

SUBDIVISIONS IN MAINE- 2004
TABLE OF CONTENTS

	Page
1. Municipal Subdivisions	1
Introduction.....	2
The Statute	2
The Statutory Definition of “Subdivision”	2
Land Subdivisions-Basic Elements and Issues	2
The Elements	2
The Issues	3
1. The “division” into lots by Sale, Lease, Development, Buildings or Otherwise	3
2. A “Tract or Parcel”	5
3. Creation of 3 or More Lots	6
4. Within any 5 year Period Beginning on or After September. 23, 1971	6
5. A Lot is Exempt from the Calculation of “3 or more within any 5 year period”	7
A. Homestead Exemption {§ 4401 (4) (A) (1)}	7
B. “Open Space” Exemption {§ 4401 (4) (A) (1)}	8
C. Lots not Part of Subdivision When Created {§ 4401 (4) (B)}	8
D. Lots of 40 or More Acres {§ 4401 (4) (C)}	9
E. Divisions by Devise {§ 4401 (4) (D-1)}	9
F. Divisions by Condemnation {§ 4401 (4) (D-2)}	10
G. Divisions by Order of Court {§ 4401 (4) (D-3)}	10
H. Divisions Accomplished by Gift to a Person Related to the Donor {§ 4401 (4) (D-4)}	10
I. Gift to a Municipality {§ 4401 (4) (D-5)}	13
J. Transfer to Abutter {§ 4401 (4) (D-6)}	13
K. Existing Developed Parcel . {§ 4401 (4) (E)}.....	15
L. Documenting Eligibility for Exemption in the Registry	15
Dwelling Unit Subdivisions-The Elements and Issues	15
The Elements	15
The Issues	16
Exempt Subdivisions {§ 4401 (4) (D-2)}	17
Municipal Ordinance Definitions	19
Statutory Limitations on Home Rule Authority	19
Recording the Ordinance	19
Related Issues: Waivers; Expiration Clauses/Extension of Deadlines; Plan Revisions; Pending Applications/Retroactivity Clauses; Abandonment of Approved Plans; Subdivisions Crossing Municipal Boundaries; Violations of the Subdivision Law.....	20
Waivers.....	21
Extension of Deadlines/Expiration Clauses.....	21
Plan Revisions or Amendments after Approval and Recording	22
Pending Applications/Retroactivity Clauses in New Ordinances.....	24
Abandonment of an Approved Subdivision Plan	25
Subdivisions Divided by Municipal Boundaries	25
Subdivision Violations and Enforcement Actions.....	26
Municipal Subdivision Law	29
§ 4401 Definitions	30
§ 4402 Exceptions.....	35
§ 4403 Municipal review and regulation	36
§ 4404 Review criteria.....	38
§ 4405 Access to direct sunlight.....	41
§ 4406 Enforcement; prohibited activities.....	41

§ 4407 Revisions to existing plat or plan.....	43
Complete Legislative History of the Municipal Subdivision Law.....	45
R.S. 1944, Chapter 80, Sections 84-89.....	46
R. S. 1954, Chapter 91, Sections 93-99.....	46
R.S. 1954, Chapter 90-A, Sections 61-63.....	46
30 M.R.S.A. (1964) § 4956.....	47
30-A M.R.S.A. 4551.....	49
30-A M.R.S.A §§ 4401-4407.....	49
Forms for Use in Abandoning an Approved Subdivision Plan.....	53
Tinsman v. Town of Falmouth, 2004 ME 2.....	57
Report of Legislative “Task Force to Study Growth Management.....	65
Subdivision Law.....	66
Exemptions to Definitions of Subdivisions.....	66
§ 4401 (4) (A) (1).....	66
§ 4401 (4) (C).....	67
§ 4401 (4) (D).....	67
Impact Fees.....	69
Report entitled “Maine’s Municipal Subdivision Law 30-A MRSA.....	70
Summary and Recommendations.....	72
Background and Process.....	72
Conclusions.....	72
Recommendation Summary.....	73
Purpose of Maine’s Subdivision Law: Consumer Protection and Guiding Growth.....	74
Confusing from the Outset.....	74
Outreach process.....	76
Summary of Key Issues and Recommendations.....	76
Report entitled “Maine’s Subdivision Law and its Home Rule Implications.....	84
Diagrams Depicting Various Subdivision Issues.....	105
<i>BAKALA</i> : What is a division?.....	106
Five year period.....	107
“Tract or parcel” Definitions; Others?.....	108
One Conveyance every 5 years.....	109
Five year period; tract or parcel.....	110
Five year period: tract or parcel.....	111
Mortgage on portion of lot.....	112
Mortgage on portion of lot; retained acreage; others?.....	113
Homestead lot.....	114
40-acre exemption.....	115
Date of creation of 40+ acre lot/exemption status; parcel within shoreland zone; others.....	116
Gift Exemption.....	117
Gift Exemption.....	118
Gift Exemption/Consideration Issue; Lot Created by Court Order; Others?.....	119
Gift Exemption/Recapture Provisions; Status of Retained Acreage; Others?.....	120
About exemption.....	121
Abutter Transfer; Retained Acreage; Others?.....	122
Transfer to Abutter; Others?.....	123

Bakala; Status of Retained Acreage; Abutter Exemption; Curing Violations; Exempt Subdivisions; Others.....	124
Exempt Subdivisions; “Tract or Parcel Definitions; Division; Others?	125
Multiple Exemptions	126
Construction or Placement of 3 or More Dwelling Units on a Single Tract or Parcel (includes manufactured housing and mobile homes)	127
Leased Dwelling Units Created on or after September 23, 1988.....	128
Dwelling Units Created after September 23, 1988	129
Dwelling Units Placed on a Single Tract or Parcel; Homestead Exemption; Change in Nature of Occupancy; Others?.....	130
Permanent Dwelling Structures Existing on September 23, 1971; Others?	131
Multiple Buildings on a Single Parcel	132

Rebecca Warren Seel, Esquire

2. LURC Subdivisions.....	133
13 October 1993 to	134
30 March 1990 to 13 October 1993	134
21 September 2001	135
Gifts to Relatives.....	135
Transfer to Governmental entity	135
Transfer to Conservation Organization.....	135
Transfer of lots for Forest Management, Agricultural Management or Conservation.....	135
Unauthorized Subdivision lots in Existence for at least 20 years	136
Permit not Required	137
21 September 2001 to	138
18 September 1999 to 21 September 2001	140
29 September 1995 to 18 September 1999	142
30 June 1992 to 29 September 1995	145
9 October 1991 to 30 June 1992	148
14 July 1990 to 9 October 1991	150
30 March 1990 to 14 July 1990	152
30 September 1989 to 9 October 1991	155
20 April 1989 to 30 September 1989.....	157
23 September 1988 to 20 April 1989.....	159
19 April 1988 to 23 September 1988.....	161
20 April 1987 to 19 April 1988	163
16 April 1982 to 20 April 1987	164
3 July 1980 to 16 April 1982	166
22 June 1979 to 3 July 1980	168
3 October 1973 to 22 June 1979	169
23 September 1971 to 3 October 1973	170
1 October 1969 to 23 September 1971	171
Common Traps & Concerns-LURC Jurisdiction.....	173
Scenario 1	174
Scenario 2	175

Scenario 3	176
Scenario 4	177
Scenario 5	178
Scenario 6	179
Scenario 7	180
LURC Subdivision.....	181

Knud Hermansen, P.E., P.L.S., Ph. D., Esquire

3. Subdivisions and Related Issues	182
Legal & Title Concerns-Land Development.....	183
General.....	183
Title Research-Land Development Analysis	183
Investigation of Adjoining Lots	184
Construction.....	184
Subdivisions.....	184
Improper Exemptions Lots/Subdivisions.....	185
Access Considerations	185
Replats	186
Zoning, Limitations & Permits	186
Potential Title Problems Resolved.....	188
Common Law and Implied Easements Identified or Limited.....	189
Lotting Requirements.....	189
Platting & Document Requirements	190

Knud Hermansen, P.E., P.L.S., Ph. D., Esquire
Rebecca Warren Seel, Esquire

<i>Notes</i>	<i>192</i>
--------------------	------------

Additional Handouts

Commentary Related to Municipal Subdivision Law Scenarios
Powerpoint Presentation

Rebecca Warren Seel, Esquire

The Site Location of Development Act

John Cunningham, Esquire