

AGENDA

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, February 25, 2019

5:30 P.M. Finance Committee Budget Workshop

7:00 P.M. Call to Order

I. CALL TO ORDER

II. APPROVAL OF MINUTES

February 11, 2019

III. MANAGER'S REPORT

IV. PUBLIC DISCUSSION

V. LEGISLATION AND POLICY

- 19 – 026** To hear a report from M.S.A.D. 51 Superintendent, Jeff Porter.
- 19 – 027** To hear a report from Steve Moriarty (Planning Board) re: amendments to Chapter 250 (Subdivision of Land)
- 19 – 028** To hold a Public Hearing to consider and act on amendments to Chapter 250 (Subdivision of Land) to include a Conservation Subdivision option, as recommended by the Planning Board.
- 19 – 029** To hold a Public Hearing to consider and act on repealing Chapter 315 (Zoning), Section 43 (Clustered, dispersed and traditional residential developments) of the Cumberland Code, as recommended by the Planning Board.
- 19 – 030** To hear a report from the Fire Truck Committee.
- 19 – 031** To hold a Public Hearing to consider and act on a Credit Enhancement Agreement with Belted Cow Company.
- 19 – 032** To hold a Public Hearing to consider and act on a Credit Enhancement Agreement for Dr. Sean McCloy of Integrative Health Center of Maine.
- 19 – 033** To authorize the Town Manager to execute an amended lease agreement with Rachel's On the Green.
- 19 – 034** To appoint members to an Ad Hoc Historical Society Building Committee.

19 – 035 To hear a report from the Town Manager re: Budget FY2020.

VI. NEW BUSINESS

Budget Workshop Schedule:

March 4th at 5:30 p.m. (Capital Improvement Plan budget review)

March 11th at 5:30 p.m.

Saturday, March 16th 8:00 a.m. to noon

March 25th or April 8th Town Council budget adoption

Nomination papers available on March 4th and due by April 15th

VII. BUDGET REPORT

VIII. ADJOURNMENT

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, February 11, 2019

5:00 P.M. Ordinance Committee

5:30 P.M. Finance Committee Budget Workshop

7:00 P.M. Call to Order

Present: Councilors Bingham, Copp, Edes, Gruber, Stiles, Storey-King and Turner

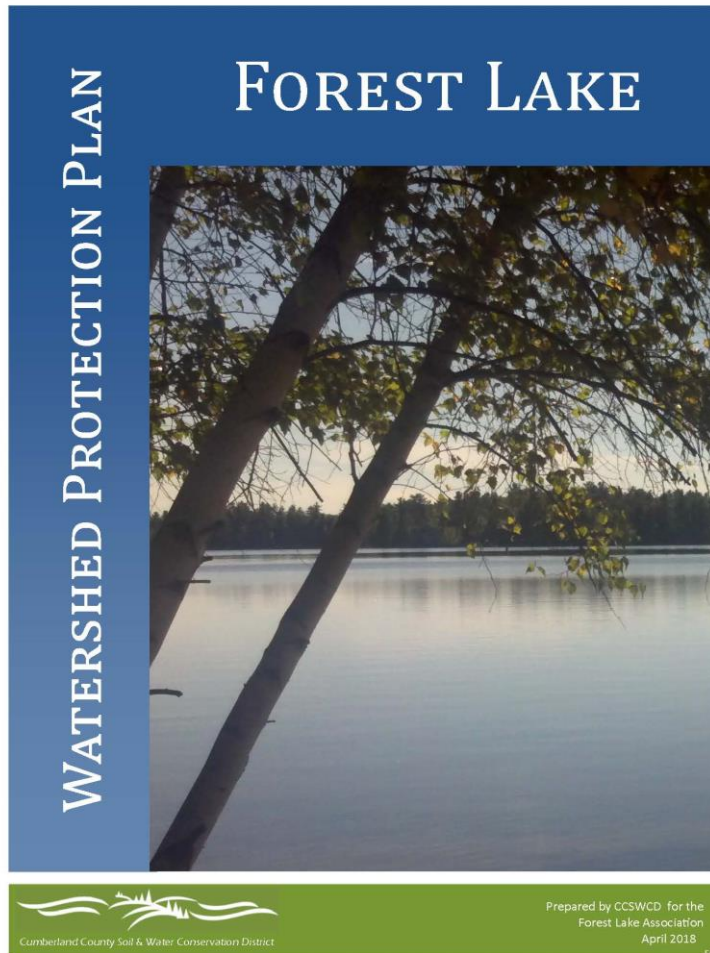
I. APPROVAL OF MINUTES

Motion by Councilor Bingham, seconded by Councilor Stiles, to accept the January 28, 2019 meeting minutes as presented.

VOTE: 5-0-2 (Storey-King and Gruber abstained) MOTION PASSES

II. MANAGER'S REPORT

Janene Gorham of the Forest Lake Association gave an update on the results of the Forest Lake Watershed Survey:



1. Watershed Background Information

A. Document Purpose and Scope

The purpose of this watershed-based plan, hereafter referred to as the “Plan,” is to lay out a strategy and schedule for non-point source (NPS) pollution¹ mitigation and water quality protection efforts over the next ten years (2018 to 2028). Cumberland County Soil and Water Conservation District (CCSWCD) has prepared this Plan on behalf of the Forest Lake Association (FLA) with support from the Maine Department of Environmental Protection (DEP).

This Plan was developed to satisfy national watershed planning guidelines provided by the U.S. Environmental Protection Agency (EPA). EPA and DEP require nine-element plans for impaired watersheds but allow alternative plans that meet minimum planning elements for Maine’s unimpaired lakes threatened by NPS pollution, provided they have recent watershed survey data and reference a geographically-appropriate scale. The Forest Lake watershed currently meets these requirements.

B. Watershed Information

The Forest Lake watershed is located in the Towns of Gray, Cumberland, and Windham in Cumberland County, Maine (Figure 1). The lake has a surface area of 210 acres, a maximum depth of 38 feet, an average depth of 12 feet, and a flushing rate of 1.4 flushes per year². The lake’s immediate watershed covers three square miles and serves as the headwaters for the Piscataqua River, which then flows into the Presumpscot River and Casco Bay. Development within the watershed has been mostly residential with nearly 180 lakefront properties. Most recent development has been occurring along the western shore and of the lake and west side of the upper watershed. On the eastern side of the lake, the watershed includes one mile of the Maine Turnpike and a rest area.

Forest Lake’s water quality is threatened by NPS pollution, which washes into the lake from its surrounding watershed. Phosphorus and eroding soil, in particular, pose the greatest NPS threats to the lake. As a result, Forest Lake is currently listed by DEP as an *NPS Priority Watershed* and a lake *Most at Risk from New Development* under Maine Stormwater Law in Chapter 502.

C. Summary of Prior NPS Watershed Work

FLA, CCSWCD, and DEP have been working collaboratively to address soil erosion throughout the watershed since 2002, starting with a watershed survey that identified 112 NPS pollution sites and indicated that at least 17% of septic systems in the watershed were more than 20-30 years old. A follow-up watershed management plan was created in 2003, listing methods to address the NPS sites identified. Two phases of conservation projects were implemented between 2004 and 2009. An updated NPS watershed survey was completed in the summer of 2017. Below is a list of all NPS-related projects to date:

- 2002 Forest Lake Watershed Survey
- 2003 Forest Lake Watershed Management Plan
- 2004-2006 Forest Lake Conservation Project, Phase I
- 2007-2009 Forest Lake Conservation Project, Phase II
- 2017 Forest Lake Watershed Survey

All projects, with the exception of the 2017 Forest Lake Watershed Survey, were funded in part by the United States Environmental Protection Agency with Clean Water Act Section 319(h) grants. Maine Department of Environmental Protection administered the grants and provided technical assistance on the projects.

A total of 46 NPS priority sites were addressed through the Phase I and Phase II conservation projects. These improvements prevented more than ~77 tons of sediment from entering Forest Lake each year.

This Plan serves to guide future actions and is based on the 2017 watershed survey. Of the 77 NPS pollution sites identified in the 2017 survey, 57% were determined to have a high or medium impact on Forest Lake’s water quality. Based on these findings, CCSWCD will work with FLA to seek grant funds in 2018 to help address the highest priority sites.

2. Identification of the Causes or Sources of NPS Threats

A. Water Quality Summary

Water quality monitoring has occurred on Forest Lake

¹NPS pollution is caused by rain or melted snow moving over the land. As the water moves, it picks up and carries away natural and man-made pollutants, finally depositing them into lakes, rivers, streams, and other bodies of water.
² www.lakesofmaine.org

Forest Lake Watershed



Figure 1: Forest Lake Watershed

at three sample stations since 1974. Water quality is considered above average based on Secchi Disk Transparencies (SDT). Total Phosphorus (TP), and Chlorophyll-a (Chla). Forest Lake is a non-colored lake with an average SDT of 5.2 m (17.1ft). The range for TP in the water column is 6-12 parts per billion (ppb) with an average of 8 ppb. Chla ranges from 1.4-8.5 ppb with an average of 3.4 ppb. The lake has moderate dissolved oxygen depletion in the deep areas of the lake in late summer².

B. Threatened Status

Forest Lake currently meets its designated Class GPA standards. However, the watershed is listed as a threatened waterbody on DEP's list of *Nonpoint Source Priority Watersheds*. It is listed primarily due to being considered sensitive to additional inputs of phosphorus³.

In addition to being listed as a *Nonpoint Source Priority Watershed*, Forest Lake is also on the State of Maine's Chapter 502 Stormwater Management Law's list of *Lakes Most at Risk from New Development*⁴. Forest Lake watershed was added to this list due to rapidly increasing development in the watershed and existing water quality data indicate that it is sensitive to pollution.

C. Watershed NPS Threats

The biggest water quality threat to Forest Lake is NPS pollution (i.e., polluted runoff), particularly soil erosion. Soil particles themselves can cause pollution by decreasing water clarity, covering fish beds, and clogging fish gills. However, it is the ability of soil particles to easily bind to other pollutants, particularly phosphorus, that can significantly affect lake water quality. Phosphorus is a nutrient that, in excess, can cause algal blooms. When algae die off, the water becomes depleted of oxygen through decomposition, and more advanced aquatic organisms such as fish are unable to survive. Algae itself can turn a lake green, making it undesirable and potentially unusable for fishing, boating, swimming, and wildlife. In 2002, the entire watershed was surveyed for sources of NPS pollution / polluted runoff into Forest Lake. A total of 112 NPS sites were identified. The greatest number of sites were identified on residential properties (61), which accounted for about 55% of sites documented. The next most documented land uses were

private road sites (25 sites, 22%) and driveways (19 sites, 17%). The remaining sites were associated with beach (6) and boat (1) access locations.

NPS sites identified in these surveys were ranked as having a low, medium, or high impact to water quality, based on size of disturbed area, slope, soil type, amount of soil eroding, proximity to water, and size of buffer. Low impact sites are those with limited transport of NPS/soil off-site. Medium impact sites have sediment transported off-site but do not reach a high magnitude, and high impact sites consist of significant erosion that flows directly into a stream, lake, or ditch. Out of the 112 sites identified, 75 were ranked as having a low impact to water quality, 26 as medium impact, and 11 as high impact. The majority of high impact sites were related to private roads and residential properties.

The watershed was surveyed again in 2017, and a total of 77 NPS sites were identified. Many of these sites may have been identified in the original survey. Out of these problem sites, 33 (43%) were ranked as having a low impact to water quality, 31 (40%) as medium, and 13 (17%) as high (Figure 2).

Residential properties (43%), private roads (33%), and driveways (13%) accounted for most of the sites in the 2017 survey (Figure 3). This breakdown of sites by land use was surprisingly similar to the results of the 2002 survey, especially in regards to sites associated



Figure 2. Impact of sites identified in 2017

with private roads. The greatest changes from the 2002 survey are the decrease in number of sites associated with residential properties, which decreased by 28, and driveways, which decreased by 9. The 25 private road sites identified in 2017 was consistent with the number identified in 2002.

² www.maine.gov/dep/land/watershed/nps-management-plan-2015-2019.pdf

⁴ www.maine.gov/dep/land/stormwater/storm.html



Figure 3. 2017 impact sites per residential land uses

The 2017 survey indicated that the majority of high and medium impact NPS sites were located on private roads. Driveways and residential properties were primarily ranked as low impact sites (Table 1).

3. Watershed Plan Goals and Objectives

The overall goal of this Plan is to maintain Class GPA

Table 1. Summary of 2017 survey sites by land use and their impact on water quality.

Land Use	High	Medium	Low	Total	%
Residential	2	9	22	33	43%
Private Road	10	10	5	25	33%
Driveway	1	3	6	10	13%
Boat Access		2		2	3%
Trail/Path		2		2	3%
State Road	1		1	1	1%
Town Road	1		1	1	1%
Beach Access		1		1	1%
Construction		1		1	1%
Other		1		1	1%
TOTALS	13	31	33	77	100%

water quality standards in Forest Lake by reducing phosphorus and sediment loading to the lake by approximately 50 tons of sediment per year. This goal will be achieved through partnership efforts (See Section 6) through the following actions over the next ten years (2018-2028):

- **Reduce current sources of phosphorus loading** by addressing 25 of the highest water quality impact sites identified in 2017 NPS watershed survey. These sites will be addressed by providing

targeted outreach, technical assistance, and cost-sharing assistance to install conservation practices at NPS sites.

- **Prevent new sources of phosphorus loading** by facilitating improved land use practices and ongoing maintenance activities. This objective will be met by conducting outreach and providing technical assistance to residents, road associations, and municipal officials.
- **Build local capacity** for watershed stewardship by strengthening the FLA-led outreach to the local community to recruit new members and membership donations; establishing a Forest Lake NPS committee with residents, FLA, road associations, town representatives, Maine Department of Transportation, and Maine Turnpike Authority; and supporting lake protection education programs.
- **Conduct ongoing assessment of lake and watershed conditions** by monitoring Forest Lake's water quality and creating/maintaining the NPS Site Tracker, data included in 2017 Forest Lake Watershed Survey Report, **Appendix A**.

4. Proposed Schedule and Milestones

Actions to meet this Plan's goal and objectives are listed in Table 2. This table includes a description of milestones, schedule, approximate cost estimates, potential funding sources and an organization responsible for the application of each specific action item. This Plan is designed to be implemented over the next ten years and will be carried out with a combination of local, state, and federal resources. An overview of the implementation schedule is given in Table 3 below.

5. Proposed Management Measures

Specific management measures to address currently known NPS sites are listed in the 2017 Forest Lake Watershed Survey Report included as **Appendix A**. Typical problems and management measures for the most common land uses identified in the survey are described in the sections below. Recommendations follow guidelines commonly used by Soil and Water Conservation Districts and found in DEP publications including the *Gravel Road Maintenance Manual*, *Conservation Practices for Homeowners Factsheet Series*, *Natural Resources Conservation Service (Field Office Technical Guide)*, and the *State of Maine Erosion and*

Table 2. Action items⁵

Activity	Management	Schedule	Cost Estimates	Potential Resources
Reduce current sources of phosphorus loading				
Notify landowners of observed sites needing to be addressed and provide guidance on solutions/where to obtain solutions	Forest Lake Association (FLA)	2019-2028	\$2,500 in-kind or fee-for-service	FLA; Cumberland County Soil & Water Conservation District (CCSWCD)
Sites addressed based on FLA notification and guidance	Landowners	2019-2028	\$4,500	Landowners
Determine sites eligible for 319 grant cost sharing: Comparison of 2017 sites to sites previously addressed through 319 program	FLA	Winter/Spring 2018	\$500 in-kind	FLA
Apply for EPA 319 watershed implementation grant funds (Phase III) through MDEP to address 25 impact sites identified in the 2017 watershed survey (approximately 1/3 of sites identified)	CCSWCD	Spring 2018	\$3,500 plus \$1,000 in-kind	CCSWCD, watershed towns, FLA
If funded, conduct a Phase III 319 watershed implementation project targeting 25 of the highest impact sites (primarily residential) identified in the 2017 watershed survey	CCSWCD	January 2019 - December 2020	\$90,000 grant; \$60,000 in-kind/cost share	EPA and DEP 319 grant program and local match
Through a potential Phase III 319 watershed implementation project, establish a yearly residential cost share program to provide landowners with up to \$300 matching grants to address erosion issues (At least 2-3 sites per year)	CCSWCD / FLA	2019-2028	\$30,000 grant, \$20,000 in-kind/cost share	EPA and DEP 319 grant program, non-federal match from watershed towns and landowners
Apply for EPA 319 watershed implementation grant funds (Phase IV) through MDEP to address 25 impact sites identified in the 2017 watershed survey (approximately 1/3 of sites identified)	CCSWCD	Spring 2021	\$3,500 plus \$1,000 in-kind	CCSWCD, watershed towns, FLA
If funded, conduct a Phase IV 319 watershed implementation project targeting 25 of the highest remaining impact sites identified in the 2017 watershed survey	CCSWCD	January 2022 - December 2023	\$90,000 grant; \$60,000 in-kind/cost share	EPA and DEP 319 grant program and local match
Prevent new sources of phosphorus loading				
Write and distribute yearly newsletters promoting phosphorus reduction methods and distribute to watershed residents, towns and stakeholders	FLA	Yearly	\$2,500 (\$500/year)	FLA
Conduct presentations to Towns of Cumberland, Gray, and Windham, on lake water quality trends, opportunities, and recommendations to reduce impacts.	FLA and CCSWCD	Yearly starting in spring 2018	\$5,000 (\$1,000 per year)	FLA and CCSWCD; Potentially EPA and DEP 319 grant program
Review local town ordinances of the three watershed municipalities to determine if updated language is needed to help reduce phosphorus loading into Forest Lake	FLA and CCSWCD	Yearly starting in spring 2018	\$18,000 (\$6,000 per town)	watershed towns, FLA
Reach out to private road associations to promote road maintenance	FLA	Yearly starting in spring 2018	\$1,000 in-kind	FLA
Provide technical assistance and summarize road problems and BMP recommendations in 5-year Private Road Operation and Maintenance Reports	CCSWCD	Yearly starting in 2019	\$10,000 (Approx. \$2,500 per road / up to four road reports)	Private road associations and watershed towns; Potentially EPA and DEP 319 grant program

⁵With the exception of CCSWCD, resources may be able to provide monetary and/or in-kind support.

Table 2 continued on next page

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Forest Lake Watershed Protection Plan – 2018

Table 2. Action items (continued)

Activity	Management	Schedule	Cost Estimates	Potential Resources
Conduct presentations at FLA Annual Meetings to promote lake protection and residential BMPs; Highlight opportunities available through potential 319 watershed implementation grants	CCSWCD	Yearly/Summer	\$700 fee-for-service/grant, \$500 matching funds	Local match from watershed towns and FLA; Potentially EPA and DEP 319 grant program
Submit press releases to local papers to promote lake protection and highlight opportunities available through potential 319 watershed implementation grant	CCSWCD	Yearly/Spring	\$600 grant, \$500 matching funds	EPA and DEP 319 grant program and local match from watershed towns and FLA
Create summary of sites addressed through the potential implementation grant to be available by FLA to watershed stakeholders	CCSWCD	2020 (Phase III) and 2023 (Phase IV)	\$900 grant, \$600 matching funds	EPA (319) and DEP grant program and local match from watershed towns and FLA
Build local capacity				
Campaign to grow FLA membership and participation: Newsletter encouraging participation based on recent NPS survey findings; Incentives to participate in 2018 Annual Meeting	FLA	Spring/Summer 2018	\$500 plus \$2,500 in-kind	FLA
Establish NPS committee to form steering committee for watershed implementation grants	FLA	3 meetings per year	\$2,000 in-kind	FLA
Devise incentives plan for new members to join FLA (e.g. plant/BMP material discounts, local business discounts, FLA support plaques, etc.)	FLA and CCSWCD	2019-2020	\$3,000 plus \$2,000 in-kind	FLA; Potentially through EPA and DEP 319 grant program
Increase outreach efforts to encourage community participation and FLA membership (through newspaper notifications, community service workshops, guest speaker presentations, etc.)	FLA and CCSWCD	Spring/Summer 2019-2020	\$3,000 plus \$5,000 in-kind	FLA; Potentially through EPA and DEP 319 grant program
Solicit local business support of FLA and its endeavors	FLA and CCSWCD	2019-2020	\$2,500 plus \$2,500 in-kind	FLA; Potentially through EPA and DEP 319 grant program
Create and install water signage to unify community and encourage FLA membership	FLA and CCSWCD	2019-2020	\$2,000 plus \$2,000 in-kind	FLA; Potentially through EPA and DEP 319 grant program
Continue to hold yearly FLA meetings to educate and recruit members	FLA	Yearly (Summer)	\$1,600 in-kind	FLA
Conduct ongoing assessment of lake and watershed conditions				
Continue yearly water quality monitoring through Maine's Volunteer Lake Water Quality Monitoring Program	FLA's Water Quality Volunteer Monitors	Yearly (Spring, Summer, and Fall)	\$8,000	FLA Volunteers
Create or update an NPS Site Tracker with sites identified in 2017, and sites previously addressed	FLA	Winter/Spring 2018	\$500 in-kind	FLA
Continue to update NPS Site Tracker as sites are addressed and as new sites become apparent	FLA	Yearly	\$2,500 in-kind	FLA

Cumberland County Soil & Water Conservation District

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Table 3. Implementation timeline

2018
<ul style="list-style-type: none"> • Compare 2017 sites identified to sites addressed in through Phase I and II 319 grant cost sharing • Apply for Phase III EPA Section 319 Clean Water Act implementation grant through MDEP to address eligible sites • Distribute FLA newsletter highlighting 2017 NPS survey results, promoting phosphorous reduction methods, and encouraging membership, volunteering, and funding for FLA • Review local town ordinances of the three watershed municipalities to reduce phosphorous loading • Establish NPS committee, meet up to three times per year • Create NPS Site Tracker
2019
<ul style="list-style-type: none"> • Address up to 10 NPS abatement sites through a potential Phase III 319 grant project • Establish yearly residential cost share program to address erosion issues • Devise incentives plan for new members to join FLA and increase outreach efforts to encourage community participation and FLA membership • Review local town ordinances of the three watershed municipalities to reduce phosphorous loading • Conduct residential BMP presentation at yearly lake association meeting and highlight cost share opportunities • Submit press releases to promote lake protection and highlight cost share opportunities
2020
<ul style="list-style-type: none"> • Address up to 15 NPS abatement sites through a potential Phase III 319 grant project • Conduct yearly residential cost share program to address erosion issues • Devise incentives plan for new members to join FLA and increase outreach efforts to encourage community participation and FLA membership • Update and install new water signage to unify community and encourage FLA membership • Review local town ordinances of the three watershed municipalities to reduce phosphorous loading • Conduct residential BMP presentation at yearly lake association meeting and highlight cost share opportunities • Submit press releases to promote lake protection and highlight cost share opportunities • Create summary of sites addressed through potential Phase III implementation grant project
2021
<ul style="list-style-type: none"> • Apply for Phase IV EPA Section 319 Clean Water Act implementation grant through MDEP to address eligible sites • If funding allows, continue conducting yearly residential cost share program to address erosion issues at a minimum of 2-3 properties per year
2022
<ul style="list-style-type: none"> • Address up to 10 NPS abatement sites through a potential Phase IV 319 grant project • Conduct yearly residential cost share program to address erosion issues • Submit press releases to promote lake protection and highlight cost share opportunities • Conduct residential BMP presentation at yearly lake association meeting and highlight cost share opportunities
2023
<ul style="list-style-type: none"> • Address up to 15 NPS abatement sites through a potential Phase IV 319 grant project • Conduct yearly residential cost share program to address erosion issues • Submit press releases to promote lake protection and highlight cost share opportunities • Conduct residential BMP presentation at yearly lake association meeting and highlight cost share opportunities • Create summary of sites addressed through potential Phase IV implementation grant project

Table 3 continued on next page

Table 3. Implementation timeline (continued)

2024-2028
<ul style="list-style-type: none"> • If funding allows, continue conducting yearly residential cost share program to address erosion issues at a minimum of 2-3 properties per year • 5-year check-in: Strategize methods for long-term lake protection based; Create addendum to add to this watershed protection plan • In 2027 and 2028, pursue updating this watershed protection plan for the next 10-years
Ongoing/Yearly
<ul style="list-style-type: none"> • Distribute FLA newsletter promoting phosphorous reduction methods and to recruit new members, volunteers, and funding for FLA • Conduct presentations to Towns of Cumberland, Gray, and Windham on lake water quality trends, opportunities, and recommendations to reduce negative lake water quality impacts • Promote road maintenance to private road associations • Provide 5-year Private Road Operation and Maintenance Plans • Conduct two to three NPS committee meetings per year • Conduct annual lake association meeting to educate and recruit members • Conduct water quality monitoring • Update NPS Site Tracker as sites are addressed

Sediment Control Manual. The recommended best management practices (BMPs) or conservation practices accomplish this Plan's goal of reducing phosphorus and sediment loading to the lake by stabilizing bare soil; mitigating erosion; and diverting, infiltrating, or filtering polluted runoff before it reaches the lake and its tributaries.

In addition to structural BMP recommendations, public education and outreach efforts will be needed to promote responsible stewardship and ongoing maintenance activities. Many of these efforts will be led by the FLA.

A. Residential Sites

A total of 33 (43%) residential sites were documented in the 2017 survey. Of these, 2 were rated as having a high impact to water quality, 9 as medium impact, and 22 as low impact.

Common problems identified included:

- Bare soil
- Inadequate vegetation along the shoreline
- Sheet erosion
- Roof runoff erosion
- Shoreline erosion

Recommended solutions include:

- Seed and mulch bare soil
- Establish or enhance shoreline buffer with native plants
- Limit foot traffic in eroding areas, place erosion control mulch or stone on heavily used paths
- Install runoff diverters, such as rubber razor blade water bars or "speed bump" water diverters

- Use dripline trenches to infiltrate roof runoff
- Stabilize shoreline with woody shrubs, root wads, and hand-placed armor, like riprap if appropriate (permitting required)

Maintenance for recommended solutions include:

- Reseeding/over-seeding and replenishing erosion control mulch every two years and when area has been scraped or damaged (often due to snow plowing and in areas of high foot traffic)
- Water plants frequently during first year following installation, water during summer months and times of drought; replace dead and dying buffer plants
- Replace decomposed erosion control mulch in walking paths (about every two years), clean out stone paths every two to five years to ensure proper infiltration
- Clean out accumulated debris from behind waterbars, re-establish diverters if damaged or no longer functioning as intended
- Clean out stone in dripline trenches every five years to ensure proper infiltration
- Repair shoreline stabilization following proper permitting requirements

All maintenance recommendations will be the sole responsibility of the landowner to perform.

This Plan aims to address residential sites in the following manner, based on the availability of federal, state, and local funding and resources:

- FLA will form an NPS committee to oversee residential outreach and assistance.

- FLA will notify landowners whose properties were identified in the 2017 NPS watershed survey of findings and basic corrective actions items they can implement.
- Through a potential Phase III 319 implementation grant/conservation project, free technical assistance can be provided by CCSWCD to residential landowners and up to \$300 matching grant funds to address erosion issues. CCSWCD will assist FLA in trying to continue offering matching grant funds once the 319 implementation grant project has been completed through possible funding from FLA.
- FLA will distribute yearly newsletters and hold a yearly annual lake association meeting to promote phosphorous reduction methods on residential sites.
- Presentations on residential BMPs to occur at yearly annual lake association meetings.
- Replace fallen riprap at culvert inlets and outlets
- Remove accumulated sediment from plunge pools and properly dispose of away from water resources
- Ensure existing culvert inlets and outlets are free of accumulated debris and sediment, check to make sure damage has not occurred to culvert itself
- Ensure future culverts are aligned and sized properly; consider using StreamSmart® principles in future culvert replacements

All maintenance recommendations will be the sole responsibility of the road associations and landowners to perform.

This Plan aims to address private road sites in the following manner, based on the availability of federal, state, and local funding and resources:

- FLA will form an NPS committee to oversee private road outreach and assistance.
- FLA will notify private road associations whose roads were identified in the 2017 NPS watershed survey and provide a summary of findings and action items to implement improvements on their road(s).
- Technical assistance to be offered to private roads by CCSWCD on a fee-for-service basis. Potential 319 implementation grants may be able to provide up to 50% matching funds to address the highest priority erosion issues.
- Private road technical assistance, and operation and maintenance reports, which summarize erosion problems and recommendations, will be offered to private road associations by CCSWCD for a fee. Potential 319 implementation grants may be able to provide private roads with cost reductions of these services.

B. Private Road Sites

Private road sites were the second most common land use associated with NPS pollution, with a total of 25 sites identified, totaling 33% of the sites identified. Of these, 10 were rated as having a high impact to water quality, 10 as medium impact, and 5 as low impact.

Common problems identified include:

- Road shoulder and surface erosion
- Severe ditch erosion
- Unstable culvert inlet and outlet
- Winter sand build-up
- Plow or grader berm

Recommended solutions include:

- Grade and reshape gravel roads to create a "crown" and install appropriate surface material
- Stabilize road shoulders with riprap or grass seed
- Clean, reshape, and armor ditches with stone or grass
- Armor culvert inlets and outlets
- Remove winter sand and built up grader berms
- Install plunge pools below culverts to hold runoff and catch sediment before it enters streams or the lake.
- Properly size and align culverts

Maintenance for recommended solutions include:

- Re-grade gravel roads twice a year to properly re-establish road crown
- Re-establish and repair ditches and road shoulders where needed each spring from snow plow damage; inspect ditches after storm events to ensure they are functioning as intended (no heavy sedimentation)

C. Driveway Sites

NPS sites associated with driveways totaled 13% (10 sites) of the water quality impact sites identified in 2017. Of these sites, 1 was rated as high impact, 3 as medium, and 6 as low.

Common problems identified include:

- Surface erosion
- Bare soil
- Damaged or clogged culverts
- Roof runoff erosion

Recommended solutions include:

- Install gravel or asphalt water bars or rubber razor blade water diverters to divert flow off road

*www.maine.gov/duc/mfs/policy/management/water_resources/stream_smart_crossings.html

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- Seed and mulch bare soil
- Properly size and align culverts
- Install native plant buffers between driveways and the lake to infiltrate and filter runoff

Maintenance for recommended solutions includes:

- Re-grade gravel driveways yearly to properly re-establish crown
- Remove accumulated sediment and debris from behind water diverters, re-establish diverters if damaged or no longer functioning as intended
- Inspect and maintain culverts before and after rain events to ensure they are able to properly convey water flow
- Water plants frequently during first year of installation, water during summer months and times of drought; Replace dead and dying buffer plants

All maintenance recommendations will be the sole responsibility of the landowner to perform.

This Plan aims to address driveway sites in the following manner, based on the availability of federal, state, and local funding and resources:

- FLA will notify landowners whose driveways were identified in the 2017 NPS watershed survey of findings and basic corrective actions.
- Technical assistance to be offered to landowners by CCSWCD on a fee-for-service basis. Potential 319 implementation grants may be able to provide up to 50% matching funds to address the highest priority erosion issues.
- Less extensive driveway fixes will be considered for residential cost sharing programs and landowner outreach through FLA.

D. Other Sites

The remaining 11% of water quality impact sites documented consisted of two boat access sites, two trails, and one site at each of the following: beach access, Town road, State road, and construction site. All of these sites were listed as medium impact.

Common problems identified with the beach access sites, boat access sites, trail, and town and state roads include:

- Bare soil and surface erosion
- Shoreline erosion
- Minimal vegetated buffer along shoreline

Recommended solutions include:

- Establish or enhance buffer
- Seed and mulch bare soil
- Minimize bare areas
- Create defined pathways for foot traffic
- Stabilize shoreline with vegetation and riprap if appropriate (permitting required)

Maintenance for recommended solutions includes:

- Water plants frequently during first year following installation, water during summer months and times of drought; replace dead and dying buffer plants
- Reseeding/over-seeding and replenishing erosion control mulch every two years and when area has been scraped or damaged (often due to snow plowing and in areas of high foot traffic)
- Re-establishing paths if damaged, replace mulch every two years
- Repair shoreline stabilization if damaged
- Use appropriate ECM BMPs on construction sites

All maintenance recommendations will be the sole responsibility of the landowner to perform.

This Plan aims to these remaining water quality impact sites in the following manner, based on the availability of federal, state, and local funding and resources:

- FLA will notify landowners whose properties were identified in the 2017 NPS watershed survey of findings and basic corrective actions.
- Technical assistance to be offered to landowners by CCSWCD on a fee-for-service basis. Potential 319 implementation grants may be able to provide up to 50% matching funds to address the highest priority erosion issues.

6. Plan Oversight and Partner Roles

FLA will lead implementation of this Plan according to schedule and update the action items as needed. Key partners assisting with the Plan's implementation are listed below with their general roles responsibilities. Specific action items that these partners will implement are listed in Table 2.

Forest Lake Association (FLA) will serve as the designated entity to oversee the implementation of this Plan and ensure it is updated as needed. FLA will both provide funding and help to seek additional funding to conduct landowner outreach, encourage FLA membership and volunteers, and establish an NPS committee to oversee remediation of NPS sites and keep the NPS Site Tracker up-to-date. FLA will also support efforts to notify property owners of identified BMP sites to provide basic recommendations for corrective actions and work with NPS committee to update this Plan in 5-10 years.

Cumberland County Soil and Water Conservation District (CCSWCD) will assist with the Plan's implementation by seeking federal, state, and local funding in order to provide technical resources. With adequate support, CCSWCD will apply for a Phase III implementation grant under Section 319 of the Clean Water Act, distributed by DEP's annual NPS Grants Program. CCSWCD will serve as the Project Coordinator, and participate on FLA's NPS committee, should the grant be awarded. Tasks through this project include managing and reporting activities, providing technical recommendations and engineering for high priority sites, and educating the community on the importance of water quality protection and recommended conservation practices.

Maine Department of Environmental Protection (DEP) will collaborate with Maine's Volunteer Lake Monitoring Program to conduct water quality monitoring and technical assistance and provide the opportunity for financial assistance through the NPS Grants Program. Should a Phase III implementation grant be funded, DEP will provide project guidance and participate on FLA's NPS committee.

US Environmental Protection Agency (EPA) may provide Clean Water Act Section 319 funds and guidance.

The Towns of Cumberland, Gray, and Windham may provide funding support for the Plan and their respective town-owned and maintained water quality impact sites. Based on guidance from FLA and CCSWCD, the Towns will work to address NPS problems and conduct regular maintenance of town road sites. They will also participate in the FLA's NPS committee.

Private road associations, Maine Department of Transportation, Maine Turnpike Authority, and landowners will address NPS issues on their properties and conduct ongoing maintenance of BMPs, as well as be invited to participate on FLA's NPS committee and potential grant-funded projects.

7. Water Quality Monitoring

Throughout the 10-year duration of this Plan, water quality testing will be performed by Volunteer Lake Monitors under the guidance and collaboration of Maine's Volunteer Lake Monitoring Program (VLM) and DEP. Readings on water clarity and dissolved oxygen will be taken by FLA volunteers at two-week intervals through the spring, summer, and fall months.

MDEP also conducts baseline monitoring on Forest Lake every five years and collects data on SDT, temperature, dissolved oxygen, chlorophyll a and other parameters.

MDEP conducts Secchi disk trend analysis every two years as part of their Integrated Water Quality Monitoring and Assessment report. Trend reporting (positive, negative or stable) will assist in determining whether the plan meets its goal of having stable or improving water quality over time.

8. Pollutant Load Reductions

Pollutant load reductions will be estimated for all high priority sites addressed through EPA and DEP 319 watershed projects. These calculations will estimate sediment and phosphorus load reductions expected upon the installation of prescribed BMPs. Pollutant load reduction estimates will be completed using methods approved and recommended by DEP and EPA.



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Beth Andrews and her daughter, Lauren Lamberson, made a request of a \$2,000.00 donation from the Town to LifeFlight. When Lauren was 5 years old, she and her family were involved in a plane crash on Kezar Lake. Lauren was submerged under water and was unconscious when her mother was finally able to free her from the plane. She was taken by LifeFlight to Medical Center and miraculously, the only injury she suffered was a major concussion. Councilor Turner advised that there is a \$2,000.00 donation slotted for LifeFlight in this year's budget.

III. PUBLIC DISCUSSION

Beth Waldman of 86 Wyman Way said that she is here on behalf of the Village Green community and to reiterate their concerns about the current Public Works issues, including the recent discovery of dangerous levels of methane gas. She asked for an update on the progress of the Public Works issues and what funds have been budgeted to address the concerns of the neighborhood.

Town Manager Shane responded that the methane is located 10 to 15 feet below ground surface and we are waiting for approval from the DEP on a plan to put in two large trenches in order to vent the trapped methane. This should happen sometime in April or May. The homeowners that are adjacent to the Public Works facility have had monitoring meters installed in their basements at the Town's expense, and the Fire Department will monitor gas levels monthly. After the area is vented, the gas will dissipate into the atmosphere and the levels will come back down. The mitigation costs have been budgeted in the next fiscal years budget.

Chairman Copp added that we are currently looking at location for the compost pile, brush dump as well as the sand and salt shed and that cost will also likely be in the next budget.

IV. LEGISLATION AND POLICY

19 – 018 To hold a Public Hearing to consider and act on amendments to Chapter 48 (Coastal Waters) of the Cumberland Code, as recommended by the Coastal Waters Commission.

Councilor Storey-King explained that most of these amendments have to do with kayaks and paddleboards and is mostly housekeeping.

Chairman Copp opened the Public Hearing.

Public discussion: None

Chairman Copp closed the Public Hearing.

Motion by Councilor Gruber, seconded by Councilor Edes, to amend Chapter 48 (Coastal Waters) of the Cumberland Code, as recommended by the Coastal Waters Commission.

VOTE: 7-0 UNANIMOUS

19 – 019 To hold a Public Hearing to consider and act on amendments to Chapter 84 (Fees and Fines), Section 12 (Moorings) of the Cumberland Code, as recommended by the Coastal Waters Commission.

Councilor Storey-King explained that this is related to the fees and fines for kayak storage and moorings based on the amendments in the previous item.

Chairman Copp opened the Public Hearing.

Public discussion: None

Chairman Copp closed the Public Hearing.

Motion by Councilor Gruber, seconded by Councilor Edes, to amend Chapter 84 (Fees and Fines), Section 12 (Moorings) of the Cumberland Code, as recommended by the Coastal Waters Commission.

VOTE: 7-0 UNANIMOUS

19 – 020 To consider and act on beginning the process of amending the Contract Zone Agreement with Heritage Village Development Group, LLC.

Town Manager Shane explained that this is the third step in a nine step process. This is for the lot on Route One near the Falmouth town line. It will be an exciting project and if it gets through this step, we will hear more about the specific plan at the Council facilitated neighborhood meeting that will be held in late February or early March.

Chairman Copp asked for any public comment.

No public comments.

Councilor Storey-King said that she is not in favor of this because of the number of dwelling units proposed. 150 additional units in that area is just too much in her opinion.

Motion by Councilor Bingham, seconded by Councilor Turner, to accept staff's recommendation to begin the process to amend the Contract Zone Agreement with Heritage Village Development Group, LLC.

VOTE: 6-1 (Storey-King opposed) MOTION PASSES

19 – 021 To hold a Public Hearing to consider and act on a Class I Liquor License application for Rachel's On the Green, for the period of March 29, 2019 – March 29, 2020.

Town Manager Shane said that staff is recommending approval.

Chairman Copp opened the Public Hearing.

Public comment: None

Chairman Copp closed the Public Hearing.

Motion by Councilor Stiles, seconded by Councilor Turner, to approve the Class 1 Liquor License application for Rachel's On the Green, for the period of March 29, 2019 – March 29, 2020.

VOTE: 7-0 UNANIMOUS

19 – 022 To hold a Public Hearing to consider and act on a Farm Based Special Events License renewal for Joanne Fryer of Mowfield Farm.

Town Manager Shane said that staff is recommending approval of this license renewal.

Chairman Copp opened the Public Hearing.

Public discussion: None

Chairman Copp closed the Public Hearing.

Motion by Councilor Storey-King, seconded by Councilor Turner, to renew the Farm Based Special Events License for Joanne Fryer of Mowfield Farm for the period of February 11, 2019 to February 11, 2020.

VOTE: 7-0 UNANIMOUS

19 – 023 To hear a report and request the appointment of an ad hoc Historical Society Building Committee to work on the logistics of moving the Historical Society building to the Library site.

Town Manager Shane explained that the Historical Society is in need of structural repairs. The Town met with the Historical Society and discussed the building at its present site and determined that it might be money better spent to move the building to the Library site in order to preserve it and allow it to be enjoyed by the many patrons who visit the Library. The Historical Society has approved the plan to develop a building committee that would be comprised of 2 Town Councilors, 2 members of the Library Board and 2 members of the Historical Society to help us in the process of moving the building. There is a lot of work to be done and the action this evening is to get the process started.

Chairman Copp asked for any public comment.

Tom Foley, Chairman of the Prince Memorial Library Advisory Board, said the Board is in favor of moving the Historical Society building to the Library, but they are concerned that to do so as a single project may cost the Towns of Cumberland and North Yarmouth far more expense and disruption than if the inevitable expansion of the Library is included in the planning stage of the Historical Society move. He respectfully recommended that the architect chosen for the project be required to include the footprint for the future expansion of the Library along with the plan to relocate the Historical Society building.

Susan Gallo, President of the Friends of Prince Memorial Library said that the Friends raises money for the Library on a small scale and they have been saving money to help with a future Library expansion and they support this project and plan to help financially.

Joanne Fryer of Mowfield Farm said that she would love to do a fundraiser for the Historical Society to help raise money.

Judy Gagnon said that she is a new member of the Cumberland Historical Society and has read through all the meeting notes that she has been able to find on the subject of the move and it has left her with a lot of questions. Her biggest question is why are we moving the building now and displacing the Historical Society for a project 2 years away? She hopes for transparency and clear communication moving forward. As a board member, she does not want to read about a meeting with the Historical Society on the Town Crier.

Councilor Gruber reminded Ms. Gagnon that all Town Committee meetings are open to the public and we are always transparent.

Deb Dugas of the Cumberland Historical Society said that she also read through the Historical Society meeting minutes trying to get some clarity about this project. It is still very unclear to her and going forward, everything needs to be spelled out in detail exactly what will be done and in what timeframe. She would also like to see a long-term agreement between the Town and Historical Society in regard to the continued use of the building by the Historical Society.

Motion by Councilor Bingham, seconded by Councilor Gruber, to forward appointments to the Historical Society Building Committee to the Nominating Committee.

VOTE: 7-0 UNANIMOUS

19 – 024 To set a Public Hearing date of February 25th to consider and act on amendments to Chapter 250 (Subdivision of Land) to include a Conservation Subdivision option, as recommended by the Planning Board.

Motion by Councilor Bingham, seconded by Councilor Edes, to set a Public Hearing date of February 25th to consider and act on amendments to Chapter 250 (Subdivision of Land) to include a Conservation Subdivision option, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS

19 – 025 To set a Public Hearing date of February 25th to consider and act on repealing Chapter 315 (Zoning), Section 43 (Clustered, dispersed and traditional residential developments) of the Cumberland Code, as recommended by the Planning Board.

Note: some of these provisions have been relocated to the revised Subdivision Ordinance.

Motion by Councilor Turner, seconded by Councilor Storey-King, to set a Public Hearing date of February 25th to consider and act on repealing Chapter 315 (Zoning), Section 43 (Clustered, dispersed and traditional residential developments) of the Cumberland Code, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS

V. NEW BUSINESS

Councilor Bingham – the Finance Committee met with the Town auditor last week and reviewed the Town audit report. We received a completely clean opinion and there were no deficiencies in internal controls. Our Town is being managed in a very fiscally responsible manner.

Councilor Gruber – he attended a meeting on Saturday at Town Hall on brown tail moths. He did not realize how many brown tail moth nests we have in this community. We are looking into how to control the problem. More information on this to come.

Councilor Edes – none

Councilor Storey-King – she and the Town Manager missed the last Council meeting because they were at a Windham Planning Board meeting advocating for the residents of West Cumberland.

We had a meeting recently for the large landowners in our community that was well attended. There was a lot of good information regarding options that these landowners have.

Final paving will be done on Middle Road this spring. Road cuts for water or natural gas have to be done before the final paving takes place. Once final paving is done, there will be no cuts allowed for 5 years.

She wished Councilor Bingham good luck. He will be presenting at the Library on February 28th on his trip to Mount Everest.

Good luck to all Greely competitors during tourney week.

Chairman Copp – none

Councilor Stiles – he thanked Councilor Copp for his continued support of donating to the Food Pantry 4-H fund. He reminded the public that his goal is to collect \$10 from 1,000 residents of Cumberland and North Yarmouth to benefit the Food Pantry and also the 4-H kids.

Councilor Turner – the noise of installing the pilings for the new pier at Broad Cove Reserve should be starting soon. The nuisance of the noise will be worth it when the pier is completed.

Town Manager Shane – our Finance Director, Heather Perreault, will be leaving us to take a job as Deputy Commissioner of Finance for the State of Maine. This is a huge loss for us, but a great opportunity for Heather. We will truly miss her.

Cumberland was ranked #1 in the State as the safest place in Maine to live.

The Tax Assessor has completed his property audit. Each property was visited to make sure that the data we have on the property card matched the actual property. Many errors were discovered that will be corrected.

The FY2020 budget information will be on our website this week. The Council will meet in workshop to review the proposed budget on February 25th, March 4th and 11th and Saturday, March 16th. The budget adoption public hearing will be on March 25th or April 8th.

Nomination papers will be available from the Town Clerk on March 4th. There are two Town Council and two School Board seats open for anyone who may be interested in running.

VI. EXECUTIVE SESSION pursuant to 1 M.R.S.A., § 405(6)(A)(1) re: a personnel matter and pursuant to Title 36 M.R.S.A. Section 841(2) to consider and act on application for tax abatement based on hardship.

Motion by Councilor Stiles, seconded by Councilor Gruber, to recess to EXECUTIVE SESSION pursuant to 1 M.R.S.A., § 405(6)(A)(1) re: a personnel matter and pursuant to Title 36 M.R.S.A. Section 841(2) to consider and act on application for tax abatement based on hardship.

VOTE: 7-0 UNANIMOUS

TIME: 8:30 P.M.

Reconvene to regular session at 8:51 P.M.

VII. ADJOURNMENT

Motion by Councilor Bingham, seconded by Councilor Storey-King, to adjourn.

VOTE: 7-0 UNANIMOUS

TIME: 8:51 P.M.

Respectfully submitted by,

Brenda L. Moore
Council Secretary

ITEM 19-028

To hold a Public Hearing to consider and act on amendments to Chapter 250 (Subdivision of Land) to include a Conservation Subdivision option, as recommended by the Planning Board

250. SUBDIVISION OF LAND

Article I General Provisions

§250-1 Purpose.

The purpose of these Subdivision standards shall be to assure the comfort, convenience, safety, health and welfare of the people of the Town of Cumberland, to protect the environment and to promote the development of an economically sound and stable community. Depending on the type of Subdivision selected (i.e., Conservation, Clustered or Traditional), the purposes are to:

- A. Promote grouping of houses and structures on less environmentally sensitive soils, which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for development.
- B. Promote interconnected greenways and corridors throughout the community.
- C. Provide a Subdivision option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- D. Preserve in perpetuity unique or sensitive natural resources, such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
- E. Preserve scenic views both from within and without the Subdivision.
- F. Preserve important historic and archaeological sites.
- G. Preserve green space through the use of nonstructural stormwater runoff and water protection measures.
- H. Encourage interaction in the neighborhood by grouping houses closer together, orienting the houses toward the street, providing public gathering places and encouraging the use of parks and community facilities as focal points in the neighborhood.
- I. Encourage street designs that reduce traffic speeds and promote interconnectivity.
- J. Promote construction of convenient, landscaped walking trails and bike paths within the Subdivision that are connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- K. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in the Subdivision.

- L. Promote contiguous green space with adjacent municipalities.
- M. Protect rural character and activities such as farming and forestry.
- N. Protect water quality and aquifers.

§250-2 Authority, title and applicability.

A. Authority and title.

(1) This chapter has been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq.

(2) These standards shall be known and may be cited as the “Town of Cumberland Subdivision Ordinance”.

B. Administration and applicability.

(1) The Planning Board of the Town of Cumberland shall administer this chapter.

(2) The provisions of this chapter shall pertain to all land proposed for Subdivision as herein defined within the boundaries of the Town of Cumberland.

§250-3 Definitions.

Unless otherwise defined in this section, terms shall be defined as set forth in Section 315-3 of the Zoning Ordinance. Terms not defined in either this Ordinance or the Zoning Ordinance shall have their customary dictionary meanings.

AGRICULTURE: The cultivation of land and breeding of animals and plants to provide food, fiber, medicinal plants and other products to sustain and enhance life.

APPLICANT: A property owner or any person or entity acting as an agent for the property owner in an application for a development proposal, permit, or approval.

APPLICATION: The completed form or forms and all accompanying documents, exhibits, and fees required of an Applicant by the Planning Board.

AQUIFER: A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

| **BUFFER:** An area of a Subdivision, whether part of the Common Open Space or building lot, that shall remain free from the development of roads and/or structures and which may or may not have visual screening, such as trees or fencing, within it.

CLUSTERED SUBDIVISION: A type of ~~Subdivision development~~ where building lots are smaller, with shorter lot frontages than those in a Traditional Subdivision, and are grouped on certain portions of the site that are best suited for development, and where other areas of the site remain open and free from development. The homes may or may not be connected to the public water and sewer system.

COMMON OPEN SPACE: Land within or related to a Subdivision that is set aside to conserve natural resources, scenic, cultural, historic, or archeological values, and to provide Active or Passive recreation or accommodate support facilities related to the Subdivision. The Common Open Space is restricted from development or intensive use except for approved recreational or support facilities and must be protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements. The Common Open Space must not be included in any of the buildable lots of the Subdivision and must be held in common ownership amongst all the Subdivision's lot owners or by another approved ownership entity.

CONSERVATION SUBDIVISION: A type of development designed to preserve sensitive and/or valuable natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant views.

CONSTRUCTION DRAWINGS: Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts and underground telephone ducts, pavements, cross section of streets, miscellaneous structures, etc.

EASEMENT: The written authorization by a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

FINAL PLAN: The final drawings on which the Applicant's plan of Subdivision is presented to the Planning Board for approval and which, if approved, shall be filed for record with the ~~Municipal Clerk~~ Planning Department and recorded in the Cumberland County Registry of Deeds.

LEGISLATIVE BODY: Cumberland Town Council.

MUNICIPALITY: Town of Cumberland.

MUNICIPAL ENGINEER: An engineer licensed by the State of Maine that is retained by the Town of Cumberland to review Subdivision plans and conduct construction inspections of approved Subdivisions.

NET RESIDENTIAL ACREAGE: Net Residential Acreage shall be determined by subtracting the following from the gross acreage:

- (a) Roads and parking as shown on the proposed plan.
- (b) Slopes in excess of 20% that are sustained for 30,000 square feet or more.
- (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January, 1989, as amended.

- (d) Land in the 100 year flood zone shown on FEMA Flood Insurance Rate Maps (FIRM), as revised.
- (e) Land in rights-of-way or easements, but not including land in any type of Common Open Space easement.
- (f) Lands in Resource Protection Districts.

NET RESIDENTIAL DENSITY: The maximum number of dwelling units permitted on the tract or parcel of land proposed for any type of residential Subdivision shall be determined by dividing the Net Residential Acreage of the tract or parcel by the zoning district minimum lot size for the zone in which the project is located. In no event shall the number of residential units exceed the density limit of the zoning district in which it is located.

OFFICIAL SUBMITTAL DATE: The time of submission of a pre-application plan, preliminary plan, or final plan shall be considered the submission date of the Application for such plan approval to the Planning Board, if complete and accompanied by any required fee and all information supporting the Application as required by these standards.

OFFICIAL ZONING MAP: The most current Zoning Map adopted by the Town Council, as amended from time to time.

OPEN SPACE: A portion of the total area of the tract or parcel of land being developed which shall be maintained as undeveloped land, to serve to preserve sensitive and/or natural areas and which must not be included in any of the buildable lots of the Subdivision and may be held in common ownership amongst the Subdivision's lot owners or by another approved ownership entity.

PERSON: Includes a firm, association, organization, partnership, trust, company or corporation, individual, or other legal entity.

PLANNING BOARD: Cumberland Planning Board.

PRELIMINARY PLAN: The preliminary drawings indicating the proposed layout of the Subdivision to be submitted to the Planning Board for its consideration.

PRIME AGRICULTURAL LAND: Land used for the purpose of Agriculture that contains prime agricultural soils of the first, second or third class.

RECREATION, ACTIVE: Those recreational pursuits which require physical alteration to the area in which they are performed, examples include playgrounds, ball courts and swimming pools.

RECREATION, PASSIVE: Recreation that involves existing natural resources and has a minimal impact. Passive recreation includes hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, bird-watching and the operation of snowmobiles or ATVs on existing snowmobile or ATV trails.

REVISION TO AN APPROVED SUBDIVISION: Any change to an approved Subdivision that modifies any Subdivision lot, restrictions, easements, roadway, walkway or Common Open Space.

STREET: Public and private rights-of-way such as alleys, avenues, boulevards, roads, and highways.

STRUCTURE: Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

SUBDIVISION: A Subdivision shall be as defined by 30-A M.R.S.A. § 4401, as amended from time to time. Lots of 40 or more acres shall not count as lots for purposes of this chapter when the parcel of land being divided is located entirely outside any shoreland area as defined in 38 M.R.S.A. § 435, as amended from time to time.

SUBDIVISION, MAJOR: Any Subdivision containing more than four five or more lots or a Subdivision requiring new streets or private ways, or extensions of existing streets or private ways, or construction and/or extension of public utilities or any Subdivision proposing that any of its lots not meet the minimum area or lot requirements of the zones in which they are located.

SUBDIVISION, MINOR: A Subdivision containing not more than four or fewer lots and not otherwise requiring classification as a Major Subdivision, as defined in this section.

TRADITIONAL SUBDIVISION: A type of Subdivision development where building lots are at least the minimum lot size for the zoning district in which they are located. A ~~small~~ portion of the ~~lot~~ parcel may remain as Open Space.

WALKWAY: A traffic-way alongside or adjacent to one side of the paved portions of roads to be used by persons including, but not limited to, pedestrians, bicyclists, and handicapped persons operating motorized wheelchairs and which otherwise specifically excludes motorized vehicles, except as otherwise provided in this chapter or state law.
Walkways include sidewalks, freewalks, and paved or graveled shoulders.

§250-4 Subdivision Approval Criteria.

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

- A. **Pollution.** The proposed Subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
- (1) The elevation of the land above sea level and its relation to the floodplains;
 - (2) The nature of soils and subsoils and their ability to adequately support waste disposal;

- (3) The slope of the land and its effect on effluents;
 - (4) The availability of streams for disposal of effluents; and
 - (5) The applicable state and local health and water resource rules and regulations.
- B. **Sufficient water.** The proposed Subdivision has sufficient water available for the reasonable, foreseeable needs of the Subdivision;
- C. **Municipal water supply.** The proposed Subdivision will not cause an unreasonable burden on an existing Municipal water supply, if one is to be used;
- D. **Erosion.** The proposed Subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water such that a dangerous or unhealthy condition results;
- E. **Traffic.** The proposed Subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed;
- F. **Sewage disposal.** The proposed Subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on Municipal services, if they are utilized;
- G. **Municipal solid waste disposal.** The proposed Subdivision will not cause an unreasonable burden on the Municipality's ability to dispose of solid waste, if Municipal services are to be utilized;
- H. **Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline;
- I. **Conformity with local ordinances and plans.** The proposed Subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;
- J. **Financial and technical capacity.** The Applicant has adequate financial and technical capacity to meet the standards of this section as set forth in § 250-48.
- K. **Surface waters; outstanding river segments.** 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, of the Maine Revised Statutes Annotated, the proposed subdivision will not adversely affect the quality of that

body of water or unreasonably affect the shoreline of that body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed Subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extend to the shore. The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definition requirements of 30-A M.R.S.A. § 4401, Subsection 1, on September 23, 1983;

- L. **Groundwater.** The proposed Subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- M. **Flood areas.** Flood areas, or flood-prone areas, are based on the 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 one-hundred-year flood elevation and flood hazard boundaries 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 their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation;
- N. **Stormwater.** The proposed subdivision will provide for adequate stormwater management;
- O. **Freshwater wetlands.** All potential freshwater wetlands, as defined in 30-A M.R.S.A. § 4401, Subsection 2-A, within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district; and
- P. **River, stream or brook.** Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, Subsection 9.

ARTICLE II Standards

§250-5 General Subdivision Standards.

- A. **General.** In reviewing any Application for Subdivision approval involving a residential development consisting of three or more lots or dwelling units ~~single-family residences and/or duplex dwellings in the Rural Residential 1, Rural Residential 2, Rural Industrial, Medium Density Residential, Low Density Residential, Village Mixed Use, Village Medium Density Residential, Mixed Use Zone and Island Residential Districts,~~ the Planning Board shall be authorized to require that the residential development be designed and constructed as a Clustered Subdivision, a Traditional Subdivision, or a Conservation Subdivision based on the standards and criteria set forth in this section.

Four or fewer lots may be designed as a Conservation Subdivision upon a positive finding by the Planning Board that the intent of ~~this~~ that section can be met. All such residential subdivisions shall conform to the requirements of this chapter as well as applicable requirements of Chapter 315, Zoning, and all other applicable ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan.

The intention of this section is to assure that residential Subdivisions are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid contamination from subsurface wastewater disposal systems or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements, including streets, water lines, sewer lines, electric lines, gas lines, telephone lines, and other utilities, protect areas in Resource Protection Districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.

- B. **Criteria to be considered.** In determining whether a proposed residential Subdivision shall be constructed as a Clustered Subdivision, a Traditional Subdivision, or a Conservation Subdivision, the Planning Board shall consider the following criteria as required by 30-A M.R.S.A. § 4404 and Chapter 250, Subdivision of Land if :

- (1) The tract or parcel of land to be developed has a public water system or will be connected to the public water system, or the Planning Board determines that adequate wells can be established for each residential unit without risk of contamination or interference with existing wells or groundwater on abutting properties and wells to be located within the proposed residential development.
- (2) The tract or parcel of land to be developed is connected to the public sewer system or will be connected to the public sewer system, or the Planning Board determines that adequate on-site subsurface wastewater disposal systems can be established for each residential unit without risk of contamination or interference

with existing wells, groundwater and wastewater disposal systems on abutting properties and within the proposed residential development.

(3) The tract or parcel of land to be developed contains one or more of the following types of open space:

- (i) Land which is active farmland or which adjoins or abuts active farmland.
- (ii) Land which contains an existing trail system used by the public or which can provide a link to existing trails.
- (iii) Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area(s), as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.
- (iv) Land which may provide physical or visual access to water bodies, including the ocean, lakes, ponds, rivers, streams, and brooks.
- (v) Land which contains or adjoins a Resource Protection District, as shown on the Official Zoning Map of the Town of Cumberland.
- (vi) Land which adjoins or abuts an existing parcel of land which constitutes open space.
- (vii) Land which is suitable for Passive Recreational Activities.

ARTICLE III Conservation Subdivision

§250-6 Conservation Subdivision Standards.

A. Conservation Subdivision Option.

The Conservation Subdivision option replaces the Clustered Subdivision option in the Rural Residential 1 (RR1) and Rural Residential 2 (RR2) zoning districts.

Conservation Subdivisions are designed to preserve sensitive and/or natural areas including, but not limited to, farmland, wetlands, active trail systems, land which provides a Buffer around a sensitive wildlife habitat or other natural area(s), land which provides physical or visual access to a water body, land which is suitable for Passive Recreation, and land which abuts or adjoins an existing open space.

B. A Buffer of at least 75 feet in width shall be created around the entire perimeter of the subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard and Foreside Roads, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in the Buffers, except that invasive vegetation may be removed.

C. Minimum Common Open Space Requirement.

At least 50% of the total area of the tract or parcel of land being developed must be maintained as Common Open Space and not included in the individual building lots.

The following “High Value Conservation Areas” shall be considered when determining the area(s) within the Ssubdivision to be allocated to the 50% required Common Open Space. When there is land deemed to be in one or more of the “High Value Conservation Areas” in excess of the 50% requirement, or when inclusion of all land meeting the below-listed categories to the Common Open Space would make subdivision of the parcel unreasonably onerous, the Planning Board shall consider not only the priority of the “High Value Conservation Areas” but also the overall intent of this ordinance as well as the impact on the design of the buildable lots and infrastructure of the Subdivision in determining what land should be included in the Common Open Space.

D. High Value Conservation Areas:-

- (1) Existing trails that connect with existing trails on Town-owned land or with existing trails on abutting land protected by a conservation easement;
- (2) Existing healthy, native forests of at least one contiguous acre;
- (3) Habitats of endangered or threatened species;
- (4) Significant wildlife habitats as defined by Maine Department of Inland Fisheries and Wildlife, or the Municipality;
- (5) Significant natural features and scenic views such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
- (6) Archaeological sites, historic structures, cemeteries and burial grounds; and
- (7) Prime Agricultural Lands of at least five contiguous acres.

E. Conservation Subdivisions shall meet the following additional standards:

(1) Applicability of regulations. The Applicant must comply with all provisions of the Zoning Ordinance and applicable laws, except those that are incompatible with the provisions contained herein.

(2) Ownership of Subdivision. The land to be subdivided may be held in single or in multiple ownerships. If held in multiple ownerships, the site must be subdivided according to a single plan with common authority and common responsibility.

(3) Housing density determination. The maximum number of lots in a Conservation Subdivision must be determined using the Net Residential Acreage calculation. The

density within the Conservation Subdivision will be based on the zoning district lot size requirements.

F. Conservation Subdivision Standards.

(1) The maximum number of lots permitted in a Conservation Subdivision shall not exceed that allowed per the underlying zoning district. The following standards apply to development in Conservation Subdivisions, in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located.

(a) Lot size-density calculation.

(i) Net residential acreage. The Net Residential Acreage shall be calculated as defined herein.

(ii) Maximum number of lots allowed. The maximum number of lots allowed in a Conservation Subdivision shall be calculated by dividing the Net Residential Acreage by the minimum lot size allowed in the applicable zoning district. (Net residential acreage/minimum lot size allowed in zoning district = maximum number of lots allowed-).

(b) Minimum lot size.

(i) The minimum allowed lot size shall be calculated by dividing fifty percent (50%) of the gross area (total area) of the parcel by the number of lots as calculated above. ~~calculated in Subsection (i) above.~~

(ii) Due to the unique characteristics of lot sizes, the Planning Board may allow up to a 10% lot acreage adjustment, if the Applicant can demonstrate the adjustment would improve the Subdivision. In no case shall lot areas be required to exceed the minimum requirements of the underlying zoning district.

(c) Lot Setbacks.

Front: 50 feet

Side: minimum 30 feet; combined width at least 75 feet

Rear: 50 feet

(d) Minimum lot frontage: 200 feet.

(e) Minimum access easement to Common Open Space: 10 feet.

(f) Sheds and Driveways: The above minimum lot standards are required in a Conservation Subdivision except that sheds and driveways are permitted a minimum setback of 15 feet from the side and rear lot lines.

§250-7 - Permitted Uses of Common Open Space.

A. Uses of Common Open Space may include:

- (1) Passive Recreation, such as hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, bird watching and other low impact recreational activities that do not significantly alter the natural Common Open Space;
- (2) Operation of snowmobiles or ATVs on existing snowmobile or ATV trails;
- (3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices as defined by the Manual of Best Management Practices for Maine Agriculture, dated January, 2007, as amended, are used to minimize environmental impacts;
- (4) Nonstructural stormwater management, such as rain gardens;
- (5) Easements for drainage, access, and underground utility lines; and
- (6) Other conservation-oriented uses, such as a community garden, compatible with the purposes of this ordinance, as determined by the Planning Board in consultation with the Cumberland Lands and Conservation Commission.

§250-8 Prohibited Uses of Common Open Space.

A. The following are prohibited in the Common Open Space:

- (1) Roads, parking lots and impervious surfaces, except as specifically authorized in this ordinance;
- (2) Subsurface wastewater disposal systems and wells;
- (3) Dumping or disposal of any type of yard waste, household waste, hazardous waste or other debris, organic or inorganic;
- (4) Cutting vegetation, except for an annual mowing to prevent undesirable shrub brush from overtaking protected fields, without an approved management plan, except that the removal of invasive vegetation shall be allowed;
- (5)- Active Recreation;
- (6) Altering approved Common Open Space;

(76) Additional structures being placed on the Common Open Space without prior Planning Board approval; and

(87) Other activities as determined by the Applicant and recorded on a legal instrument providing for permanent protection such as deed restrictions.

§250-9 Ownership, Management, Legal Protection, and Maintenance of Common Open Space in a Conservation Subdivision.

A. Ownership and Management and Maintenance of Common Open Space:

(1) Ownership of Common Open Space. The Applicant must identify who will be the owner of the Common Open Space and who will be responsible for maintaining the Common Open Space and facilities located thereon if that will be someone other than the owner of the Common Open Space. If a homeowners association will be the owner, membership in the association must be mandatory and will be required by deed covenants for all homeowners in the Subdivision and their successors. If a homeowners association is the owner, it must have lien authority to ensure the collection of assessments from all members. The cost and responsibility for maintaining the Common Open Space and any facilities located thereon shall be borne by the owner.

(2) Management of Open Space. The Applicant must submit a plan for management of the Common Open Space and common facilities that:

(a) Allocates responsibility and standards for the maintenance of the Common Open Space and any facilities located thereon, including provisions for ongoing maintenance and for any required long-term capital improvements;

(b) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Common Open Space, and outlines the means by which such funding will be obtained or provided;

(c) Provides that any changes to the plan must be approved by the Planning Board; and

(d) Provides for the enforcement of the plan.

(B) Legal Instrument for Protection.

The Common Open Space must be protected by a binding legal instrument that is recorded with the deed. The instrument must be one of the following:

(1) A permanent conservation easement held by one of the following:

(a) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The nonprofit organization must be in good legal standing and the conveyance instruments must contain all appropriate provision for retransfer in the event the organization becomes unable or chooses to not carry out its functions; or

(b) A governmental entity with the authority to pursue goals compatible with the purposes of this Ordinance. If the entity accepting the easement is not the Town, then a third-party right of enforcement granted to the Town may be included in the easement.

(2) A permanent restrictive covenant for conservation purposes granted to a governmental entity.

(3) An equivalent legal tool, if approved by the Town that provides permanent protection such as a Homeowners Association.

The instrument of permanent protection must include clear restrictions on the use of Common Open Space ~~open space~~ and must include all restrictions contained in this ordinance, as well as any further restrictions the Applicant chooses to place on the use of the Common Open Space ~~open space~~. –All legal instruments provided shall be subject to review by the Planning Board and the Town Attorney for compliance with the requirements of this Ordinance. In addition, the Applicant shall submit for review and approval all homeowners association documents, including a declaration of covenants and restrictions and a draft deed that incorporates the declaration of covenants and restrictions and includes a requirement for lot owner membership in the homeowners association.

(4) Additional Common Open Space considerations:

(a) The Common Open Space within an approved Conservation Subdivision is the responsibility of the owner(s), regardless of whether or not the land is leased to another entity. Maintenance requirements and restrictions must be listed and approved by the Planning Board as part of the conditions of approval.

(b) Utility rights-of-way and areas of impervious surface may be included within the protected Common Open Space but cannot be counted towards the 50% minimum area requirement (exception: historic structures and existing trails may be counted).

(c) Where possible, Common Open Space areas shall be contiguous to another Common Open Space area either within or abutting the Subdivision. The Common Open Space should adjoin any neighboring areas of Common Open Space, Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.

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(d) All lots must be provided with safe, convenient access to the Common Open Space.

(e) The Planning Board may require the Applicant to dedicate easements not less than 10 feet wide to the Town over any existing trails that are observable during the site walk or are shown on existing conditions maps. If the location of the existing trails precludes the appropriate placement of house lots or infrastructure, the trail may, with the approval of the Planning Board, be relocated on the parcel. This provision shall only apply to trails which connect to trails on adjacent properties. Where an easement is dedicated to and accepted by the Town, the Town shall have the right but not the obligation to maintain such easements. Any such dedication must be made through appropriate legal instruments approved by the Town Attorney.

ARTICLE IV Clustered Subdivision

§250-10 Clustered Subdivision Standards.

Clustered Subdivisions are not permitted in the RR1 or RR2 zoning districts. Clustered Subdivisions are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as Common Open Space, so long as the maximum number of lots permitted shall not exceed that allowed per the underlying zoning district. The following standards apply to development in Clustered Subdivisions in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located:

(A) Lot density calculation.

(1) Net Residential Acreage. The Net Residential Acreage shall be calculated as defined.

(2) Maximum number of lots allowed. The maximum number of lots allowed in a Clustered Subdivision shall be calculated by dividing the Net Residential Acreage by the minimum lot size allowed in the applicable zoning district. (Net Residential Acreage/minimum lot size allowed in zoning district = maximum number of lots allowed).

(B) Minimum lot size.

If the lots are connected to the public water and sewer systems, the minimum lot size for each single-family dwelling shall be 30,000 square feet and for each duplex dwelling shall be 40,000 square feet. If the lots are connected to the public water system but not the public sewer system, the minimum lot size for each single-family dwelling shall be 45,000 square feet and 60,000 square feet for each duplex. If the lots are not connected to the public water and sewer system, the

minimum lot size for each single-family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.

(C) Lot setbacks.

Setback requirements for a Clustered Subdivision shall be the same as those required in the zoning district in which the subdivision is located.

Sheds and driveways are permitted a minimum setback of 15 feet from the side and rear lot lines.

(D) Frontage.

Each lot shall have no less than 75 feet of lot frontage on a street.

(E) Buffer.

A Buffer of at least 75 feet in width shall be created around the entire perimeter of the Subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard, and Foreside Road, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in Buffers, except that vegetation classified as invasive may be removed.

250-11 Common Open Space.

A. At least 25% of the total area of the tract or parcel of land being developed must be maintained as Common Open Space and not included in the individual building lots. Common Open Space may include, but not be limited to, the following:

- (1) Active farmland or land adjoining active farmland;
- (2) An active trail system or which provides a link to an existing trail system;
- (3) Land which provides a buffer around a sensitive wildlife habitat or other natural area;
- (4) Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook;
- (5) Land in a Resource Protection District as shown on the official Town of Cumberland Overlay Map;
- (6) Land which is suitable for Active or Passive Recreation; and

(7) Land which abuts or adjoins an existing public Open Space.

B. Ownership, Management, Legal Protection, and Maintenance of Common Open Space in a Clustered Subdivision.

(1) Ownership of Common Open Space.

The Applicant must identify who will be the owner of the Common Open Space and who will be responsible for maintaining the Common Open Space and facilities located thereon if that will be someone other than the owner of the Common Open Space. If a homeowners association will be the owner, membership in the association must be mandatory and will be required by deed covenants for all homeowners in the subdivision and their successors. If a homeowners association is the owner, it must have lien authority to ensure the collection of assessments from all members. The cost and responsibility for maintaining the Common Open Space and any facilities located thereon shall be borne by the owner.

(2) Management of Common Open Space.

The Applicant must submit a plan for management of Common Open Space and common facilities that:

- (i) Allocates responsibility and standards for the maintenance of the Common Open Space and any facilities located thereon, including provisions for ongoing maintenance and for any required long-term capital improvements;
- (ii) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Common Open Space, and outlines the means by which such funding will be obtained or provided;
- (iii) Provides that any changes to the plan must be approved by the Planning Board; and
- (iv) Provides for the enforcement of the plan.

(3) Legal Instrument for Protection of Common Open Space.

The Common Open Space must be protected by a binding legal instrument that is recorded with the deed. The instrument must be a permanent conservation easement held by one of the following:

(i) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The nonprofit organization must be in good legal standing and the conveyance instruments must contain all appropriate provision for retransfer in the event the organization becomes unable or chooses to not carry out its functions;

(ii) A governmental entity with the authority to pursue goals compatible with the purposes of this ordinance. If the entity accepting the easement is not the Town, then a third-party right of enforcement granted to to the Town may be included in the easement.

(iii) A permanent restrictive covenant for conservation purposes granted to a governmental entity.

(iv) An equivalent legal tool, if approved by the Town Attorney and Planning Board that provides permanent protection such as a homeowners association.

(v) The instrument of permanent protection must include clear restrictions on the use of Common Open Space and must include all restrictions contained in this ordinance, as well as any further restrictions the Applicant chooses to place on the use of the Common Open Space. All legal instruments provided shall be subject to review by the Town for compliance with the requirements of this ordinance.

(vi) The Common Open Space within an approved Clustered Subdivision is the responsibility of the owner(s), regardless of whether or not the land is leased to another entity. Maintenance requirements and restrictions must be listed and approved by the Planning Board as part of the conditions of approval.

(4) Additional Common Open Space considerations:

(a) Utility rights-of-way and areas of impervious surface may be included within the protected Common Open Space but cannot be counted towards the 25% minimum area requirement (exception: historic structures and existing trails may be counted).

(b) Where possible, Common Open Space areas shall be contiguous to another Common Open Space area either within or abutting the subdivision. The Common Open Space should adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.

(c) All lots must be provided with safe, convenient access to the Common Open Space. The minimum width of an access easement to the Common Open Space is 10 feet.

(d) The Applicant shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the homeowners association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instruments binding upon the lot owner and running with the land.

(e) The Planning Board may require the developer to dedicate easements not less than 10 feet wide to the Town over any existing trails that are observable during the site walk or are shown on existing conditions maps. If the location of the existing trails precludes the appropriate placement of house lots or infrastructure, the trail may, with the approval of the Planning Board, be relocated on the parcel. This provision shall only apply to trails which connect to trails on adjacent properties. Where an easement is dedicated to and accepted by the Town, the Town shall have the right but not the obligation to maintain such easements. Any such dedication must be made through appropriate legal instruments approved by the Town Attorney.

ARTICLE V Traditional Subdivision

250-11 Traditional Subdivision Standards.

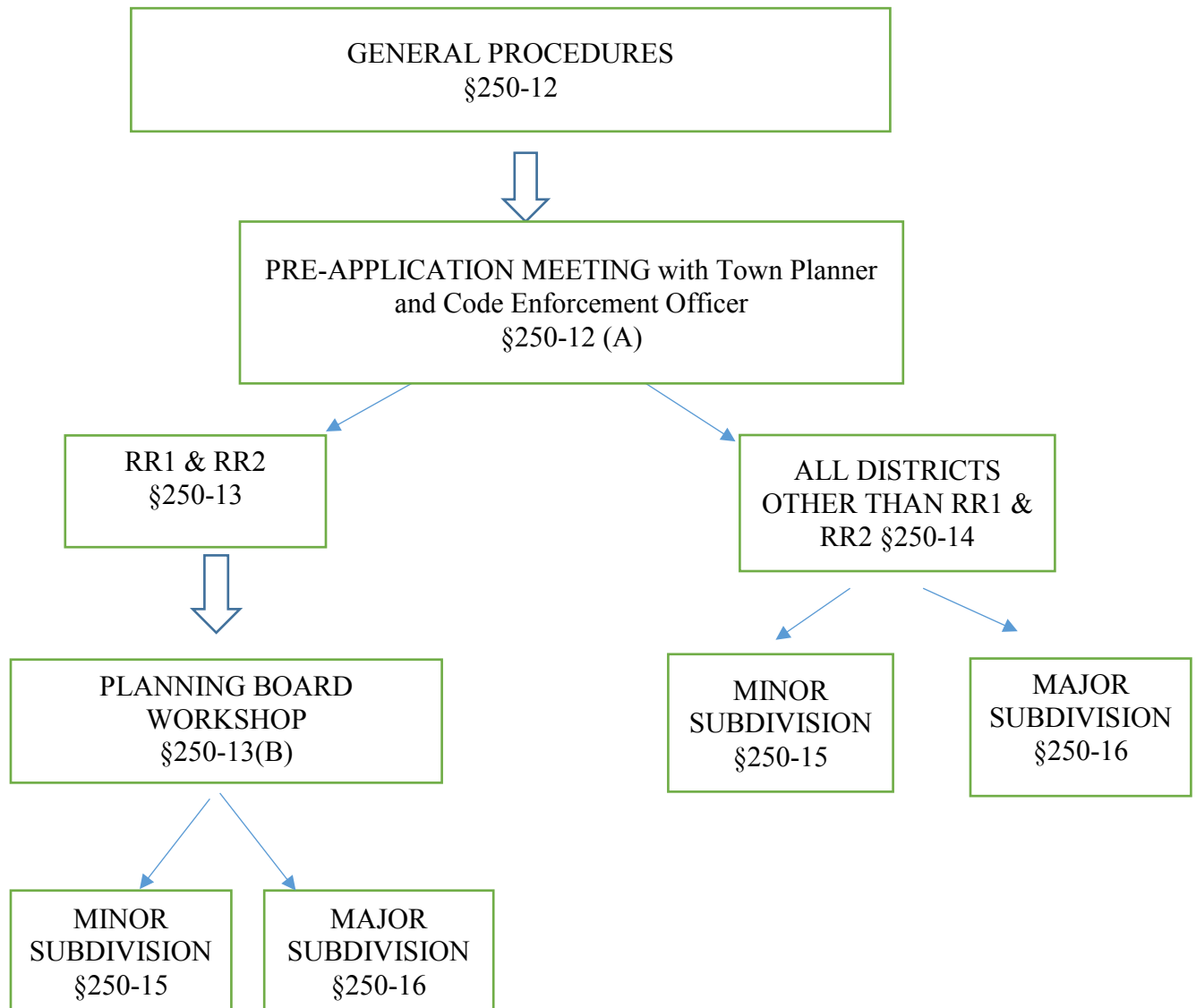
(A) Traditional Subdivisions are Subdivisions in which the dwelling units are located on separate building lots which conform to the minimum lot size for the zoning district in which they are located. A Traditional Subdivision may, but is not required to, include land set aside as Open Space, defined herein. Any Traditional Subdivision that will include a homeowners association shall submit for review and approval by the Planning Board and the Town Attorney all documents related to the homeowners association, including but not limited to the declaration of covenants and restrictions and a draft deed that incorporates the declaration of covenants and restrictions and the requirement of membership in the homeowners association.

(B) Buffer.

A Buffer of at least 75 feet in width shall be created around the entire perimeter of the Subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard, and Foreside Road, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in Buffers, except that vegetation classified as invasive may be removed.

ARTICLE VI: Subdivision Application Procedures

Note: The following flowchart illustrates the general procedures to be followed for all subdivision applications.



| §250-12 General **Subdivision** Procedures

A. Pre-application meeting with Town Planner and Code Enforcement Officer.

Prior to submission of a Subdivision Application, Applicants shall arrange a pre-application conference with the Town Planner and Code Enforcement Officer. A proposed plan shall be provided by the Applicant which shows the original parcel to be subdivided and the number of lots and road design proposed for the Subdivision. At the conclusion of this meeting, the Code Enforcement Officer shall classify the proposed project as either a Minor or Major Subdivision.

B. Subdivision options in the residential zoning districts.

- (1) If the proposed Subdivision will be located in the Rural Residential 1 (RR1) or Rural Residential 2 (RR2) zoning district, the Applicant may propose either a Conservation Subdivision or a Traditional Subdivision plan.
- (2) If the proposed Subdivision is located in any zoning district other than the Rural Residential 1 (RR1) or Rural Residential 2 (RR2), the Applicant may propose either a Clustered or a Traditional Subdivision plan.

| **C. Content of plans**

A proposed plan shall show the natural features of the property such as topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal systems locations (if applicable), steep slopes, open fields, wooded areas, etc. The proposed plan shall also depict the location of the road(s) and lots, the stormwater management system, and the Common Open Space (if any).

D. Application Fees, Consulting Fees and Application Forms.

- (1) The subdivision review fee schedule is established by order of the Town Council.
- (2) Outside consulting fees shall be charged in accordance with Chapter 315, Zoning, § 315-81.
- (3) Appendix A should be completed for any proposed Conservation Subdivision.
- (4) Appendix B should be completed for a proposed Minor Traditional or Clustered Subdivision.

- (5) Appendix C should be completed for a proposed Major Traditional or Clustered Subdivision.

§ 250-13 Procedure for subdivisions in the RR1 or RR2 Zoning Districts.

- A. The Conservation Subdivision is the preferred option and a proposed Conservation Subdivision plan must be submitted by the Applicant. The Applicant may propose, as an alternative, a Traditional Subdivision in which case a proposed Traditional Subdivision plan may also be submitted.

B. Pre-application workshop with Planning Board.

Following the pre-application conference with the Town Planner and the Code Enforcement Officer, the Applicant shall meet with the Planning Board in a workshop setting to review the physical attributes and natural resources of the parcel to be developed and to discuss the Subdivision type that would be best suited to the physical characteristics of the parcel being developed. The Town Lands and Conservation Commission will be invited to attend the workshop.

- C. All plans shall show the natural features of the property, including topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal system locations (if applicable), steep slopes, open fields and wooded areas. The plan shall also depict how the road(s), lots, ~~and the~~ stormwater management system, and Common Open Space (if any) would be laid out in each option.
- D. The Planning Board shall notify abutters within 500 feet of the proposed Subdivision of the meeting date, location and time of the workshop. The Planning Board will solicit public comments on the proposed plan options after which the Planning Board will make a determination on which plan should be selected for the Subdivision.
- E. The Applicant shall be given a decision at the workshop as to what type of Subdivision is most appropriate or be told what additional information is necessary for the Planning Board to make a decision. The Planning Board shall specify in writing its decision within 10 days of the workshop.
- F. The type of Subdivision selected by the Planning Board shall not be changed unless the Planning Board finds that unforeseen circumstances require the decision to be altered.
- G. The pre-application workshop shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.
- H. Following completion of the pre-application workshop with the Planning Board, Applications for a Minor Subdivision shall proceed pursuant to 250-15 and Applications for a Major Subdivision shall proceed pursuant to 250-16.

§ 250-14 Procedure for Subdivisions not located in the RR1 or RR2 Zoning Districts.

- A. If the proposed subdivision is located in any residential zoning district other than the RR1 or RR2, the Applicant may propose either a Clustered Subdivision or a Traditional Subdivision.
- B. The Clustered Subdivision is the preferred option for subdivisions in residential zoning districts other than RR 1 and RR 2. The Applicant may submit a Traditional Subdivision plan as an alternative.
- C. Following completion of the pre-application meeting, Applications for Minor Subdivision shall proceed pursuant to 250-15 and Applications for Major Subdivisions shall proceed pursuant to 250-16.
- ~~D. All plans shall show the natural features of the property such as topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal system locations (if applicable), steep slopes, open fields, wooded areas, etc. The Planning Board shall then determine which type of Subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of Common Open Space to be maintained, if applicable. The plan shall also depict how the road(s), lots and the stormwater management system, and Common Open Space (if any) would be laid out in each option.~~
- ~~E. The Planning Board will notify abutters within 500 feet of the proposed Subdivision of the meeting date, location and time. The Planning Board will hold a public hearing to solicit public comments on the proposed plan options after which it will make a determination on which plan should be selected for subdivision.~~
- ~~F. The Applicant shall be given a decision at the meeting as to what type of Subdivision is most appropriate or be told what additional information is necessary for the Planning Board to make a decision. The Planning Board shall specify in writing its decision within 10 days of the meeting.~~
- ~~G. The type of Subdivision approved by the Planning Board shall not be changed unless the Planning Board finds that unforeseen circumstances require the decision to be altered.~~
- ~~H. The consideration of the pre-application plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.~~

§ 250-15 Review and approval of a plan for a Minor Subdivision.

A. Minor Subdivision procedure.

Review and approval of a plan for a Minor Subdivision shall be a process whereby the Planning Board shall grant final approval for a project at the time that all ordinance requirements have been met. There shall be no preliminary approval step.

B. Minor Subdivision Submission requirements.

Minor Subdivision plan submissions shall conform to the standards and requirements contained in Appendix B of this chapter.

(1) An Application for a Minor Subdivision shall consist of a cover letter describing the nature of the project, a completed Application form, the appropriate submission requirements and, if necessary, a letter listing any requested waivers from the submission requirements. The Applicant shall submit an electronic version of all required plans and materials listed in the Application submission checklist. In addition, ~~one-two~~ full size paper copies of all required plans and of all materials listed in the Application submission checklist shall be provided to the Town Planner. These items shall be submitted to the Town Planner at least 21 days prior to the Planning Board meeting at which it is to be considered, and shall be accompanied by the fee, which is established by order of the Town Council.

(2) ~~The~~ Within five (5) days of the submitted Application, the Town Planner shall ~~then~~ determine whether the Application is complete or incomplete and shall notify the Applicant of the determination in writing ~~in writing within 30 days of the date that the receipt is issued.~~ If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Town Planner shall notify the Applicant and the Application will be placed on the next Planning Board agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of payment of the application fee ~~issued receipt date~~ shall become null and void.

(3) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the Applicant, hold a public hearing and begin review of the Application. The Planning Board shall ~~vote on the type of Subdivision to be pursued and~~ then vote to either table, approve, approve with conditions, or disapprove the plan. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

~~The Planning Board shall specify in writing its decision.~~

C. Minor Subdivision Plan approval and filing.

(1) Upon completion of the requirements above and approval of the plan, the plan shall be signed by a majority of the voting members of the Planning Board and shall be filed by the Applicant with the Cumberland County Registry of Deeds.

(2) Approval of any Subdivision plan not filed for recording within 90 days after final plan approval shall become null and void. A note referencing this time provision shall be placed upon the final plan. The ~~developer~~ Applicant shall provide the Town Planner with the plan book number and page number upon recording of the Subdivision plan.

(3) This approval is dependent upon and limited to the proposals and plans contained in the Application, and supporting documents submitted by the Applicant, and all statements made by the Applicant to the Planning Board. There shall be no variation from the approved plans except for minor field changes which do not affect approval standards; these minor field changes shall be reviewed and approved by the Town Planner, Code Enforcement Officer and, if needed, the Municipal Engineer. Written notification documenting the approved changes shall be provided to the Applicant and materials relating to the minor field changes and the approval thereof, shall be placed in the Planning Department's file for the project. The Planning Board shall be informed of any approved minor field changes at its next scheduled meeting.

D. Performance guarantees.

(1) The purpose of a performance guarantee is to secure the completion of all required improvements or the restoration of the site as the Town deems appropriate.

(2) Prior to plan approval, or as a condition of plan approval, the Applicant shall provide a construction schedule and cost estimate for all required improvements to the Town Planner. Required improvements include, but are not limited to, street and utility construction, stormwater management, landscaping, erosion control, and monumentation. The Town Planner shall submit the cost estimate to the ~~Engineer~~ Municipal Engineer and Town Manager for review and approval. Once the amount for the performance guarantee is set, the Applicant shall provide a performance guarantee in one of the following acceptable forms:

(a) An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.

(b) An irrevocable letter of credit from a financial institution in a form reviewed by the Town Attorney and acceptable to the Town Manager that provides at least 60 days

written notification of expiration. The terms and conditions shall include a maximum ~~two~~ three-year time limit and an inflation clause.

(c) Any other performance guarantee reviewed by the Town Manager and Town Attorney as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

(3) In the event that a final plan is to be divided into two or more phases, the performance guarantee may be provided in an amount commensurate with the level of improvement to be undertaken in the phase or phases to be filed with the Cumberland County Registry of Deeds and may defer the remaining required amount(s) until the remaining phases of the proposed Subdivision are ready for filing with the Cumberland County Registry of Deeds. The terms and conditions of the performance guarantee for each phase shall include a maximum ~~two~~ three-year time limit and an inflation clause.

(4) Completion of required improvements shall be determined by the Town Manager, who shall receive written certification from the Municipal Engineer that all improvements assured by the performance guarantee have been constructed in conformance with the final plan and all applicable codes and ordinances. In addition, the Applicant shall furnish at his/her own expense the signed certification by a registered surveyor or civil engineer that all permanent boundary markers or monuments have been installed and are accurately in place in the locations designated in the final plan.

(5) The performance guarantee may, at the discretion of the Town Manager, provide for a partial release of the performance guarantee amount as specific portions of the required improvements are completed.

§ 250-16 Review and approval of plan for a Major Subdivision.

Major Subdivision plan submissions shall conform to the standards and requirements contained in Appendix B of this chapter.

A. Sketch Plan Review.

(1) The purpose of sketch plan review is for the Applicant to submit a concept plan or plans to the Planning Board and to receive the Planning Board's decision as to which type of Subdivision is most appropriate for the site. An Application for sketch plan review and any accompanying materials shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered. The Application shall be submitted electronically and two full size paper copies shall be delivered to the Town Planner.

(2) At the Planning Board meeting, the Applicant shall present the sketch plan(s) and make a verbal presentation regarding the site and the proposed Subdivision. The Planning Board shall hold a public hearing to solicit public comment. Suggested changes made by the Planning Board may be incorporated by the Applicant into the Application.

- (3) The sketch plan shall show, in simple form, the proposed layout of streets, lots, building envelopes, and proposed open spaces. The plan shall include a delineation of topography, wetlands, steep slopes, water bodies, adequate septic system locations, if applicable, and other known natural features.
- (4) The Planning Board shall determine which type of Subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of any Open Space to be maintained, if applicable.
- (5) The Applicant shall be given a decision at the meeting as to what type of Subdivision is most appropriate or be told what additional information is necessary for the Planning Board to make a decision. The Planning Board shall specify in writing its decision within 10 days of the meeting.
- (6) The type of Subdivision approved at the sketch plan meeting shall not be changed unless the Planning Board finds that unforeseen circumstances require the decision to be altered.
- (7) The acceptance of a sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.
- (8) Following the sketch plan meeting the Planning Department shall establish a file for the proposed Subdivision. All correspondence and submissions shall be maintained in the file.

B. Preliminary Plan Procedures

- (1) An Application for a Major Subdivision shall consist of a cover letter describing the nature of the project, a completed Application form, the appropriate submission requirements and, if necessary, a letter listing any requested waivers from the submission requirements. The Applicant shall submit an electronic version of all required plans and materials listed in the Application submission checklist. In addition, two full size paper copies of all required plans and of all materials listed in the Application submission checklist shall be provided to the Town Planner. These items shall be submitted to the Town Planner at least 21 days prior to the Planning Board meeting at which it is to be considered, and shall be accompanied by the fee, which is established by order of the Town Council.
- (2) 1) An Application for preliminary plan approval, a completed Application checklist and 2 full size paper copies of the preliminary plan and accompanying materials shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered and shall be accompanied by the fee as established by order of the Town Council. The Applicant shall also provide an electronic copy of all application forms, plans and supporting information. If the application is found to be deficient, all additional information must be submitted no later than 14 days prior to the meeting at which it is to be considered.

- (2) Major Subdivision review is a process whereby an Application is reviewed and approved in two stages: 1) Preliminary Plan Review and Approval and 2) Final Plan Review and Approval. An Application for Major Subdivision Review may be considered for both Preliminary and Final Plan approval at the same meeting if all submission requirements have been met.
- (3) Within ten (10) days of the submitted Application, the Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Town Planner shall notify the Applicant and the Application will be placed on the next Planning Board agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of the payment of the Application fee shall become null and void.
- (4) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the Applicant, hold a public hearing and begin review of the Application. The Planning Board shall then vote to either table, approve, approve with conditions, or disapprove the preliminary application. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

B. Preliminary plan procedures.

- ~~((2) The Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination in writing within 30 days of the date that the receipt is issued. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. Any Application not determined to be complete within 180 days of the issued receipt date shall become null and void.~~
- ~~(3) A public hearing shall be scheduled within 30 days after the date that the Application is determined to be complete, with written notice given to property owners within 500 feet of the proposed Subdivision and written notice to the general public in a newspaper of general circulation in the Town. The Planning Board may, at its discretion, hold any additional public hearings as it deems appropriate. Failure of any property owner or any member of the public to receive a notice of the public hearing shall not necessitate another public hearing and shall not invalidate the action of the Planning Board.~~
- ~~(4) The Planning Board shall, within 30 days after the date of the last public hearing, approve, approve with conditions, or disapprove the preliminary plan. The Planning Board shall specify in writing its findings of fact and the Planning Board's decision. A separate copy of the written decision and findings of fact shall be maintained apart from the Planning Board minutes and stored in the Town Planner's files. The Planning Board, at its discretion, may require annotations to be placed directly on the preliminary plan.~~

(~~55~~) Preliminary ~~plan-application~~ approval shall not constitute approval of the final plan but rather shall be deemed an expression of approval of the design submitted on the preliminary plan as a guide to preparation of the final plan.

(~~66~~) Preliminary plan submissions shall conform to the standards and requirements contained in Appendix D of this chapter.

C. Final plan procedures.

(1) Prior to submission of the final plan, the Applicant shall have fulfilled the following requirements:

(a) The Applicant shall provide evidence that a completed Application was received by the Maine Department of Environmental Protection and is under review; if the proposed Subdivision is subject to review by said Department;

(b) The proposed water supply system shall be approved in writing by the Portland Water District if existing public water service is to be used or by the Maine Department of Health and Human Services if a central water supply system is proposed; and

(c) Allocation of sewer user units by the appropriate municipal agency shall be secured if said units are required for the proposed subdivision, and the proposed sewage disposal system shall conform to § 250-29 of this chapter.

(~~24~~) An Application for final plan approval and a completed Application checklist shall be submitted to the Town Planner within 180 days after preliminary ~~plan-application~~ approval and at least 21 days prior to the meeting at which it is to be considered. The Applicant shall provide 2 full size paper copies of the final plan and accompanying materials which shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered. The Application shall be accompanied by the fee as established by order of the Town Council. The Applicant shall also provide an electronic copy of all application forms, plans and supporting information.

(3) Within ten (10) days of the submitted Application, the Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination in writing. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Application will be place on the next Planning Board Agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of payment of the Application fee shall become null and void.

(4) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the Applicant, hold a public hearing and begin review of the

Application. The Planning Board shall then vote to either table, approve, approve with conditions, or disapprove the plan. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

C. Phasing of Project.

Prior to the final plan approval, the Planning Board may grant approval to permit the plan to be divided into two or more phases and may impose such conditions upon the phases as it deems necessary to ensure the orderly development of the Subdivision. Each phase shall be reviewed by the Planning Board both as a potentially independent Subdivision and as a section of the total Subdivision. Each phase shall constitute at least 25% of the total number of lots contained in the approved final plan.

D. Performance guarantees.

(1) The purpose of a performance guarantee is to secure the completion of all required improvements or the restoration of the site as the Town deems appropriate.

(2) Prior to final plan approval, or as a condition of final plan approval, the Applicant shall provide a construction schedule and cost estimate for all required improvements to the Town Planner. Required improvements include, but are not limited to, street and utility construction, stormwater management, landscaping, lighting, erosion control, and monumentation. The Town Planner shall submit the cost estimate to the ~~Engineer~~ Municipal Engineer and Town Manager for review and approval. Once the amount for the performance guarantee is set, the Applicant shall provide a performance guarantee in one of the following acceptable forms:

- (a) An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.
- (b) An irrevocable letter of credit from a financial institution in a form reviewed by the Town Attorney and acceptable to the Town Manager that provides at least 60 days' written notification of expiration. The terms and conditions shall include a maximum two-year time limit and an inflation clause.
- (c) Any other performance guarantee reviewed by the Town Attorney and acceptable to the Town Manager as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

(3) In the event that a final plan is to be divided into two or more phases, the performance guarantee may be provided in an amount commensurate with the level of improvement to be undertaken in the phase or phases to be filed with the Cumberland County Registry of Deeds and may defer the remaining required amount(s) until the remaining sections of the proposed Subdivision are ready for filing with the Registry of

Deeds. The terms and conditions of the performance guarantee for each phase shall include a maximum three-year time limit and an inflation clause.

- (4) Completion of required improvements shall be determined by the Town Manager, who shall receive written certification from the ~~Engineer~~Municipal Engineer that all improvements assured by the performance guarantee have been constructed in conformance with the final plan and all applicable codes and ordinances. In addition, the Applicant shall furnish the signed certification by a registered surveyor or civil engineer that all permanent boundary markers or monuments have been installed and are accurately in place in the locations designated in the final plan.
- (5) The performance guarantee may, in the discretion of the Town Manager, provide for a partial release of the performance guarantee amount as specific portions of the required improvements are completed.

E. Final plan approval and filing.

- (1) Upon completion of the requirements above and approval of the final plan, the final plan shall be signed by a majority of the voting members of the Planning Board and shall be filed by the Applicant with the Town Planner.
- (2) The performance ~~-guarantee bond or irrevocable letter of credit~~, with the terms and conditions previously set by the Planning Board, shall be filed with the Town Manager before the final plan is released for recording by the Applicant at his expense with the Cumberland County Registry of Deeds.
- (3) Approval of any Subdivision plan not filed for recording within 90 days after final plan approval shall become null and void. A note referencing this time provision shall be placed upon the final plan. The Applicant shall provide the Town Planner with the plan book number and page number upon recording of the Subdivision plan at the Cumberland County Registry of Deeds.

§ 250-17 Plan revisions after approval.

No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the final plan, unless said plan is first resubmitted and the Planning Board approves any modifications. Any Application for Subdivision approval that constitutes a revision or amendment to a Subdivision plan which has been previously approved shall indicate that fact on the Application and shall identify the original Subdivision plan being revised or amended. Approved changes shall be endorsed on the revised final plan by the Planning Board, and the plan as modified shall be recorded in the Cumberland County Registry of Deeds within 60 days after such approval. The Applicant shall provide the Town Planner with the plan book number and page number upon recording of the revised Subdivision plan, as well as a full-sized copy of the recorded plan and one reduced size copy in the dimensions specified by the Town Planner.

§ 250-18 Public acceptance of streets and recreation areas.

When a street, easement, Common Open Space area, park, playground, or other recreation area is shown on the final plan, approval of the plan shall not constitute an acceptance by the Town of such areas. All plans shall be endorsed with the following note: *"The approval of this plan by the Planning Board does not constitute acceptance by the Town of any street, easement, Common Open Space area, park, playground, or other recreation area thereon."* The Planning Board may also require the filing of a written agreement between the Applicant and the Town Council covering future deed and title requirements, dedication, and provision for the cost of grading, Subdivision, equipment, and maintenance of any such areas.

§ 250-19 Times for commencement and completion of construction; preconstruction conference.

A. All improvements required by § 250-25 and any other improvements required by the Planning Board for approval of the plan shall be completed no later than ~~two~~ three years after approval of the final plan. The Applicant may, prior to the expiration of approval, request a one year extension from the Planning Board for good cause shown. Subdivisions that are proposed to be built out in phases shall meet the three year limit for each phase of the Subdivision. Where a project requires both Subdivision and Site Plan approval under Chapter 229, the improvements must be completed within the time periods established by this section rather than those established by § 229-11.

B. Preconstruction Conference. Prior to the commencement of construction there shall be a mandatory preconstruction conference, unless waived by the Town Manager. The preconstruction conference attendees should include the developer, his/her site contractor, engineer, general contractor, the Code Enforcement Officer, the Town Planner, the ~~Engineer~~Municipal Engineer and any such other department heads deemed appropriate by the Town Planner, to review the proposed construction activities to assure compliance with the requirements of this chapter and any special terms of the project's approval.

Article VII. Enforcement

§ 250-20 Approval required prior to recording.

No plan of a Subdivision of land within the municipal boundaries which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Cumberland County Registry of Deeds until a final plan thereof shall have been approved by the Planning Board in accordance with all of the requirements, design standards, and construction specifications set forth elsewhere in these standards nor until such approval shall have been entered on such final plan by the Planning Board.

§ 250-21 Conveyance of land.

No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a Subdivision which has not been approved by the Planning Board and recorded in the Cumberland County Registry of Deeds.

§ 250-22 Violations and penalties.

Any person, firm, corporation or other legal entity who or which conveys, offers or agrees to convey any land in a Subdivision which has not been approved as required by this article or who builds or develops a Subdivision other than in strict conformance with the requirements of this chapter and his/her approval, including any conditions attached thereto, shall be subject to a civil action seeking injunctive relief to prevent any such violation and restore or repair the land, if appropriate, and be further subject to a civil fine, attorney fees and costs of court as provided under 30-A M.R.S.A. § 4452. The Municipality or the Code Enforcement Officer may institute such proceedings.

§ 250-23 -Utility service.

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.

§ 250-24 Grading and construction work prior to final approval.

Not only is making a Subdivision without Planning Board approval a violation of law, but so also within such a Subdivision is grading or construction of roads, grading of land or lots, or construction of buildings until a final plan of such Subdivision shall have been duly prepared, submitted, reviewed, approved, and endorsed as provided in these standards and until the original copy of the final plan so approved and endorsed has been duly recorded in the Cumberland County Registry of Deeds.

Article VIII Required improvements

§ 250-25 Required improvements.

The following are required improvements: monuments, street signs, streets, byways, water supply, sewage disposal, storm drainage, landscaping, lighting and signing and pavement markings for traffic control, walking and biking trails, erosion control, or other improvements required by the Planning Board, except where the Planning Board may waive or modify such improvements in accordance with the provisions of these standards.

§ 250-26 Inspection of required improvements.

A. Inspection fee.

(1) At least five days prior to commencing construction of required improvements the Applicant shall pay

~~(a) Pay an inspection fee equal to 2% of the cost of the required improvements, or \$5,000, whichever is greater, to cover the costs of construction inspections by the Municipal Engineer or Town Staff, as required.~~

~~(b) Pay an inspection fee equal to the estimated costs of inspection by the Town Engineer and/or Public Services Director, if any;~~

~~(c) Pay an inspection fee equal to the estimated cost of inspection by an engineer appointed by the Planning Board payable by check to the Town of Cumberland, Maine, stating the purpose of the fee.~~

(2) The Applicant shall notify the Town Manager, or the Town Manager's his/her appointed designee, in writing of the time when he/she the Applicant proposes to commence construction of such improvements so that the Town Manager can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements and utilities required by the Planning Board. Any amount in excess of actual cost of inspections shall be returned to the developerApplicant.

B. If the Town Manager or the Town Manager's his/her appointed designee shall find, upon inspection of the improvements performed before expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by Applicant, he/she the Town Manager or the Town Manager's designee shall so report to the Town Council, Code Enforcement Officer, and Planning Board. The Town Manager or his/her appointed or the Town Manager's designee shall then notify the Applicant and, if necessary, the bonding company financial institution that has provided the performance guarantee and take all necessary steps to preserve the Municipality's right under the bond said performance guarantee. No plan Application shall be accepted by the Planning Department for Planning Board review if approved by the Planning Board as long as the Applicant is in default on a previously approved plan.

C. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the EngineerMunicipal Engineer or Town-appointed engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the EngineerMunicipal Engineer may authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Planning Board. The EngineerMunicipal Engineer shall issue any authorization under this subsection in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

D. The Applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of said improvements by the ~~legislative body~~ Town Council.

E. Upon completion of the Subdivision, the Applicant shall notify the Town Manager or ~~his/her~~ the Town Manager's designee in writing stating that all improvements have been completed. Along with this statement shall be submitted as-built record construction drawings on Mylar which were previously approved by the Planning Board.

Article IX- General Requirements

§ 250-27 Considerations for approval.

In reviewing applications for the Subdivisions of land, the Planning Board shall consider the following general requirements. In all instances the burden of proof shall be upon the Applicant. ~~the person proposing the Subdivision.~~

§ 250-28 Review and approval by other agencies.

Where review and approval of any Subdivision ~~or site plan~~ by any other governmental, quasi-governmental agency or public utility is required, evidence of the status of such approval shall be submitted to the Planning Board in writing ~~prior to~~ with the submission of the final -Application plan.

§ 250-29 Conformity with other state and local regulations.

Any proposed Subdivision shall be in conformity with a comprehensive plan or policy statement of the Municipality and with the provisions of all pertinent state and local codes and ordinances.

§ 250-30 ~~-Retention of proposed public sites and~~ Common Open Spaces.

~~Public sites and~~ Common Open Spaces in a Conservation~~Traditional~~ or Clustered Subdivision ~~shall~~ should comply with the following requirements:

~~A. Depending on the size and location of the Subdivision, the Planning Board may require the Applicant to provide up to 10% of its total area for recreation. It is desirable that areas reserved for recreation be at least five acres in size and easily accessible from all lots within the subdivision.~~

~~B. A.~~ Land reserved for park and/or recreational purposes shall be of a character, configuration and location suitable for the particular use intended. ~~A site to be used for active recreational purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have~~

~~no major dimensions of less than 200 feet. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Planning Board may deem suitable and shall have no less than 25 feet of road frontage. The configuration of such sites shall be deemed adequate by the Planning Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc., where necessary and appropriate.~~

~~C. B. _____~~ When ~~ren~~ the proposed Subdivision is located on a lake, pond, river, or stream, ~~a portion of the waterfront area, when feasible,~~ the Planning Board may require, ~~when feasible, that the developer shall be included~~ a portion of the water frontage as part of the Common Open Space in the reserved land. The land so reserved shall be at least 200 feet wide measured perpendicularly from the normal high water mark.

~~D. The Planning Board may further require that the developer provide space for future municipal uses, in accordance with a comprehensive plan or policy statement, giving the Town first option on the property.~~

~~E. The Planning Board may require the developer to dedicate easements not less than 10 feet wide to the Town over any existing trails that are observable during the site walk or are shown on existing conditions maps. If the location of the existing trails precludes the appropriate placement of house lots or infrastructure, the trail may, with the approval of the Planning Board, be relocated on the parcel. This provision shall only apply to trails which connect to trails on adjacent properties. Where an easement is dedicated to and accepted by the Town, the Town shall have the right but not the obligation to maintain such easements. Any such dedication must be made through appropriate legal instruments approved by the Town Attorney.~~

~~F. E. C. _____~~ The provisions of this section shall not apply to multiplex dwellings, mobile homes parks, or ~~R~~esidential ~~C~~are ~~F~~acilities. The retention of Common Open Space ~~areas~~ in ~~M~~multiplex ~~D~~dwellings, ~~M~~mobile ~~H~~home ~~P~~parks or ~~R~~esidential ~~C~~are ~~F~~acilities is governed by Chapter 315, Zoning, §§ 315-44, 315-56 and 315-71.

§ 250-31 Preservation of natural features.

A. The Planning Board may require that a proposed Subdivision design include a landscape plan that will show the preservation of existing trees (10 inches in diameter or more), 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, and extensive grading and filling shall be avoided.

~~B. Except in the MDR and LDR Districts, a~~ A Subdivision in which the land cover type at the time of Application is forested shall maintain a wooded ~~B~~buffer ~~strip~~ no less than ~~50~~ 75 feet in width along all existing ~~public~~ streets. ~~Except in the MDR and LDR Districts, b~~ Buildings shall be restricted from open fields and shall be located within forested portions of the Subdivision when the Planning Board determines that to do so will preserve scenic vistas from the street.

When the Subdivision contains no forest or insufficient forested portions to include the buildings, the Subdivision shall be designed to minimize the appearance of buildings when viewed from existing ~~public~~ streets.

~~§ 250-32 Land not suitable for Subdivision.~~

~~The Planning Board shall not approve any plan for Subdivision that would alter the natural state of any of the following types of land:~~

~~A. Lands which are located within the one hundred year frequency floodplain as identified by an authorized federal or state agency or, when such identification is not available, are located on floodplain soils identified and described in the National Cooperative Standard Soil Survey.~~

~~B. Lands which are located on land which must be filled or drained or on land created by diverting a watercourse, except that the Planning Board may grant approval if a central sewage collection and treatment system is provided. In no instance shall the Planning Board approve any part of a Subdivision located on filled tidal wetlands or filled or drained great ponds (natural body of water 10 acres or more in size).~~

~~C. Lands which contain soils unsuitable for construction and Subdivision of structures due to their very severe limitations of drainage, flooding, organic nature or settlement properties, including Chocorua, Whately, Sebago, Saco, Saco-Limerick, Borochemists, Borosaprists, and Sulfihemists.~~

~~§ 250-33 Blocks.~~

~~A. The length, width and shape of blocks shall be determined with due regard to:~~

~~———(1) Provision of adequate building sites suitable to the special needs of the type of use contemplated.~~

~~———(2) Zoning requirements as to lot sizes and dimensions.~~

~~———(3) Needs for convenient access, circulation, control and safety of street traffic.~~

~~———(4) Limitations and opportunities of topography.~~

~~B. In blocks exceeding 800 feet in length, the Planning Board may require the reservation of a thirty foot wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a five foot wide paved footpath be included.~~

~~§ 250-34 Lots.~~

~~A. The lot size, depth, width, shape and orientation and the minimum building setback lines shall be appropriate for the location and type of the Subdivision and use contemplated.~~

~~B. Depth and width of properties reserved or laid out for all purposes shall be adequate to provide for off street parking and service facilities for vehicles required by the type of use contemplated.~~

~~C. The subdividing of the land shall be such as to provide that all lots shall have a minimum lot frontage on a street which conforms to the requirements set by Chapter 315, Zoning.~~

~~D. Double frontage lots (lots with frontage on two streets that are opposite each other) shall be avoided except where essential to provide separation of residential Subdivision from traffic arteries or to overcome specific disadvantages of topography and orientation.~~

~~E. Except in the MDR and LDR Districts, a Subdivision in which the land cover type at the time of applications is forested shall maintain a wooded buffer strip no less than 50 feet in width along all existing public streets. Except in the MDR and LDR Districts, buildings shall be restricted to open fields and shall be located within forested portions of the Subdivision. When the Subdivision contains no forest or insufficient forested portions to include the buildings, the Subdivision shall be designed to minimize the appearance of buildings when viewed from the existing public streets.~~

~~F. Side lot lines should be substantially at right angles or radial to street lines.~~

§ 250-~~325~~ Utilities.

A. The size, type and location of public utilities, such as streetlights, electricity, telephones, gas lines, fire hydrants, etc., shall be approved by the Planning Board and installed in accordance with local practice.

B. Utilities shall be installed underground except as otherwise approved by the Planning Board.

C. The provisions of this section shall not apply to mobile home parks. The installation and location of utilities in Mobile Home Parks are governed by Chapter 315, Zoning, § 315-56.

§ 250-~~336~~ Water supply.

A. A public water supply system with fire hydrants shall be installed at the expense of the Applicant or, if in the opinion of the Planning Board service to each lot by a public water system is not feasible, the Planning Board may allow individual wells to be used.

B. The Applicant shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting State of Maine Rules of the Department of Health and Human Services Relating to Drinking Water can be supplied to the

Subdivision at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for fire-fighting purposes.

C. ~~Storage~~ The water supply shall be ~~provided as necessary~~ sufficient to meet peak domestic demands and fire protection needs.

D. The Applicant shall demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the State of Maine that the proposed Subdivision will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facility or distribution system will be modified to meet the expanded needs.

E. The minimum water main permitted shall be six inches or a dimension approved by the Portland Water District, and shall be installed at the expense of the Applicant.

F. The water supply system shall be designed and installed in accordance with requirements of the Maine Department of Health and Human Services.³

G. If a central water supply system is provided by the Applicant, location and protection of the source and design, construction and operation of the distribution system and appurtenances and treatment facilities shall conform to the recommendations included in the State of Maine Rules of the Department of Health and Human Services Relating to Drinking Water.

H. The Planning Board may require the Applicant at ~~his/her~~ the Applicant's own cost to evaluate the effect of withdrawal of groundwater if on-site groundwater supply wells are proposed. An analysis of lowering of the water table during pumping, ground subsidence, reduction in groundwater recharge, saltwater intrusion and/or modification of groundwater flow patterns may be required. The analysis may require pump testing of on-site wells or measurements of soil and/or rock permeability, measurement of existing groundwater levels, soil borings, and/or installation of groundwater observation wells.

I. No Subdivision or use of land shall lower the groundwater table more than 10 feet, reduce on-site groundwater recharge by more than 20%, cause saltwater intrusion or undesirable change in groundwater flow patterns, or cause ground subsidence of more than one inch on abutting property. If the analysis of groundwater withdrawal (subsection H above) shows that one or more of these effects will occur, that will be the basis for denial of the Application.

§ 250-3~~4~~7 Sewage disposal.

A. A sanitary sewer system shall be installed at the expense of the Applicant or, if in the opinion of the Planning Board service to each lot by a sanitary sewer system is not feasible, the ~~-~~Planning Board may allow individual subsurface wastewater disposal systems to be used.

B. An Applicant shall submit plans for subsurface wastewater disposal designed by an Engineer and/or licensed site evaluator, as appropriate, in full compliance with the requirements of the State of Maine Plumbing Code, except as noted herein or in Chapter 315, Zoning.

C. Connections and/or extensions to a public sanitary sewer line shall comply with the requirements of Chapter **216**, Sewers, and/or sewer extension design specifications for the Town of Cumberland.

D. The Applicant shall apply to the appropriate municipal agencies for certification that the proposed connection(s) and/or extension(s) will not be a burden on the system.

E. The Planning Board may require a hydrogeologic evaluation where it is concerned about possible groundwater or surface water contamination. Any cluster system shall require a hydrogeologic investigation. The investigation could involve soil borings and installing groundwater observation wells, measurement of groundwater elevation at wells, estimation of the direction and rate of groundwater flow, hydraulic mounding estimate beneath any leach field, measurement of existing groundwater and/or surface water quality, identification of existing water supply wells or springs on abutting properties, and a projection by analytical methods of groundwater and/or surface water quality within and at the property boundaries as a result of Subdivision.

F. The Applicant shall specify the location, both horizontally and vertically, of on-site well and subsurface wastewater disposal systems to avoid contamination of proposed or existing water supplies by subsurface wastewater disposal system effluent. No subdivision or use of land shall result in existing groundwater quality exceeding 50% of the physical, biological, chemical and radiological levels for raw and untreated drinking water supply sources specified in the Maine state drinking water regulations. If existing groundwater quality is inferior to the state drinking water regulations, the developer or landowner will not degrade the water quality any further. This criterion shall apply to the property boundaries' existing and proposed water supply wells and springs. If the hydrogeologic evaluation and projection of groundwater and/or surface water quality (Subsection **E** above) show that the effect of the Subdivision or use of land will be to exceed whichever of these groundwater quality standards applies, that will be the basis for denial of the application.

§ 250-3~~56~~ Trees, esplanades~~Common Open Spaces~~ and planting screens.

A. Street trees, and esplanades, ~~and open green spaces~~ may be required at the discretion of the Planning Board. Where such improvements are required, they shall be incorporated in the final plan and executed by the Applicant as construction of the Subdivision progresses.

B. The Subdivision design shall minimize the possibility of noise pollution either from within or without the Subdivision (from highway or industrial sources) by providing and maintaining a planting screen easement at least 20 feet wide, except as may otherwise be required by Chapter **315**, Zoning, between abutting properties that are so endangered.

Article X Street Design and Construction Standards

§ 250-3~~67~~ General street standards.

A. Classification.

In accordance with the Comprehensive Plan of the Town of Cumberland and for the purposes of these standards, streets are classified according to the average daily traffic (ADT) they are intended to serve, as calculated by the number of average daily trips, as follows:

(1) Average daily trip. "Average daily trip" shall be defined as the anticipated number of daily vehicle trips generated by a use as established by the Trip Generation Manual, published by the Institute of Transportation Engineers, 1991, as revised. If the developer disagrees with the estimated number of trips per day generated by a particular use as listed by the Trip Generation Manual published by the Institute of Transportation Engineers, the developer may request a waiver of these standards if information is submitted demonstrating that the Trip Generation Manual estimate is inaccurate. Table 1 lists the estimated number of average weekday trips for residential uses.

Table 1

Housing Type	Average Weekday Trip Generation Rates (trips per dwelling unit)
Single-family detached	10
Duplex, multiplex, townhouse, apartments, condominium, etc.	8
Mobile home	5.5
Retirement home	3.5

(2) Arterial streets. Arterial streets and highways serve primarily as major traffic ways for travel between and through towns.

(3) Residential private streets. Private streets serve as feeders to access, subcollector, and collector residential streets and may be the principal entrance streets of a residential subdivision. Private streets are permitted only when the average daily traffic is less than 50.

(4) Residential access streets. Access streets serve primarily for access to abutting residential properties and as feeders to other residential streets of equal or greater capacity. Access streets are intended to serve Subdivisions with average daily trips less than 200.

(5) Residential subcollector streets. Subcollector streets serve as collectors from access or private streets and as feeders to collector streets; they are intended to serve Subdivisions with average daily trips of 200 to 500.

(6) Residential collector street. Collector streets serve as collectors from subcollector streets and as feeders to arterial streets; they are intended to serve Subdivisions with average daily trips greater than 500.

(7) Commercial access streets. Access streets shall be defined as streets servicing commercial and industrial Subdivisions with average daily trips less than 2,000.

(8) Commercial collector streets. Collector streets shall be defined as streets servicing commercial and industrial Subdivisions with average daily trips greater than 2,000.

(9) Classification of street types will be made by the Planning Board within the considerations outlined above.

B. Layout.

(1) Proposed streets shall conform, as far as practical, to such comprehensive plan or policy statement as may have been adopted, in whole or in part, prior to the submission of a preliminary plan.

(2) All streets in the Subdivision shall be so designed that, in the opinion of the Planning Board, they will provide safe vehicular travel while discouraging movement of through traffic over local streets.

(3) The arrangement, character, extent, width, grade and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of the land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography.

(4) In the case of dead-end streets, where needed or desirable, the Planning Board may require the reservation of a minimum thirty-foot-wide utility easement and/or minimum twenty-foot-wide right-of-way for pedestrian and/or bicycle traffic. The Planning Board may require that additional right-of-way widths be provided if it determines that future extension of the street may occur. Such additional widths shall be consistent with the right-of-way width of the dead-end street.

(5) In front of areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial use is contemplated by the municipality, the street right-of-way and/or pavement width shall be increased by such amount on each side as may be deemed necessary by the Planning Board to assure the free flow of through traffic without interference by parked or parking vehicles and to provide adequate and safe parking space for such commercial or business district. In no case shall the street have a right-of-way width and pavement width less than that specified in Table 3.

(6) Where a Subdivision borders on or contains a railroad right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the intervening land, as for park purposes in appropriate districts. Such distances shall also be determined with due regard for approach grades and future grade separations.

(7) Where a Subdivision borders an existing narrow road (below standards set herein) or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the Subdivision, the Applicant shall be required to show areas for widening or realigning such roads on the plan, marked "Reserved for Road Realignment (or Widening) Purposes." It shall be mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the Official Map. Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of Chapter 315, Zoning.

(8) Where topographic and other site conditions allow, provisions shall be made for street connections to adjoining lots of similar existing or potential use, for the purposes of facilitating public safety services and/or to enable the public to travel between the two Subdivisions without the need to travel on a collector street. When a street connection is not feasible or desired, a "live end" street shall be shown on the plan which allows for a pedestrian or bike trail connection to the abutting parcel.

(9) The extension or continuation of an existing street right-of-way less than that specified herein may be permitted with the approval of the Planning Board.

(10) If deemed necessary by the Planning Board, the Subdivision may be required to provide at least two street connections with existing public streets or streets on an approved Subdivision plan for which a bond has been filed.

(11) Entrances, either proposed driveways or streets, onto existing state aid or state highways must be approved by the Maine Department of Transportation. Copies of such approval shall be submitted to the Planning Board at the time of final review.

(12) Utility plans must be approved by the responsible utilities. Copies of written approval shall be submitted to the Planning Board at the time of final review.

(13) If the Planning Board determines that future Subdivision will occur on land adjacent to or near the proposed Subdivision, whether it is owned by the applicant or not, then the Planning Board shall retain the right to require the developer to meet the requirements for collector street design and construction as specified herein at no cost to the Town.

C. Street naming and numbering.

The assignment of street names and unit numbering shall be in conformance with Chapter 246 of the Cumberland Code.

D. Street ~~name signs. signs and names.~~

(~~12~~) Street name signs shall ~~be furnished and installed~~paid for by the Applicant ~~but furnished and installed by the Municipality. The type, size and location shall be subject to the approval of the Planning Board.~~

E. Traffic control devices. The developer shall furnish and place all appropriate signing and pavement markings required for the proper control of pedestrian, bicycle and vehicular traffic within the Subdivision. The types and locations of all such devices shall be determined by the Planning Board, Police Chief, and Municipal Engineer and shall be in conformance with the Manual on Uniform Traffic Control Devices, as currently revised.

F. Street lighting. The Applicant shall coordinate with the appropriate servicing utility, the Road Commissioner, and the Police Chief for furnishing, locating and placing of any lighting. Light poles and luminaires shall be a type approved by the Planning Board and said utility.

G. ~~Byways~~ Walkways shall be provided along all roads within a proposed Subdivision.

H Private ways. A private way built to the "private residential" standards of this section shall not be accepted as a public way; provided, however, that privately owned roads in mobile home parks are exempt from the requirements set forth in this article but shall be considered as streets for building purposes. The plan shall contain a note which shall read: "The Town of Cumberland shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan."
~~-If at a future date users of the road upgrade the private way to the standards set forth in this article, the users may petition the Town Council to consider the acceptance of the road as a public way.~~

§ 250-~~3740~~ Design and construction standards.

A. All streets in the Subdivision shall be designed and constructed to meet the following standards for streets according to their classification, including whether urban or rural standards apply, as determined by the Planning Board:

(1) Open Drainage Systems

~~(i)~~ Open drainage design standards shall apply to all roads that are constructed using subsurface drainage and curbing. Open standards may be applied to rural roads at the Planning Board's discretion if conditions so warrant, such as topography, soil conditions and aesthetics. Urban-Open design standards shall be defined as paved streets with such appurtenances as curbs, esplanades, a byway Walkway, and an enclosed storm drainage system with catch basins, manholes, and associated piping.

~~(ii) The Planning Board shall require the provision of a byway under the open design standards, which for purposes of this Subsection A(1) shall include only a sidewalk or freewalk; provided, however, that under the waiver standard set forth in § 250-51 of this chapter, a freewalk may be substituted for a sidewalk if in the opinion of the Planning Board such substitution will not significantly lessen drainage efficiency, or the requirement of a byway may be waived altogether.~~

(2) Closed Drainage Systems.

~~(i)~~ Closed drainage design standards as tabulated herein shall be used for all street designs in the Town of Cumberland, except as specified above. ~~Rural-Closed~~ design standards shall be defined as paved streets with gravel shoulder, side ditches for the transportation of stormwater and a ~~byway~~ Walkway.

~~(ii) The Planning Board shall require the provision of a byway under the rural design standards, which for purposes of this Subsection A (2) shall include only a freewalk or paved shoulder; provided, however, that under the waiver standard set forth in § 250-51 of this chapter, a paved shoulder may be substituted for a freewalk, or the requirement of a byway may be waived altogether.~~

B. Dimensions of street construction. The dimensions for street construction shall be shown in Table 2.

C. Minimum sight distance for all streets and roadways, except local and private streets, shall be calculated using the standard of 10 feet of sight distance per every one mile of posted speed limit. This standard may be reasonably reduced by the Planning Board for local and private streets, where appropriate. Sight distance requirements at intersections shall follow the guidelines specified in "A Policy on Geometric Design of Highways and Streets, 1984" as published by the American Association of State Highway and Transportation Officials.

D. Dead-end streets.

(1) Presentation of special design, discussion and written permission by the Planning Board shall be required for those conditions that may require dead-end streets under the category of residential subcollector, residential collector, commercial access, or commercial collector.

(2) The terminus of any dead-end street must have a cul-de-sac, with standards as listed in Subsection **D (3)** below. Other types of turnaround may be approved by the Planning Board after receiving a recommendation by the Fire/EMS Chief and Public Services Director. Cul-de-sac island area shall be restricted to grass, or where the radius is large enough the Planning Board may permit other cover types.

(3) Standards as listed under Subsection **B** shall be applicable for dead-end streets. In addition, the following requirements shall be fulfilled:

~~(i) Maximum length of dead-end streets shall be limited to 2,000 feet unless the lots on the street are served by public water in which case the maximum length of the dead-end street shall be 2500 feet as measured from the center line of the feeder street to the center of the turnaround radius. However, the The Planning Board may allow longer lengths of dead end streets due to the location of natural features on the site. because of property configuration and/or topographical constraints.~~

- (ii) Radii at cul-de-sac with center island.
- (iii) Property line: 70 feet.
- (iv) Outer edge of pavement: 60 feet.
- (v) Inner edge of pavement: 30 feet.
- (vi) Radii at cul-de-sac without center island.
- (vii) Property line: 60 feet.
- (viii) Outer edge of pavement: 50 feet.

(4) At the end of temporary dead-end streets, a temporary turnaround shall be provided with an outside roadway diameter of 90 feet or a backing space extending at least 30 feet from the edge of the street and 30 feet beyond the edge of the backing space. Pavement widths for backing spaces shall be identical to the type of street involved.

E. Driveways.

(1) Driveways shall be designed and constructed in such a way so as to preclude the possibility of damage to the underside of vehicles due to excessive changes in grade. Dimensions and break-over angles of vehicles, such as those published by the Automobile Manufacturing Association, should be used as a guide in the design and construction of all driveways within the Subdivision.

(2) Where streets are built to closed drainage design standards, driveways shall enter a street at the level of the edge of the traveled way. They shall in no way impede the flow of storm water along the gutter line. Where a driveway crosses a sidewalk or a reservation for the same, it shall do so with little or no change in the longitudinal grade at the back edge of the sidewalk. All driveways shall be paved to a point at least four feet beyond the right-of-way in order to prevent damage to sidewalk areas.

(3) Where streets are built to open drainage design standards, driveways shall enter a street at the level of the outer edge of the gravel shoulder. They shall be graded in such a manner so as to direct as much storm water as practical into roadside ditches. All driveways shall be paved to the street right-of-way. Such paving shall include the gravel shoulder of the roadway and, when completed, it shall be at the proposed grade of the gravel shoulder.

(4) All driveways shall be constructed with adequate drainage systems to prevent water flow from entering garages or basements.

(5) The portion of any driveway within the right-of-way shall be constructed to the same road construction materials standards as the adjoining road.

§ 250-~~384~~ **Roadway construction materials standards and specifications.**

All roadway construction standards and specifications shall conform to the Maine Department of Transportation Standard Specifications, 2003, as revised.

~~A. General.~~

~~(1) Roadway construction materials as specified herein shall conform to the current specifications of the Maine Department of Transportation.~~

~~(2) Standards and dimensions tabulated herein shall be considered as minimum. The Applicant shall be required to investigate and determine the types and classifications of the soils.~~

~~(a) Computations shall be made to determine pavement design standards for construction, which shall be submitted to the Engineer for review.~~

~~(b) If the existing native soil through the subbase course area can be defined as being equal in quality and thickness to the minimum requirements specified herein, the Planning Board may waive a portion or all of the minimum requirements for subbase courses. In any event, the ultimate density of any material left in place shall conform to the minimum requirements for compaction specified in § 250-42 contained herein.~~

~~(c) If, during construction, subsurface soils vary from the original classification, the pavement design shall be modified to reflect the new soil types. Revised pavement designs shall be submitted to the Town Engineer for approval.~~

~~B. Materials.~~

~~(1) The minimum thickness of the various materials courses shall be shown in Table 3.~~

~~(2) Curbing materials. Curbing materials shall be either granite stone curbing, Type 1, or bituminous curbing, Type 3. Type 1 vertical circular curbing shall be used for radii at intersections.~~

~~(3) Minimum paving requirements on island streets shall consist of a penetration treated surface using asphalt. Bituminous surface treatment shall consist of a prime coat using a low viscosity liquid bituminous material to coat and bind mineral particles. A coat of cover material, sand, will be required. After a minimum five day curing period or such other time as the Road Commissioner may require, a seal coat consisting of bituminous material and a sand cover shall be applied. Bituminous materials, their application rates and the cover material to be used shall be approved by the Road Commissioner prior to paving.~~

~~§ 250-42 Construction specifications.~~

~~All streets within the Subdivision shall be constructed according to the specifications herein as overseen by the Road Commissioner and/or Town Engineer.~~

~~A. Grading. All streets shall be graded to their full width by the Applicant so that pavements and sidewalks can be constructed on parallel profiles. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Planning Board.~~

~~(1) Preparation. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush, and other objectionable material and all trees not intended for preservation.~~

~~(2) Cuts. Tree stumps, roots, and other organic materials shall be removed to a depth of two feet below the subgrade. Rock and boulders, when encountered, shall be removed to subgrade.~~

~~(3) Fill. All materials used in the construction of embankments shall meet the standards for embankment construction, Sections 203.09 through 203.16 of the Maine Department of Transportation Standard Specifications. Excess material, including organic materials, etc., shall be removed from the street site. The fill shall be spread in layers not to exceed 12 inches loose and compacted. The filling of utility trenches and other such areas shall be mechanically tamped.~~

~~(4) All underground utilities and their services shall be installed within the street right-of-way prior to placement of the aggregate base course (crushed gravel).~~

~~(5) Side slopes. All side slopes shall be a maximum slope of three horizontal to one vertical. All slopes shall be graded, loamed (four inches compacted), fertilized, limed and seeded as required.~~

~~B. Bases, pavement and curbing.~~

~~The appropriate sections of the bases and pavements divisions of the Maine Department of Transportation Standard Specifications currently in effect at the date of submission of the preliminary plan shall be applicable.~~

~~(2) Bases.~~

~~(a) Aggregate subbase course: gravel (Type D). Aggregate subbase shall not contain particles of rock exceeding six inches in any dimension.~~

~~(b) Aggregate base course: crushed (Type A). Aggregate base shall not contain particles of rock that will not pass a two-inch-square mesh sieve.~~

~~(c) Where pavement placed joins an existing pavement, the existing pavement shall be cut along a smooth line and to a neat, even, vertical joint. Broken or raveled edges will not be permitted, nor deviation from grade. Gradation of aggregates for plant mix hot bituminous pavements shall be as specified in Division 700 of the Maine Department of Transportation Standard Specifications.~~

~~C. Section 609 of the Maine Department of Transportation Standard Specifications shall be applicable to this section, except as follows:~~

~~(1) Curbing shall be limited to Type 1 and Type 3.~~

~~(2) Vertical or sloped curbing shall be used in accordance with the design standards set forth herein for the particular type of street. All curbs shall have a typical reveal of six inches. (3) Type 1 curbing shall be used for radii at all intersections.~~

~~D. Walkways.~~

~~(1) Sidewalk. Sidewalk construction shall comply with Section 608 of the Maine Department of Transportation Standard Specifications. Sidewalks shall have typical cross slopes of 3/8 inch per foot.~~

~~(2) Free walk. A free walk shall be four feet wide, shall consist of two inch thick asphalt with an eight inch gravel subsurface and shall be separated from the paved portion of the road by a grassy esplanade with a minimum width of four feet.~~

~~(3) Paved shoulder. A paved shoulder shall be constructed to the same road construction materials standards as the adjoining road. The paved shoulder shall be contiguous with the roadbed and shall be separated from the roadway by a painted, solid white line.~~

~~§ 250-43 Monuments.~~

~~A. Granite or precast reinforced Portland cement concrete monuments four inches square and four feet long with a flat top shall be set at the following locations:~~

~~(1) All street corners;~~

~~(2) All points where the street line intersects the exterior of the Subdivision; and~~

~~(3) All angle points or all points of horizontal curvature in each street.~~

~~B. The tops of monuments shall have an indented cross or drill hole to properly identify the location and shall be set flush with the finished grade.~~

~~C. All other lot corners shall be marked with iron pipe not less than one inch in diameter and 48 inches long and driven so as to be flush with the finished grade.~~

Article XI. Storm drainage design and construction standards

~~§ 250-44 Intent.~~

~~An adequate storm water control and conveyance system shall be provided, including appurtenances such as sediment and detention basins as needed, and catch basins, manholes, and piped or professionally designed ditch conveyance systems to assure that storm water discharged from the site is in compliance with the guidelines contained herein and all other requirements of this chapter.~~

~~§ 250-45 Closed and open drainage systems.~~

~~A.~~

~~Closed systems. Storm drainage facilities located within areas defined by this chapter as closed shall be an enclosed underground system capable of effectively removing storm water from the street and adjacent areas. Discharge of storm water shall be into natural drainage courses.~~

~~(2)~~

~~If conditions warrant, the Planning Board may allow a combination of closed and open drainage standards or utilize rural standards entirely.~~

~~B.~~

~~Open systems. Storm drainage facilities located within areas defined by this chapter as open shall consist of a system of culverts and open drainage channels capable of effectively carrying storm water into natural drainage courses.~~

~~§ 250-46 Surface drainage and storm water management plans required.~~

~~A. All Subdivision applications shall contain a surface drainage plan with profiles and cross sections designed by a State of Maine registered professional engineer. This plan shall show ditches, culverts, easements and other proposed improvements with a statement in writing attached to the drainage plan indicating that the proposed Subdivision will not create erosion, drainage or runoff problems either in the Subdivision or in adjacent properties, and properly executed easements as required by the Planning Board shall be filed with the Planning Board.~~

~~B. Applications submitted pursuant to this chapter for projects which will expose more than 60,000 square feet of soil at one time or which will produce more than 10,000 square feet of additional impervious surface must include a storm water management plan submitted to the Planning Board for its review and approval.~~

~~§ 250-47 Performance standards.~~

~~Storm water management plans shall show means whereby the peak discharge for the developed site shall not exceed the peak discharge for the undeveloped site for the two- and twenty-five year storms. Emergency overflow facilities shall be provided for storms in excess of the twenty-five-year storm. Sediments and other pollutants shall be limited through appropriate management practices to prevent adverse downstream water quality impacts. Regulations specifying hydraulic calculation techniques and design standards for facilities to achieve this performance standard shall be as approved by the Planning Board.~~

~~§ 250-48 Design standards.~~

~~A. General.~~

~~(1) All storm water systems within the Subdivision shall be designed to meet the criteria of the performance standards for a twenty-five-year storm based on rainfall data from the National Weather Service records in Portland. Flows shall be computed by appropriate professional methods with design computations being submitted for review.~~

~~(2) Upstream drainage shall be accommodated by an adequately sized drainage system through the proposed Subdivision for existing and future potential Subdivision in the upstream drainage area or areas tributary to the proposed Subdivision as determined by the Planning Board.~~

~~(3) Existing downstream drainage facilities shall be studied to determine the effect of the proposed Subdivision's drainage. The developer shall demonstrate to the satisfaction of the Planning Board that the storm drainage from the proposed Subdivision will not, in any way, overload or damage existing storm drainage systems downstream from the proposed Subdivision.~~

~~(4) Where open ditches (other than roadway ditches), channels, streams, or natural drainage courses are used to collect, discharge, and/or transmit water through the Subdivision, an adequately sized, perpetual drainage easement shall be provided. Said easement shall be centered as closely as possible to the middle of the watercourse and shall be no less than 30 feet in width.~~

~~(5) Where subsurface soils are poorly drained, an underdrain system may be required by the Planning Board. Underdrains shall be installed and discharged in a positive manner.~~

~~B. Open:~~

~~(1) Design standards for open drainage systems shall be approved by the Planning Board.~~

~~(2) Minimum pipe size for any storm drainage pipe shall be 12 inches.~~

~~(3) Design of storm drains shall be on a basis of flowing full at a minimum velocity of 2.5 feet per second.~~

~~(4) Three hundred feet shall be considered as a maximum length for carrying storm water in a street gutter prior to intake at a catch basin.~~

~~(5) No water shall be permitted to drain across a street or an intersection.~~

~~(6) Manholes shall be placed at all vertical or horizontal changes in the alignment of pipe. However, in no case shall manholes be spaced at intervals exceeding 400 feet, unless otherwise approved by the Planning Board.~~

~~(7) Drains shall be designed such that a minimum of four feet of cover over the pipe is provided in paved areas and/or three feet of cover is provided in unpaved areas outside the street right-of-way.~~

~~(8) The Planning Board may require that house foundation drains be connected to the storm drainage system. All connections shall be made with wyes, tees, or saddles which are compatible with the storm drain. All such work shall be done under the supervision of the Plumbing Inspector.~~

~~C. Open~~

~~(1) Design standards for open drainage systems shall be approved by the Planning Board.~~

~~(2) Roadside ditches and outlet channels shall be of a configuration and size to carry the contributory storm water and subsurface flows from the roadway structure and roadside embankments. In all instances the invert of the ditch shall be a minimum of six inches below the subgrade of the roadway extended to the shoulder except as modified below:~~

~~(a) In areas of well drained native soils or in areas where subsurface soils are of a nature requiring an underdrain system, subgrades may be constructed to direct subsurface water to the underdrain pipes.~~

~~(3) Ditch linings shall be provided to protect the side and slopes and bottom from erosion and scour.~~

~~(a) Minimum channel linings for corresponding longitudinal slopes shall conform to the following table:~~

0% to 3%	Loam and seed
3% to 6%	Loam and seed, protected by erosion control mesh
6% to 8%	Sod placed over loam
Over 8%	Stone, masonry, bituminous concrete or metal linings

~~(b) Ditches adjacent to roadways shall be of a configuration that does not create a hazard to vehicular traffic.~~

~~(4) Culverts.~~

~~(a) Cross culverts. Culverts crossing under roads or streets shall be sized to pass a twenty-five-year frequency storm from the contributing drainage area without hydrostatic head. Design shall be based on accepted hydrological methods and culvert capacity analysis. Minimum culvert diameter shall be 15 inches.~~

~~(b) Driveway culverts. Culverts shall be installed under any proposed or existing driveway that interrupts natural or proposed longitudinal drainage along any street or road. Driveway culverts shall be of a size capable of passing the amount of storm water equal to the next upstream culvert within the same drainage course. Driveway culverts shall have a minimum diameter of 12 inches. Final determination of culvert size shall be determined by the Road Commissioner.~~

~~(c) Minimum cover over culverts in roadway areas shall be 24 inches. Minimum cover over driveway culverts shall be 12 inches.~~

§ 250-49 Materials for storm drain construction.

~~The following material shall be utilized for storm drain construction:~~

~~A. Reinforced concrete pipe (closed and open). Reinforced concrete pipe and fittings shall meet the requirement of ASTM Designation C 76. The classification of pipe shall be as required to meet soil and traffic loads with a factor of safety of 1.0 on the crack strength of 0.01 inch with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C 443 or of an approved preformed plastic jointing material such as Ram-Nek®.~~

~~B. Polyvinyl chloride (PVC) pipe. Polyvinyl chloride (PVC) pipe and fittings shall conform to the requirements of AASHTO M278. All pipe shall be supplied with gasket type joints meeting the requirements of ASTM D3212. Pipe shall be designed to withstand soil and traffic loads with a maximum deflection of 5% in diameter.~~

~~C. Corrugated aluminum alloy pipe. This pipe and special fittings such as elbows, tees, and wyes shall conform to the requirements of AASHTO M196/M196M, Type I, IR, or II. Special sections, such as elbows and metal end sections, shall be of the thickness called for on the plans and shall conform to the applicable requirements of AASHTO M196, M196M. Aluminum sheet shall conform to the requirements of AASHTO M197/M197M.~~

~~D. Underdrain pipe (urban and rural). Underdrain pipe may be of polyvinyl chloride (PVC) perforated pipe meeting the requirements of AASHTO M278 or perforated bituminous-coated corrugated metal pipe meeting the requirements of AASHTO M136 and shall be coated with bituminous material to meet the requirements of AASHTO M190, Type A coating. Coupling bands shall be fully coated.~~

~~E. Manholes. Manholes shall be of precast concrete section construction or of precast concrete block construction. Precast units shall conform to the requirements of ASTM Designation C 478. Precast concrete manhole blocks shall be of load-bearing masonry units meeting the requirements of ASTM Designation C 139, radial type. Manhole cones shall be truncated. Manhole bases may be cast in-place concrete with a twenty-eight-day strength of 3,000 pounds per square inch (psi) or may be of precast concrete.~~

~~(1) Concrete block manholes shall be treated with two coats of asphalt waterproofing material conforming to ASTM Designation D 41 or a cement base coating suitable for brush-coat application.~~

~~(2) Manhole steps shall be drop front type of cast aluminum conforming to Federal Specification QQ-A-200/8 aluminum magnesium silicide type alloy. All steps shall be cast into the walls of the manholes so as to form a continuous ladder with a distance of 12 inches between steps.~~

~~(3) Manhole frames and covers shall be either an M24 x 8 manhole or E24 x 5 manhole as manufactured by Etheridge Foundry of Portland, Maine, or an approved equal. Covers shall be solid diamond and marked "storm."~~

~~(4) Manhole inverts shall be constructed of brick and shall be shaped to the crown of the pipe for sizes up to 18 inches and to the spring line for larger pipes.~~

~~F. Catch basins. Catch basins shall be of precast concrete construction or of precast concrete block construction conforming to the appropriate ASTM designations specified in Subsection E, Manholes, above.~~

~~(1) Castings shall be twenty-four inch square grating Type M as manufactured by Etheridge Foundry, Portland, Maine, or an approved equal. All catch basins shall be provided with a curb face inlet unless otherwise approved by the Road Commissioner.~~

~~(2) Catch basins shall have a minimum two foot sump for retention of waterborne solids.~~

~~G. Catch basin drainpipe. Catch basin drainpipe shall be of the same material as the main storm drain and shall meet the design requirements as specified in Subsection A above for the material being used. Catch basin leads shall enter the drain at manholes or at tee or wye fittings. When entering at manholes, the invert elevations of the lead and the main drain shall not be greater than 12 inches. Where the difference in invert elevations differs by more than 12 inches, drop connections will be provided.~~

~~§ 250-50- General construction requirements.~~

~~A.~~

~~All trenching shall be accomplished in accordance with all appropriate state and federal safety requirements.~~

~~B.~~

~~Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet.~~

~~C.~~

~~Pipe shall be bedded in crushed or screened stone with a minimum depth of six inches to provide a Class B bedding. The stone will be deposited in the trench and brought to proper invert grade. The maximum size of stone aggregate will be 3/4 inch. When the trench bottom has been excavated, it shall be filled and thoroughly compacted to grade before the utility pipe is placed. When the excavated trench bottom is not sufficiently firm to properly support the utility pipe, the Town Engineer may direct the Applicant to excavate below grade and bed the trench bottom with a specified depth of select material. Unless otherwise shown on the final plan, the stone shall be brought to the spring line of the pipe. Bedding materials other than those stated above may be used but only by a written statement from the Town Engineer. The statement will include a description of materials that will be substituted.~~

~~D.~~

~~Pipe alignment shall be straight in both the horizontal and vertical unless specific approval of a curvilinear drain is obtained in writing from the Planning Board.~~

~~E.~~

~~Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of four hundred foot intervals.~~

~~F.~~

~~Manholes and catch basins shall be founded below the frost line on a minimum depth of six inches of crushed or screened gravel compacted to a uniform density.~~

~~G.~~

~~All drain outlets shall be terminated in a concrete end wall or shall be riprapped to prevent erosion. Facilities for energy dissipation shall be provided. Culvert pipe inlets shall be constructed so as to prevent or decrease damage to embankment and/or to improve efficiency of the culvert. Inlet control devices shall be as approved by the Town Engineer.~~

~~H.~~

~~Underdrains shall be laid with perforations down on a minimum six inch bed of granular material used for the bed. Granular material for bedding and backfill shall be as specified for Type B underdrain in Section 703.22, Underdrain Backfill Materials, of the State of Maine Department of Transportation Standard Specifications.~~

~~§ 250-51 Easements for natural drainage ways.~~

~~Where a Subdivision is traversed by a natural watercourse, drainage way, channel, or stream, there shall be provided a stormwater easement or drainage right of way conforming substantially to the lines of such watercourse and such further width or construction, or both, as will assure that no flooding occurs and all stormwater can be disposed of properly. Such easement or right of way shall be not less than 30 feet in width.~~

Article XII - Additional Standards

§ 250-~~39~~⁵² Fire protection.

The Subdivision design must comply with Chapter 96, Article II, Fire Protection, of this Code. ~~The Fire/EMS Chief shall issue the applicant a certificate of compliance once the applicant has met the design requirements of Chapter 96, Article II.~~

§ 250-~~40~~⁵³ Soil erosion.

- A. The proposed Subdivision shall prevent eroded soil from entering water bodies, freshwater wetlands, and adjacent properties.
- B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and cleanup stages.
- C. Topsoil shall be considered part of the Subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

§ 250-~~41~~⁵⁴ Identification of freshwater wetlands.

Freshwater wetlands shall be identified in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published by the Federal Interagency Committee for Wetland Delineation, January 1987/1989, as amended.

§ 250-~~42~~55 **Traffic conditions.**

- A. Intent. Provisions shall be made for vehicular access to the Subdivision and circulation within the Subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the Subdivision, avoid traffic congestion on any street, and provide safe and convenient circulation on public streets and within the Subdivision.
- B. Design standards.
 - (1) No Subdivision shall reduce a street giving access to the Subdivision and neighboring streets and intersections to a Level of Service of E or below.
 - (2) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, byways, and traffic controls within public streets.
 - (3) Accessways to nonresidential Subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A warrant analysis to determine the need for a left-turn storage lane shall be done.
 - (4) Where topographic and other site conditions allow, provisions shall be made for street connections to adjoining lots of similar existing or potential use, for the purposes of facilitating public safety services and/or to enable the public to travel between the two developments without the need to travel on a collector street.

Article XIII -- Administration

§ 250-~~56~~43 **Financial and technical capacity.**

- A. Financial capacity. The Applicant shall have adequate financial resources to construct the required improvements and meet the criteria of the statute and the standards of these regulations. In making the above determinations the Planning Board shall consider the proposed time frame for construction and the effects of inflation.
- B. Technical capacity. The Applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability the Board shall consider the Applicant's previous experience, the experience and training of the Applicant's consultants and contractors, and the existence of violations of previous approvals granted to the Applicant.

§ 250-~~57~~44 **Waivers and modifications.**

- A. Hardships. Where the Planning Board finds that an unnecessary hardship may result from

strict compliance with these standards, or where there are special circumstances of a particular plan which the Planning Board finds make a particular standard inapplicable, it may waive these standards, provided that such waiver will not have the effect of nullifying the intent and purpose of the Comprehensive Plan, this chapter or Chapter **315**, Zoning, and that such waiver will not endanger public safety. An unnecessary hardship shall be defined as a substantial burden on the Applicant subdivider which affects ~~his~~ the Applicant's ability to achieve a reasonable economic return on said project. Special circumstances shall relate to the unique circumstances of the property, such as its proximity to similar public improvements or the adequacy of connecting facilities.

- B. Conditions. In granting waivers and modifications, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards so waived or modified.
- C. Appeals. Appeals from the decisions of the Planning Board shall be to the Superior Court.

§ 250-~~4558~~ **Conflicting provisions.**

Where a provision of this chapter appears to be in conflict with any provision of any other ordinance, rule, regulation, restriction, or statute, that provision which imposes the greater restriction and/or provides for the lesser density of land use shall have precedence.

Notice of Decision

Date: February 20, 2019

To: William Shane, Town Manager

From: Carla Nixon, Town Planner

Re: Public Hearing: Recommendation to the Town Council on proposed amendments to the Cumberland Code, Chapter 250 – Subdivision Ordinance.

This is to advise you that on February 19, 2019 the Planning Board voted to rescind the Planning Board's recommendation to the Town Council of January 15, 2019 regarding the deletion and replacement of Chapter 250 of the Cumberland Code titled Subdivision of Land. The Planning Board then voted unanimously to recommend to the Town Council the repeal of current Chapter 250 of the Cumberland Code titled Subdivision of Land and recommend the adoption of the revised Chapter 250 of the Cumberland Code titled Subdivision of Land dated February 13, 2019 as amended by the Planning Board on February 19, 2019.

Cumberland Planning Board

Paul Auclair, Board Chair

250. SUBDIVISION OF LAND

Article I General Provisions

§250-1 Purpose.

The purpose of these Subdivision standards shall be to assure the comfort, convenience, safety, health and welfare of the people of the Town of Cumberland, to protect the environment and to promote the development of an economically sound and stable community. Depending on the type of Subdivision selected (i.e., Conservation, Clustered or Traditional), the purposes are to:

- A. Promote grouping of houses and structures on less environmentally sensitive soils, which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for development.
- B. Promote interconnected greenways and corridors throughout the community.
- C. Provide a Subdivision option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
- D. Preserve in perpetuity unique or sensitive natural resources, such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.

- E. Preserve scenic views both from within and without the Subdivision.
- F. Preserve important historic and archaeological sites.
- G. Preserve green space through the use of nonstructural stormwater runoff and water protection measures.
- H. Encourage interaction in the neighborhood by grouping houses closer together, orienting the houses toward the street, providing public gathering places and encouraging the use of parks and community facilities as focal points in the neighborhood.
- I. Encourage street designs that reduce traffic speeds and promote interconnectivity.
- J. Promote construction of convenient, landscaped walking trails and bike paths within the Subdivision that are connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
- K. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in the Subdivision.
- L. Promote contiguous green space with adjacent municipalities.
- M. Protect rural character and activities such as farming and forestry.
- N. Protect water quality and aquifers.

§250-2 Authority, title and applicability.

A. Authority and title.

(1) This chapter has been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq.

(2) These standards shall be known and may be cited as the “Town of Cumberland Subdivision Ordinance”.

B. Administration and applicability.

(1) The Planning Board of the Town of Cumberland shall administer this chapter.

(2) The provisions of this chapter shall pertain to all land proposed for Subdivision as herein defined within the boundaries of the Town of Cumberland.

§250-3 Definitions.

Unless otherwise defined in this section, terms shall be defined as set forth in Section 315-3 of the Zoning Ordinance. Terms not defined in either this Ordinance or the Zoning Ordinance shall have their customary dictionary meanings.

AGRICULTURE: The cultivation of land and breeding of animals and plants to provide food, fiber, medicinal plants and other products to sustain and enhance life.

APPLICANT: A property owner or any person or entity acting as an agent for the property owner in an application for a development proposal, permit, or approval.

APPLICATION: The completed form or forms and all accompanying documents, exhibits, and fees required of an Applicant by the Planning Board.

AQUIFER: A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

BUFFER: An area of a Subdivision, whether part of the Common Open Space or building lot, that shall remain free from the development of roads and/or structures and which may or may not have visual screening, such as trees or fencing, within it.

CLUSTERED SUBDIVISION: A type of development where building lots are smaller, with shorter lot frontages than those in a Traditional Subdivision, and are grouped on certain portions of the site that are best suited for development, and where other areas of the site remain open and free from development. The homes may or may not be connected to the public water and sewer system.

COMMON OPEN SPACE: Land within or related to a Subdivision that is set aside to conserve natural resources, scenic, cultural, historic, or archeological values, and to provide Active or Passive recreation or accommodate support facilities related to the Subdivision. The Common Open Space is restricted from development or intensive use except for approved recreational or support facilities and must be protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements. The Common Open Space must not be included in any of the buildable lots of the Subdivision and must be held in common ownership amongst all the Subdivision's lot owners or by another approved ownership entity.

CONSERVATION SUBDIVISION: A type of development designed to preserve sensitive and/or valuable natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant viewscapes.

CONSTRUCTION DRAWINGS: Drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts and underground telephone ducts, pavements, cross section of streets, miscellaneous structures, etc.

EASEMENT: The written authorization by a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

FINAL PLAN: The final drawings on which the Applicant's plan of Subdivision is presented to the Planning Board for approval and which, if approved, shall be filed for record with the Planning Department and recorded in the Cumberland County Registry of Deeds.

LEGISLATIVE BODY: Cumberland Town Council.

MUNICIPALITY: Town of Cumberland.

MUNICIPAL ENGINEER: An engineer licensed by the State of Maine that is retained by the Town of Cumberland to review Subdivision plans and conduct construction inspections of approved Subdivisions.

NET RESIDENTIAL ACREAGE: Net Residential Acreage shall be determined by subtracting the following from the gross acreage:

- (a) Roads and parking as shown on the proposed plan.
- (b) Slopes in excess of 20% that are sustained for 30,000 square feet or more.
- (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January, 1989, as amended.
- (d) Land in the 100 year flood zone shown on FEMA Flood Insurance Rate Maps (FIRM), as revised.
- (e) Land in rights-of-way or easements, but not including land in any type of Common Open Space easement.
- (f) Lands in Resource Protection Districts.

NET RESIDENTIAL DENSITY: The maximum number of dwelling units permitted on the tract or parcel of land proposed for any type of residential Subdivision shall be determined by dividing the Net Residential Acreage of the tract or parcel by the zoning district minimum lot size for the zone in which the project is located. In no event shall the number of residential units exceed the density limit of the zoning district in which it is located.

OFFICIAL SUBMITTAL DATE: The time of submission of a pre-application plan, preliminary plan, or final plan shall be considered the submission date of the Application for such plan approval to the Planning Board, if complete and accompanied by any required fee and all information supporting the Application as required by these standards.

OFFICIAL ZONING MAP: The most current Zoning Map adopted by the Town Council, as amended from time to time.

OPEN SPACE: A portion of the total area of the tract or parcel of land being developed which shall serve to preserve sensitive and/or natural areas and which must not be included in any of the buildable lots of the Subdivision and may be held in common ownership amongst the Subdivision's lot owners or by another approved ownership entity.

PERSON: Includes a firm, association, organization, partnership, trust, company or corporation, individual, or other legal entity.

PLANNING BOARD: Cumberland Planning Board.

PRELIMINARY PLAN: The preliminary drawings indicating the proposed layout of the Subdivision to be submitted to the Planning Board for its consideration.

PRIME AGRICULTURAL LAND: Land used for the purpose of Agriculture that contains prime agricultural soils of the first, second or third class.

RECREATION, ACTIVE: Those recreational pursuits which require physical alteration to the area in which they are performed, examples include playgrounds, ball courts and swimming pools.

RECREATION, PASSIVE: Recreation that involves existing natural resources and has a minimal impact. Passive recreation includes hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, bird-watching and the operation of snowmobiles or ATVs on existing snowmobile or ATV trails.

REVISION TO AN APPROVED SUBDIVISION: Any change to an approved Subdivision that modifies any Subdivision lot, restrictions, easements, roadway, walkway or Common Open Space.

STREET: Public and private rights-of-way such as alleys, avenues, boulevards, roads, and highways.

STRUCTURE: Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind.

SUBDIVISION: A Subdivision shall be as defined by 30-A M.R.S.A. § 4401, as amended from time to time. Lots of 40 or more acres shall not count as lots for purposes of this chapter when the parcel of land being divided is located entirely outside any shoreland area as defined in 38 M.R.S.A. § 435, as amended from time to time.

SUBDIVISION, MAJOR: Any Subdivision containing ~~more than four~~ five or more lots or a Subdivision requiring new streets or private ways, or extensions of existing streets or private ways, or construction and/or extension of public utilities or any Subdivision proposing that any of its lots not meet the minimum area or lot requirements of the zones in which they are located.

SUBDIVISION, MINOR: A Subdivision containing ~~not more than~~ four or fewer lots and not otherwise requiring classification as a Major Subdivision, as defined in this section.

TRADITIONAL SUBDIVISION: A type of development where building lots are at least the minimum lot size for the zoning district in which they are located. A ~~small~~ portion of the ~~lot~~ parcel may remain as Open Space.

WALKWAY: A traffic-way alongside or adjacent to one side of the paved portions of roads to be used by persons including, but not limited to, pedestrians, bicyclists, and handicapped persons operating motorized wheelchairs and which otherwise specifically excludes motorized vehicles, except as otherwise provided in this chapter or state law. Walkways include sidewalks, freewalks, and paved or graveled shoulders.

§250-4 Subdivision Approval Criteria.

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

- A. **Pollution.** The proposed Subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - (1) The elevation of the land above sea level and its relation to the floodplains;
 - (2) The nature of soils and subsoils and their ability to adequately support waste disposal;
 - (3) The slope of the land and its effect on effluents;
 - (4) The availability of streams for disposal of effluents; and
 - (5) The applicable state and local health and water resource rules and regulations.
- B. **Sufficient water.** The proposed Subdivision has sufficient water available for the reasonable, foreseeable needs of the Subdivision;
- C. **Municipal water supply.** The proposed Subdivision will not cause an unreasonable burden on an existing Municipal water supply, if one is to be used;
- D. **Erosion.** The proposed Subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water such that a dangerous or unhealthy condition results;
- E. **Traffic.** The proposed Subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed;
- F. **Sewage disposal.** The proposed Subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on Municipal services, if they are utilized;
- G. **Municipal solid waste disposal.** The proposed Subdivision will not cause an unreasonable burden on the Municipality's ability to dispose of solid waste, if Municipal services are to be utilized;

- H. **Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline;
- I. **Conformity with local ordinances and plans.** The proposed Subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;
- J. **Financial and technical capacity.** The Applicant has adequate financial and technical capacity to meet the standards of this section as set forth in § 250-48.
- K. **Surface waters; outstanding river segments.** 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, of the Maine Revised Statutes Annotated, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed Subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extend to the shore. The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definition requirements of 30-A M.R.S.A. § 4401, Subsection 1, on September 23, 1983;
- L. **Groundwater.** The proposed Subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- M. **Flood areas.** Flood areas, or flood-prone areas, are based on the 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 one-hundred-year flood elevation and flood hazard boundaries 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 their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation;

- N. **Stormwater.** The proposed subdivision will provide for adequate stormwater management;
- O. **Freshwater wetlands.** All potential freshwater wetlands, as defined in 30-A M.R.S.A. § 4401, Subsection 2-A, within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district; and
- P. **River, stream or brook.** Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, Subsection 9.

ARTICLE II Standards

§250-5 General Subdivision Standards.

- A. **General.** In reviewing any Application for Subdivision approval involving a residential development consisting of three or more lots or dwelling units—~~single-family residences and/or duplex dwellings~~—the Planning Board shall be authorized to require that the residential development be designed and constructed as a Clustered Subdivision, a Traditional Subdivision, or a Conservation Subdivision based on the standards and criteria set forth in this section.

Four or fewer lots may be designed as a Conservation Subdivision upon a positive finding by the Planning Board that the intent of that section can be met. All such residential subdivisions shall conform to the requirements of this chapter as well as applicable requirements of Chapter 315, Zoning, and all other applicable ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan.

The intention of this section is to assure that residential Subdivisions are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid contamination from subsurface wastewater disposal systems or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements, including streets, water lines, sewer lines, electric lines, gas lines, telephone lines, and other utilities, protect areas in Resource Protection Districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.

- B. **Criteria to be considered.** In determining whether a proposed residential Subdivision shall be constructed as a Clustered Subdivision, a Traditional Subdivision, or a

Conservation Subdivision, the Planning Board shall consider the following criteria as required by 30-A M.R.S.A. § 4404 and Chapter 250, Subdivision of Land if :

- (1) The tract or parcel of land to be developed has a public water system or will be connected to the public water system, or the Planning Board determines that adequate wells can be established for each residential unit without risk of contamination or interference with existing wells or groundwater on abutting properties and wells to be located within the proposed residential development.
- (2) The tract or parcel of land to be developed is connected to the public sewer system or will be connected to the public sewer system, or the Planning Board determines that adequate on-site subsurface wastewater disposal systems can be established for each residential unit without risk of contamination or interference with existing wells, groundwater and wastewater disposal systems on abutting properties and within the proposed residential development.
- (3) The tract or parcel of land to be developed contains one or more of the following types of open space:
 - (i) Land which is active farmland or which adjoins or abuts active farmland.
 - (ii) Land which contains an existing trail system used by the public or which can provide a link to existing trails.
 - (iii) Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area(s), as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.
 - (iv) Land which may provide physical or visual access to water bodies, including the ocean, lakes, ponds, rivers, streams, and brooks.
 - (v) Land which contains or adjoins a Resource Protection District, as shown on the Official Zoning Map of the Town of Cumberland.
 - (vi) Land which adjoins or abuts an existing parcel of land which constitutes open space.
 - (vii) Land which is suitable for Passive Recreational Activities.

ARTICLE III Conservation Subdivision

§250-6 Conservation Subdivision Standards.

A. Conservation Subdivision Option.

The Conservation Subdivision option replaces the Clustered Subdivision option in the Rural Residential 1 (RR1) and Rural Residential 2 (RR2) zoning districts.

Conservation Subdivisions are designed to preserve sensitive and/or natural areas including, but not limited to, farmland, wetlands, active trail systems, land which provides

a Buffer around a sensitive wildlife habitat or other natural area(s), land which provides physical or visual access to a water body, land which is suitable for Passive Recreation, and land which abuts or adjoins an existing open space.

- B. A Buffer of at least 75 feet in width shall be created around the entire perimeter of the subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard and Foreside Roads, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in the Buffers, except that invasive vegetation may be removed.

- C. Minimum Common Open Space Requirement.

At least 50% of the total area of the tract or parcel of land being developed must be maintained as Common Open Space and not included in the individual building lots.

The following “High Value Conservation Areas” shall be considered when determining the area(s) within the Subdivision to be allocated to the 50% required Common Open Space. When there is land deemed to be in one or more of the “High Value Conservation Areas” in excess of the 50% requirement, or when inclusion of all land meeting the below-listed categories to the Common Open Space would make subdivision of the parcel unreasonably onerous, the Planning Board shall consider not only the priority of the “High Value Conservation Areas” but also the overall intent of this ordinance as well as the impact on the design of the buildable lots and infrastructure of the Subdivision in determining what land should be included in the Common Open Space.

- D. High Value Conservation Areas:

- (1) Existing trails that connect with existing trails on Town-owned land or with existing trails on abutting land protected by a conservation easement;
- (2) Existing healthy, native forests of at least one contiguous acre;
- (3) Habitats of endangered or threatened species;
- (4) Significant wildlife habitats as defined by Maine Department of Inland Fisheries and Wildlife, or the Municipality;
- (5) Significant natural features and scenic views such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
- (6) Archaeological sites, historic structures, cemeteries and burial grounds; and
- (7) Prime Agricultural Lands of at least five contiguous acres.

E. Conservation Subdivisions shall meet the following additional standards:

(1) Applicability of regulations. The Applicant must comply with all provisions of the Zoning Ordinance except those that are incompatible with the provisions contained herein.

(2) Ownership of Subdivision. The land to be subdivided may be held in single or in multiple ownerships. If held in multiple ownerships, the site must be subdivided according to a single plan with common authority and common responsibility.

(3) Housing density determination. The maximum number of lots in a Conservation Subdivision must be determined using the Net Residential Acreage calculation. The density within the Conservation Subdivision will be based on the zoning district lot size requirements.

F. Conservation Subdivision Standards.

(1) The maximum number of lots permitted in a Conservation Subdivision shall not exceed that allowed per the underlying zoning district. The following standards apply to development in Conservation Subdivisions, in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located.

(a) Lot density calculation.

(i) Net residential acreage. The Net Residential Acreage shall be calculated as defined herein.

(ii) Maximum number of lots allowed. The maximum number of lots allowed in a Conservation Subdivision shall be calculated by dividing the Net Residential Acreage by the minimum lot size allowed in the applicable zoning district. (Net residential acreage/minimum lot size allowed in zoning district = maximum number of lots allowed).

(b) Minimum lot size.

(i) The minimum allowed lot size shall be calculated by dividing fifty percent (50%) of the gross area (total area) of the parcel by the number of lots as calculated above.

(ii) Due to the unique characteristics of lot sizes, the Planning Board may allow up to a 10% lot acreage adjustment, if the Applicant can demonstrate the adjustment would improve the Subdivision. In no case shall lot areas be required to exceed the minimum requirements of the underlying zoning district.

(c) Lot Setbacks.

Front: 50 feet
Side: minimum 30 feet; combined width at least 75 feet
Rear: 50 feet

- (d) Minimum lot frontage: 200 feet.
- (e) Minimum access easement to Common Open Space: 10 feet.
- (f) Sheds and Driveways: The above minimum lot standards are required in a Conservation Subdivision except that sheds and driveways are permitted a minimum setback of 15 feet from the side and rear lot lines.

§250-7 - Permitted Uses of Common Open Space.

Uses of Common Open Space may include:

- (1) Passive Recreation, such as hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, bird watching and other low impact recreational activities that do not significantly alter the natural Common Open Space;
- (2) Operation of snowmobiles or ATVs on existing snowmobile or ATV trails;
- (3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices as defined by the Manual of Best Management Practices for Maine Agriculture, dated January, 2007, as amended, are used to minimize environmental impacts;
- (4) Nonstructural stormwater management, such as rain gardens;
- (5) Easements for drainage, access, and underground utility lines; and
- (6) Other conservation-oriented uses, such as a community garden, compatible with the purposes of this ordinance, as determined by the Planning Board in consultation with the Cumberland Lands and Conservation Commission.

§250-8 Prohibited Uses of Common Open Space.

The following are prohibited in the Common Open Space:

- (1) Roads, parking lots and impervious surfaces, except as specifically authorized in this ordinance;
- (2) Subsurface wastewater disposal systems and wells;
- (3) Dumping or disposal of any type of yard waste, household waste, hazardous waste or other debris, organic or inorganic;

- (4) Cutting vegetation, except for an annual mowing to prevent undesirable shrub brush from overtaking protected fields, without an approved management plan, except that the removal of invasive vegetation shall be allowed;
- (5) Active Recreation;
- (6) Altering approved Common Open Space;
- (7) Additional structures being placed on the Common Open Space without prior Planning Board approval; and
- (8) Other activities as determined by the Applicant and recorded on a legal instrument providing for permanent protection such as deed restrictions.

§250-9 Ownership, Management, Legal Protection, and Maintenance of Common Open Space in a Conservation Subdivision.

A. Ownership and Management and Maintenance of Common Open Space:

(1) Ownership of Common Open Space. The Applicant must identify who will be the owner of the Common Open Space and who will be responsible for maintaining the Common Open Space and facilities located thereon if that will be someone other than the owner of the Common Open Space. If a homeowners association will be the owner, membership in the association must be mandatory and will be required by deed covenants for all homeowners in the Subdivision and their successors. If a homeowners association is the owner, it must have lien authority to ensure the collection of assessments from all members. The cost and responsibility for maintaining the Common Open Space and any facilities located thereon shall be borne by the owner.

(2) Management of Open Space. The Applicant must submit a plan for management of the Common Open Space and common facilities that:

- (a) Allocates responsibility and standards for the maintenance of the Common Open Space and any facilities located thereon, including provisions for ongoing maintenance and for any required long-term capital improvements;
- (b) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Common Open Space, and outlines the means by which such funding will be obtained or provided;
- (c) Provides that any changes to the plan must be approved by the Planning Board; and

(d) Provides for the enforcement of the plan.

(B) Legal Instrument for Protection.

The Common Open Space must be protected by a binding legal instrument that is recorded with the deed. The instrument must be one of the following:

(1) A permanent conservation easement held by one of the following:

(a) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The nonprofit organization must be in good legal standing and the conveyance instruments must contain all appropriate provision for retransfer in the event the organization becomes unable or chooses to not carry out its functions; or

(b) A governmental entity with the authority to pursue goals compatible with the purposes of this Ordinance. If the entity accepting the easement is not the Town, then a third-party right of enforcement granted to the Town may be included in the easement.

(2) A permanent restrictive covenant for conservation purposes granted to a governmental entity.

(3) An equivalent legal tool, if approved by the Town that provides permanent protection such as a Homeowners Association.

The instrument of permanent protection must include clear restrictions on the use of Common Open Space and must include all restrictions contained in this ordinance, as well as any further restrictions the Applicant chooses to place on the use of the Common Open Space. All legal instruments provided shall be subject to review by the Planning Board and the Town Attorney for compliance with the requirements of this Ordinance. In addition, the Applicant shall submit for review and approval all homeowners association documents, including a declaration of covenants and restrictions and a draft deed that incorporates the declaration of covenants and restrictions and includes a requirement for lot owner membership in the homeowners association.

(4) Additional Common Open Space considerations:

(a) The Common Open Space within an approved Conservation Subdivision is the responsibility of the owner(s), regardless of whether or not the land is leased to another entity. Maintenance requirements and restrictions must be listed and approved by the Planning Board as part of the conditions of approval.

(b) Utility rights-of-way and areas of impervious surface may be included within the protected Common Open Space but cannot be counted towards the 50% minimum area requirement (exception: historic structures and existing trails may be counted).

(c) Where possible, Common Open Space areas shall be contiguous to another Common Open Space area either within or abutting the Subdivision. The Common Open Space should adjoin any neighboring areas of Common Open Space, Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.

(d) All lots must be provided with safe, convenient access to the Common Open Space.

(e) The Planning Board may require the Applicant to dedicate easements not less than 10 feet wide to the Town over any existing trails that are observable during the site walk or are shown on existing conditions maps. If the location of the existing trails precludes the appropriate placement of house lots or infrastructure, the trail may, with the approval of the Planning Board, be relocated on the parcel. This provision shall only apply to trails which connect to trails on adjacent properties. Where an easement is dedicated to and accepted by the Town, the Town shall have the right but not the obligation to maintain such easements. Any such dedication must be made through appropriate legal instruments approved by the Town Attorney.

ARTICLE IV Clustered Subdivision

§250-10 Clustered Subdivision Standards.

Clustered Subdivisions are not permitted in the RR1 or RR2 zoning districts. Clustered Subdivisions are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as Common Open Space, so long as the maximum number of lots permitted shall not exceed that allowed per the underlying zoning district. The following standards apply to development in Clustered Subdivisions in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located:

(A) Lot density calculation.

(1) Net Residential Acreage. The Net Residential Acreage shall be calculated as defined.

(2) Maximum number of lots allowed. The maximum number of lots allowed in a Clustered Subdivision shall be calculated by dividing the Net Residential Acreage by the minimum lot size allowed in the applicable zoning district. (Net Residential Acreage/minimum lot size allowed in zoning district = maximum number of lots allowed).

(B) Minimum lot size.

If the lots are connected to the public water and sewer systems, the minimum lot size for each single-family dwelling shall be 30,000 square feet and for each duplex dwelling shall be 40,000 square feet. If the lots are connected to the public water system but not the public sewer system, the minimum lot size for each single-family dwelling shall be 45,000 square feet and 60,000 square feet for each duplex. If the lots are not connected to the public water and sewer system, the minimum lot size for each single-family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.

(C) Lot setbacks.

Setback requirements for a Clustered Subdivision shall be the same as those required in the zoning district in which the subdivision is located.

Sheds and driveways are permitted a minimum setback of 15 feet from the side and rear lot lines.

(D) Frontage.

Each lot shall have no less than 75 feet of lot frontage on a street.

(E) Buffer.

A Buffer of at least 75 feet in width shall be created around the entire perimeter of the Subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard, and Foreside Road, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in Buffers, except that vegetation classified as invasive may be removed.

250-11 Common Open Space.

A. At least 25% of the total area of the tract or parcel of land being developed must be maintained as Common Open Space and not included in the individual building lots. Common Open Space may include, but not be limited to, the following:

- (1) Active farmland or land adjoining active farmland;
- (2) An active trail system or which provides a link to an existing trail system;
- (3) Land which provides a buffer around a sensitive wildlife habitat or other natural area;

(4) Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook;

(5) Land in a Resource Protection District as shown on the official Town of Cumberland Overlay Map;

(6) Land which is suitable for Active or Passive Recreation; and

(7) Land which abuts or adjoins an existing public Open Space.

B. Ownership, Management, Legal Protection, and Maintenance of Common Open Space in a Clustered Subdivision.

(1) Ownership of Common Open Space.

The Applicant must identify who will be the owner of the Common Open Space and who will be responsible for maintaining the Common Open Space and facilities located thereon if that will be someone other than the owner of the Common Open Space. If a homeowners association will be the owner, membership in the association must be mandatory and will be required by deed covenants for all homeowners in the subdivision and their successors. If a homeowners association is the owner, it must have lien authority to ensure the collection of assessments from all members. The cost and responsibility for maintaining the Common Open Space and any facilities located thereon shall be borne by the owner.

(2) Management of Common Open Space.

The Applicant must submit a plan for management of Common Open Space and common facilities that:

(i) Allocates responsibility and standards for the maintenance of the Common Open Space and any facilities located thereon, including provisions for ongoing maintenance and for any required long-term capital improvements;

(ii) Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the Common Open Space, and outlines the means by which such funding will be obtained or provided;

(iii) Provides that any changes to the plan must be approved by the Planning Board; and

(iv) Provides for the enforcement of the plan.

(3) Legal Instrument for Protection of Common Open Space.

The Common Open Space must be protected by a binding legal instrument that is recorded with the deed. The instrument must be a permanent conservation easement held by one of the following:

(i) A land trust or similar conservation-oriented nonprofit organization with legal authority to accept such easements. The nonprofit organization must be in good legal standing and the conveyance instruments must contain all appropriate provision for retransfer in the event the organization becomes unable or chooses to not carry out its functions;

(ii) A governmental entity with the authority to pursue goals compatible with the purposes of this ordinance. If the entity accepting the easement is not the Town, then a third-party right of enforcement granted to the Town may be included in the easement.

(iii) A permanent restrictive covenant for conservation purposes granted to a governmental entity.

(iv) An equivalent legal tool, if approved by the Town Attorney and Planning Board that provides permanent protection such as a homeowners association.

(v) The instrument of permanent protection must include clear restrictions on the use of Common Open Space and must include all restrictions contained in this ordinance, as well as any further restrictions the Applicant chooses to place on the use of the Common Open Space. All legal instruments provided shall be subject to review by the Town for compliance with the requirements of this ordinance.

(vi) The Common Open Space within an approved Clustered Subdivision is the responsibility of the owner(s), regardless of whether or not the land is leased to another entity. Maintenance requirements and restrictions must be listed and approved by the Planning Board as part of the conditions of approval.

(4) Additional Common Open Space considerations:

(a) Utility rights-of-way and areas of impervious surface may be included within the protected Common Open Space but cannot be counted towards the 25% minimum area requirement (exception: historic structures and existing trails may be counted).

(b) Where possible, Common Open Space areas shall be contiguous to another Common Open Space area either within or abutting the subdivision. The Common Open Space should adjoin any neighboring areas of Open Space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.

(c) All lots must be provided with safe, convenient access to the Common Open Space. The minimum width of an access easement to the Common Open Space is 10 feet.

(d) The Applicant shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the homeowners association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instruments binding upon the lot owner and running with the land.

(e) The Planning Board may require the developer to dedicate easements not less than 10 feet wide to the Town over any existing trails that are observable during the site walk or are shown on existing conditions maps. If the location of the existing trails precludes the appropriate placement of house lots or infrastructure, the trail may, with the approval of the Planning Board, be relocated on the parcel. This provision shall only apply to trails which connect to trails on adjacent properties. Where an easement is dedicated to and accepted by the Town, the Town shall have the right but not the obligation to maintain such easements. Any such dedication must be made through appropriate legal instruments approved by the Town Attorney.

ARTICLE V Traditional Subdivision

250-11 Traditional Subdivision Standards.

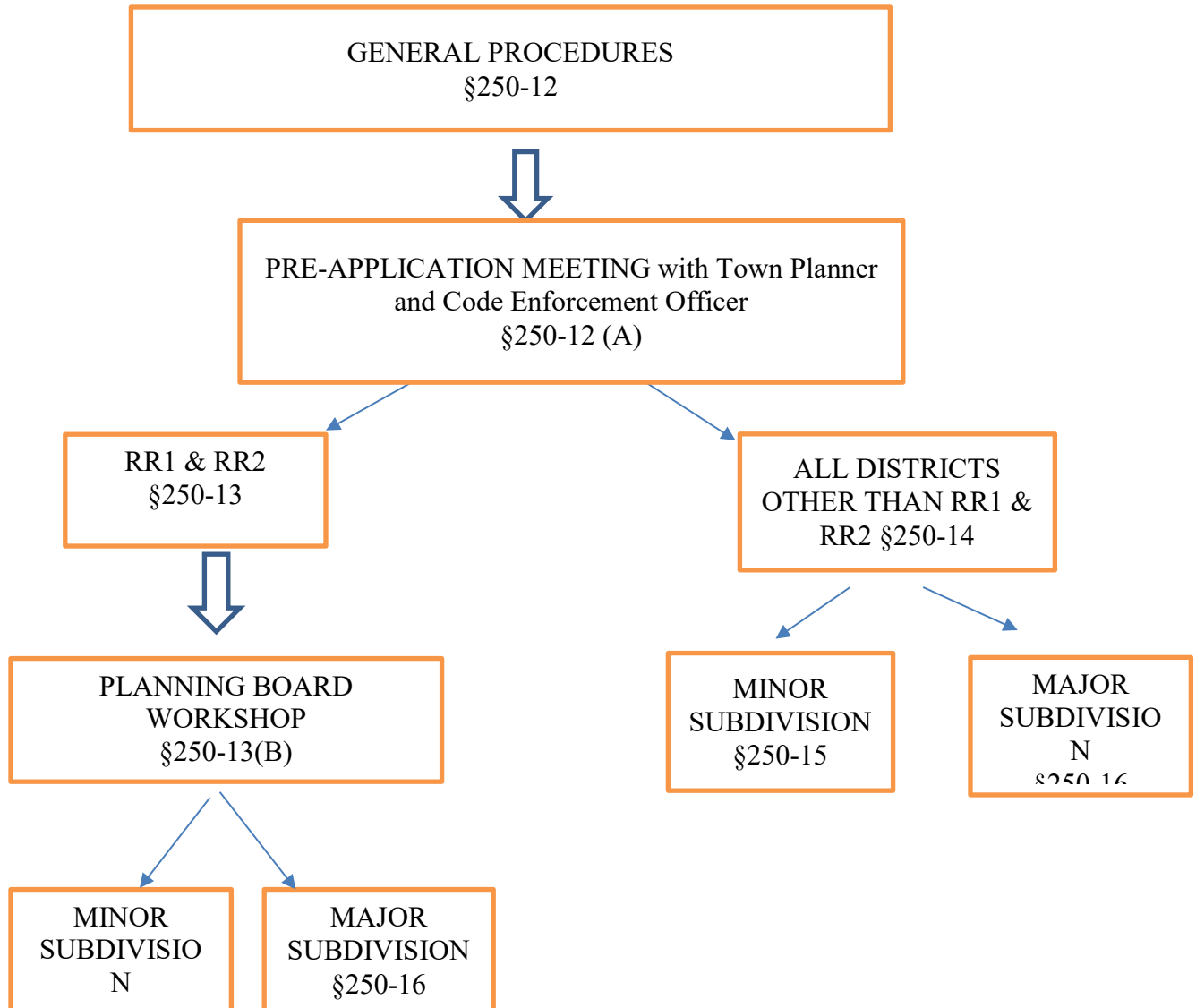
(A) Traditional Subdivisions are Subdivisions in which the dwelling units are located on separate building lots which conform to the minimum lot size for the zoning district in which they are located. A Traditional Subdivision may, but is not required to, include land set aside as Open Space, defined herein. Any Traditional Subdivision that will include a homeowners association shall submit for review and approval by the Planning Board and the Town Attorney all documents related to the homeowners association, including but not limited to the declaration of covenants and restrictions and a draft deed that incorporates the declaration of covenants and restrictions and the requirement of membership in the homeowners association.

(B) Buffer.

A Buffer of at least 75 feet in width shall be created around the entire perimeter of the Subdivision. For Subdivisions that front on Tuttle, Greely, Blanchard, and Foreside Road, the Buffer along those roads shall be 150 feet. Where possible, existing trees and vegetation shall be preserved in Buffers, except that vegetation classified as invasive may be removed.

ARTICLE VI: Subdivision Application Procedures

Note: The following flowchart illustrates the general procedures to be followed for all subdivision applications.



§250-12 General Subdivision Procedures

A. Pre-application meeting with Town Planner and Code Enforcement Officer.

Prior to submission of a Subdivision Application, Applicants shall arrange a pre-application conference with the Town Planner and Code Enforcement Officer. A proposed plan shall be provided by the Applicant which shows the original parcel to be subdivided

and the number of lots and road design proposed for the Subdivision. At the conclusion of this meeting, the Code Enforcement Officer shall classify the proposed project as either a Minor or Major Subdivision.

B. Subdivision options in the residential zoning districts.

- (1) If the proposed Subdivision will be located in the Rural Residential 1 (RR1) or Rural Residential 2 (RR2) zoning district, the Applicant may propose either a Conservation Subdivision or a Traditional Subdivision plan.
- (2) If the proposed Subdivision is located in any zoning district other than the Rural Residential 1 (RR1) or Rural Residential 2 (RR2), the Applicant may propose either a Clustered or a Traditional Subdivision plan.

C. Content of plans

A proposed plan shall show the natural features of the property such as topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal systems locations (if applicable), steep slopes, open fields, wooded areas, etc. The proposed plan shall also depict the location of the road(s) and lots, the stormwater management system, and the Common Open Space (if any).

D. Application Fees, Consulting Fees and Application Forms.

- (1) The subdivision review fee schedule is established by order of the Town Council.
- (2) Outside consulting fees shall be charged in accordance with Chapter 315, Zoning, § 315-81.
- (3) Appendix A should be completed for any proposed Conservation Subdivision.
- (4) Appendix B should be completed for a proposed Minor Traditional or Clustered Subdivision.
- (5) Appendix C should be completed for a proposed Major Traditional or Clustered Subdivision.

§ 250-13 Procedure for subdivisions in the RR1 or RR2 Zoning Districts.

- A. The Conservation Subdivision is the preferred option and a proposed Conservation Subdivision plan must be submitted by the Applicant. The Applicant may propose, as an alternative, a Traditional Subdivision in which case a proposed Traditional Subdivision plan may also be submitted.
- B. Pre-application workshop with Planning Board.

Following the pre-application conference with the Town Planner and the Code Enforcement Officer, the Applicant shall meet with the Planning Board in a workshop setting to review the physical attributes and natural resources of the parcel to be developed and to discuss the Subdivision type that would be best suited to the physical characteristics of the parcel being developed. The Town Lands and Conservation Commission will be invited to attend the workshop.

- C. All plans shall show the natural features of the property, including topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal system locations (if applicable), steep slopes, open fields and wooded areas. The plan shall also depict how the road(s), lots, stormwater management system, and Common Open Space (if any) would be laid out in each option.
- D. The Planning Board shall notify abutters within 500 feet of the proposed Subdivision of the meeting date, location and time of the workshop. The Planning Board will solicit public comments on the proposed plan options after which the Planning Board will make a determination on which plan should be selected for the Subdivision.
- E. The Applicant shall be given a decision at the workshop as to what type of Subdivision is most appropriate or be told what additional information is necessary for the Planning Board to make a decision. The Planning Board shall specify in writing its decision within 10 days of the workshop.
- F. The type of Subdivision selected by the Planning Board shall not be changed unless the Planning Board finds that unforeseen circumstances require the decision to be altered.
- G. The pre-application workshop shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.
- H. Following completion of the pre-application workshop with the Planning Board, Applications for a Minor Subdivision shall proceed pursuant to 250-15 and Applications for a Major Subdivision shall proceed pursuant to 250-16.

§ 250-14 Procedure for Subdivisions not located in the RR1 or RR2 Zoning Districts.

- A. If the proposed subdivision is located in any residential zoning district other than the RR1 or RR1, the Applicant may propose either a Clustered Subdivision or a Traditional Subdivision.
- B. The Clustered Subdivision is the preferred option for subdivisions in residential zoning districts other than RR 1 and RR 2. The Applicant may submit a Traditional Subdivision plan as an alternative.

- C. Following completion of the pre-application meeting, Applications for Minor Subdivision shall proceed pursuant to 250-15 and Applications for Major Subdivisions shall proceed pursuant to 250-16.

§ 250-15 Review and approval of a plan for a Minor Subdivision.

A. Minor Subdivision procedure.

Review and approval of a plan for a Minor Subdivision shall be a process whereby the Planning Board shall grant final approval for a project at the time that all ordinance requirements have been met. There shall be no preliminary approval step.

B. Minor Subdivision Submission requirements.

Minor Subdivision plan submissions shall conform to the standards and requirements contained in Appendix B of this chapter.

(1) An Application for a Minor Subdivision shall consist of a cover letter describing the nature of the project, a completed Application form, the appropriate submission requirements and, if necessary, a letter listing any requested waivers from the submission requirements. The Applicant shall submit an electronic version of all required plans and materials listed in the Application submission checklist. In addition, two full size paper copies of all required plans and of all materials listed in the Application submission checklist shall be provided to the Town Planner. These items shall be submitted to the Town Planner at least 21 days prior to the Planning Board meeting at which it is to be considered, and shall be accompanied by the fee, which is established by order of the Town Council.

(2) Within five (5) days of the submitted Application, the Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination in writing. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Town Planner shall notify the Applicant and the Application will be placed on the next Planning Board agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of payment of the application fee shall become null and void.

(3) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the Applicant, hold a public hearing and begin review of the Application. The Planning Board shall then vote to either table, approve, approve with conditions, or disapprove the plan. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

C. Minor Subdivision Plan approval and filing.

(1) Upon completion of the requirements above and approval of the plan, the plan shall be signed by a majority of the voting members of the Planning Board and shall be filed by the Applicant with the Cumberland County Registry of Deeds.

(2) Approval of any Subdivision plan not filed for recording within 90 days after final plan approval shall become null and void. A note referencing this time provision shall be placed upon the final plan. The Applicant shall provide the Town Planner with the plan book number and page number upon recording of the Subdivision plan.

(3) This approval is dependent upon and limited to the proposals and plans contained in the Application, and supporting documents submitted by the Applicant, and all statements made by the Applicant to the Planning Board. There shall be no variation from the approved plans except for minor field changes which do not affect approval standards; these minor field changes shall be reviewed and approved by the Town Planner, Code Enforcement Officer and, if needed, the Municipal Engineer. Written notification documenting the approved changes shall be provided to the Applicant and materials relating to the minor field changes and the approval thereof, shall be placed in the Planning Department's file for the project. The Planning Board shall be informed of any approved minor field changes at its next scheduled meeting.

D. Performance guarantees.

(1) The purpose of a performance guarantee is to secure the completion of all required improvements or the restoration of the site as the Town deems appropriate.

(2) Prior to plan approval, or as a condition of plan approval, the Applicant shall provide a construction schedule and cost estimate for all required improvements to the Town Planner. Required improvements include, but are not limited to, street and utility construction, stormwater management, landscaping, erosion control, and monumentation. The Town Planner shall submit the cost estimate to the Municipal Engineer and Town Manager for review and approval. Once the amount for the performance guarantee is set, the Applicant shall provide a performance guarantee in one of the following acceptable forms:

(a) An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.

(b) An irrevocable letter of credit from a financial institution in a form reviewed by the Town Attorney and acceptable to the Town Manager that provides at least 60 days written notification of expiration. The terms and conditions shall include a maximum ~~two~~ three-year time limit and an inflation clause.

(c) Any other performance guarantee reviewed by the Town Manager and Town Attorney as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

(3) In the event that a final plan is to be divided into two or more phases, the performance guarantee may be provided in an amount commensurate with the level of improvement to be undertaken in the phase or phases to be filed with the Cumberland County Registry of Deeds and may defer the remaining required amount(s) until the remaining phases of the proposed Subdivision are ready for filing with the Cumberland County Registry of Deeds. The terms and conditions of the performance guarantee for each phase shall include a maximum three-year time limit and an inflation clause.

(4) Completion of required improvements shall be determined by the Town Manager, who shall receive written certification from the Municipal Engineer that all improvements assured by the performance guarantee have been constructed in conformance with the final plan and all applicable codes and ordinances. In addition, the Applicant shall furnish at his/her own expense the signed certification by a registered surveyor or civil engineer that all permanent boundary markers or monuments have been installed and are accurately in place in the locations designated in the final plan.

(5) The performance guarantee may, at the discretion of the Town Manager, provide for a partial release of the performance guarantee amount as specific portions of the required improvements are completed.

§ 250-16 Review and approval of plan for a Major Subdivision.

Major Subdivision plan submissions shall conform to the standards and requirements contained in Appendix B of this chapter.

A. Sketch Plan Review.

- (1) The purpose of sketch plan review is for the Applicant to submit a concept plan or plans to the Planning Board and to receive the Planning Board's decision as to which type of Subdivision is most appropriate for the site. An Application for sketch plan review and any accompanying materials shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered. The Application shall be submitted electronically and two full size paper copies shall be delivered to the Town Planner.
- (2) At the Planning Board meeting, the Applicant shall present the sketch plan(s) and make a verbal presentation regarding the site and the proposed Subdivision. The Planning Board shall hold a public hearing to solicit public comment. Suggested changes made by the Planning Board may be incorporated by the Applicant into the Application.
- (3) The sketch plan shall show, in simple form, the proposed layout of streets, lots, building envelopes, and proposed open spaces. The plan shall include a delineation of topography, wetlands, steep slopes, water bodies, adequate septic system locations, if applicable, and other known natural features.
- (4) The Planning Board shall determine which type of Subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of any Open Space to be maintained, if applicable.

- (5) The Applicant shall be given a decision at the meeting as to what type of Subdivision is most appropriate or be told what additional information is necessary for the Planning Board to make a decision. The Planning Board shall specify in writing its decision within 10 days of the meeting.
- (6) The type of Subdivision approved at the sketch plan meeting shall not be changed unless the Planning Board finds that unforeseen circumstances require the decision to be altered.
- (7) The acceptance of a sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.
- (8) Following the sketch plan meeting the Planning Department shall establish a file for the proposed Subdivision. All correspondence and submissions shall be maintained in the file.

B. Preliminary Plan Procedures

- (1) An Application for a Major Subdivision shall consist of a cover letter describing the nature of the project, a completed Application form, the appropriate submission requirements and, if necessary, a letter listing any requested waivers from the submission requirements. The Applicant shall submit an electronic version of all required plans and materials listed in the Application submission checklist. In addition, two full size paper copies of all required plans and of all materials listed in the Application submission checklist shall be provided to the Town Planner. These items shall be submitted to the Town Planner at least 21 days prior to the Planning Board meeting at which it is to be considered, and shall be accompanied by the fee, which is established by order of the Town Council.
- (2) Major Subdivision review is a process whereby an Application is reviewed and approved in two stages: 1) Preliminary Plan Review and Approval and 2) Final Plan Review and Approval. An Application for Major Subdivision Review may be considered for both Preliminary and Final Plan approval at the same meeting if all submission requirements have been met.
- (3) Within ten (10) days of the submitted Application, the Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Town Planner shall notify the Applicant and the Application will be placed on the next Planning Board agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of the payment of the Application fee shall become null and void.
- (4) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the Applicant, hold a public hearing and begin review of the Application. The Planning Board shall then vote to either table, approve, approve with

conditions, or disapprove the preliminary application. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

- (5) Preliminary application approval shall not constitute approval of the final plan but rather shall be deemed an expression of approval of the design submitted on the preliminary plan as a guide to preparation of the final plan.
- (6) Preliminary plan submissions shall conform to the standards and requirements contained in Appendix D of this chapter.

C. Final plan procedures.

- (1) Prior to submission of the final plan, the Applicant shall have fulfilled the following requirements:
 - (a) The Applicant shall provide evidence that a completed Application was received by the Maine Department of Environmental Protection and is under review; if the proposed Subdivision is subject to review by said Department;
 - (b) The proposed water supply system shall be approved in writing by the Portland Water District if existing public water service is to be used or by the Maine Department of Health and Human Services if a central water supply system is proposed; and
 - (c) Allocation of sewer user units by the appropriate municipal agency shall be secured if said units are required for the proposed subdivision, and the proposed sewage disposal system shall conform to § **250-29** of this chapter.
- (2) An Application for final plan approval and a completed Application checklist shall be submitted to the Town Planner within 180 days after preliminary application approval and at least 21 days prior to the meeting at which it is to be considered. The Applicant shall provide 2 full size paper copies of the final plan and accompanying materials which shall be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered. The Application shall be accompanied by the fee as established by order of the Town Council. The Applicant shall also provide an electronic copy of all application forms, plans and supporting information.
- (3) Within ten (10) days of the submitted Application, the Town Planner shall determine whether the Application is complete or incomplete and shall notify the Applicant of the determination in writing. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the Application complete. When the Application is determined to be complete, the Application will be placed on the next Planning Board Agenda for which the required notice can be met. Any Application not determined to be complete within 180 days of the date of payment of the Application fee shall become null and void.
- (4) The Planning Board shall, within 45 days from the date that the Application is determined to be complete, or within such other time that may be mutually agreed to by both the

Planning Board and the Applicant, hold a public hearing and begin review of the Application. The Planning Board shall then vote to either table, approve, approve with conditions, or disapprove the plan. A written Notice of Decision shall be provided to the Applicant within five (5) days of the meeting.

C. Phasing of Project.

Prior to the final plan approval, the Planning Board may grant approval to permit the plan to be divided into two or more phases and may impose such conditions upon the phases as it deems necessary to ensure the orderly development of the Subdivision. Each phase shall be reviewed by the Planning Board both as a potentially independent Subdivision and as a section of the total Subdivision. Each phase shall constitute at least 25% of the total number of lots contained in the approved final plan.

D. Performance guarantees.

(1) The purpose of a performance guarantee is to secure the completion of all required improvements or the restoration of the site as the Town deems appropriate.

(2) Prior to final plan approval, or as a condition of final plan approval, the Applicant shall provide a construction schedule and cost estimate for all required improvements to the Town Planner. Required improvements include, but are not limited to, street and utility construction, stormwater management, landscaping, lighting, erosion control, and monumentation. The Town Planner shall submit the cost estimate to the Municipal Engineer and Town Manager for review and approval. Once the amount for the performance guarantee is set, the Applicant shall provide a performance guarantee in one of the following acceptable forms:

- (a) An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.
- (b) An irrevocable letter of credit from a financial institution in a form reviewed by the Town Attorney and acceptable to the Town Manager that provides at least 60 days' written notification of expiration. The terms and conditions shall include a maximum two-year time limit and an inflation clause.
- (c) Any other performance guarantee reviewed by the Town Attorney and acceptable to the Town Manager as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

(3) In the event that a final plan is to be divided into two or more phases, the performance guarantee may be provided in an amount commensurate with the level of improvement to be undertaken in the phase or phases to be filed with the Cumberland County Registry of Deeds and may defer the remaining required amount(s) until the remaining sections of the proposed Subdivision are ready for filing with the Registry of

Deeds. The terms and conditions of the performance guarantee for each phase shall include a maximum three-year time limit and an inflation clause.

- (4) Completion of required improvements shall be determined by the Town Manager, who shall receive written certification from the Municipal Engineer that all improvements assured by the performance guarantee have been constructed in conformance with the final plan and all applicable codes and ordinances. In addition, the Applicant shall furnish the signed certification by a registered surveyor or civil engineer that all permanent boundary markers or monuments have been installed and are accurately in place in the locations designated in the final plan.
- (5) The performance guarantee may, in the discretion of the Town Manager, provide for a partial release of the performance guarantee amount as specific portions of the required improvements are completed.

E. Final plan approval and filing.

- (1) Upon completion of the requirements above and approval of the final plan, the final plan shall be signed by a majority of the voting members of the Planning Board and shall be filed by the Applicant with the Town Planner.
- (2) The performance guarantee, with the terms and conditions previously set by the Planning Board, shall be filed with the Town Manager before the final plan is released for recording by the Applicant at his expense with the Cumberland County Registry of Deeds.
- (3) Approval of any Subdivision plan not filed for recording within 90 days after final plan approval shall become null and void. A note referencing this time provision shall be placed upon the final plan. The Applicant shall provide the Town Planner with the plan book number and page number upon recording of the Subdivision plan at the Cumberland County Registry of Deeds.

§ 250-17 Plan revisions after approval.

No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the final plan, unless said plan is first resubmitted and the Planning Board approves any modifications. Any Application for Subdivision approval that constitutes a revision or amendment to a Subdivision plan which has been previously approved shall indicate that fact on the Application and shall identify the original Subdivision plan being revised or amended. Approved changes shall be endorsed on the revised final plan by the Planning Board, and the plan as modified shall be recorded in the Cumberland County Registry of Deeds within 60 days after such approval. The Applicant shall provide the Town Planner with the plan book number and page number upon recording of the revised Subdivision plan, as well as a full-sized copy of the recorded plan and one reduced size copy in the dimensions specified by the Town Planner.

§ 250-18 Public acceptance of streets and recreation areas.

When a street, easement, Common Open Space area, park, playground, or other recreation area is shown on the final plan, approval of the plan shall not constitute an acceptance by the Town of such areas. All plans shall be endorsed with the following note: *"The approval of this plan by the Planning Board does not constitute acceptance by the Town of any street, easement, Common Open Space area, park, playground, or other recreation area thereon."* The Planning Board may also require the filing of a written agreement between the Applicant and the Town Council covering future deed and title requirements, dedication, and provision for the cost of grading, Subdivision, equipment, and maintenance of any such areas.

§ 250-19 Times for commencement and completion of construction; preconstruction conference.

A. All improvements required by § 250-25 and any other improvements required by the Planning Board for approval of the plan shall be completed no later than ~~two~~ three years after approval of the final plan. The Applicant may, prior to the expiration of approval, request a one year extension from the Planning Board for good cause shown. Subdivisions that are proposed to be built out in phases shall meet the three year limit for each phase of the Subdivision. Where a project requires both Subdivision and Site Plan approval under Chapter 229, the improvements must be completed within the time periods established by this section rather than those established by § 229-11.

B. Preconstruction Conference. Prior to the commencement of construction there shall be a mandatory preconstruction conference, unless waived by the Town Manager. The preconstruction conference attendees should include the developer, his/her site contractor, engineer, general contractor, the Code Enforcement Officer, the Town Planner, the Municipal Engineer and any such other department heads deemed appropriate by the Town Planner, to review the proposed construction activities to assure compliance with the requirements of this chapter and any special terms of the project's approval.

Article VII. Enforcement

§ 250-20 Approval required prior to recording.

No plan of a Subdivision of land within the municipal boundaries which would constitute a subdivision as defined herein shall hereafter be filed or recorded in the Cumberland County Registry of Deeds until a final plan thereof shall have been approved by the Planning Board in accordance with all of the requirements, design standards, and construction specifications set forth elsewhere in these standards nor until such approval shall have been entered on such final plan by the Planning Board.

§ 250-21 Conveyance of land.

No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a Subdivision which has not been approved by the Planning Board and recorded in the Cumberland County Registry of Deeds.

§ 250-22 Violations and penalties.

Any person, firm, corporation or other legal entity who or which conveys, offers or agrees to convey any land in a Subdivision which has not been approved as required by this article or who builds or develops a Subdivision other than in strict conformance with the requirements of this chapter and his/her approval, including any conditions attached thereto, shall be subject to a civil action seeking injunctive relief to prevent any such violation and restore or repair the land, if appropriate, and be further subject to a civil fine, attorney fees and costs of court as provided under 30-A M.R.S.A. § 4452. The Municipality or the Code Enforcement Officer may institute such proceedings.

§ 250-23 Utility service.

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.

§ 250-24 Grading and construction work prior to final approval.

Not only is making a Subdivision without Planning Board approval a violation of law, but so also within such a Subdivision is grading or construction of roads, grading of land or lots, or construction of buildings until a final plan of such Subdivision shall have been duly prepared, submitted, reviewed, approved, and endorsed as provided in these standards and until the original copy of the final plan so approved and endorsed has been duly recorded in the Cumberland County Registry of Deeds.

Article VIII Required improvements

§ 250-25 Required improvements.

The following are required improvements: monuments, street signs, streets, byways, water supply, sewage disposal, storm drainage, landscaping, lighting and signing and pavement markings for traffic control, walking and biking trails, erosion control, or other improvements required by the Planning Board, except where the Planning Board may waive or modify such improvements in accordance with the provisions of these standards.

§ 250-26 Inspection of required improvements.

A. Inspection fee.

(1) At least five days prior to commencing construction of required improvements the Applicant shall pay an inspection fee equal to 2% of the cost of the required improvements, or \$5,000, whichever is greater, to cover the costs of construction inspections by the Municipal Engineer or Town Staff, as required.

(2) The Applicant shall notify the Town Manager, or the Town Manager's designee, in writing of the time when the Applicant proposes to commence construction of such

improvements so that the Town Manager can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements and utilities required by the Planning Board. Any amount in excess of actual cost of inspections shall be returned to the Applicant.

B. If the Town Manager or the Town Manager's designee shall find, upon inspection of the improvements performed before expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by Applicant, the Town Manager or the Town Manager's designee shall so report to the Town Council, Code Enforcement Officer, and Planning Board. The Town Manager or the Town Manager's designee shall then notify the Applicant and, if necessary, the financial institution that has provided the performance guarantee and take all necessary steps to preserve the Municipality's right under said performance guarantee. No Application shall be accepted by the Planning Department for Planning Board review if the Applicant is in default on a previously approved plan.

C. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Municipal Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Municipal Engineer may authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Planning Board. The Municipal Engineer shall issue any authorization under this subsection in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

D. The Applicant shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of said improvements by the Town Council.

E. Upon completion of the Subdivision, the Applicant shall notify the Town Manager or the Town Manager's designee in writing stating that all improvements have been completed. Along with this statement shall be submitted as-built record construction drawings on Mylar which were previously approved by the Planning Board.

Article IX- General Requirements

§ 250-27 Considerations for approval.

In reviewing applications for the Subdivisions of land, the Planning Board shall consider the following general requirements. In all instances the burden of proof shall be upon the Applicant.

§ 250-28 Review and approval by other agencies.

Where review and approval of any Subdivision by any other governmental, quasi-governmental agency or public utility is required, evidence of the status of such approval shall be submitted to the Planning Board in writing ~~prior to~~ with the submission of the final Application .

§ 250-29 Conformity with other state and local regulations.

Any proposed Subdivision shall be in conformity with a comprehensive plan or policy statement of the Municipality and with the provisions of all pertinent state and local codes and ordinances.

§ 250-30 - Common Open Space.

Common Open Space in a Conservation or Clustered Subdivision should comply with the following requirements:

- A. Land reserved for park and/or recreational purposes shall be of a character, configuration and location suitable for the particular use intended
- B. When the proposed Subdivision is located on a lake, pond, river, or stream, the Planning Board may require, when feasible, that the developer include a portion of the water frontage as part of the Common Open Space.
- C. The provisions of this section shall not apply to multiplex dwellings, mobile homes parks, or Residential Care Facilities. The retention of Common Open Space in Multiplex Dwellings, Mobile Home Parks or Residential Care Facilities is governed by Chapter 315, Zoning, §§ 315-44, 315-56 and 315-71.

§ 250-31 Preservation of natural features.

A. The Planning Board may require that a proposed Subdivision design include a landscape plan that will show the preservation of existing trees (10 inches in diameter or more), 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, and extensive grading and filling shall be avoided.

B. A Subdivision in which the land cover type at the time of Application is forested shall maintain a wooded Buffer no less than 75 feet in width along all existing streets. Buildings shall be restricted from open fields and shall be located within forested portions of the Subdivision when the Planning Board determines that to do so will preserve scenic vistas from the street. When the Subdivision contains no forest or insufficient forested portions to include the buildings, the Subdivision shall be designed to minimize the appearance of buildings when viewed from existing streets.

§ 250-32 Utilities.

A. The size, type and location of public utilities, such as streetlights, electricity, telephones, gas lines, fire hydrants, etc., shall be approved by the Planning Board and installed in accordance with local practice.

B. Utilities shall be installed underground except as otherwise approved by the Planning Board.

C. The provisions of this section shall not apply to mobile home parks. The installation and location of utilities in Mobile Home Parks are governed by Chapter **315**, Zoning, § **315-56**.

§ 250-33 Water supply.

A. A public water supply system with fire hydrants shall be installed at the expense of the Applicant or, if in the opinion of the Planning Board service to each lot by a public water system is not feasible, the Planning Board may allow individual wells to be used.

B. The Applicant shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting State of Maine Rules of the Department of Health and Human Services Relating to Drinking Water can be supplied to the Subdivision at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for fire-fighting purposes.

C. The water supply shall be sufficient to meet peak domestic demands and fire protection needs.

D. The Applicant shall demonstrate in the form of signed affidavits from the servicing water company or by engineering reports prepared by a civil engineer registered in the State of Maine that the proposed Subdivision will not result in an undue burden on the source, treatment facilities or distribution system involved or provide adequate assurance that such source, treatment facility or distribution system will be modified to meet the expanded needs.

E. The minimum water main permitted shall be six inches or a dimension approved by the Portland Water District, and shall be installed at the expense of the Applicant.

F. The water supply system shall be designed and installed in accordance with requirements of the Maine Department of Health and Human Services.

G. If a central water supply system is provided by the Applicant, location and protection of the source and design, construction and operation of the distribution system and appurtenances and treatment facilities shall conform to the recommendations included in the State of Maine Rules of the Department of Health and Human Services Relating to Drinking Water.

H. The Planning Board may require the Applicant at the Applicant's own cost to evaluate the effect of withdrawal of groundwater if on-site groundwater supply wells are proposed. An analysis of lowering of the water table during pumping, ground subsidence, reduction in groundwater recharge, saltwater intrusion and/or modification of groundwater flow patterns may be required. The analysis may require pump testing of on-site wells or measurements of soil and/or rock permeability, measurement of existing groundwater levels, soil borings, and/or installation of groundwater observation wells.

I. No Subdivision or use of land shall lower the groundwater table more than 10 feet, reduce on-site groundwater recharge by more than 20%, cause saltwater intrusion or undesirable change in groundwater flow patterns, or cause ground subsidence of more than one inch on abutting

property. If the analysis of groundwater withdrawal (subsection H above) shows that one or more of these effects will occur, that will be the basis for denial of the Application.

§ 250-34 Sewage disposal.

A. A sanitary sewer system shall be installed at the expense of the Applicant or, if in the opinion of the Planning Board service to each lot by a sanitary sewer system is not feasible, the Planning Board may allow individual subsurface wastewater disposal systems to be used.

B. An Applicant shall submit plans for subsurface wastewater disposal designed by an Engineer and/or licensed site evaluator, as appropriate, in full compliance with the requirements of the State of Maine Plumbing Code, except as noted herein or in Chapter **315**, Zoning.

C. Connections and/or extensions to a public sanitary sewer line shall comply with the requirements of Chapter **216**, Sewers, and/or sewer extension design specifications for the Town of Cumberland.

D. The Applicant shall apply to the appropriate municipal agencies for certification that the proposed connection(s) and/or extension(s) will not be a burden on the system.

E. The Planning Board may require a hydrogeologic evaluation where it is concerned about possible groundwater or surface water contamination. Any cluster system shall require a hydrogeologic investigation. The investigation could involve soil borings and installing groundwater observation wells, measurement of groundwater elevation at wells, estimation of the direction and rate of groundwater flow, hydraulic mounding estimate beneath any leach field, measurement of existing groundwater and/or surface water quality, identification of existing water supply wells or springs on abutting properties, and a projection by analytical methods of groundwater and/or surface water quality within and at the property boundaries as a result of Subdivision.

F. The Applicant shall specify the location, both horizontally and vertically, of on-site well and subsurface wastewater disposal systems to avoid contamination of proposed or existing water supplies by subsurface wastewater disposal system effluent. No subdivision or use of land shall result in existing groundwater quality exceeding 50% of the physical, biological, chemical and radiological levels for raw and untreated drinking water supply sources specified in the Maine state drinking water regulations. If existing groundwater quality is inferior to the state drinking water regulations, the developer or landowner will not degrade the water quality any further. This criterion shall apply to the property boundaries' existing and proposed water supply wells and springs. If the hydrogeologic evaluation and projection of groundwater and/or surface water quality (Subsection E above) show that the effect of the Subdivision or use of land will be to exceed whichever of these groundwater quality standards applies, that will be the basis for denial of the application.

§ 250-35 Trees, esplanades and planting screens.

A. Street trees and esplanades may be required at the discretion of the Planning Board. Where such improvements are required, they shall be incorporated in the final plan and executed by the Applicant as construction of the Subdivision progresses.

B. The Subdivision design shall minimize the possibility of noise pollution either from within or without the Subdivision (from highway or industrial sources) by providing and maintaining a planting screen easement at least 20 feet wide, except as may otherwise be required by Chapter 315, Zoning, between abutting properties that are so endangered.

Article X Street Design and Construction Standards

§ 250-36 General street standards.

A. Classification.

In accordance with the Comprehensive Plan of the Town of Cumberland and for the purposes of these standards, streets are classified according to the average daily traffic (ADT) they are intended to serve, as calculated by the number of average daily trips, as follows:

(1) Average daily trip. "Average daily trip" shall be defined as the anticipated number of daily vehicle trips generated by a use as established by the Trip Generation Manual, published by the Institute of Transportation Engineers, 1991, as revised. If the developer disagrees with the estimated number of trips per day generated by a particular use as listed by the Trip Generation Manual published by the Institute of Transportation Engineers, the developer may request a waiver of these standards if information is submitted demonstrating that the Trip Generation Manual estimate is inaccurate. Table 1 lists the estimated number of average weekday trips for residential uses.

Table 1

Housing Type	Average Weekday Trip Generation Rates (trips per dwelling unit)
Single-family detached	10
Duplex, multiplex, townhouse, apartments, condominium, etc.	8
Mobile home	5.5
Retirement home	3.5

(2) Arterial streets. Arterial streets and highways serve primarily as major traffic ways for travel between and through towns.

(3) Residential private streets. Private streets serve as feeders to access, subcollector, and collector residential streets and may be the principal entrance streets of a residential subdivision. Private streets are permitted only when the average daily traffic is less than 50.

(4) Residential access streets. Access streets serve primarily for access to abutting residential properties and as feeders to other residential streets of equal or greater capacity. Access streets are intended to serve Subdivisions with average daily trips less than 200.

(5) Residential subcollector streets. Subcollector streets serve as collectors from access or private streets and as feeders to collector streets; they are intended to serve Subdivisions with average daily trips of 200 to 500.

(6) Residential collector street. Collector streets serve as collectors from subcollector streets and as feeders to arterial streets; they are intended to serve Subdivisions with average daily trips greater than 500.

(7) Commercial access streets. Access streets shall be defined as streets servicing commercial and industrial Subdivisions with average daily trips less than 2,000.

(8) Commercial collector streets. Collector streets shall be defined as streets servicing commercial and industrial Subdivisions with average daily trips greater than 2,000.

(9) Classification of street types will be made by the Planning Board within the considerations outlined above.

B. Layout.

(1) Proposed streets shall conform, as far as practical, to such comprehensive plan or policy statement as may have been adopted, in whole or in part, prior to the submission of a preliminary plan.

(2) All streets in the Subdivision shall be so designed that, in the opinion of the Planning Board, they will provide safe vehicular travel while discouraging movement of through traffic over local streets.

(3) The arrangement, character, extent, width, grade and location of all streets shall be considered in their relation to existing or planned streets, to topographical conditions, to public convenience and safety, and their appropriate relation to the proposed use of the land to be served by such streets. Grades of streets shall conform as closely as possible to the original topography.

(4) In the case of dead-end streets, where needed or desirable, the Planning Board may require the reservation of a minimum thirty-foot-wide utility easement and/or minimum twenty-foot-wide right-of-way for pedestrian and/or bicycle traffic. The Planning Board may require that additional right-of-way widths be provided if it determines that future extension of the street may occur. Such additional widths shall be consistent with the right-of-way width of the dead-end street.

(5) In front of areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial use is contemplated by the municipality, the street

right-of-way and/or pavement width shall be increased by such amount on each side as may be deemed necessary by the Planning Board to assure the free flow of through traffic without interference by parked or parking vehicles and to provide adequate and safe parking space for such commercial or business district. In no case shall the street have a right-of-way width and pavement width less than that specified in Table 3.

(6) Where a Subdivision borders on or contains a railroad right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the intervening land, as for park purposes in appropriate districts. Such distances shall also be determined with due regard for approach grades and future grade separations.

(7) Where a Subdivision borders an existing narrow road (below standards set herein) or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the Subdivision, the Applicant shall be required to show areas for widening or realigning such roads on the plan, marked "Reserved for Road Realignment (or Widening) Purposes." It shall be mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the Official Map. Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of Chapter **315**, Zoning.

(8) Where topographic and other site conditions allow, provisions shall be made for street connections to adjoining lots of similar existing or potential use, for the purposes of facilitating public safety services and/or to enable the public to travel between the two Subdivisions without the need to travel on a collector street. When a street connection is not feasible or desired, a "live end" street shall be shown on the plan which allows for a pedestrian or bike trail connection to the abutting parcel.

(9) The extension or continuation of an existing street right-of-way less than that specified herein may be permitted with the approval of the Planning Board.

(10) If deemed necessary by the Planning Board, the Subdivision may be required to provide at least two street connections with existing public streets or streets on an approved Subdivision plan for which a bond has been filed.

(11) Entrances, either proposed driveways or streets, onto existing state aid or state highways must be approved by the Maine Department of Transportation. Copies of such approval shall be submitted to the Planning Board at the time of final review.

(12) Utility plans must be approved by the responsible utilities. Copies of written approval shall be submitted to the Planning Board at the time of final review.

(13) If the Planning Board determines that future Subdivision will occur on land adjacent to or near the proposed Subdivision, whether it is owned by the applicant or not, then the Planning Board shall retain the right to require the developer to meet the requirements for collector street design and construction as specified herein at no cost to the Town.

C. Street naming and numbering.

The assignment of street names and unit numbering shall be in conformance with Chapter 246 of the Cumberland Code.

D. Street name signs.

(1) Street name signs shall be paid for by the Applicant but furnished and installed by the Municipality.

E. Traffic control devices. The developer shall furnish and place all appropriate signing and pavement markings required for the proper control of pedestrian, bicycle and vehicular traffic within the Subdivision. The types and locations of all such devices shall be determined by the Planning Board, Police Chief, and Municipal Engineer and shall be in conformance with the Manual on Uniform Traffic Control Devices, as currently revised.

F. Street lighting. The Applicant shall coordinate with the appropriate servicing utility, the Road Commissioner, and the Police Chief for furnishing, locating and placing of any lighting. Light poles and luminaires shall be a type approved by the Planning Board and said utility.

G. Walkways shall be provided along all roads within a proposed Subdivision.

H Private ways. A private way built to the "private residential" standards of this section shall not be accepted as a public way; provided, however, that privately owned roads in mobile home parks are exempt from the requirements set forth in this article but shall be considered as streets for building purposes. The plan shall contain a note which shall read: "The Town of Cumberland shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan."
If at a future date users of the road upgrade the private way to the standards set forth in this article, the users may petition the Town Council to consider the acceptance of the road as a public way.

§ 250-37 Design and construction standards.

A. All streets in the Subdivision shall be designed and constructed to meet the following standards for streets according to their classification, including whether urban or rural standards apply, as determined by the Planning Board:

(1) Open Drainage Systems

Open drainage design standards shall apply to all roads that are constructed using subsurface drainage and curbing. Open standards may be applied to rural roads at the Planning Board's discretion if conditions so warrant, such as topography, soil conditions and aesthetics. Open design standards shall be defined as paved streets with such

appurtenances as curbs, esplanades, a Walkway, and an enclosed storm drainage system with catch basins, manholes, and associated piping.

(2) Closed Drainage Systems.

Closed drainage design standards as tabulated herein shall be used for all street designs in the Town of Cumberland, except as specified above. Closed design standards shall be defined as paved streets with gravel shoulder, side ditches for the transportation of stormwater and a Walkway.

B. Dimensions of street construction. The dimensions for street construction shall be shown in Table 2.

C. Minimum sight distance for all streets and roadways, except local and private streets, shall be calculated using the standard of 10 feet of sight distance per every one mile of posted speed limit. This standard may be reasonably reduced by the Planning Board for local and private streets, where appropriate. Sight distance requirements at intersections shall follow the guidelines specified in "A Policy on Geometric Design of Highways and Streets, 1984" as published by the American Association of State Highway and Transportation Officials.

D. Dead-end streets.

(1) Presentation of special design, discussion and written permission by the Planning Board shall be required for those conditions that may require dead-end streets under the category of residential subcollector, residential collector, commercial access, or commercial collector.

(2) The terminus of any dead-end street must have a cul-de-sac, with standards as listed in Subsection **D (3)** below. Other types of turnaround may be approved by the Planning Board after receiving a recommendation by the Fire Chief and Public Services Director. Cul-de-sac island area shall be restricted to grass, or where the radius is large enough the Planning Board may permit other cover types.

(3) Standards as listed under Subsection **B** shall be applicable for dead-end streets. In addition, the following requirements shall be fulfilled:

(i) Maximum length of dead-end streets shall be limited to 2,000 feet unless the lots on the street are served by public water in which case the maximum length of the dead-end street shall be 2500 feet as measured from the center line of the feeder street to the center of the turnaround radius. The Planning Board may allow longer lengths of dead end streets due to the location of natural features on the site.

(ii) Radii at cul-de-sac with center island.

(iii) Property line: 70 feet.

- (iv) Outer edge of pavement: 60 feet.
- (v) Inner edge of pavement: 30 feet.
- (vi) Radii at cul-de-sac without center island.
- (vii) Property line: 60 feet.
- (viii) Outer edge of pavement: 50 feet.

(4) At the end of temporary dead-end streets, a temporary turnaround shall be provided with an outside roadway diameter of 90 feet or a backing space extending at least 30 feet from the edge of the street and 30 feet beyond the edge of the backing space. Pavement widths for backing spaces shall be identical to the type of street involved.

E. Driveways.

(1) Driveways shall be designed and constructed in such a way so as to preclude the possibility of damage to the underside of vehicles due to excessive changes in grade. Dimensions and break-over angles of vehicles, such as those published by the Automobile Manufacturing Association, should be used as a guide in the design and construction of all driveways within the Subdivision.

(2) Where streets are built to closed drainage design standards, driveways shall enter a street at the level of the edge of the traveled way. They shall in no way impede the flow of storm water along the gutter line. Where a driveway crosses a sidewalk or a reservation for the same, it shall do so with little or no change in the longitudinal grade at the back edge of the sidewalk. All driveways shall be paved to a point at least four feet beyond the right-of-way in order to prevent damage to sidewalk areas.

(3) Where streets are built to open drainage design standards, driveways shall enter a street at the level of the outer edge of the gravel shoulder. They shall be graded in such a manner so as to direct as much storm water as practical into roadside ditches. All driveways shall be paved to the street right-of-way. Such paving shall include the gravel shoulder of the roadway and, when completed, it shall be at the proposed grade of the gravel shoulder.

(4) All driveways shall be constructed with adequate drainage systems to prevent water flow from entering garages or basements.

(5) The portion of any driveway within the right-of-way shall be constructed to the same road construction materials standards as the adjoining road.

§ 250-38 Roadway construction standards and specifications.

All roadway construction standards and specifications shall conform to the Maine Department of Transportation Standard Specifications, 2003, as revised.

Article XII - Additional Standards

§ 250-39 Fire protection.

The Subdivision design must comply with Chapter **96**, Article **II**, Fire Protection, of this Code.

§ 250-40 Soil erosion.

- A. The proposed Subdivision shall prevent eroded soil from entering water bodies, freshwater wetlands, and adjacent properties.
- B. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and cleanup stages.
- C. Topsoil shall be considered part of the Subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

§ 250-41 Identification of freshwater wetlands.

Freshwater wetlands shall be identified in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published by the Federal Interagency Committee for Wetland Delineation, 1989, as amended.

§ 250-42 Traffic conditions.

- A. Intent. Provisions shall be made for vehicular access to the Subdivision and circulation within the Subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the Subdivision, avoid traffic congestion on any street, and provide safe and convenient circulation on public streets and within the Subdivision.
- B. Design standards.
 - (1) No Subdivision shall reduce a street giving access to the Subdivision and neighboring streets and intersections to a Level of Service of E or below.
 - (2) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, byways, and traffic controls within public streets.
 - (3) Accessways to nonresidential Subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A warrant analysis to determine the need for a left-turn storage lane shall be done.
 - (4) Where topographic and other site conditions allow, provisions shall be made for street connections to adjoining lots of similar existing or potential use, for the purposes of facilitating public safety services and/or to enable the public to travel between the two developments without the need to travel on a collector street.

Article XIII - Administration

§ 250-43 Financial and technical capacity.

- A. Financial capacity. The Applicant shall have adequate financial resources to construct the required improvements and meet the criteria of the statute and the standards of these regulations. In making the above determinations the Planning Board shall consider the proposed time frame for construction and the effects of inflation.
- B. Technical capacity. The Applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability the Board shall consider the Applicant's previous experience, the experience and training of the Applicant's consultants and contractors, and the existence of violations of previous approvals granted to the Applicant.

§ 250-44 Waivers and modifications.

- A. Hardships. Where the Planning Board finds that an unnecessary hardship may result from strict compliance with these standards, or where there are special circumstances of a particular plan which the Planning Board finds make a particular standard inapplicable, it may waive these standards, provided that such waiver will not have the effect of nullifying the intent and purpose of the Comprehensive Plan, this chapter or Chapter **315**, Zoning, and that such waiver will not endanger public safety. An unnecessary hardship shall be defined as a substantial burden on the Applicant which affects the Applicant's ability to achieve a reasonable economic return on said project. Special circumstances shall relate to the unique circumstances of the property, such as its proximity to similar public improvements or the adequacy of connecting facilities.
- B. Conditions. In granting waivers and modifications, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards so waived or modified.
- C. Appeals. Appeals from the decisions of the Planning Board shall be to the Superior Court.

§ 250-45 Conflicting provisions.

Where a provision of this chapter appears to be in conflict with any provision of any other ordinance, rule, regulation, restriction, or statute, that provision which imposes the greater restriction and/or provides for the lesser density of land use shall have precedence.

ITEM 19-029

To hold a Public Hearing to consider and act on repealing Chapter 315 (Zoning), Section 43 (Clustered, dispersed and traditional residential developments) of the Cumberland Code, as recommended by the Planning Board

Notice of Decision

Date: February 20, 2019

To: William Shane, Town Manager

From: Carla Nixon, Town Planner

Re: Public Hearing: Recommendation to the Town Council to strike Section 315-43 (Clustered, dispersed and traditional residential developments) from the Zoning Ordinance. (Note: some of these provisions have been relocated to the revised Subdivision Ordinance).

This is to advise you that on February 19, 2019 the Planning Board voted unanimously to recommend to the Town Council that Section 315-43 of the Cumberland Code titled Clustered, dispersed and traditional residential developments be repealed.

Cumberland Planning Board

Paul Auclair, Board Chair

~~§ 315-43. Clustered, dispersed and traditional residential development.~~

~~A.~~

~~General. In reviewing applications for major subdivision approval involving a residential development consisting of five or more single-family residences and/or duplex dwellings in the Rural Residential 1, Rural Residential 2, Rural Industrial, Medium-Density Residential, Low-Density Residential, and Island Residential Districts, the Planning Board shall be authorized to require that the residential development be designed and constructed as a clustered residential development, a traditional residential development, or a dispersed residential development based on the standards and criteria set forth in this section, except that developments with four or fewer lots may be designed as a clustered or dispersed development upon a positive finding by the Planning Board that the intent of this section listed below can be met. Such developments are subject to Chapter 250, Subdivision of Land, § 250-7. All such residential developments shall conform to the requirements of this chapter as well as Chapter 250, Subdivision of Land, and all other applicable ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan. The intention of this section is to assure that residential developments are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid septic contamination or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements, including streets, waterlines, sewer lines, electric lines, gas lines, telephone lines, and other utilities; protect and preserve existing farms and farmland;~~

~~protect areas in Resource Protection Districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.[1]~~

~~[1]~~

~~Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).~~

~~B.~~

~~**Clustered residential development.** Clustered residential developments are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space, so long as the following requirements are satisfied:~~

~~(1)~~

~~Minimum lot size. If the lots are connected to the public water and sewer systems, the minimum lot size for each single-family dwelling shall be 30,000 square feet and for each duplex dwelling shall be 40,000 square feet. If the lots are connected to the public water system but not the public sewer system, the minimum lot size for each single-family dwelling shall be 45,000 square feet and 60,000 square feet for each duplex. If the lots are not connected to the public water and sewer system, the minimum lot size for each single-family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.~~

~~(2)~~

~~Setback. Setback requirements for a clustered residential development shall be the same as those required in the zoning district in which the residential development is located.~~

~~(3)~~

~~Frontage. In Rural Residential Districts 1 and 2, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less than 75 feet of lot frontage on a street.~~

~~(4)~~

~~Buffering. A buffer area at least 75 feet in depth shall be established between the clustered residential development and abutting tracts or parcels of land and between the clustered residential development and existing streets and roads adjoining or abutting the clustered residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.~~

~~(5)~~

~~Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:~~

~~(a)~~

~~Active farmland or land adjoining active farmland.~~

~~(b)~~

~~An active trail system or which provides a link to an existing trail system.~~

~~(c)~~

~~Land which provides a buffer around a sensitive wildlife habitat or other natural area.~~

~~(d)~~

~~Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook.~~

~~(e)~~

~~Land which is in resource protection.~~

~~(f)~~

~~Land which is suitable for active recreation.~~

~~(g)~~

~~Land which abuts or adjoins an existing public open space.~~

~~(6)~~

~~Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such cases the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:~~

~~(a)~~

~~Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.~~

~~(b)~~

~~The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~

~~(c)~~

~~The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~

~~(d)~~

~~All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.~~

~~(7)~~

~~Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

~~(8)~~

~~Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes.~~

~~Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

~~**C.**~~

~~**Traditional residential development.** Traditional residential developments are residential developments in which the dwelling units are located on individual building lots which conform to the minimum lot size for the zoning district in which they are located. A traditional residential development may but is not required to include land set aside as open space, as provided in Chapter 250, Subdivision of Land, § 250-22.~~

~~**D.**~~

~~Dispersed residential development. Dispersed residential developments are residential developments in which the dwelling units may be located on individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space, so long as the following requirements are satisfied:~~

~~**(1)**~~

~~Minimum lot size. The minimum lot size for each single-family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.~~

~~**(2)**~~

~~Setback. Setback requirements for a dispersed residential development shall be the same as those required in the zoning district in which the residential development is located.~~

~~**(3)**~~

~~Frontage. In Rural Residential Districts 1 and 2, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less than 75 feet of lot frontage on a street.~~

~~**(4)**~~

~~Buffering. A buffer area shall be established between the residential development and abutting tracts or parcels of land and between the residential development and existing streets and roads adjoining or abutting the residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.~~

~~**(5)**~~

~~Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:~~

~~**(a)**~~

~~Active farmland or land adjoining active farmland.~~

~~**(b)**~~

~~An active trail system or which provides a link to an existing trail system.~~

~~**(c)**~~

~~Land which preserves and provides a buffer around a sensitive wildlife habitat or other natural area.~~

~~**(d)**~~

~~Land which provides physical or visual access to a water body, including the ocean, lake, pond, river, stream, or brook.~~

~~(e)~~

~~Land which is in resource protection.~~

~~(f)~~

~~Land which is suitable for active recreation.~~

~~(g)~~

~~Land which abuts or adjoins an existing public open space.~~

~~(6)~~

~~Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such case the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:~~

~~(a)~~

~~Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.~~

~~(b)~~

~~The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~

~~(c)~~

~~The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners, after which time the association shall be responsible for such maintenance, and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.~~

~~(d)~~

~~All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.~~

~~(7)~~

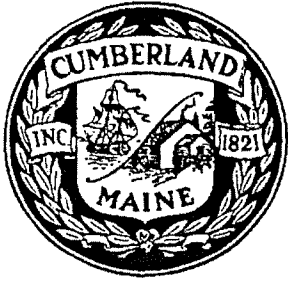
~~Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

~~(8)~~

~~Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.~~

ITEM 19-031

To hold a Public Hearing to consider and act on a Credit Enhancement
Agreement with Belted Cow Company



M E M O R A N D U M

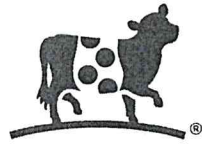
TOWN OF CUMBERLAND, MAINE
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021
TEL: 207-829-2205 FAX: 829-2224

To: Town Council
From: William R. Shane, Town Manager
Date: February 11, 2019
Re: Credit Enhancement Agreement – Jim Taylor- Belted Cow - Lot 5 Heritage Village

Jim Taylor will be meeting with the TIF committee to discuss a Credit Enhancement agreement for his property located on Lot 5 of Heritage Village on Route One.

The Committee will be hearing details of the project, expected opening and number of expected jobs that will work at the new facility. The value of the facility is over \$2 million.

Mr. Taylor has requested a Credit Enhancement Agreement (CEA) for the maximum of 50% of the property taxes. The TIF Committee will present their findings at the Council Meeting.



BELTED COW
COMPANY

January 27, 2019

William R. Shane P.E.
Cumberland Town Manager
Cumberland, ME 04021

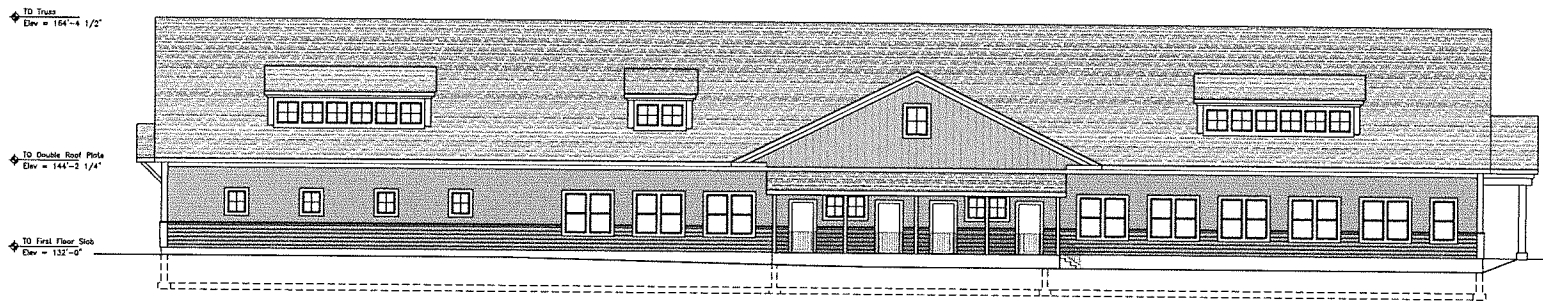
Dear Mr. Shane,

I am writing to request a Credit Enhancement Agreement between the Town of Cumberland and Belted Cow Realty, LLC for a commercial property on Rte One designated Lot 5 Cumberland Foreside Village. As I discussed with you last fall, I am relocating my company the Belted Cow Company to this property. I anticipate starting construction in April 2019 with completion by October 2019. Total building size is 14,000 sq ft. It will be used as office space.

Estimated building value (based on cost of construction...not appraised value) is \$2.2M. Based on a mil rate of \$20.20, estimated annual taxes on the building are approximately \$44,440. I am requesting the maximum allowable credit enhancement which I understand to be 50% of annual taxes capped at 20 years or \$500,000 whichever comes first.

Thank you for your consideration of my request. I look forward to hearing from you.

Jim Taylor
President & Founder



1 South Exterior Elevation [Route 1 View]

Scale: 1/8" = 1'-0"

Materials Legend:

Base Siding: Boral Channel Bevel siding, painted to match Cobblestone (2 shades darker)

Siding: HardiePlank Lap Siding, prefinished Cobble Stone color, fiber cement by James Hardie

Gable Siding: HardiePanel Vertical Siding, prefinished Cobble Stone color, fiber cement by James Hardie

Trim: Aztek PVC white trim or Boral trim, painted white

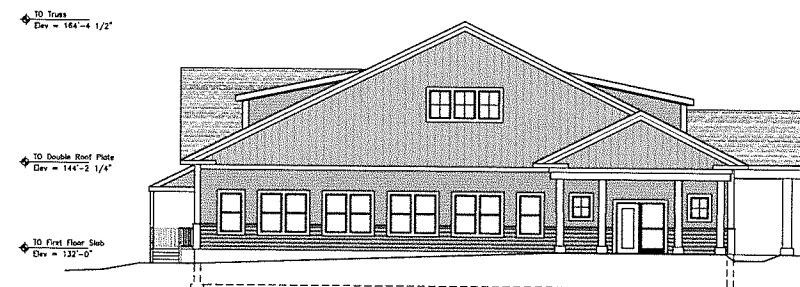
Roof: Grand Manor Luxury shingles by Certain Teed Saint-Gabain, color Weathered Wood

Windows: Pre-finished black aluminum or fiberglass clad windows by Marvin.



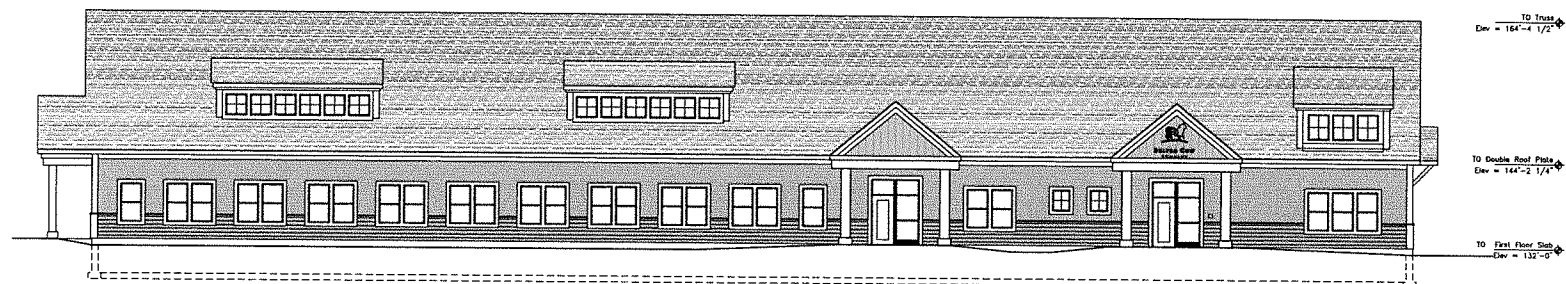
3 West Exterior Elevation

Scale: 1/8" = 1'-0"



2 East Exterior Elevation

Scale: 1/8" = 1'-0"



4 North Exterior Elevation

Scale: 1/8" = 1'-0"

David Matero Architecture

100 First Street
Suite 40
Bath, Maine 04530
207.389.4278
info@damateriality.com

Consultants

Revisions

Belted Cow Company

Route One
Cumberland, Maine

Job Number: 18.027

Date: 01.07.19

Scale: 1/8" = 1'-0"

Drawing Title:

Proposed
Elevations

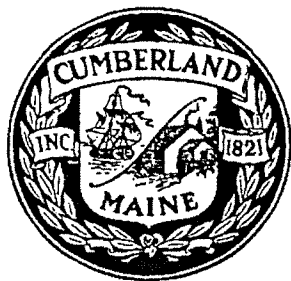
A2.1

Not For
Construction

Copyright 2019 David Matero
Architecture, LLC

ITEM 19-032

To hold a Public Hearing to consider and act on a Credit Enhancement Agreement for Dr. Sean McCloy of Integrative Health Center of Maine



M E M O R A N D U M

TOWN OF CUMBERLAND, MAINE
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021
TEL: 207-829-2205 FAX: 829-2224

To: Town Council
From: William R. Shane, Town Manager
Date: February 11, 2019
Re: Credit Enhancement Agreement – Dr. Sean McCloy - Lot 2 Heritage Village

Dr. Sean McCloy will be meeting with the TIF committee to discuss a Credit Enhancement agreement for his property located on Lot 2 of Heritage Village on Route One.

The Committee will be hearing details of the project, expected opening and number of expected jobs that will work at the new facility. The value of the facility is over \$2 million.

Dr. McCloy has requested a Credit Enhancement Agreement (CEA) for the maximum of 50% of the property taxes. The TIF Committee will present their findings at the Council Meeting.

Integrative Health Center of Maine

Offering the best of conventional and natural healthcare

Sean McCloy, MD, MPH, MA
drmcclay@maineintegrative.com

*Holistic Family Medicine
Medical Director*



William R. Shane, P.E.
Town Manager
290 Tuttle Road
Cumberland, ME 04021

February 6, 2014

Dear Mr. Shane:

Hello -- I hope this letter finds you well. I am considering construction of a new medical office at Skyview Drive, Route One. The project will likely be presented for approval at the Town Planning Board in February 2014. In the meantime, Carla Nixon suggested I contact your office regarding property tax relief for the project.

This project should help Integrative Health Center of Maine (IHCM) more effectively serve the Cumberland community. The building will be approximately 4400 sq ft on a 2.6 acre lot. We will maintain as much existing vegetation as possible to preserve a "beauty strip" along Route One and the adjacent lots. Other landscaping will be low maintenance, non-invasive or native species. The exterior architecture will resemble traditional lines of a Maine farm house, with clapboard and cedar shingle siding and divided light windows. One of the main features of the interior will be a multipurpose room instead of a typical waiting room. The adjacent kitchen can be opened up to create a teaching kitchen. This space will be available for rental to the community, and could be used for yoga or exercise classes, movie screenings, lectures and discussions, cooking classes, or other public functions. This multipurpose space opens to a patio in the rear which will overlook a wildflower meadow.

IHCM consists of a diverse group of independent medical practitioners who share a common vision of holistic health. We offer a wide variety of healing services, and strive to combine (or integrate) the most effective treatments, be they holistic/natural or conventional/pharmaceutical. There will be around twelve to fourteen practitioners and three to four staff with the new building.

The financial aspect of this project is challenging. My intention is to build an ecologically-sustainable, environmentally-friendly, energy efficient building that is in harmony with the landscape and in compliance with Route One development guidelines. Construction estimates are already far beyond what I had planned, and I am still unsure if this move makes economic sense for my business.

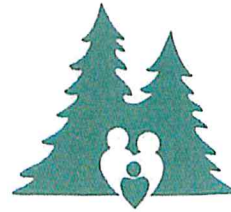
I understand the Town is trying to attract businesses like mine that will serve the greater community, support desired growth along the Route One develop corridor, and meet the vision of the Comprehensive Plan. **I request a 50% property tax relief for a period of 10 years.** This will allow me to proceed with construction in Cumberland and

Integrative Health Center of Maine

Offering the best of conventional and natural healthcare

Sean McCloy, MD, MPH, MA
drmcclroy@maineintegrative.com

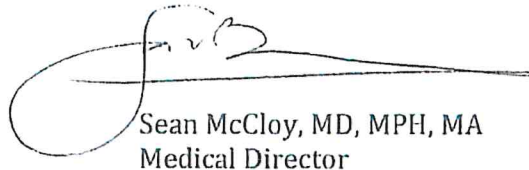
*Holistic Family Medicine
Medical Director*



help establish IHCM as a comprehensive, integrative medical center that will serve the surrounding community.

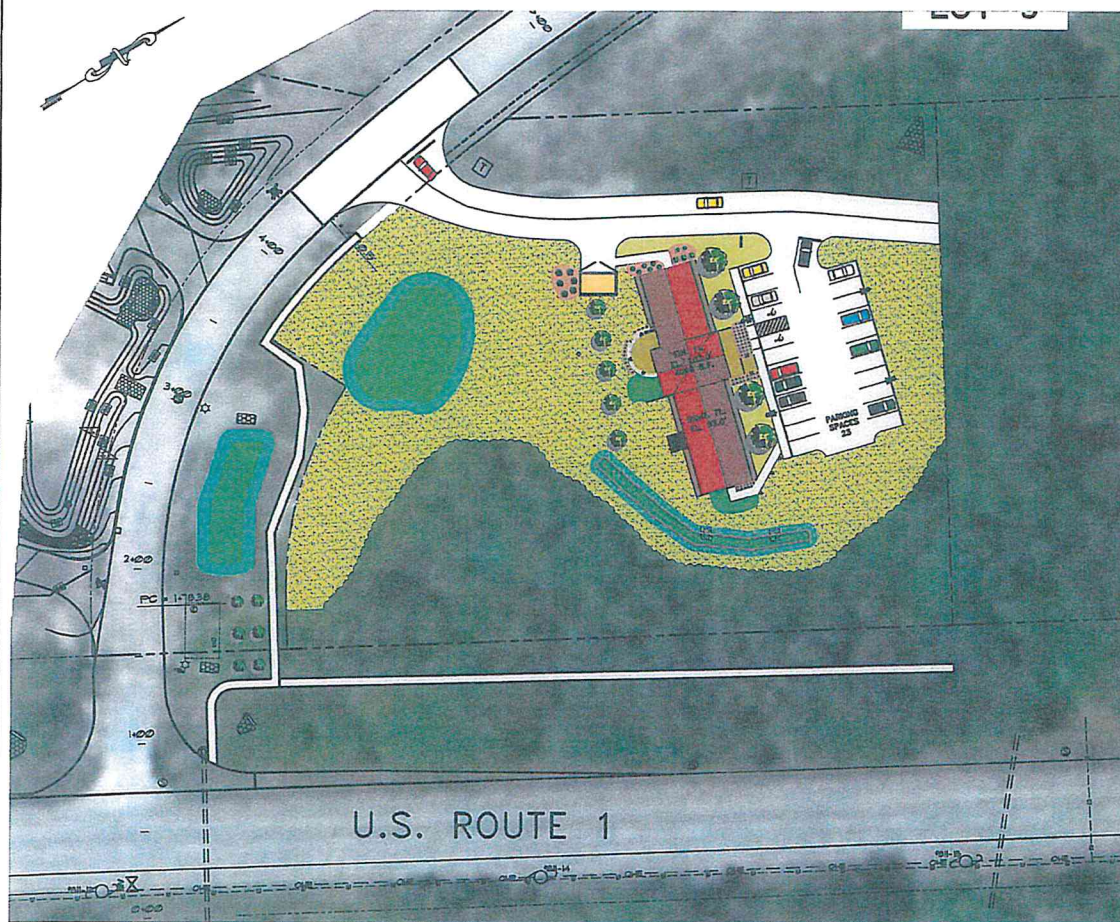
I am immensely grateful that you will consider this request for property tax relief. I am happy to answer any questions about the project. I look forward to hearing from you soon -- thank you very much.

Be Well,

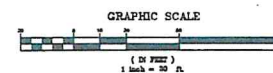


Sean McCloy, MD, MPH, MA
Medical Director

cc: Carla Nixon



SITE PLAN - LOT 2
SCALE: 1"=30'



SKYVIEW DRIVE ENTRANCE



LOOKING WEST UP SKYVIEW DRIVE



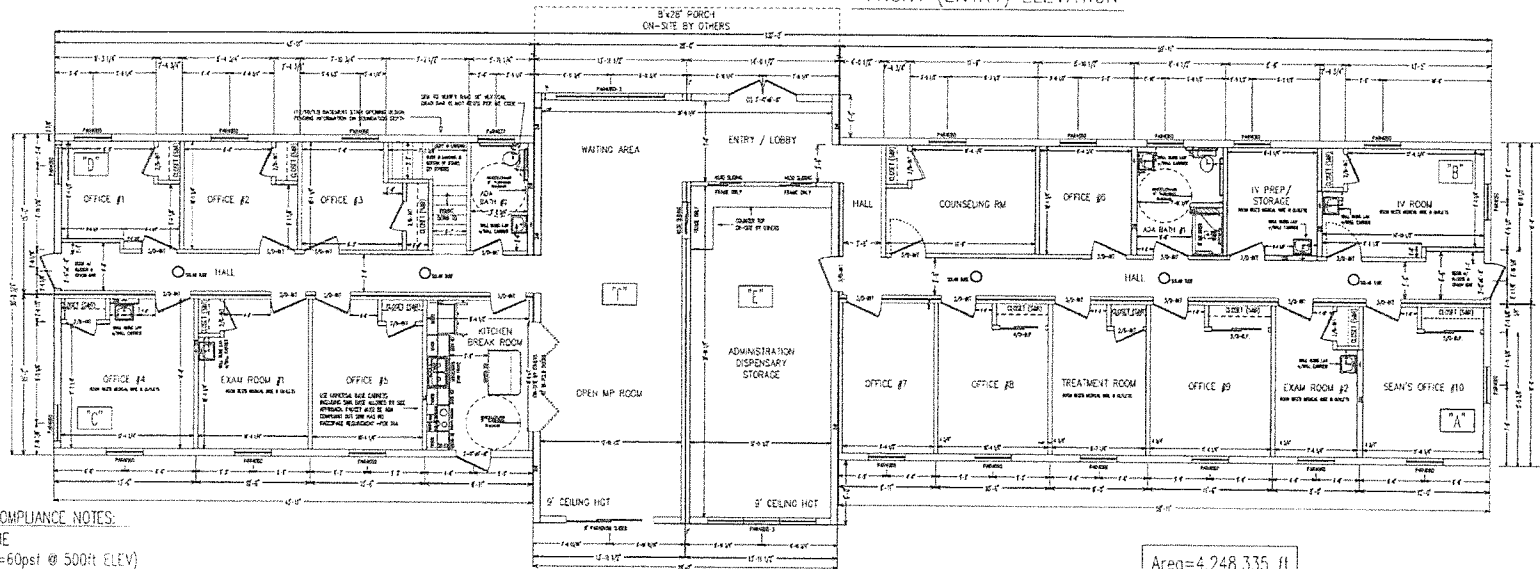
LOOKING NORTH ON US ROUTE 1

NOT FOR CONSTRUCTION

REV.	DATE	DESCRIPTION
		HALLMARK HOMES TOPSHAM, MAINE
		CUMBERLAND FORESIDE VILLAGE, LOT 2 ROUTE ONE, CUMBERLAND MAINE
		SITE PLAN
SCALE:	AS SHOWN	DRW BY: MJB
DATE:	NOVEMBER 20, 2013	DESIG BY: TSC
PROJECT:	13150	CHK BY:

C1.1

FRONT (ENTRY) ELEVATION



COMMERCIAL CODE COMPLIANCE NOTES:

- Location Cumberland, ME
- Ground Snow Load ($P_g=60\text{psf}$ @ 500ft ELEV)
- Wind Speed = 100 MPH
- Business Use (Group B) - doctor's office
- Occupancy Load = 43 ; (100 gross) for 4,250 sqft @ 1ST floor
- Use of the basement area for utility 7 storage will require a rated separation and independent egress (by others)
- Lighting must comply with the Energy Code & have dual switching or occupancy sensors
- Emergency Lighting & Exit Signs Are Required & provided by Keiser
- Exit doors require ADA clearances; plans are modified to meet standards
- Panic Hardware & out swing Exit doors are only required for Occupant loads of 50 or more
- Contract calls for Panic Hardware & Closers so all side hinged doors must swing out
- Local Fire Ordinance requires all buildings of 4,000 sqft or greater to be sprinkled (NFPA-13)
- All Ramps and ADA compliant access is provided where required by others
- All entry/exit doors to have public access sills (Except 8068 SGD ~ not for public use)
- Owner responsible to prove code compliant water coolers as required
- Energy Upgrades Per Contract ~ Exterior walls are 2x8 Dense-Pak Cellulose Approximately (R-27)
- Special high Heel Roof Truss to allow for (R-60) Ceiling ~ Over height shipping required
- Patient Exam/Treatment Rooms Require Special Outlet Grounding & must use MC cable ILO NM, Article 517 ~ Branch circuits serving patient care areas must be provided with an effective ground-fault current path by installing circuits in a metal raceway or cable with a metallic armor that qualifies as an equipment grounding conductor in accordance with 250.118.

SPECIAL NOTES FOR PLAN SET

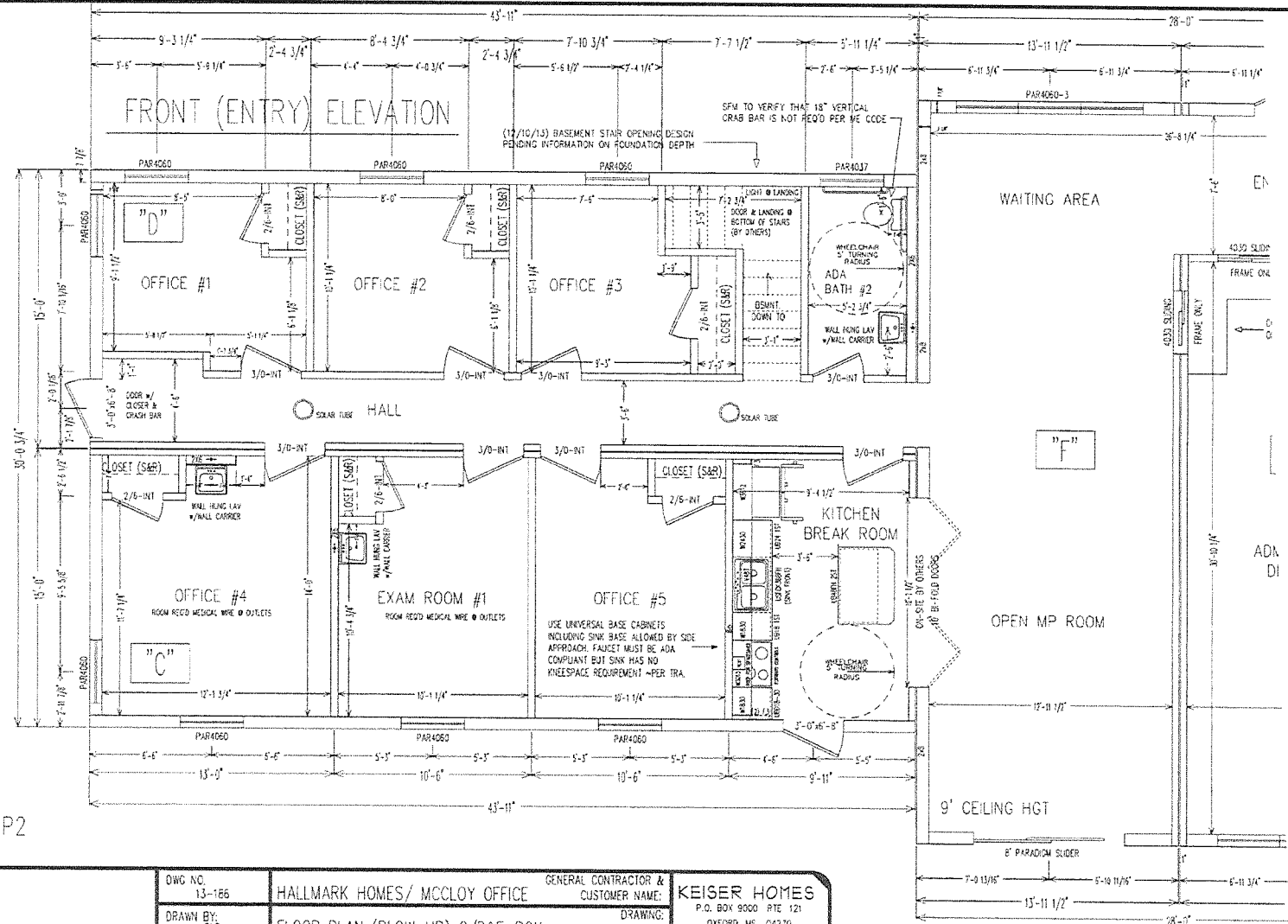
- THIS BUILDING DOES REQUIRE EXIT SIGNS & EMERGENCY LIGHTING
- ANY BASEMENT STAIR SHALL BE DESIGNED (BY OTHERS) TO COMPLY WITH STATE & LOCAL CODES ~ REGIONS 7/11 GEOMETRY & LANDINGS @ TOP & BOTTOM BASEMENT UTILITY AREA MAY NEED TO BE SEPARATED FROM 1ST FLOOR BY RATED ASSEMBLIES & RATED DOOR (BY OTHERS)
- GO TO VERIFY IF A 200 AMP ELECTRICAL SERVICE IS ADEQUATE PER STATE & LOCAL CODE REQUIREMENTS
- A WATER HEATER SHALL BE SUPPLIED & INSTALLED IN BASEMENT BY OTHERS PER STATE & LOCAL CODE REQUIREMENTS
- OWNER SHALL SUPPLY & INSTALL WATER COOLERS TO MEET STATE PLUMBING REQUIREMENTS FOR DRINKING FOUNTAINS
- A 4" SCHEDULE 40/PVC RADON VENT PIPE WILL ONLY BE INSTALLED IN THE MODULAR BOXES UPON REQUEST. IF INSTALLED THE PIPE IS STUBBED IN WALLS FROM BSMT TO ATTIC & CAPPED FOR FUTURE USE
- DIV DRAINS SHALL FIT IN ACCORDANCE W/ 708.0 OF THE MAINE PLUMBING/ 2009-UPC
- MANUFACTURERS DATA PLATE & TRA INSPECTION INSIGNS TO BE APPLIED IN KITCHEN CABINET

APPLICABLE (MUBEC) COMMERCIAL CODES:

- 2009 (IBC) International Building Code
- 2009 (IECC) International Energy Conservation Code
- 2007 ASHRAE 62.1 Ventilation for Acceptable Indoor Air Quality
- 2007 ASHRAE 90.1 Energy Standard for Buildings except Low-Rise Residential Buildings
- 2006 ASTM E1465-06 Radon Standard for new residential construction - (Maine Model Standard) ~ N/A TO COMMERCIAL BUILDINGS
- ICC International Fire Code (2003) (as of Aug. 3, 2007)
- The National Electrical Code-NFPA 70-Latest Edition (2011-NEC)
- The Maine State Plumbing Code 10-144 CMR 238 (2009-UPC BASED)

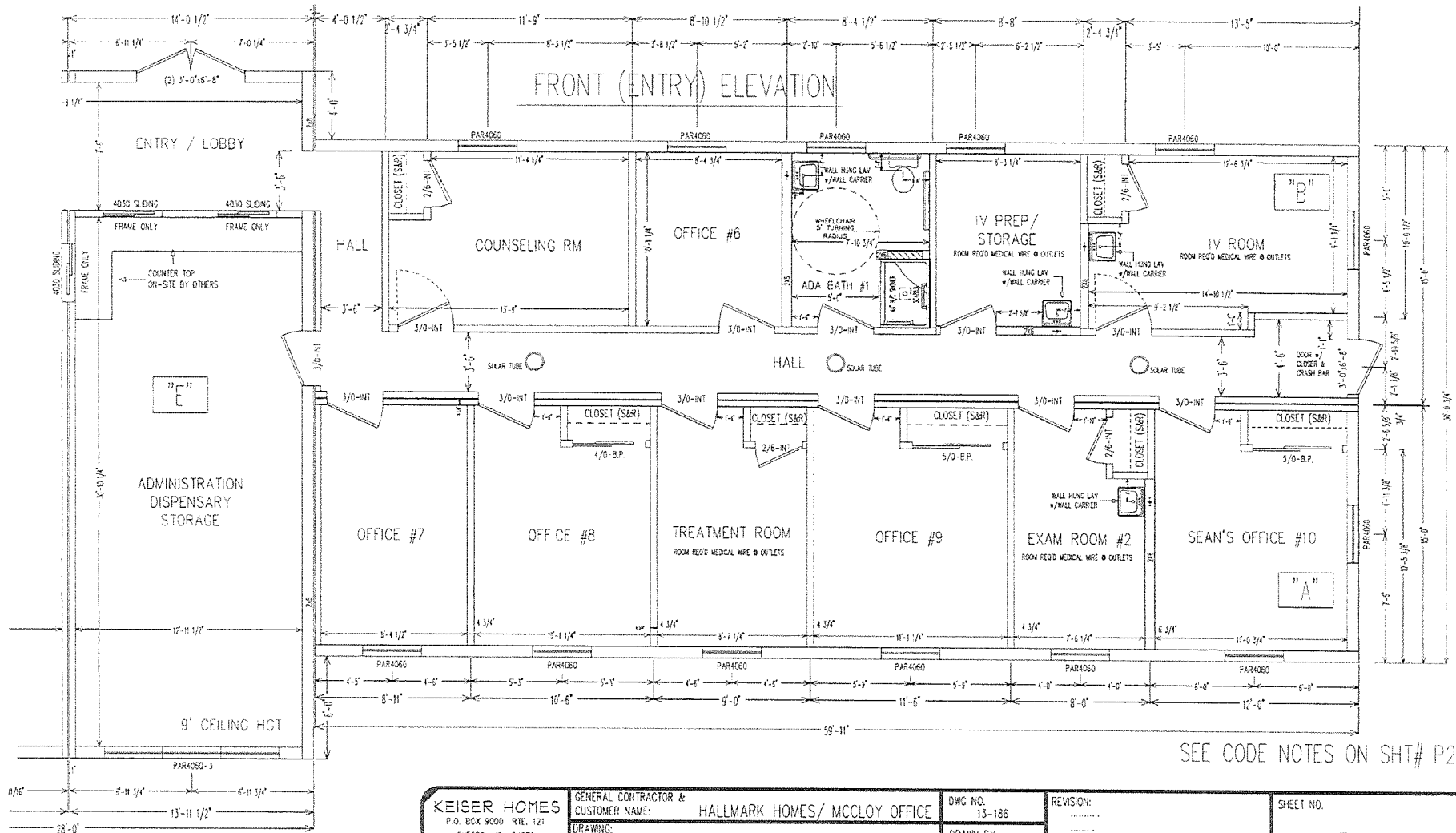
- Floor Loading = 50psf @ Office/Exam/ Bath/ Break Room/ Counseling & IV
- Floor Loading = 80psf @ Corridors
- Floor Loading = 100psf @ Entry/Waiting/ Admin-Storage

KEISER HOMES P.O. BOX 9300 RTE. 121 OXFORD, ME 04270 TEL: (207) 539-8883 FAX: (207) 539-4446	GENERAL CONTRACTOR & CUSTOMER NAME: HALLMARK HOMES/ MCCLOY OFFICE		DWG NO. 13-186	REVISION: 	SHEET NO. P2
	DRAWING: FLOOR PLAN		DRAWN BY: S.P.		
	GO TO VIEW: SPEC	SCALE: 3/32"=1'-0" ON A 11" X 17" SHEET	DATE: 12-5-13		
	DRAWING FILE & PATH: R:\DRAWINGS\JOBS\SPEC\2013\13-186-OFFICE				



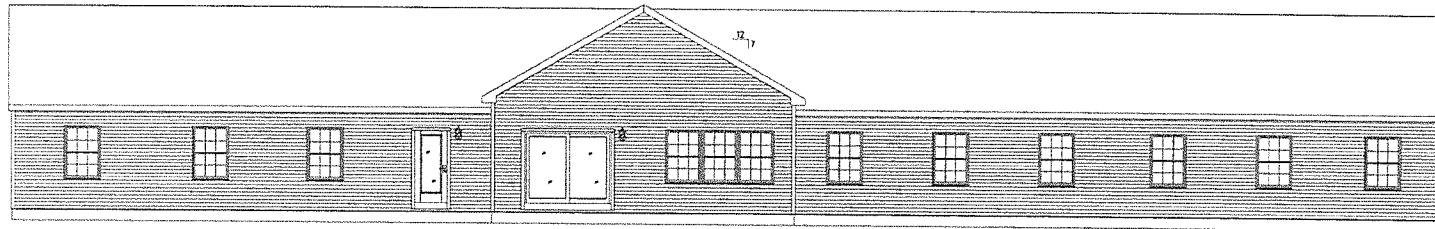
SEE CODE NOTES ON SHT# P2

SHEET NO.	REVISION:	DWG NO. 13-186	GENERAL CONTRACTOR & CUSTOMER NAME: HALLMARK HOMES/ MCCLOY OFFICE	KEISER HOMES
P2.1		DRAWN BY: SLP	DRAWING: FLOOR PLAN (BLOW-UP) C/D&F-BOX	P.O. BOX 9000 RTE 121 OXFORD, ME 04270
		DATE: 12-5-13	SCALE: 3/16"=1'-0" ON A 11" X 17" SHEET	TELE: (207) 539-8883 FAX: (207) 539-4445
LAST PRINTED: 12/11/2013 AT 7:01 PM		DRAWING REV. DATE & TIME CREATED: R: \DRAWINGS\JOBS\SPEC\2013\13-186-OFFICE		DRAWING FILE & PATH:



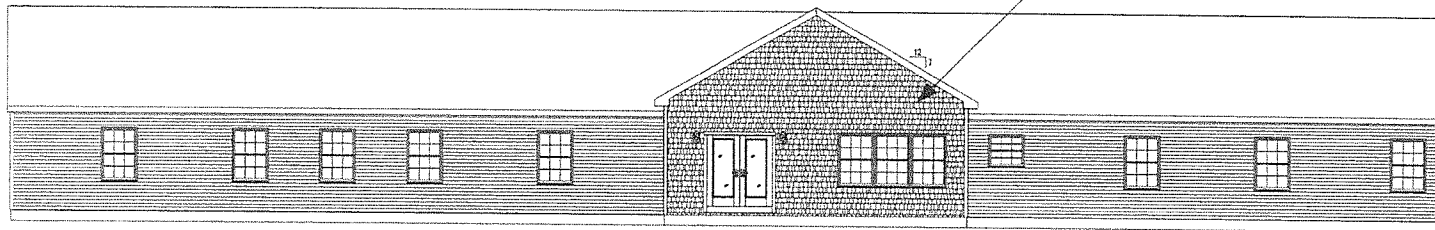
KEISER HOMES P.O. BOX 9000 RTE. 121 OXFORD, NC 24270 TELE: (207) 539-8883 FAX: (207) 539-4446	GENERAL CONTRACTOR & CUSTOMER NAME: HALLMARK HOMES/ MCCLOY OFFICE		DWG NO. 13-186	REVISION:	SHEET NO. P2.2
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	DRAWING FILE & PATH: R:_DRAWINGS\JOBS\SPEC\2013\13-186-OFFICE				

SALES & BUILDER TO VERIFY LOCATIONS OF CEDAR SHAKE SIDING

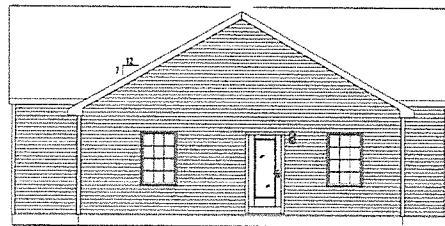


REAR ELEVATION

8'x28' COVERED PATIO TO BE SUPPLIED & INSTALLED ON-SITE BY OTHERS
SALES & BUILDER TO VERIFY LOCATIONS OF CEDAR SHAKE SIDING

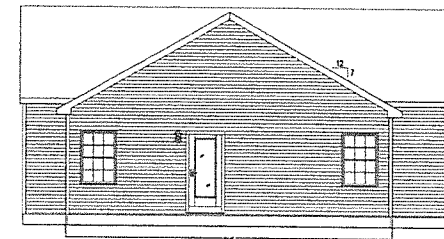


FRONT (ENTRY) ELEVATION



LEFT END ELEVATION

8'x28' COVERED PATIO OR PORCH TO BE
SUPPLIED & INSTALLED ON-SITE BY OTHERS
OVER REAR ELEVATION ENTRY AREA.
ALL ADA COMPLIANT RAMPS & RAILS TO BE
SUPPLIED & INSTALLED ON-SITE BY OTHERS
TO MEET STATE & LOCAL CODE
REQUIREMENTS.



RIGHT END ELEVATION

ELEVATIONS INTENDED FOR
CONCEPTUAL PURPOSES ONLY.
NOT TO BE USED FOR
CONSTRUCTION PURPOSES

KEISER HOMES

P.O. BOX 9300 Rte. 121
OXFORD, ME 04270
TELE: (207) 539-8883
FAX: (207) 539-4446

GENERAL CONTRACTOR &
CUSTOMER NAME:

HALLMARK HOMES/ MCCLOY OFFICE

DRAWING:

ELEVATIONS

GO TO VIEW:
SPEC

SCALE:

3/32"=1'-0" ON A 11" X 17" SHEET

DWG NO.
13-186

DRAWN BY:
SLP

DATE:
12-5-13

REVISION:

SHEET NO.

P3

DRAWING FILE
& PATH:

R: _DRAWINGS\JOBS\SPEC\2013\13-186-OFFICE

DRAWING REV. DATE
& TIME CREATED:

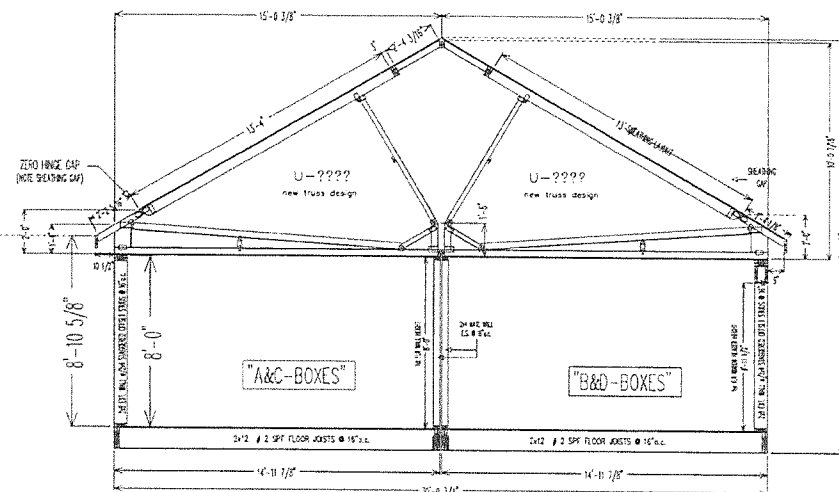
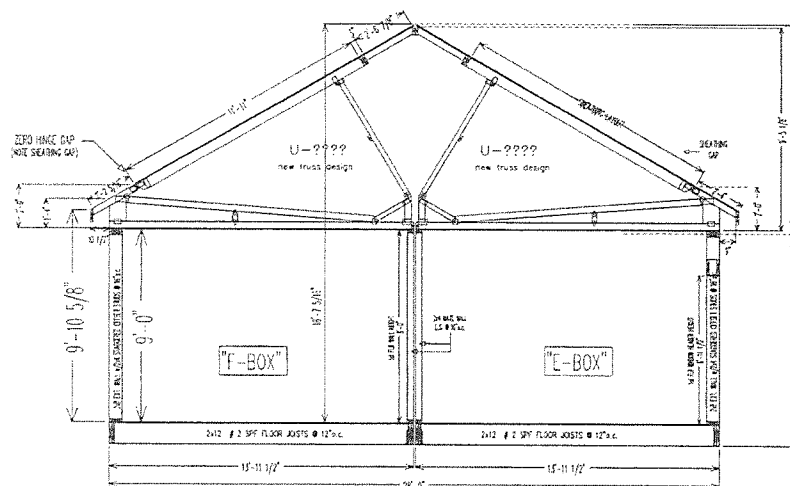
LAST PRINTED: 12/11/2013 AT 8:28 PM

CUSTOM TRUSS DESIGNS (FOR ENERGY HEEL)

SHIPMENT NEEDS TO PERMIT OVER
HEIGHT AS 14'-6" DUE TO 9FT WALLS

(R-60) ROOF INSULATION = 18" BLOWN-IN DEPTH
REQUIRE'S (16") HIGH HEEL TRUSSES FOR FULL
DEPTH AT EAVES

SHIPMENT OKAY TO PERMIT AS 13'-6"
= STANDARD HEIGHT.



1" POLYD INSULATION BE APPLIED OVER SHEATHING w/ TAPED JOINTS & PENETRATIONS PER MANF. INSTALLATION INSTRUCTIONS. MOUSE WRAP IS OPTIONAL

TYPICAL STRUCTURAL SHEATHING MATERIAL APPLIED W/ APA CAPS

- * Floor Loading = 50psf @ Office/Exam/ Bath/
Break Room/ Counseling & IV
- * Floor Loading = 80psf @ Corridors
- * Floor Loading = 100psf @ Entry/Waiting/ Admin-Storage

- * 14-BOX = 2x12 SPF#2 @ 12" O/C T/OUT
* 15-BOX = 2x12 SPF#2 @ 16" O/C T/OUT
(NO EXCEPTIONS)

2x8 EXT. WALLS w/2x4 STAGGERED OFFSET STUDS @ 16" o.c.
(R-27) DENSE PACK CELLULOSE = (R-6.5) OF 1" POLYISO FOAM BD. @ EXT OVER SHEATHING
TOTAL WALL R-value = (R-33)
SEE DETAIL (KH-1079) FOR WALL FRAME
** NO NEED TO DO SPECIAL DOOR RETURNS IF EXTERIOR DOORS ARE OUT SWING

** NO NEED TO DO SPECIAL DOOR RETURNS IF EXTERIOR DOORS ARE OUT SWING

KEISER HOMES P.O. BOX 9000 Rte. 121 OXFORD, ME 04270 TEL: (207) 539-8883 FAX: (207) 539-4446	GENERAL CONTRACTOR & CUSTOMER NAME: HALLMARK HOMES/ MCCLOY OFFICE		DWG NO. 13-186	REVISION: 	SHEET NO.
	DRAWING: ROUGH SECTIONS		DRAWN BY: APG		
GO TO VIEW: SPEC		SCALE: 3/16"=1'-0" ON A 11" X 17" SHEET	DATE: 12/10/13	P13.0	
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ITEM 19-033

To authorize the Town Manager to execute an amended lease agreement
with Rachel's On the Green

LEASE AGREEMENT

This Lease, dated on this _____ day of _____, ~~February~~, 201~~69~~¹⁹ for reference purposes, is made between the TOWN OF CUMBERLAND, with offices in Cumberland, County of Cumberland and State of Maine ("Landlord") and Rachel's on the Green, a Maine Corporation with a place of business at Cumberland, County of Cumberland and State of Maine ("Tenant"), who agree as follows:

ARTICLE I BASIC LEASE PROVISIONS

The following basic Lease provisions supplement and summarize provisions elsewhere in this Lease. They are presented to facilitate convenient reference by the parties to this Lease, subject to further definition and discussion in the referenced sections and elsewhere in this Lease. Although the basic Lease provisions are part of this Lease, if there is any conflict between the basic Lease provisions and provisions contained in the balance of this Lease, the provisions contained elsewhere shall control.

Use:	Restaurant & Bar	(Sec. 5.1)
Tenant's Trade Name:	Rachel's on the Green	(Sec. 5.1)
Premises Address:	60 Val Halla Road	(Sec. 2.1)
Commencement		
Date:	April 1, 2016 <u>March 1, 2019</u>	(Sec. 3.1)
Primary Term:	<u>109</u> months	(Sec. 3.2)
Option Period:	Two <u>Four</u> automatic renewals	(Sec. 3.3)
Rent:	\$ <u>1,125</u> /month April - November <u>January - December</u>	(Sec. 4.2)
	Utilities only December - March	
Due Date:	15 th of each month	(Sec. 4.2)
Late Charge:	\$50	(Sec. 13.4)
Damage Deposit:	\$2,000 retained from prior lease	(Sec. 4.3)
Exhibits:		
A. Tenant's Certificates of Insurance (Liability & Worker's Compensation)		
B. Landlord's Equipment and Property Inventory		
C. Tenant's Equipment and Property Inventory		

ARTICLE 2 PREMISES

2.1 **Leased Property:** Landlord leases to Tenant and Tenant leases from Landlord the following property (the Premises):

(a) Premises: The snack bar area at Val Halla Golf & Recreation Center, including kitchen, bar and dining area at Viking Grill, common use of adjoining deck and restrooms in restaurant area and dedicated space to be used as an office or for storage. Landlord does not guarantee Tenant rights to catering of banquet facility events or use of banquet facility kitchen. Tenant may negotiate with Maine State Golf Association as Lessee of said banquet facility to provide catering services or for use of banquet facility kitchen.

(b) Parking Spaces. Tenant will not have exclusive use of any parking spaces but the Landlord will permit restaurant guests and employees to park in the Center parking lot at the rear entrance of the building. Tenant or its employees may only use rear entrances for loading/unloading or receiving shipments on a time-restricted basis.

(c) Contents. Landlord also leases to Tenant all furniture, fixtures, equipment and furnishings located at the premises. A list of Landlord's personal property included in this Lease is attached hereto as Exhibit B, but Tenant agrees that whatever the contents of said list, all said furniture, fixtures, equipment and furnishings as are in place on March 1, 2016 are included herewith and Tenant shall be responsible for the repair or replacement of any of these items and all additional items required to operate a restaurant.

(d) Bar. Tenant shall operate the bar adjoining the restaurant at such times as Tenant reasonably determines to open the same. Hours of operation must be consistent with industry standards and maintained throughout the season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect.

2.2 Tenant's Acceptance of Premises. Tenant shall accept the Premises in its "As Is" condition on the Commencement Date, but shall be entitled to early occupancy, without cost, to clean and renovate the same with Landlord's consent.

2.3 Recreation Center. The Premises are part of a larger parcel of real property (the "Center") owned by Landlord commonly known as Val Halla Golf & Recreation Center in the Town of Cumberland, County of Cumberland, State of Maine.

2.4 Landlord's Title and Authority. Landlord has good, legal, and marketable fee title to the Premises and the full right and lawful authority to make this Lease.

2.5 Quiet Enjoyment. So long as no Event of Default (as defined below) has occurred, Tenant shall have full, quiet, and peaceful possession of the Premises without interference or interruption by Landlord. This quiet enjoyment provision will not be effective once Landlord has given notice of termination subject to Article 3, paragraph 3.4.

2.6 Access. Golfers shall have the right to use said premises in common with Tenant's customers. Also, Landlord shall have the right through its golf professional to use a portion of said restaurant space for registration during golf outing events and further to enter upon the Premises for the purpose of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances, or regulations, protecting the Premises, or any other lawful purpose. Tenant shall be open for business, in at least a limited capacity, during all organized golf outing events, including hours of registration. Landlord reserves the right to operate the Premises during such times if Tenant is unable or unwilling to do so. Landlord shall exercise such rights reasonably, upon reasonable advance notice (except in the case of emergencies) and in such manner as not to interfere unreasonably with the business of Tenant.

ARTICLE 3

TERM

3.1 **Commencement Date.** This Lease shall be effective and Tenant's obligation to pay rent shall commence on ~~April 1, 2016~~ March 1, 2019 (the "Commencement Date").

3.2 **Initial Term.** The initial term (the "Initial Term") shall begin on the Commencement Date and end on ~~December 31, 2016~~ December 31, 2019.

3.3 **Automatic Renewal.** The initial term shall be automatically renewed on January 1, 2020 ~~17~~ and each year thereafter on January 1, 2018 to expire no later than December 31, 2023 ~~18~~ (the "Term"). Landlord and Tenant reserve the right to cancel automatic renewal with notice. Notice of intent to cancel automatic renewal shall be provided 120 days prior to ~~December 1, 2016 and December 1, 2017~~ December 31 of each renewal year, respectively.

3.4 **Extensions.** Provided that Landlord determines at its sole judgment that the operation of said restaurant was beneficial to the Center as a whole, Landlord agrees to negotiate extensions hereof following the automatic renewal terms.

3.5 **Early Termination.** Landlord has the right to terminate the Lease at any time, with cause. Tenant has the right to terminate this Agreement thirty (30) days prior written notice to Landlord.

3.6 **Licenses and Permits.** Tenant shall be responsible for obtaining all necessary licenses and permits to operate said restaurant. Upon termination of the Lease the Tenant will surrender and assign, if requested by Landlord, to Landlord, concurrently with such termination, all of the licenses and permits necessary to operate the restaurant (without compensation to Tenant).

ARTICLE 4

RENT

4.1 **Lease Year.** The term Lease Year shall mean twelve (12) consecutive full calendar months commencing in January of each year, except that the Lease Year for the Initial Term shall mean ~~nine-ten (109)~~ consecutive full calendar months commencing ~~April 1, 2016~~ March 1, 2019.

4.2 **Rent.** Tenant shall pay to Landlord by the 15th of each month:
~~April—November~~ January - December inclusive: ~~\$1,125~~ \$750 per month plus utilities pursuant to Article 8

~~December—March: Cost of Utilities pursuant to Article 8~~

Totaling: \$9,000 annually

Annual Increases: ~~January 1, 2017/ \$800 per year and January 1, 2018 / \$800 per year.~~ _____

Improvements: Prorated amounts pursuant to Section 6.3

4.3 **Damage Deposit.** Landlord shall retain Tenant's prior security deposit as security for payment of rent and Tenant's obligation to explain and clear said premises during the Term hereof and permit to the obligation to surrender the same set forth in Section 14.1.

4.4 **Confidentiality of Information.** Landlord shall maintain confidentiality and not disclose to third parties the information furnished or revealed as the result of Section 4.3 except as may be required by the Right to Know Law, or for disclosure to prospective new Tenants after the expiration or termination of this Lease.

4.5 **Marketing.** Tenant shall be responsible for the cost of local advertising.

4.6 **Golf Pro.** Tenant shall be given first option to provide food and beverage service for various Val Halla Golf Association events and leagues and private functions and golf outings. If Tenant elects to provide food and beverage service for any of the aforementioned events, Tenant shall coordinate menu offerings and pricing with the golf pro. If Tenant declines to provide the same, the golf pro shall offer the option to an outside caterer.

ARTICLE 5

USE

5.1 **Use.** The premises shall be used for the operation of a restaurant for Center guests and the public generally. Landlord acknowledges that Tenant intends to operate a restaurant with the service of alcoholic beverages and Tenant shall obtain proper liquor liability insurance protecting Landlord in this regard. Tenant shall not use or permit the Premises to be used for any other purpose.

5.2 **Compliance with Laws.** Tenant shall comply with all laws concerning the use, condition, and occupancy of the Premises during the term. Victualers and Liquor Licenses shall be obtained by Tenant, as well as any other State or local permit or license needed to operate said Restaurant.

5.3 **Conduct of Business.** Tenant must provide high quality food and beverage service during the Center's business hours seven days per week during the golfing season, generally defined as April 15 to November 15, and during such hours as the parties may reasonably agree during the off season. Hours of operation must be consistent with industry standards and maintained throughout the golfing season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect. Landlord shall further have the right to consult on Tenant's menu and prices thereof, approval from said consultation shall not be deemed required. Further, any change in restaurant hours, menu or prices shall be established in consultation with Landlord. Tenant shall deliver a proposed menu and a full Operating Procedures manual to Landlord prior to commencement of this Lease and on an annual basis thereafter. Notwithstanding the foregoing, Tenant shall not be required to operate in the Premises (i) on the days the Center is not otherwise open for other than golf, (ii) if it is prevented from doing so because of force majeure considerations, (iii) for a reasonable period of time at the end of the term to facilitate moving out, restoration, and other activities incidental to Tenant winding up business at the Premises. If Tenant is unable or unwilling to operate in the Premises under the aforementioned circumstances, Landlord reserves the right to operate in the Premises. Tenant shall carry on its business at all times in an efficient, quality, and reputable manner for the type of business for which the Premises are leased, including maintenance of an adequate number of employees and sufficient inventory. Landlord agrees that normal odors and exhaust incidental to a restaurant, excluding odors of deteriorating food, shall not be deemed a nuisance or objectionable.

5.4 **Public Restaurant.** The Premises shall be opened to the general public and Tenant and its employees shall operate a public restaurant in a courteous and pleasant manner under the same terms and conditions as set forth herein. Restaurant guests may use the adjoining deck but no reserved seating is intended to be made available thereat by the terms of this Agreement. Smoking on the outside deck is prohibited under 22 MRSA §1550.

5.5 **Employees.** All employees shall be Tenant's, but Landlord reserves the right to approve the same; Tenant agrees that the provision of adequate wait staff, bartenders and cooks are a condition hereof. Tenant shall provide staff to operate a mobile vending cart during such days and tournaments as the parties may reasonably agree.

~~5.6 **Coke Scramble.** Tenant shall serve exclusively Coca Cola products in accordance with a tournament agreement between the Coca Cola Company and the Val Halla Golf Association.~~

ARTICLE 6

MAINTENANCE OF PREMISES

6.1 **Tenant's Obligations.** Subject to the provisions of this Lease concerning destruction and condemnation, Landlord shall make all necessary repairs and replacements to maintain the clubhouse Premises, except the Pro Shop, in good order, condition, and repair. Tenant shall make all necessary repairs and replacements to kitchen equipment and furniture, except as provided by Landlord in Section 7.4. Tenant shall maintain the refrigeration of the walk-in cooler and the True refrigerators and freezer. The maintenance and repair of all interior plumbing, walls, painting, carpet, tiles, kitchen equipment, dishwashing equipment, lighting, and additional furniture shall also be the responsibility of the Tennant. At all times Tenant shall maintain the kitchen, related storage areas and Restaurant in a safe and sanitary condition and at a level commensurate with other restaurants in the area. Tenant shall also maintain exterior landscaping and plantings as well as ensure general tidiness immediately around the rear entrances and on the outdoor eating area of the adjoining deck. Tenant shall maintain the restrooms located in the restaurant area including daily inspection, cleaning, trash removal and stocking of supplies in accordance with restaurant industry standards, and shall repair or replace any fixtures as needed to keep the restroom facilities in good working order at all times. Failure to comply with maintenance obligations shall be cause for early termination of this Lease.

6.2 **Tenant Improvements.** Tenant may make certain improvements to the premises involving certain remodeling of the Restaurant and kitchen areas, at Tenant's cost and with prior approval of Landlord. Tenant may also make certain improvements to the premises involving remodeling of the Restaurant and kitchen areas, at its sole discretion and direction. Landlord shall fund the cost of such improvements, provided that Tenant provides notice to Landlord at least 30 days in advance of Tenant's commitment to undertake such improvements and that Tenant shall be responsible to pay increased rent calculated by taking the total cost of such improvements and dividing by the remaining number of months in the Term. The remaining number of months in the Term shall assume that Tenant and Landlord will exercise all automatic renewal periods through and including December 31, 2023. In the event Tenant or Landlord provides notice of intent to cancel automatic renewal pursuant to Section 3.3 herein, the party cancelling the Agreement shall be responsible to pay the full balance of said improvements upon termination of this Agreement. All such improvements which are permanent in nature shall become Landlord's at the end of the term without any obligation to reimburse Tenant therefor.

6.3 **Emergency Repairs.** In the event of any life or property-threatening emergency, Landlord shall have the immediate right to enter the Premises to effect emergency repairs without prior notice to Tenant. In the event Landlord is unable to conduct emergency repairs immediately, Landlord will provide Tenant a list of contractors authorized to complete emergency repairs on Landlord's behalf.

ARTICLE 7 COMMON AREAS

7.1 **Definition.** The term Common Area means all areas and facilities within the Center that are designated by Landlord from time to time for the common use of Tenant and other guests or Tenants of the Center. Common Areas include hallways, lobby, driveways, parking areas, loading areas, landscaped areas, restrooms and the like.

7.2 **Modifications.** Landlord shall refrain from doing or permitting to be done any act which would in any way materially impair the visibility of or access to the Premises.

7.3 **Tenant's Right to Use.** Landlord gives Tenant and its representatives, customers, and invitees the nonexclusive right to use the Common Areas in common with others to whom Landlord has granted or shall grant a similar right, except as provided herein. Tenant shall not locate any of its restaurant equipment or furniture in Common Areas, nor displace any Golf Association bulletin boards or computer equipment from Common Areas. Members of the Val Halla Golf Association shall have priority to use lockers and shower facilities within the shared restrooms.

7.4 **Landlord's Maintenance and Management.** At all times Landlord shall adequately insure the Common Areas and maintain the Common Areas in good condition, including keeping the Common Areas properly lighted and repaired, providing professional carpet cleaning annually, and providing any necessary pest control services. Landlord shall be responsible for the maintenance ~~and repair~~ of all ~~plumbing, lighting, electrical, HVAC,~~ and security systems and equipment that are installed and in operation on the premises as of the commencement date of this agreement. Landlord shall also be responsible for the maintenance and repair of the roof on the building and; the exterior sewer system- (where the sewer leaves the building from the basement cleanout to the point at which it connects to the public sewer system); the plumbing, including sewer, outside of the building; the current electrical service and wiring; and the parking lot and grounds with the exception of walkways, decks, and porches. Landlord shall ~~also not~~ be responsible for the maintenance and repair of the hood exhaust, frialator, ~~Star Max~~ grill and cook top, dishwasher system, ice machine, walk-in cooler, ~~Duke~~ oven, grease trap cleaning, and propane fireplace insert, or bathroom toilets and urinals, ~~except that~~ Tenant shall be responsible for regular cleaning of the equipment and all products necessary to operate the equipment.

Landlord shall have the exclusive right to:

(a) **Rules and Regulations.** Establish and enforce reasonable rules and regulations applicable to all Tenants and Center guests concerning the maintenance, management, use, and operation of the Common Areas.

(b) Maintenance Closure. Close temporarily any of the Common Areas for maintenance. Landlord shall, however, use its best efforts to maintain free access to the Premises during Tenant's normal business hours.

(c) Costs. Landlord shall bear all costs associated with maintenance of the Common Areas.

7.5 Vending Machines. Landlord shall be responsible for operation and maintenance of all vending machines located on the Premises and has the exclusive right to all profits therefrom.

ARTICLE 8

UTILITIES

8.1 Utilities. Landlord shall pay the appropriate suppliers for water, sewer, telephone, internet and refuse removal. Electricity and Internet services shall be paid by Landlord and Tenant shall be proportionately assessed a proportionate share of such services, which share shall be due to Landlord on a monthly basis in addition to all other amounts due hereunder. Landlord and will continue to assess such services to Tenant in the amount assessed as of the Commencement Date of this Lease, provided that there are no substantial changes to the cost of such services during the remainder of the Lease Term, including any and all renewals. However, Landlord reserves the right to increase or decrease such assessments as may be necessary as a result of the total cost of such services billed by the provider(s) thereof. as (want to say we want to continue with current practices as of March 1 2019 provided no substantially changes in Cable to Electricity costs) Tenant shall be responsible for the cost of propane used during the months of the Lease Term in which Tenant's business is in operation and shall provide a full tank of propane upon the expiration of the Lease Term. Landlord shall bill Tenant for the cost of cable and electricity based upon monthly usage.

ARTICLE 9

TAXES & ASSESSMENTS

9.1 Personal Property. Tenant shall pay all taxes levied and assessed against furnishings, fixtures, equipment, and other personal property of Tenant kept upon the Premises to the extent such taxes become payable during the term of this Lease including, but not limited to, the equipment listed in Exhibit C attached hereto.

9.2 Real Property.

(a) Obligation. Since Landlord is a municipal corporation, no real property taxes will be assessed on said premises and nor does Landlord expect any assessment to be made on Tenant's Leasehold.

ARTICLE 10

INDEMNITY & INSURANCE

10.1 Landlord Exculpation. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and Tenant waives all claims against Landlord for damage to person or property arising from any reason, except that Landlord shall be liable to

Tenant for damage to Tenant resulting from the negligence or willful misconduct of Landlord or its representatives.

10.2 **Tenant's Indemnity**. Tenant shall defend, indemnify, and hold Landlord and its representatives harmless from and against any and all costs, expenses (including attorneys' fees and court costs), losses, liabilities, damages, claims, and demands of every kind or nature (collectively, "Losses"), arising in any way from (i) construction on or use or occupancy of the Premises by Tenant or any person claiming under Tenant, (ii) the conduct of Tenant's business and any activity, work, or thing done or permitted by Tenant in or about the Premises, (iii) negligence or willful misconduct of Tenant or its representatives, or (iv) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease. Tenant shall defend any such action or proceeding brought against Landlord or its representatives at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Landlord or its representatives.

10.3 **Landlord's Indemnity**. To the extent of the Maine Tort Claims Act, Landlord shall defend, indemnify, and hold Tenant and its representatives harmless from and against any and all Losses arising in any way from (i) construction on or use of the Common Areas, (ii) the management of the Common Area and any activity, work, or thing done or permitted by Landlord in or about the Common Areas, (iii) negligence or willful misconduct of Landlord or its representatives, or (iv) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease.

Landlord shall defend any such action or proceeding brought against Tenant or its representatives at Landlord's expense with counsel reasonably satisfactory to Tenant. Landlord's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Tenant or its representatives.

10.4 **Tenant's Insurance**. Tenant shall, at all times after the delivery of the Premises to Tenant, carry at its expense:

(a) **Liability Insurance**. Comprehensive general liability insurance providing bodily injury and property damage including dram shop/liquor liability coverage in the amount of at least \$1,000,000 combined single limit insuring against all legal liability (subject to usual policy exclusions, terms, and conditions) of Tenant and its representatives arising out of the use, occupancy, or condition of the Premises. Such insurance shall name Landlord as an additional insured for the specified amount. Tenant shall have the right to effect all or any part of such insurance by endorsement on general liability insurance maintained by or on behalf of Tenant or by a separate policy or policies of insurance.

(b) **Worker's Compensation**. Worker's compensation insurance as required by law.

10.5 **Certificates**. Tenant shall deliver to Landlord, prior to delivery of possession of the Premises to Tenant, a certificate or certificates of insurance evidencing the types of coverage, carriers, limits, and effective dates of coverage (see attached). Each policy shall provide not less than 10 days' prior notice to Landlord of cancellation of that insurance. Tenant shall provide current certificates or other satisfactory evidence of renewal to Landlord throughout the term of this Lease. Tenant shall name Landlord as co-insured on all policies. Tenant shall hold insurance policies on workers' compensation and employee liability, commercial general public

liability, liquor liability, fire and business interruption, and insurance on any personal property owned by Tenant.

10.6 **Waivers of Subrogation.** Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, worker's compensation and other insurance maintained by either of them at any time during the term hereof insuring or covering the Center, the Premises or any portions thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

10.7 **Employment Clarification.** It may occur from time to time that an employee of Landlord may work temporarily for Tenant, or an employee of Tenant may work temporarily for Landlord. In every case, full employment records must be kept on these employees by both parties, and the employee must log off one party's payroll and log onto the other party's payroll, prior to commencing work.

ARTICLE 11

ASSIGNMENT & SUBLETTING

11.1 **General Prohibition.** Tenant shall not assign or sublet all or any portion of the Premises or Tenant's interest in this Lease without Landlord's prior written consent, and if said consent is granted, Tenant shall remain primarily responsible for all obligations hereunder.

11.2 **No Waiver.** Landlord's consent to any assignment or sublease shall not waive the requirement of Landlord's consent to any subsequent assignment or sublease. Any assignment or sublease requiring but lacking Landlord's prior written consent shall be void at Landlord's option.

11.3 **Collection.** Any rental payments or other sums received by Landlord from Tenant or any other person in connection with Tenant's obligations under this Lease shall be conclusively presumed to have been paid by Tenant or on Tenant's behalf.

ARTICLE 12

DAMAGE AND DESTRUCTION

12.1 **Obligation to Repair.** In the event of (i) the partial or total damage or destruction of the Center or (ii) the Center being declared unfit or unsafe for occupancy by any authorized public authority, Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to permit the safe use and occupancy of the Center and to restore the Center to substantially the same condition as it was in immediately prior to such damage or destruction. Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to correct any damage or destruction of parking or other Common Areas which render the Center totally or partially inaccessible, unusable, or which materially and adversely affect Tenant's business.

12.2 **Option to Terminate.** If all or substantially all of the Premises are damaged or destroyed and if such damage or destruction is insured by Landlord and can be repaired within 90 days following the date of such damage or destruction, Landlord may repair such damage or destruction. If the damage or destruction cannot be repaired within such 90-day period or Landlord elects not to repair the damage to the Center, either party may terminate this Lease by

written notice to the other, given within thirty (30) days following the date such damage or destruction occurred.

12.3 **Insurance Proceeds.** If either party elects to terminate this Lease as allowed under Section 12.2, Tenant shall deliver the Premises to Landlord in their damaged condition and neither party shall have any obligation to repair or rebuild. In such event, insurance proceeds, if any, shall belong to Landlord.

12.4 **Continued Operation.** Unless this Lease is terminated pursuant to Section 12.2, Tenant shall continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management.

ARTICLE 13

DEFAULT

13.1 **Events of Default.** The occurrence of any of the following shall constitute an “Event of Default” by Tenant:

(a) **Abandonment.** Abandonment of the Premises by Tenant or vacation of the Premises by Tenant for 2 consecutive days, exclusive of time closed for renovation. Abandonment shall include not opening and operating said restaurant as agreed herein. Landlord may operate the Premises to the best of its capability during the abandonment.

(b) **Nonpayment of Rent.** Failure by Tenant to pay rent when due if the failure continues for 10 days after written notice has been given to Tenant that the rent is delinquent.

(c) **Other Obligations.** Failure by Tenant to perform any provision of this Lease required of it other than (a) and (b) above if the failure is not cured within 30 days after written notice has been given to Tenant. If, however, the failure cannot reasonably be cured within 30 days, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within such 30-day period and diligently and in good faith continues to cure the failure.

(d) **General Assignment.** A general assignment for the benefit of creditors by Tenant.

(e) **Bankruptcy.** A petition to have Tenant adjudicated a bankrupt, or a petition for reorganization or arrangement under the federal bankruptcy laws is filed by Tenant or against Tenant and is not dismissed within 60 days from the date of such filing.

(f) **Receivership.** The assumption of the assets of Tenant or of the business conducted by Tenant on the Premises by a trustee, receiver, or other person where possession is not restored to Tenant within 30 days.

(g) **Attachment.** The attachment, execution, or other judicial seizure of substantially all of Tenant’s assets located at the Premises or Tenant’s interest in the Lease, where such seizure is not discharged within 30 days.

(h) **Insolvency.** The admission by Tenant of its inability to pay its debts as they become due.

Notice given under this Section 13.1 shall (i) specify the alleged breach and the applicable Lease provisions and (ii) demand that Tenant perform the provisions of this Lease or pay the rent that is delinquent, as the case may be, within the applicable period of time or quit the

Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. The purpose of the notice requirements in this Section 13.1 is to extend the notice requirements of the unlawful detainer statutes.

13.2 **Landlord's Remedies.** Landlord shall have the following remedies if Tenant commits an Event of Default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

(a) **Recover Possession.** Landlord may terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall be required to terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant any amount, including court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

(b) **Other Relief.** The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

(c) **Right to Remedy.** Landlord may, after expiration of the applicable cure period hereunder, correct or remedy any failure of Tenant not timely cured. The reasonable cost paid by Landlord to correct or remedy any such default shall immediately become due and payable to Landlord as additional rent.

13.3 **Mitigation.** Landlord and Tenant shall each exercise best efforts to mitigate the damages caused by the other party's breach of this Lease. Efforts to mitigate damages shall not be construed as a waiver of the nonbreaching party's right to recover damages.

13.4 **Late Charges.** If Tenant fails to pay any amount due after expiration of any applicable cure period, Tenant shall pay to Landlord, as a late charge and in consideration of the additional costs and record keeping incurred or required by Landlord, \$50.

ARTICLE 14

SURRENDER OF PREMISES, HOLDING OVER

14.1 **Surrender of Premises.** Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in good and clean condition, ordinary wear and tear and damage not required to be repaired excepted. Tenant shall remove all of its furnishings, fixtures, and other personal property. Tenant shall correct any damage arising from its removal activity.

14.2 **Holding Over.** Any holding over after the termination of this Lease shall be construed as a tenancy from month-to-month at the rents specified in this Lease and otherwise upon the terms and conditions specified in the Lease, so far as applicable. The foregoing sentence shall not be construed as Landlord's consent for Tenant to hold over.

14.3 **Personal Property.** An inventory of personal property owned by Landlord and Tenant is attached hereto as Exhibit B and Exhibit C, respectively. At the surrender of the Property, it will be the responsibility of Tenant to turn over the personal property identified as Landlord's on Exhibit B in good condition.

ARTICLE 15

INTEGRATION OF AGREEMENT

15.1 **Entire Agreement.** This Lease constitutes the entire agreement between the parties on the subject matter of this Lease and supersedes any prior negotiation, understanding, representation, or agreement.

15.2 **Amendment.** This Lease may not be amended orally, but may be amended only by a written instrument signed by both parties.

ARTICLE 16 MISCELLANEOUS

16.1 **Notices.** Any notice, request, or other communication required or permitted by this Lease shall be in writing and shall be deemed given if personally delivered, mailed or registered or certified mail (return receipt requested), delivered by express delivery service, or sent by facsimile or similar transmission which is confirmed by mail or the recipient, addressed as follows:

To Landlord:

William R. Shane, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

To Tenant:

<u>Celeste A. Ross</u>	<u>Patricia S. Dunn</u>
<u>23 Carriage Road</u>	<u>13 Jean Street</u>
<u>Cumberland Foreside, ME 04110</u>	<u>Freeport, ME 04032</u>

Lloyd M. Smith
335 West Pownal Road
North Yarmouth, ME 04097

~~Lowell M. Smith~~
~~3 Brookview Lane~~
~~North Yarmouth, ME 04097~~

Service by registered or certified mail shall be deemed given three business days after mailing absent proof of sooner delivery. Either party, by written notice, may change the place or places for future notice. Each recipient must have a street address for notice purposes.

16.2 Construction and Interpretation.

(a) **Governing Law.** This Lease is to be construed in accordance with the laws of the State of Maine.

(b) **Caption, Exhibits.** The titles and subtitles of the various articles and sections of this Lease are inserted for convenience and shall not be deemed to affect the meaning or construction of this Lease in any way. The Exhibits are made part of this Lease by the respective references to them.

(c) Plain Meaning. Unless defined otherwise, the words used in this Lease shall be construed according to their plain meaning in the English language. The language used in this Lease shall not be interpreted strictly for or against either party. The word **shall** is used as a command. The word **law** includes federal, state, and local constitutions, statutes, orders, writs, injunction, decrees, ordinances, requirements, laws, rules and regulations. The word **termination** is used in an all inclusive sense, that is, it includes the concepts of the expiration of this Lease by lapse of time, rescission, and ending by reason of default. The word **transfer** is used in an all inclusive sense, that is, it includes each and every manner of disposing of any interest in or rights, privileges, or obligations under any part of this Lease, including any sale, gift, or assignment. The word **notice** means notices, requests, demands, and other communications and includes all payments to be made and all materials to be submitted for review or approval and all approvals or disapprovals. The term **rent** means Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. The term **representative** means officers, directors, partners, employees, agents, and authorized contractors of a party when acting in such capacity.

(d) Conflicting Construction. If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

(e) Singular and Plural, Gender. The singular includes the plural and vice versa, and the masculine includes the feminine and neuter, whenever the context so requires.

16.3 Time of Essence. Time is of the essence of each provision of this Lease.

16.4 Severability. Nothing in this Lease shall be construed as requiring the commission of any act contrary to law. If there is any conflict between any provision of this Lease and any present or future law, such provision shall be limited only to the extent necessary to bring it within the requirement of the law. If any part of this Lease is held to be indefinite, invalid, or otherwise unenforceable, the balance of this Lease shall continue in full force and effect. If any arbitrator or court of competent jurisdiction finds any provision of this Lease unreasonable, the arbitrator or court may declare a reasonable modification of this provision. This Lease shall be valid and enforceable and the parties agree to be bound by and perform it.

16.5 Effect of Waiver. The failure of either party to exercise any power reserved to it by this Lease or to insist on strict compliance by the other party with any obligation or condition under this Lease, and no custom or practice of the parties at variance with terms of this Lease, shall constitute a waiver of the party's right to demand exact compliance thereafter with each term of this Lease. Waiver by either party of any default by the other shall not affect or impair the waiving party's rights with respect to any other default of a like, similar, or different nature. Any delay, forbearance, or omission of a party to exercise any power or right arising out of any default by the other of any provision of this Lease shall not affect or impair the party's rights to declare any subsequent default and to terminate this Lease.

16.6 Brokers. Each party represents and warrants that it has not dealt with or taken any other action with any party in a manner so as to give rise to any valid claim against either party for a broker's commission or finder's fee in connection with the execution of this Lease. Each of the parties shall defend, indemnify, and hold the other harmless from and against all liabilities from any claims for broker's commissions or finder's fees arising out of its breach of the foregoing representation and warranty.

16.7 **Attorneys' Fees.** If any action or proceeding is necessary to enforce the provisions of this Lease, including any claims or demand or declaratory relief action to interpret this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, as may be fixed by the court having jurisdiction over the matter, in addition to any other relief to which it may otherwise be entitled.

16.8 **Force Majeure.** Except for payment obligations imposed pursuant to this Lease, if there is any prevention, delay, or stoppage of an act required of a party pursuant to this Lease because of strikes, lockouts, other labor disputes, material shortages, embargoes, civil unrest, governmental regulations, governmental controls, enemy or hostile governmental action, judicial order, public emergency, fire, earthquake, other Acts of God, and other causes beyond the reasonable control of the party obligated to perform, performance of the act shall be excused for the period of the delay.

16.9 **Relationship of Parties.** This Lease is not intended to create any relationship of partnership, joint venture, principal-and-agent, employer-employee or otherwise than the relationship of Landlord and Tenant.

16.10 **Successors.** This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, subject to the restrictions as to assignment pursuant to this Lease.

The undersigned parties have caused this Agreement to be signed on the date first written above.

LANDLORD:

TENANT:

TOWN OF CUMBERLAND

RACHEL'S ON THE GREEN

By: _____
William R. Shane
Town Manager

By: _____
Lloyd M. Smith
Owner

By: _____
Celeste A. Ross
Owner

By: _____
Patricia S. Dunn
Owner

LEASE AGREEMENT

This Lease, dated on this _____ day of February, 2019 for reference purposes, is made between the TOWN OF CUMBERLAND, with offices in Cumberland, County of Cumberland and State of Maine (“Landlord”) and Rachel’s on the Green, a Maine Corporation with a place of business at Cumberland, County of Cumberland and State of Maine (“Tenant”), who agree as follows:

ARTICLE I BASIC LEASE PROVISIONS

The following basic Lease provisions supplement and summarize provisions elsewhere in this Lease. They are presented to facilitate convenient reference by the parties to this Lease, subject to further definition and discussion in the referenced sections and elsewhere in this Lease. Although the basic Lease provisions are part of this Lease, if there is any conflict between the basic Lease provisions and provisions contained in the balance of this Lease, the provisions contained elsewhere shall control.

Use:	Restaurant & Bar	(Sec. 5.1)
Tenant’s Trade Name:	Rachel’s on the Green	(Sec. 5.1)
Premises Address:	60 Val Halla Road	(Sec. 2.1)
Commencement		
Date:	March 1, 2019	(Sec. 3.1)
Primary Term:	10 months	(Sec. 3.2)
Option Period:	Four automatic renewals	(Sec. 3.3)
Rent:	\$_____/month January - December	(Sec. 4.2)
Due Date:	15 th of each month	(Sec. 4.2)
Late Charge:	\$50	(Sec. 13.4)
Damage Deposit:	\$2,000 retained from prior lease	(Sec. 4.3)

Exhibits:

- A. Tenant’s Certificates of Insurance (Liability & Worker’s Compensation)
- B. Landlord’s Equipment and Property Inventory
- C. Tenant’s Equipment and Property Inventory

ARTICLE 2 PREMISES

2.1 **Leased Property:** Landlord leases to Tenant and Tenant leases from Landlord the following property (the Premises):

(a) **Premises:** The snack bar area at Val Halla Golf & Recreation Center, including kitchen, bar and dining area at Viking Grill, common use of adjoining deck and restrooms in restaurant area and dedicated space to be used as an office or for storage. Landlord

does not guarantee Tenant rights to catering of banquet facility events or use of banquet facility kitchen. Tenant may negotiate with Maine State Golf Association as Lessee of said banquet facility to provide catering services or for use of banquet facility kitchen.

(b) Parking Spaces. Tenant will not have exclusive use of any parking spaces but the Landlord will permit restaurant guests and employees to park in the Center parking lot at the rear entrance of the building. Tenant or its employees may only use rear entrances for loading/unloading or receiving shipments on a time-restricted basis.

(c) Contents. Landlord also leases to Tenant all furniture, fixtures, equipment and furnishings located at the premises. A list of Landlord's personal property included in this Lease is attached hereto as Exhibit B, but Tenant agrees that whatever the contents of said list, all said furniture, fixtures, equipment and furnishings as are in place on March 1, 2016 are included herewith and Tenant shall be responsible for the repair or replacement of any of these items and all additional items required to operate a restaurant.

(d) Bar. Tenant shall operate the bar adjoining the restaurant at such times as Tenant reasonably determines to open the same. Hours of operation must be consistent with industry standards and maintained throughout the season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect.

2.2 Tenant's Acceptance of Premises. Tenant shall accept the Premises in its "As Is" condition on the Commencement Date, but shall be entitled to early occupancy, without cost, to clean and renovate the same with Landlord's consent.

2.3 Recreation Center. The Premises are part of a larger parcel of real property (the "Center") owned by Landlord commonly known as Val Halla Golf & Recreation Center in the Town of Cumberland, County of Cumberland, State of Maine.

2.4 Landlord's Title and Authority. Landlord has good, legal, and marketable fee title to the Premises and the full right and lawful authority to make this Lease.

2.5 Quiet Enjoyment. So long as no Event of Default (as defined below) has occurred, Tenant shall have full, quiet, and peaceful possession of the Premises without interference or interruption by Landlord. This quiet enjoyment provision will not be effective once Landlord has given notice of termination subject to Article 3, paragraph 3.4.

2.6 Access. Golfers shall have the right to use said premises in common with Tenant's customers. Also, Landlord shall have the right through its golf professional to use a portion of said restaurant space for registration during golf outing events and further to enter upon the Premises for the purpose of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances, or regulations, protecting the Premises, or any other lawful purpose. Tenant shall be open for business, in at least a limited capacity, during all organized golf outing events, including hours of registration. Landlord reserves the right to operate the Premises during such times if Tenant is unable or unwilling to do so. Landlord shall exercise such rights reasonably, upon reasonable advance notice (except in the case of emergencies) and in such manner as not to interfere unreasonably with the business of Tenant.

ARTICLE 3

TERM

3.1 **Commencement Date.** This Lease shall be effective and Tenant's obligation to pay rent shall commence on March 1, 2019 (the "Commencement Date").

3.2 **Initial Term.** The initial term (the "Initial Term") shall begin on the Commencement Date and end on December 31, 2019.

3.3 **Automatic Renewal.** The initial term shall be automatically renewed on January 1, 2020 and each year thereafter to expire no later than December 31, 2023 (the "Term"). Landlord and Tenant reserve the right to cancel automatic renewal with notice. Notice of intent to cancel automatic renewal shall be provided 120 days prior to December 31 of each renewal year, respectively.

3.4 **Extensions.** Provided that Landlord determines at its sole judgment that the operation of said restaurant was beneficial to the Center as a whole, Landlord agrees to negotiate extensions hereof following the automatic renewal terms.

3.5 **Early Termination.** Landlord has the right to terminate the Lease at any time, with cause. Tenant has the right to terminate this Agreement thirty (30) days prior written notice to Landlord.

3.6 **Licenses and Permits.** Tenant shall be responsible for obtaining all necessary licenses and permits to operate said restaurant. Upon termination of the Lease the Tenant will surrender and assign, if requested by Landlord, to Landlord, concurrently with such termination, all of the licenses and permits necessary to operate the restaurant (without compensation to Tenant).

ARTICLE 4

RENT

4.1 **Lease Year.** The term Lease Year shall mean twelve (12) consecutive full calendar months commencing in January of each year, except that the Lease Year for the Initial Term shall mean ten (10) consecutive full calendar months commencing March 1, 2019.

4.2 **Rent.** Tenant shall pay to Landlord by the 15th of each month:

January - December: \$\$750 per month plus utilities pursuant to Article 8

Totaling: \$9,000 annually

Annual Increases: _____

Improvements: Prorated amounts pursuant to Section 6.3

4.3 **Damage Deposit.** Landlord shall retain Tenant's prior security deposit as security for payment of rent and Tenant's obligation to explain and clear said premises during the Term hereof and permit to the obligation to surrender the same set forth in Section 14.1.

4.4 **Confidentiality of Information.** Landlord shall maintain confidentiality and not disclose to third parties the information furnished or revealed as the result of Section 4.3 except as may be required by the Right to Know Law, or for disclosure to prospective new Tenants after the expiration or termination of this Lease.

4.5 **Marketing.** Tenant shall be responsible for the cost of local advertising.

4.6 **Golf Pro.** Tenant shall be given first option to provide food and beverage service for various Val Halla Golf Association events and leagues and private functions and golf outings. If Tenant elects to provide food and beverage service for any of the aforementioned events, Tenant shall coordinate menu offerings and pricing with the golf pro. If Tenant declines to provide the same, the golf pro shall offer the option to an outside caterer.

ARTICLE 5

USE

5.1 **Use.** The premises shall be used for the operation of a restaurant for Center guests and the public generally. Landlord acknowledges that Tenant intends to operate a restaurant with the service of alcoholic beverages and Tenant shall obtain proper liquor liability insurance protecting Landlord in this regard. Tenant shall not use or permit the Premises to be used for any other purpose.

5.2 **Compliance with Laws.** Tenant shall comply with all laws concerning the use, condition, and occupancy of the Premises during the term. Victualers and Liquor Licenses shall be obtained by Tenant, as well as any other State or local permit or license needed to operate said Restaurant.

5.3 **Conduct of Business.** Tenant must provide high quality food and beverage service during the Center's business hours seven days per week during the golfing season, generally defined as April 15 to November 15, and during such hours as the parties may reasonably agree during the off season. Hours of operation must be consistent with industry standards and maintained throughout the golfing season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect. Landlord shall further have the right to consult on Tenant's menu and prices thereof, approval from said consultation shall not be deemed required. Further, any change in restaurant hours, menu or prices shall be established in consultation with Landlord. Tenant shall deliver a proposed menu and a full Operating Procedures manual to Landlord prior to commencement of this Lease and on an annual basis thereafter. Notwithstanding the foregoing, Tenant shall not be required to operate in the Premises (i) on the days the Center is not otherwise open for other than golf, (ii) if it is prevented from doing so because of force majeure considerations, (iii) for a reasonable period of time at the end of the term to facilitate moving out, restoration, and other activities incidental to Tenant winding up business at the Premises. If Tenant is unable or unwilling to operate in the Premises under the aforementioned circumstances, Landlord reserves the right to operate in the Premises. Tenant shall carry on its business at all times in an efficient, quality, and reputable manner for the type of business for which the Premises are leased, including maintenance of an adequate number of employees and sufficient inventory. Landlord agrees that normal odors and exhaust incidental to a restaurant, excluding odors of deteriorating food, shall not be deemed a nuisance or objectionable.

5.4 **Public Restaurant.** The Premises shall be opened to the general public and Tenant and its employees shall operate a public restaurant in a courteous and pleasant manner under the same terms and conditions as set forth herein. Restaurant guests may use the adjoining deck but no reserved seating is intended to be made available thereat by the terms of this Agreement. Smoking on the outside deck is prohibited under 22 MRSA §1550.

5.5 **Employees.** All employees shall be Tenant's, but Landlord reserves the right to approve the same; Tenant agrees that the provision of adequate wait staff, bartenders and cooks are a condition hereof. Tenant shall provide staff to operate a mobile vending cart during such days and tournaments as the parties may reasonably agree.

ARTICLE 6

MAINTENANCE OF PREMISES

6.1 **Tenant's Obligations.** Subject to the provisions of this Lease concerning destruction and condemnation, Landlord shall make all necessary repairs and replacements to maintain the clubhouse Premises, except the Pro Shop, in good order, condition, and repair. Tenant shall make all necessary repairs and replacements to kitchen equipment and furniture, except as provided by Landlord in Section 7.4. Tenant shall maintain the refrigeration of the walk-in cooler and the True refrigerators and freezer. The maintenance and repair of all interior plumbing, walls, painting, carpet, tiles, kitchen equipment, dishwashing equipment, lighting, and additional furniture shall also be the responsibility of the Tenant. At all times Tenant shall maintain the kitchen, related storage areas and Restaurant in a safe and sanitary condition and at a level commensurate with other restaurants in the area. Tenant shall also maintain exterior landscaping and plantings as well as ensure general tidiness immediately around the rear entrances and on the outdoor eating area of the adjoining deck. Tenant shall maintain the restrooms located in the restaurant area including daily inspection, cleaning, trash removal and stocking of supplies in accordance with restaurant industry standards, and shall repair or replace any fixtures as needed to keep the restroom facilities in good working order at all times. Failure to comply with maintenance obligations shall be cause for early termination of this Lease.

6.2 **Tenant Improvements.** Tenant may make certain improvements to the premises involving certain remodeling of the Restaurant and kitchen areas, at Tenant's cost and with prior approval of Landlord. Tenant may also make certain improvements to the premises involving remodeling of the Restaurant and kitchen areas, at its sole discretion and direction. Landlord shall fund the cost of such improvements, provided that Tenant provides notice to Landlord at least 30 days in advance of Tenant's commitment to undertake such improvements and that Tenant shall be responsible to pay increased rent calculated by taking the total cost of such improvements and dividing by the remaining number of months in the Term. The remaining number of months in the Term shall assume that Tenant and Landlord will exercise all automatic renewal periods through and including December 31, 2023. In the event Tenant or Landlord provides notice of intent to cancel automatic renewal pursuant to Section 3.3 herein, the party cancelling the Agreement shall be responsible to pay the full balance of said improvements upon termination of this Agreement. All such improvements which are permanent in nature shall become Landlord's at the end of the term without any obligation to reimburse Tenant therefor.

6.3 **Emergency Repairs.** In the event of any life or property-threatening emergency, Landlord shall have the immediate right to enter the Premises to effect emergency repairs without prior notice to Tenant. In the event Landlord is unable to conduct emergency repairs immediately, Landlord will provide Tenant a list of contractors authorized to complete emergency repairs on Landlord's behalf.

ARTICLE 7

COMMON AREAS

7.1 **Definition.** The term Common Area means all areas and facilities within the Center that are designated by Landlord from time to time for the common use of Tenant and other guests or Tenants of the Center. Common Areas include hallways, lobby, driveways, parking areas, loading areas, landscaped areas, restrooms and the like.

7.2 **Modifications.** Landlord shall refrain from doing or permitting to be done any act which would in any way materially impair the visibility of or access to the Premises.

7.3 **Tenant's Right to Use.** Landlord gives Tenant and its representatives, customers, and invitees the nonexclusive right to use the Common Areas in common with others to whom Landlord has granted or shall grant a similar right, except as provided herein. Tenant shall not locate any of its restaurant equipment or furniture in Common Areas, nor displace any Golf Association bulletin boards or computer equipment from Common Areas. Members of the Val Halla Golf Association shall have priority to use lockers and shower facilities within the shared restrooms.

7.4 **Landlord's Maintenance and Management.** At all times Landlord shall adequately insure the Common Areas and maintain the Common Areas in good condition, including keeping the Common Areas properly lighted and repaired, providing professional carpet cleaning annually, and providing any necessary pest control services. Landlord shall be responsible for the maintenance of all HVAC and security systems and equipment that are installed and in operation on the premises as of the commencement date of this agreement. Landlord shall also be responsible for the maintenance and repair of the roof on the building; the exterior sewer system (where the sewer leaves the building from the basement cleanout to the point at which it connects to the public sewer system); the current electrical service and wiring; and the parking lot and grounds with the exception of walkways, decks, and porches. Landlord shall not be responsible for the maintenance and repair of the hood exhaust, frialator, grill and cook top, dishwasher system, ice machine, walk-in cooler, oven, grease trap, propane fireplace insert, or bathroom toilets and urinals. Tenant shall be responsible for regular cleaning of the equipment and all products necessary to operate the equipment.

Landlord shall have the exclusive right to:

(a) **Rules and Regulations.** Establish and enforce reasonable rules and regulations applicable to all Tenants and Center guests concerning the maintenance, management, use, and operation of the Common Areas.

(b) **Maintenance Closure.** Close temporarily any of the Common Areas for maintenance. Landlord shall, however, use its best efforts to maintain free access to the Premises during Tenant's normal business hours.

(c) **Costs.** Landlord shall bear all costs associated with maintenance of the Common Areas.

7.5 **Vending Machines.** Landlord shall be responsible for operation and maintenance of all vending machines located on the Premises and has the exclusive right to all profits therefrom.

ARTICLE 8 UTILITIES

8.1 **Utilities.** Landlord shall pay the appropriate suppliers for water, sewer, telephone, and refuse removal. Electricity and Internet services shall be paid by Landlord and Tenant shall be assessed a proportionate share of such services, which share shall be due to Landlord on a monthly basis in addition to all other amounts due hereunder. Landlord will continue to assess such services to Tenant in the amount assessed as of the Commencement Date of this Lease, provided that there are no substantial changes to the cost of such services during the remainder of the Lease Term, including any and all renewals. However, Landlord reserves the right to increase or decrease such assessments as may be necessary as a result of the total cost of such services billed by the provider(s) thereof. Tenant shall be responsible for the cost of propane used during the months of the Lease Term in which Tenant's business is in operation and shall provide a full tank of propane upon the expiration of the Lease Term. Landlord shall bill Tenant for the cost of cable and electricity based upon monthly usage.

ARTICLE 9

TAXES & ASSESSMENTS

9.1 **Personal Property.** Tenant shall pay all taxes levied and assessed against furnishings, fixtures, equipment, and other personal property of Tenant kept upon the Premises to the extent such taxes become payable during the term of this Lease including, but not limited to, the equipment listed in Exhibit C attached hereto.

9.2 **Real Property.**

(a) **Obligation.** Since Landlord is a municipal corporation, no real property taxes will be assessed on said premises and nor does Landlord expect any assessment to be made on Tenant's Leasehold.

ARTICLE 10

INDEMNITY & INSURANCE

10.1 **Landlord Exculpation.** Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and Tenant waives all claims against Landlord for damage to person or property arising from any reason, except that Landlord shall be liable to Tenant for damage to Tenant resulting from the negligence or willful misconduct of Landlord or its representatives.

10.2 **Tenant's Indemnity.** Tenant shall defend, indemnify, and hold Landlord and its representatives harmless from and against any and all costs, expenses (including attorneys' fees and court costs), losses, liabilities, damages, claims, and demands of every kind or nature (collectively, "Losses"), arising in any way from (i) construction on or use or occupancy of the Premises by Tenant or any person claiming under Tenant, (ii) the conduct of Tenant's business and any activity, work, or thing done or permitted by Tenant in or about the Premises, (iii) negligence or willful misconduct of Tenant or its representatives, or (iv) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease. Tenant shall defend any such action or proceeding brought against Landlord or its representatives at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Landlord or its representatives.

10.3 **Landlord's Indemnity.** To the extent of the Maine Tort Claims Act, Landlord shall defend, indemnify, and hold Tenant and its representatives harmless from and against any and all Losses arising in any way from (i) construction on or use of the Common Areas, (ii) the management of the Common Area and any activity, work, or thing done or permitted by Landlord in or about the Common Areas, (iii) negligence or willful misconduct of Landlord or its representatives, or (iv) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease.

Landlord shall defend any such action or proceeding brought against Tenant or its representatives at Landlord's expense with counsel reasonably satisfactory to Tenant. Landlord's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Tenant or its representatives.

10.4 **Tenant's Insurance.** Tenant shall, at all times after the delivery of the Premises to Tenant, carry at its expense:

(a) **Liability Insurance.** Comprehensive general liability insurance providing bodily injury and property damage including dram shop/liquor liability coverage in the amount of at least \$1,000,000 combined single limit insuring against all legal liability (subject to usual policy exclusions, terms, and conditions) of Tenant and its representatives arising out of the use, occupancy, or condition of the Premises. Such insurance shall name Landlord as an additional insured for the specified amount. Tenant shall have the right to effect all or any part of such insurance by endorsement on general liability insurance maintained by or on behalf of Tenant or by a separate policy or policies of insurance.

(b) **Worker's Compensation.** Worker's compensation insurance as required by law.

10.5 **Certificates.** Tenant shall deliver to Landlord, prior to delivery of possession of the Premises to Tenant, a certificate or certificates of insurance evidencing the types of coverage, carriers, limits, and effective dates of coverage (see attached). Each policy shall provide not less than 10 days' prior notice to Landlord of cancellation of that insurance. Tenant shall provide current certificates or other satisfactory evidence of renewal to Landlord throughout the term of this Lease. Tenant shall name Landlord as co-insured on all policies. Tenant shall hold insurance policies on workers' compensation and employee liability, commercial general public liability, liquor liability, fire and business interruption, and insurance on any personal property owned by Tenant.

10.6 **Waivers of Subrogation.** Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, worker's compensation and other insurance maintained by either of them at any time during the term hereof insuring or covering the Center, the Premises or any portions thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

10.7 **Employment Clarification.** It may occur from time to time that an employee of Landlord may work temporarily for Tenant, or an employee of Tenant may work temporarily for Landlord. In every case, full employment records must be kept on these employees by both parties, and the employee must log off one party's payroll and log onto the other party's payroll, prior to commencing work.

ARTICLE 11

ASSIGNMENT & SUBLETTING

11.1 **General Prohibition.** Tenant shall not assign or sublet all or any portion of the Premises or Tenant's interest in this Lease without Landlord's prior written consent, and if said consent is granted, Tenant shall remain primarily responsible for all obligations hereunder.

11.2 **No Waiver.** Landlord's consent to any assignment or sublease shall not waive the requirement of Landlord's consent to any subsequent assignment or sublease. Any assignment or sublease requiring but lacking Landlord's prior written consent shall be void at Landlord's option.

11.3 **Collection.** Any rental payments or other sums received by Landlord from Tenant or any other person in connection with Tenant's obligations under this Lease shall be conclusively presumed to have been paid by Tenant or on Tenant's behalf.

ARTICLE 12

DAMAGE AND DESTRUCTION

12.1 **Obligation to Repair.** In the event of (i) the partial or total damage or destruction of the Center or (ii) the Center being declared unfit or unsafe for occupancy by any authorized public authority, Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to permit the safe use and occupancy of the Center and to restore the Center to substantially the same condition as it was in immediately prior to such damage or destruction. Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to correct any damage or destruction of parking or other Common Areas which render the Center totally or partially inaccessible, unusable, or which materially and adversely affect Tenant's business.

12.2 **Option to Terminate.** If all or substantially all of the Premises are damaged or destroyed and if such damage or destruction is insured by Landlord and can be repaired within 90 days following the date of such damage or destruction, Landlord may repair such damage or destruction. If the damage or destruction cannot be repaired within such 90-day period or Landlord elects not to repair the damage to the Center, either party may terminate this Lease by written notice to the other, given within thirty (30) days following the date such damage or destruction occurred.

12.3 **Insurance Proceeds.** If either party elects to terminate this Lease as allowed under Section 12.2, Tenant shall deliver the Premises to Landlord in their damaged condition and neither party shall have any obligation to repair or rebuild. In such event, insurance proceeds, if any, shall belong to Landlord.

12.4 **Continued Operation.** Unless this Lease is terminated pursuant to Section 12.2, Tenant shall continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management.

ARTICLE 13

DEFAULT

13.1 **Events of Default.** The occurrence of any of the following shall constitute an “Event of Default” by Tenant:

(a) **Abandonment.** Abandonment of the Premises by Tenant or vacation of the Premises by Tenant for 2 consecutive days, exclusive of time closed for renovation. Abandonment shall include not opening and operating said restaurant as agreed herein. Landlord may operate the Premises to the best of its capability during the abandonment.

(b) **Nonpayment of Rent.** Failure by Tenant to pay rent when due if the failure continues for 10 days after written notice has been given to Tenant that the rent is delinquent.

(c) **Other Obligations.** Failure by Tenant to perform any provision of this Lease required of it other than (a) and (b) above if the failure is not cured within 30 days after written notice has been given to Tenant. If, however, the failure cannot reasonably be cured within 30 days, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within such 30-day period and diligently and in good faith continues to cure the failure.

(d) **General Assignment.** A general assignment for the benefit of creditors by Tenant.

(e) **Bankruptcy.** A petition to have Tenant adjudicated a bankrupt, or a petition for reorganization or arrangement under the federal bankruptcy laws is filed by Tenant or against Tenant and is not dismissed within 60 days from the date of such filing.

(f) **Receivership.** The assumption of the assets of Tenant or of the business conducted by Tenant on the Premises by a trustee, receiver, or other person where possession is not restored to Tenant within 30 days.

(g) **Attachment.** The attachment, execution, or other judicial seizure of substantially all of Tenant’s assets located at the Premises or Tenant’s interest in the Lease, where such seizure is not discharged within 30 days.

(h) **Insolvency.** The admission by Tenant of its inability to pay its debts as they become due.

Notice given under this Section 13.1 shall (i) specify the alleged breach and the applicable Lease provisions and (ii) demand that Tenant perform the provisions of this Lease or pay the rent that is delinquent, as the case may be, within the applicable period of time or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. The purpose of the notice requirements in this Section 13.1 is to extend the notice requirements of the unlawful detainer statutes.

13.2 **Landlord’s Remedies.** Landlord shall have the following remedies if Tenant commits an Event of Default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

(a) **Recover Possession.** Landlord may terminate Tenant’s right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall be required to terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord’s initiative to protect Landlord’s interest under this Lease shall not constitute a termination of Tenant’s right to possession. On termination, Landlord has the right to recover from Tenant any amount, including court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant’s default.

(b) Other Relief. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

(c) Right to Remedy. Landlord may, after expiration of the applicable cure period hereunder, correct or remedy any failure of Tenant not timely cured. The reasonable cost paid by Landlord to correct or remedy any such default shall immediately become due and payable to Landlord as additional rent.

13.3 **Mitigation**. Landlord and Tenant shall each exercise best efforts to mitigate the damages caused by the other party's breach of this Lease. Efforts to mitigate damages shall not be construed as a waiver of the nonbreaching party's right to recover damages.

13.4 **Late Charges**. If Tenant fails to pay any amount due after expiration of any applicable cure period, Tenant shall pay to Landlord, as a late charge and in consideration of the additional costs and record keeping incurred or required by Landlord, \$50.

ARTICLE 14

SURRENDER OF PREMISES, HOLDING OVER

14.1 **Surrender of Premises**. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in good and clean condition, ordinary wear and tear and damage not required to be repaired excepted. Tenant shall remove all of its furnishings, fixtures, and other personal property. Tenant shall correct any damage arising from its removal activity.

14.2 **Holding Over**. Any holding over after the termination of this Lease shall be construed as a tenancy from month-to-month at the rents specified in this Lease and otherwise upon the terms and conditions specified in the Lease, so far as applicable. The foregoing sentence shall not be construed as Landlord's consent for Tenant to hold over.

14.3 **Personal Property**. An inventory of personal property owned by Landlord and Tenant is attached hereto as Exhibit B and Exhibit C, respectively. At the surrender of the Property, it will be the responsibility of Tenant to turn over the personal property identified as Landlord's on Exhibit B in good condition.

ARTICLE 15

INTEGRATION OF AGREEMENT

15.1 **Entire Agreement**. This Lease constitutes the entire agreement between the parties on the subject matter of this Lease and supersedes any prior negotiation, understanding, representation, or agreement.

15.2 **Amendment**. This Lease may not be amended orally, but may be amended only by a written instrument signed by both parties.

ARTICLE 16

MISCELLANEOUS

16.1 **Notices**. Any notice, request, or other communication required or permitted by this Lease shall be in writing and shall be deemed given if personally delivered, mailed or registered or certified mail (return receipt requested), delivered by express delivery service, or sent by facsimile or similar transmission which is confirmed by mail or the recipient, addressed as follows:

To Landlord:

William R. Shane, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

To Tenant:

Celeste A. Ross
23 Carriage Road
Cumberland Foreside, ME 04110

Patricia S. Dunn
13 Jean Street
Freeport, ME 04032

Lloyd M. Smith
335 West Pownal Road
North Yarmouth, ME 04097

Service by registered or certified mail shall be deemed given three business days after mailing absent proof of sooner delivery. Either party, by written notice, may change the place or places for future notice. Each recipient must have a street address for notice purposes.

16.2 **Construction and Interpretation.**

(a) Governing Law. This Lease is to be construed in accordance with the laws of the State of Maine.

(b) Caption, Exhibits. The titles and subtitles of the various articles and sections of this Lease are inserted for convenience and shall not be deemed to affect the meaning or construction of this Lease in any way. The Exhibits are made part of this Lease by the respective references to them.

(c) Plain Meaning. Unless defined otherwise, the words used in this Lease shall be construed according to their plain meaning in the English language. The language used in this Lease shall not be interpreted strictly for or against either party. The word **shall** is used as a command. The word **law** includes federal, state, and local constitutions, statutes, orders, writs, injunction, decrees, ordinances, requirements, laws, rules and regulations. The word **termination** is used in an all inclusive sense, that is, it includes the concepts of the expiration of this Lease by lapse of time, rescission, and ending by reason of default. The word **transfer** is used in an all inclusive sense, that is, it includes each and every manner of disposing of any interest in or rights, privileges, or obligations under any part of this Lease, including any sale, gift, or assignment. The word **notice** means notices, requests, demands, and other communications and includes all payments to be made and all materials to be submitted for review or approval and all approvals or disapprovals. The term **rent** means Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. The term **representative** means officers, directors, partners, employees, agents, and authorized contractors of a party when acting in such capacity.

(d) **Conflicting Construction.** If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

(e) **Singular and Plural, Gender.** The singular includes the plural and vice versa, and the masculine includes the feminine and neuter, whenever the context so requires.

16.3 **Time of Essence.** Time is of the essence of each provision of this Lease.

16.4 **Severability.** Nothing in this Lease shall be construed as requiring the commission of any act contrary to law. If there is any conflict between any provision of this Lease and any present or future law, such provision shall be limited only to the extent necessary to bring it within the requirement of the law. If any part of this Lease is held to be indefinite, invalid, or otherwise unenforceable, the balance of this Lease shall continue in full force and effect. If any arbitrator or court of competent jurisdiction finds any provision of this Lease unreasonable, the arbitrator or court may declare a reasonable modification of this provision. This Lease shall be valid and enforceable and the parties agree to be bound by and perform it.

16.5 **Effect of Waiver.** The failure of either party to exercise any power reserved to it by this Lease or to insist on strict compliance by the other party with any obligation or condition under this Lease, and no custom or practice of the parties at variance with terms of this Lease, shall constitute a waiver of the party's right to demand exact compliance thereafter with each term of this Lease. Waiver by either party of any default by the other shall not affect or impair the waiving party's rights with respect to any other default of a like, similar, or different nature. Any delay, forbearance, or omission of a party to exercise any power or right arising out of any default by the other of any provision of this Lease shall not affect or impair the party's rights to declare any subsequent default and to terminate this Lease.

16.6 **Brokers.** Each party represents and warrants that it has not dealt with or taken any other action with any party in a manner so as to give rise to any valid claim against either party for a broker's commission or finder's fee in connection with the execution of this Lease. Each of the parties shall defend, indemnify, and hold the other harmless from and against all liabilities from any claims for broker's commissions or finder's fees arising out of its breach of the foregoing representation and warranty.

16.7 **Attorneys' Fees.** If any action or proceeding is necessary to enforce the provisions of this Lease, including any claims or demand or declaratory relief action to interpret this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, as may be fixed by the court having jurisdiction over the matter, in addition to any other relief to which it may otherwise be entitled.

16.8 **Force Majeure.** Except for payment obligations imposed pursuant to this Lease, if there is any prevention, delay, or stoppage of an act required of a party pursuant to this Lease because of strikes, lockouts, other labor disputes, material shortages, embargoes, civil unrest, governmental regulations, governmental controls, enemy or hostile governmental action, judicial order, public emergency, fire, earthquake, other Acts of God, and other causes beyond the reasonable control of the party obligated to perform, performance of the act shall be excused for the period of the delay.

16.9 **Relationship of Parties.** This Lease is not intended to create any relationship of partnership, joint venture, principal-and-agent, employer-employee or otherwise than the relationship of Landlord and Tenant.

16.10 **Successors**. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, subject to the restrictions as to assignment pursuant to this Lease.

The undersigned parties have caused this Agreement to be signed on the date first written above.

LANDLORD:

TENANT:

TOWN OF CUMBERLAND

RACHEL'S ON THE GREEN

By: _____
William R. Shane
Town Manager

By: _____
Lloyd M. Smith
Owner

By: _____
Celeste A. Ross
Owner

By: _____
Patricia S. Dunn
Owner