.A., §1102 for a period of at least 5 years before the second dividing occurs; or |

(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 that has been the subdivider's principal 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. [PL 2001, c. 359, §1 (AMD).]

b. The division of the tract or parcel is otherwise exempt under this definition.

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 or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations. If real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this definition. The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, 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 these regulations.

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. [PL 2001, c. 359, §3 (NEW).]

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. [PL 2001, c. 359, §3 (NEW).]



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. [PL 2001, c. 359, §3 (NEW).]

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 1/2 the assessed value of the real estate. [PL 2001, c. 359, §3 (NEW).]

D-5. A division accomplished by a gift to a municipality if that municipality accepts the 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. [PL 2001, c. 359, §3 (NEW).]

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 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. [PL 2013, c. 126, §1 (AMD).]

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. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

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

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. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

**H-2. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that otherwise regulates land use activities.**

**A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2021. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2020 for the definition to remain valid for the grace period ending January 1, 2021. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located. [PL 2019, c. 174, §1 (AMD).]**

I. The grant of a bona fide security interest 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. [PL 2001, c. 359, §5 (AMD).]  
[PL 2019, c. 174, §1 (AMD).]

**Subdivision, Major:** Any subdivision containing more than four lots or dwelling units, or any subdivision containing a proposed street.

**Subdivision, Minor:** Any subdivision containing four lots or dwelling units or less, and in which no street is proposed to be constructed.

**Tract or Parcel of Land:** 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.

**6. Tract or parcel of land.** "Tract or parcel of land" means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

[PL 2007, c. 49, §1 (AMD).]

**Usable Open Space:** That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. In order to be considered usable open space, the land must not be poorly drained or very poorly drained, have ledge outcroppings, or areas with slopes exceeding 10%.

**7. Outstanding river segments.** In accordance with Title 12, section 402, "outstanding river segments" means:

Q. The Saco River from the Little Ossipee River to the New Hampshire border; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]