

Memorandum

To: Planning Board

Re: June Planning Board Agenda Items

From: Carla Nixon, Town Planner

Date: June 15, 2023

Re: Agenda Item #1: Sketch Plan Review: The Board is being asked to provide feedback on a proposed residential subdivision located in the West Cumberland Affordable Housing Overlay district. Given the Overlay, there is no alternative design option to consider. This will be a clustered subdivision design and the individual housing units will be part of a condominium association. The “level of affordability” for the units is still being refined. The Town Manager will make a brief presentation and answer questions. This will be a public hearing and I expect there will be neighbors present who wish to speak.

Please review Section 315-28 of the Zoning Ordinance to see what the requirements are for this type of project.

Land Design Solutions

Land Planning, Site Planning and Landscape Architecture

May 30, 2023

Ms. Carla Nixon
Town Planner
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

**RE: Sketch Plan Application - Proposed Single Family Condominium Style Subdivision of Affordable & Market Rate Homes
77 Blackstrap Road**

Dear Carla,

Land Design Solutions, in association with Sevee & Maher Engineers has been retained by B.R. Property, LLC, (David Chase) the Owner of a 40.1 acre parcel located at 77 Blackstrap Road to assist with the design and permitting of a single family residential subdivision. The site is an existing gravel pit. The proposed subdivision consists of a total of 72 single family homes. The following are the main points of the proposed subdivision:

Parcel:

- Parcel Size: The parcel is 40.1 acres.
- Zoning: The project is in the Industrial Zone, and the West Cumberland Overlay District.
- Net Residential Density calculation allows for 73 units. 72 units are proposed.

Proposed Project (under West Cumberland Overlay District):

- The project is proposed as a single family home condominium style subdivision development using the parcel as one large lot. Front, Rear and Side setbacks will be from the parcel boundary, and then a front setback from the proposed subdivision street r.o.w.
- The 72 proposed units will consist of 50% (36) affordable housing units as defined by the Town of Cumberland, and 50% (36) market rate housing units.
- Open Space: 10% (4 acres) open space is required by the Town Ordinance, this project proposes 65% (26.9 acres).
- Subdivision Road: designed to the Town's residential collector standards is proposed to be owned by the Town of Cumberland and will connect Blackstrap Road to Upper Methodist Road.
- Sidewalk: proposed on one side of the street.
- Affordable Homes: a mix of one story ranch and two story modified colonial homes without garages. All homes will have a full basement.
- Market Rate Homes: a mix of two story modified colonials with one car garages and full basements.

Proposed Utilities:

- Water: The project will utilize public water.
- Sewer: The project will utilize private subsurface wastewater disposal systems. We have met with the State of Maine Department of Health and Human Services and the Maine DEP to discuss the septic systems and make sure that our system sizing and area calculations are correct.
- Power, Cable and Tel/data will be underground.

We believe that the proposed project meets the following criteria as outlined in Section 315-28.1 West Cumberland Housing Overlay District.

Permitted Uses: Single Family

Lot Standards:

Front Setback = 25 ft. shown along Blackstrap Road, Upper Methodist Road and the proposed subdivision street.

Rear Setback = 50 ft. shown along the parcel's rear property line. This is also a 50 ft. buffer area because the Turnpike is a nonresidential development.

Side Setback = 10 ft. combined width of 25 ft. Side setback is shown along the parcels side property line.

Minimum Lot Size = 20,000 s.f. for single family dwelling unit. See net residential density below and calculation shown on the sketch plan.

Lot Frontage = No less than 100 ft. The parcel has approximately 1,563 ft. on Upper Methodist Road and approximately 866 ft. on Blackstrap Road.

Public Water: Is required for this project and is in the process of being brought to the site.

Open Space = 10% of the total area is required to be in open space. The project proposes to have approximately 65%. The open space will consist of both active (play areas) and passive (trail system) recreation space for the residents.

Buffering = 50 ft. established between the residential development and abutting tracts or parcels of land that include nonresidential uses. 50 ft. shown between development and the Maine Turnpike and the Cemetery.

Net Residential Density = Based on lot size allowed by the overlay zone (20,000 s.f.) See the calculation shown on the sketch plan. 3 units are allowed, 72 units are proposed.

The following documents are included with this cover letter for submission of this project to the Town of Cumberland:

1. Appendix B Application for Major Subdivision
2. Aerial Context Map
3. Right, Title or Interest
 - a. Deed of sale of property from Pike Industries to B.R. Property, LLC (current owner)
 - b. Deed conveying a portion of the original parcel to the Maine Turnpike.
 - c. Deed conveying land from the Maine Turnpike to B.R. Property, LLC.
4. Sketch Plan

Please review the application, supporting documents and plan set and contact me with any comments or questions. We request that the project be placed on the next available agenda for discussion with the Town of Cumberland Planning Board.

Sincerely,

A handwritten signature in black ink that reads "Peter B. Biegel". The signature is written in a cursive, flowing style.

Peter B. Biegel, ASLA
Maine Licensed Landscape Architect

APPENDIX B

APPLICATION FOR MAJOR OR MINOR SUBDIVISIONS

Applicant's Contact Information

Name: B. R. Property, LLC (David Chase)
Mailing Address: 39 Nubbin Reach, Yarmouth, ME 04096
Email Address: Dave@allinconstructioninc.com
Phone#: Office: _____ Cell: (207) 776-3031 Fax: _____
Interest in property: Owner
Interest in abutting properties, if any: None

Property Owner's Contact Information

Name: Same as above
Mailing Address: _____
Email Address: _____
Phone#: Office: _____ Cell: _____ Fax: _____

Applicant's Architect, Landscape Architect, Engineer, Planner or Surveyor Contact

Information (If more than one, please attach contact info for each one.)

Name: Land Design Solutions (Peter Biegel) - in association with Sevee & Maher Engineers (Dan Diffin P.E.)
Mailing Address: 1 Faraday Drive, Suite 7, Cumberland, ME 04021
Email Address: pbiegel@landdesignsolutions.com
Phone#: Office: _____ Cell: (207) 939-1717 Fax: _____

Project Information

Name of Project: Blackstrap Road Subdivision
Address of site: 77 Blackstrap Road
CCRD Book/Page #: 27325 / 312 Tax Map/Lot #: R07/53 West Cumberland
Zoning District: Industrial Zone Overlay District (If any): Housing Overlay
Site size (acres): 40.1 +/- # of Lots: 1 # Buildings: _____ # Dwellings: 72
____ Minor Subdivision X Major Subdivision _____ Conservation Subdivision
Affordable Housing Condominium Project

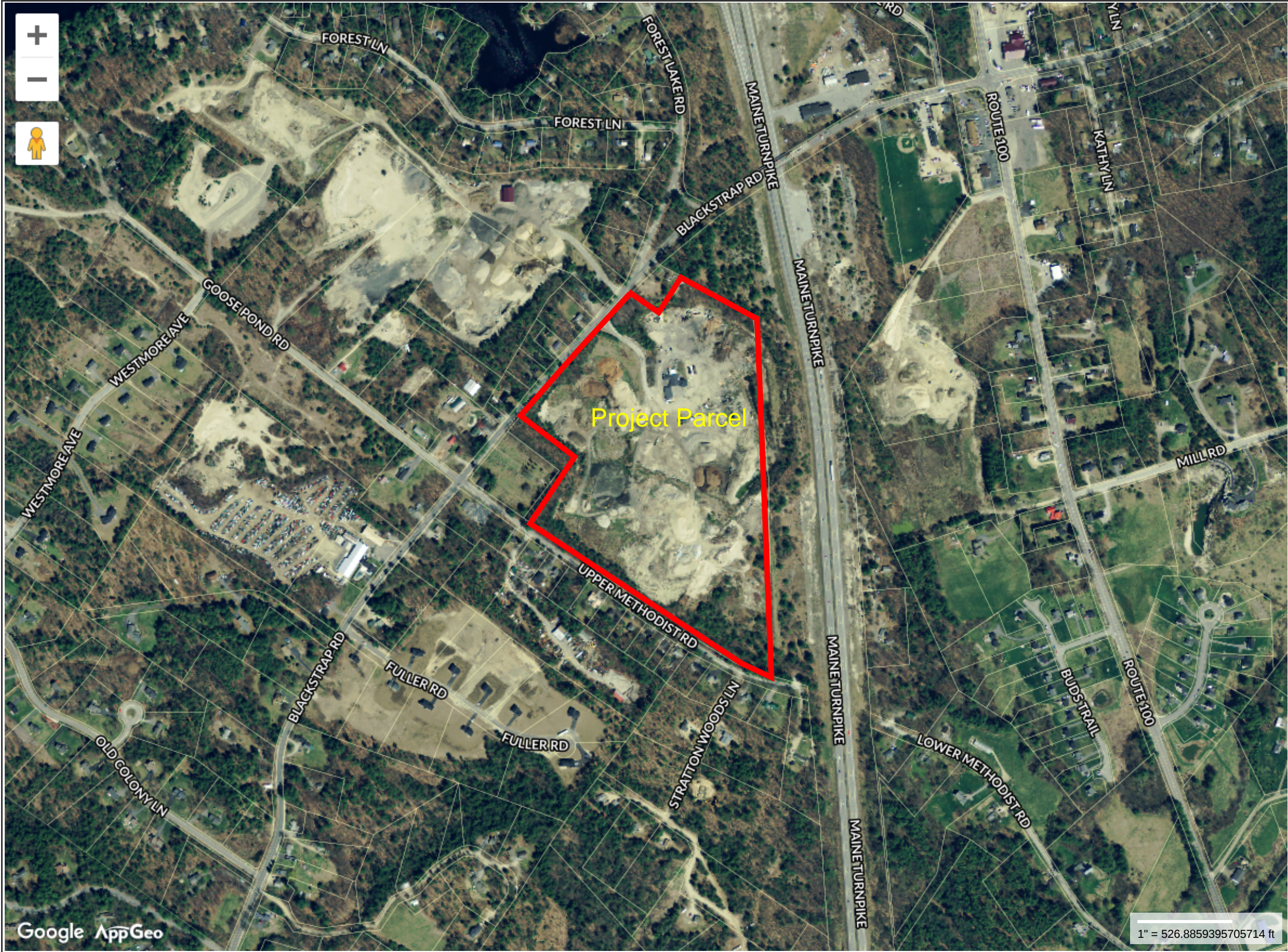
OTHER INFORMATION

1. Is Board of Adjustment and Appeals approval required? No
2. Are any ordinance waivers requested? ____ Yes X No (If yes, attach a list of waivers requested and reason for the request.)
3. Application fee per Town ordinance: \$ Application Fee = \$100.00
4. This application form and all accompanying materials must be submitted to the Town Planner at least 21 days prior to the meeting at which it is to be considered by the Planning Board.

The undersigned, being the applicant, owner or legally authorized representative, states that all information contained in this application is true and correct to the best of his/her knowledge and hereby does submit the information for review by the Town and in accordance with applicable ordinances, statutes and regulations of the Town, state and federal governments.

Peter B. Biegel (Agent) 5/30/23
Signature of Applicant/Owner/Representative Date

77 Blackstrap Road Parcel



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town of Cumberland, ME makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 6/10/2020
Data updated monthly (see property record card)

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Original Purchase Pike Industries to B.R. Property, LLC

WARRANTY DEED
(Maine Statutory Short Form)

MAINE REAL ESTATE TAX PAID

KNOW ALL PERSONS BY THESE PRESENTS, that **PIKE INDUSTRIES, INC.**, a Delaware corporation with a place of business at Belmont, County of Belknap and State of New Hampshire, for consideration paid, grants to **B. R. PROPERTY, LLC**, a Maine limited liability company with a place of business at Falmouth, County of Cumberland and State of Maine, whose mailing address is c/o Chase Excavating, 50 Gray Road, Falmouth, ME 04105, with **WARRANTY COVENANTS**, the land and improvements in the Town of Cumberland, County of Cumberland, State of Maine, described as follows:

Certain lots or parcels of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, being more particularly described as follows:

Parcel I: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, being more particularly described as follows:

Beginning on the southerly side of the old County Road leading by the Methodist Meeting House, at a point distant northeasterly thereon one hundred one (101) feet from the Cemetery fence;

Thence southeasterly, on a line parallel with and distant northeasterly one hundred (100) feet from said Cemetery fence, seven hundred sixty-two (762) feet, more or less, to land formerly owned by Daniel Marston;

Thence northeasterly, by said Marston land, three hundred seventy-one (371) feet, more or less to land formerly owned by Abbie P. Leavitt;

Thence northwesterly, by said Leavitt land, eight hundred fifty-eight (858) feet, more or less, to a stone monument on the southerly side line of said old County Road;

Thence southwesterly, by said road, three hundred thirty-six (336) feet, more or less, to the point of beginning; containing six and three-tenths (6.3) acres, more or less.

Said premises are a part of the same conveyed to Henry M. Wilson and Willis R. Wilson by Ines E. Hicks et al by deed dated March 4, 1935 and recorded in the Cumberland County Registry of Deeds in Book 1464, Page 266, and are conveyed subject to any rights of way which may now exist in an old woods road across the southerly end thereof.

Parcel II: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, lying in lot numbered forty, beginning at the south corner of said lot; being more particularly described as follows:

Thence North forty-four (44) degrees West by the range road, forty (40) rods to a stake;

Thence North sixty-nine (69) degrees East, fifty (50) rods to a stake;

Thence North seventy-three and one half (73 ½) degrees East, twenty-two (22) rods to a stake;
Thence South sixty-four and one half (64½) degrees East, eleven (11) rods to Dennis Doughty's land;

Thence South forty-six (46) degrees West by said Doughty's land, sixty-eight and three-fourths ($68 \frac{3}{4}$) rods more or less to the first bounds mentioned. Containing ten (10) acres and one hundred and thirteen (113) square rods, more or less.

Excepting that portion of the premises conveyed by deed of Cumberland Sand and Gravel Company, Inc. to Maine Turnpike Authority dated November 29, 1954 recorded in said Registry in Book 2209, Page 319.

Parcel III: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, lying on the easterly side of the Blackstrap Road, and being more particularly described as follows:

Beginning at the southwest corner of land of Durward W. Safford on the line of said road;

Thence running easterly on said Safford line to an iron stake and land of one Leavitt;

Thence running southerly on line of said Leavitt land to an iron stake and said Leavitt land;

Thence running westerly on the line of land of said Leavitt to the road aforesaid;

Thence running northerly on the line of the road to the place of beginning.

Excepting that portion of the premises conveyed by deed of Cumberland Sand and Gravel Company, Inc. to Antonio Mancini and Pauline Mancini dated June 3, 1966 and recorded in said Registry of Deeds in Book 2973, Page 140.

Further excepting that portion of the premises conveyed by deed of Alton R. Russell and Hilda W. Russell to Maine Turnpike Authority dated January 26, 1954 and recorded in Book 2166, Page 439.

Parcel IV: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, located on the southerly side of the Old Portland Road, so-called, which leads from Gray Road Inn, so-called, over Blackstrap to Portland, and more particularly described as follows:

Beginning at a point in the southerly sideline of said road, at the northwest corner of land now or formerly of Abbie P. Leavitt and also the northeast corner of land of one Willis Wilson;

Thence in a general southeasterly direction along the line of said Wilson land to a stake and land of said Leavitt;

Thence northeasterly and parallel with the said road one hundred forty (140) feet to a stake and land of said Leavitt;

Thence northwesterly and parallel to the first mentioned line, to a stake in the southerly side line of said road one hundred forty (140) feet to first bound and place of beginning, said lot containing one acre, more or less.

Parcel V: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine being in Lot Number 40 in said town, bounded and described as follows:

Beginning at an iron stake set in the ground on the dividing line of land now or formerly of Abbie Leavitt in West Cumberland, and the land of Willis Wilson, said stake being three hundred fifty (350) feet more or less southeast of the southeasterly side line of Blackstrap Road;

Thence continuing along the dividing line of said land of Abbie Leavitt and said Wilson property, in a southeasterly direction four hundred seventy-five (475) feet more or less to an iron stake and a woods road and right of way;

Thence northeasterly along said woods road, and approximately parallel with the Blackstrap Road, four hundred seventy-five (475) feet more or less to an iron stake;

Thence northwesterly, maintaining a distance of approximately four hundred seventy-five (475) feet from the said Wilson property, a distance of four hundred seventy-five (475) feet more or less to an iron set in the ground;

Thence southwesterly four hundred seventy-five (475) feet more or less to the point of beginning.

Parcel VI: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, and more particularly described as follows:

Beginning at a point which is two hundred seventy-five (275) feet, more or less, South forty-four degrees (44°) East from a point on the southeasterly side line of the old County Road leading by the Methodist Meeting House in said town, which point on said road is forty-six (46) rods more or less, northerly from the northerly side line of the Range Road, so called, and now is, or formerly was, marked by a pine tree and which point of beginning is marked by an iron stake near the corner of a boundary fence and is the southwesterly corner of land conveyed by Abbie Leavitt to Linwood C. Morrill hereinafter identified;

Thence from said point of beginning northeasterly in a line by said fence and through iron stakes set in the ground, said stakes marking the southeasterly line of land of the said Abbie Leavitt and lands conveyed by said Abbie Leavitt to Linwood C. Morrill, Ervin L. Morrill and John P. Breiel, forty-six (46) rods more or less to a stake set in the ground on the line of land now or formerly of Levi Clough, which stake is two hundred eleven and three-tenths (211.3) feet more or less southerly from said County Road;

Thence South forty-four degrees (44°) East to a point, which point is sixty-seven (67) rods ten (10) links more or less from said County Road;

Thence southwesterly along the Right of Way road, so called, (leading from the Range Road otherwise known as the Shawtown Road) to wit, by the northerly line of land conveyed by the said Abbie Leavitt to Ruth Wood and continuing by the northerly line of land now or formerly of Cumberland Sand & Gravel Co., Inc., formerly of one Charles L. Shaw, to a point and iron stake where the westerly line of said land of Abbie Leavitt intersects the line of said land of Cumberland Sand & Gravel Co., Inc., which point and stake is in a course South forty-four degrees (44°) East of the point of beginning and fifty-two (52) rods from said County Road;

Thence North forty-four degrees (44°) West along said Abbie Leavitt's westerly line to the point of beginning;

Meaning and intending to convey all the land acquired by the said Abbie Leavitt from Shirley H. Mann by deed dated July 10, 1934 and recorded in Cumberland County Registry of Deeds in Book 1443, Page 466 with the exception of the parcels conveyed by Abbie P. Leavitt as follows: to John P. Breiel by deed dated

May 29, 1940 and recorded in said Registry in Book 1603, Page 486; to Ervin L. Morrill by deed dated March 18, 1946 and recorded in said Registry in Book 1812, Page 160; to Linwood C. Morrill by deed dated May 26, 1951 and recorded in said Registry in Book 2054, Page 315; to Ruth Wood by deed dated October 5, 1950 and recorded in said Registry in Book 2021, Page 3, and with the further exception of the land southerly of said County Road lying between said land sold to Ervin L. Morrill and said land sold to said Linwood C. Morrill, retained by the said Abbie Leavitt;

And further conveying a right of way from the land hereby conveyed to the said County Road, said right of way being fifty (50) feet in width and running along the northerly side line of land now or formerly of Abbie Leavitt and southwesterly of said land conveyed to Ervin L. Morrill for use by the grantee, its successors and assigns, in common with others, for ingress and egress to the above granted premises to and from said County Road; the land hereby conveyed including the land heretofore conveyed by deed dated December 11, 1947 and recorded in said Registry in Book 1897, Page 246.

Excepting from the above described premises the property conveyed by Cumberland Sand & Gravel Co., Inc. to Maine Turnpike Authority by deed dated November 29, 1954 and recorded in said Registry of Deeds in Book 2209, Page 319.

Further excepting that portion of the premises described in the Maine Turnpike Authority Notice of Taking dated March 15, 1954 and recorded in Book 2172, Page 101.

Excepting that portion of the premises conveyed by deed of Cumberland Sand and Gravel Company, Inc. to Antonio Mancini and Pauline Mancini dated June 3, 1966 and recorded in said Registry of Deeds in Book 2973, Page 140.

Parcel VII: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, and more particularly described as follows:

Beginning at a point approximately nine hundred (900) feet northeasterly of the Range Road, which point is the northerly corner of land sold by Abbie P. Leavitt to Linwood Morrill by deed dated May 26, 1951, and recorded in Cumberland County Registry of Deeds in Book 2054, Page 315;

Thence southeasterly by said Linwood Morrill land two hundred seventy-five (275) feet more or less to a stake on the land conveyed by said Abbie P. Leavitt to the Cumberland Sand & Gravel Co., Inc., by deed dated November 24, 1952, and recorded in said Registry in Book 2115, Page 168;

Thence northeasterly by said Cumberland Sand & Gravel Co., Inc., land two hundred eighteen (218) feet more or less to the southerly corner of land conveyed by said Abbie P. Leavitt to Ervin L. Morrill by deed dated March 18, 1946, and recorded in said Registry in Book 1812, Page 160;

Thence northwesterly by said Ervin L. Morrill land to said Old County Road;

Thence southwesterly two hundred eighteen (218) feet more or less by said southerly side line of said Old County Road to the point of beginning.

Excepting therefrom a certain right of way conveyed to said Cumberland Sand & Gravel Co., Inc., by said deed of November 24, 1952.

Parcel VIII: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, and more particularly described as follows:

Beginning at a point in the northeasterly sideline of the Range Road, so-called (now marked "Dead End"), distant southeasterly fifteen (15) feet from the West Cumberland Methodist Cemetery fence;

Thence parallel with and fifteen (15) feet southeasterly from the southeasterly side of said Cemetery fence, extending northeasterly in a straight line, to land conveyed by Henry M. Wilson and Willis E. Wilson to W.H. Hinman Co.;

Thence southeasterly, by said Hinman Co. land, to land now or formerly of Cumberland Sand & Gravel Co., formerly of one Shaw;

Thence southwesterly, by said land of Cumberland Sand & Gravel Co., to the northeasterly side line of said Range Road;

Thence southeasterly, by said Hinman Co. land, to land now or formerly of Cumberland Sand & Gravel Co., formerly of one Shaw;

Thence northwesterly, by said road, to the point of beginning.

Parcel IX: A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland and State of Maine, and more particularly described as follows:

Lying on the generally easterly side of the right-of-way road, in said Cumberland, which road leads northerly from the Shawtown Road, in said Cumberland, a road running from the Blackstrap Road, so called, to the Portland Gray Road, said lot being bounded westerly by the right-of-way Road, northerly by land now or formerly of one Wilson, easterly by Wilson's land, and southerly by land now or formerly of one Shaw.

Excepting from the above described land so much thereof as was taken over by and conveyed to the Maine Turnpike Authority by deed dated January 26, 1954 and recorded in said Registry of Deeds in Book 2161, Page 395.

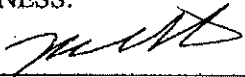
Covenant Running with the Land: Grantee, its successors and assigns, covenant and agree, by acceptance of this deed, that the premises conveyed herein shall not be used for the production of concrete or hot-mix asphalt. Any excavation of earthen materials from this site shall remain on this site. Grantor agrees to allow the Grantee, its successors and assigns, the ability to utilize the Property for onsite storage and crushing of "off-site originated" rock and other materials, including off-site originated concrete or hot-mix waste products for recycling, and shall allow for the sale (retail or wholesale) and distribution of such recycled products or aggregate. These restrictions shall run with the land, shall inure to the benefit of Grantor, its successors and assigns, and shall be binding upon the Grantee, its successors and assigns.

Easements: The premises are conveyed subject to: (a) the Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company as set forth in an instrument from Cumberland Sand & Gravel Co., Inc. dated February 27, 1963 and recorded in said Registry of Deeds in Book 3016, Page 626; (b) Rights and easements granted to Cumberland County Power and Light Company as set forth in an instrument by Charles L. Shaw dated October 27, 1916 and recorded in Book 979, Page 241. (Parcel II); (c) Rights and easements granted to New England Telephone and Telegraph Company and Central Maine Power Company as set forth in an instrument dated February 23, 1951 and

recorded in Book 2037, Page 256. (Parcel V); (d) Rights and easements granted to Central Maine Power Company as set forth in an instrument from Cumberland Sand & Gravel Co., Inc. dated September 22, 1952 and recorded in Book 2106, Page 323; (e) Agreement by and among the Town of Cumberland, the State of Maine Department of Transportation, Shaw Brothers Construction, Inc., and Blue Rock Industries dated June 28, 1995 and recorded in Book 12013, Page 43; (f) Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company as set forth in an instrument by Alton R. and Hilda W. Russell dated February 3, 1955 and recorded in Book 2238, Page 8; (g) Rights and easements granted to New England Telephone and Telegraph Company and Central Maine Power Company as set forth in an instrument by Abbie P. Leavitt dated February 23, 1951 and recorded in Book 2037, Page 254. (Parcels IV, VI, VIII, and IX); (h) Rights and easements granted to Cumberland County Power and Light Company as set forth in an instrument by Lorinda Mountfort dated October 26, 1916 and recorded in Book 980, Page 151; and (i) rights and easements, as may exist, as set forth in an instrument from Henry M. Wilson to W.H. Hinman, Inc. dated September 8, 1958 and recorded in Book 2435, Page 149 (Parcel I).

WITNESS its hand and seal this 14th day of October, 2009.

WITNESS:



PIKE INDUSTRIES, INC.

By:

Typed name:

Its:

Jonathan Olson

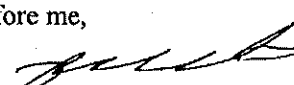
Regional Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

October 14, 2009

Then personally appeared the above named Jonathan Olson, its Regional Manager of **PIKE INDUSTRIES, INC.** who acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said **PIKE INDUSTRIES, INC.**

Before me,


Attorney at Law/Notary Public

Print Name:

My Commission Expires:

Ronald E. Jester

Received
Recorded Register of Deeds
Oct 15, 2009 01:49:44P
Cumberland County
Pamela E. Lovley

Land Conveyed from B.R. Property, LLC to the Maine Turnpike

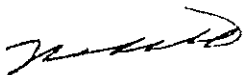
WARRANTY DEED

Statutory Short Form


KNOW ALL BY THESE PRESENTS, THAT **B.R. PROPERTY, LLC**, a Maine limited liability company, whose mailing address is c/o Chase Excavating, 50 Gray Road, Falmouth, ME 04105, for consideration paid, grants to the **MAINE TURNPIKE AUTHORITY** a body corporate and politic, duly created by virtue of an Act of the Legislature of the State of Maine, Chapter 69 of the Private and Special Laws of 1941, as amended, and continued in existence under Title 23, M.R.S.A., Chapter 24, and having an office at 2360 Congress Street, Portland, in the County of Cumberland and State of Maine, 04102, with WARRANTY COVENANTS, a certain lot or parcel of land with any improvements for highway or transportation purposes situated in the Town of Cumberland, County of Cumberland, State of Maine, and more particularly described in **Exhibit A**, attached hereto and made a part hereof.

IN WITNESS WHEREOF, **B.R. Property, LLC** has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this 13th day of January, 2011.

Witness



B.R. Property, LLC


David A. Chase

STATE OF MAINE
COUNTY OF CUMBERLAND ss.

January 13, 2011

Personally appeared before me the above named David A. Chase and acknowledged the foregoing instrument to be his free act and deed and that of B.R. Property, LLC.

Before me,

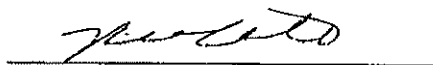
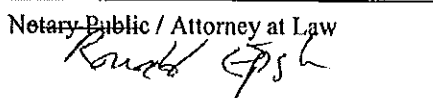

Notary Public / Attorney at Law


EXHIBIT A

A certain strip of land in the Town of Cumberland, County of Cumberland and State of Maine being primarily 150 feet in width situated on the west edge of the Maine Turnpike right of way and the southeast corner of that parcel of land conveyed to B. R. Property LLC by deed recorded in the Cumberland County Registry of Deeds in book 27325 page 312, and as depicted on a certain plan entitled, "Plan of Survey of Properties in the Town of Cumberland made for the Maine Turnpike Authority and B. R. Property, LLC, being more particularly bounded and described as follows, to wit:

Beginning at a point on the westerly sideline of the Maine Turnpike at the northeast corner of land of the aforesaid B. R. Properties and the southerly corner of land now of this grantee as described in the deed recorded in said registry in book 2181 page 437, formerly known as the Wilson lot, said point being 150 feet west of center line station 2909+25.39, and proceeding around the parcel hereby described and conveyed in a counter-clockwise fashion;

Thence N 55°-14'-58" W along the land of said grantee herein a distance of 217.58 feet to a certain survey marker;

Thence S 11°-47' E for a distance of 98.11 feet to a certain survey marker set in the ground 150 feet west of a granite monument designating a point of tangency at the west edge of the Maine Turnpike right of way said monument being 150 feet west of and opposite center line station 2909+85.19;

Thence along a curve to the right having a radius of 5429.58 feet for a distance of 754.95 feet as measured along the arc of said curve to a point of curvature 150 feet west of a granite monument designating a point of curvature of the Maine Turnpike right of way, said monument situated 150 feet west of and opposite center line station 2901+88.52, the hereby described curve subtended by a chord having a length of 754.35 feet bearing S 07°-48' E;

Thence S 03°-49' E for a distance of 39.46 feet to a certain survey marker set in the northerly side of a steep embankment and land conveyed to this grantee from Vernie B. Stratton by deed recorded in said registry in book 2166 page 237;

Thence N 34°-41'-23" E along the former Stratton parcel as aforesaid for a distance of 206.64 feet to the westerly edge of the Maine Turnpike right of way situated 170 feet westerly of the Maine Turnpike center line aforesaid;

Thence proceeding along the Maine Turnpike right of way and a curve to the left having a radius of 5559.58 feet for a distance along said arc of 69.50 feet to a point at southerly boundary of a certain parcel of land formerly of Ruth Wood, being the ninth parcel of land described in the deed given the grantor herein aforesaid, said curve subtended by a chord having a length of 69.50 feet bearing N 05°-26'-05" W;

EXHIBIT A

(continued)

Thence S 79°-51'-30" E along the former Ruth Wood parcel for a distance of 20.80 feet to the westerly edge of the Maine Turnpike right of way and a corner, said corner situated 150 feet westerly of the center line of the Maine Turnpike;

Thence proceeding along the Maine Turnpike right of way and a curve to the left having a radius of 5579.58 feet for a distance along said arc of 529.27 feet to the **Point of Beginning** herein, at the southerly boundary of the aforesaid former Wilson lot, said curve subtended by a chord having a length of 529.07 feet bearing N 08°-27'-06" W, said hereby described and conveyed parcel encompassing an area of 2.49 acres, more or less.

The above description was prepared by benefit of a survey plan and on the ground survey performed by Royal River Survey Company entitled, "Plan of Survey of Properties in the Town of Cumberland" dated October 14, 2010. All bearings cited herein are based upon the north orientation prescribed by the right of way surveys and plans of the Maine Turnpike Authority. All markers cited herein as "certain survey marker" are 5/8 inch diameter steel rebar with identification caps inscribed, "Royal River PLS 1154".

Received
Recorded Register of Deeds
Jan 14, 2011 01:44:30P
Cumberland County
Pamela E. Lovley

Land Conveyed to B.R. Property, LLC from the Maine Turnpike

QUITCLAIM DEED

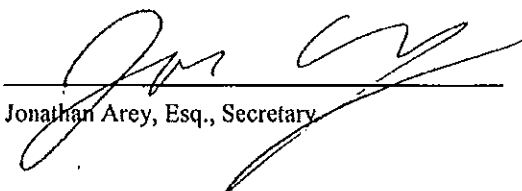
With Covenant

MAINE REAL ESTATE TAX PAID


KNOW ALL BY THESE PRESENTS, THAT the MAINE TURNPIKE AUTHORITY a body corporate and politic, duly created by virtue of an Act of the Legislature of the State of Maine, Chapter 69 of the Private and Special Laws of 1941, as amended, and continued in existence under Title 23, M.R.S.A., Chapter 24, and having an office at 2360 Congress Street, Portland, in the County of Cumberland and State of Maine, 04102, for consideration paid, grants to **B.R. PROPERTY, LLC**, a Maine limited liability company, whose mailing address is c/o Chase Excavating, 50 Gray Road, Falmouth, ME 04105, with Quitclaim Covenant, a parcel of land in Cumberland, Cumberland County, Maine and more particularly described in **Exhibit A**, attached hereto and made a part hereof,

IN WITNESS WHEREOF, the Maine Turnpike Authority has caused this instrument to be sealed with its corporate seal and signed in its corporate name hereunto duly authorized this 11th day of January, 2011.

Attest:


Jonathan Arey, Esq., Secretary

Maine Turnpike Authority


Paul E. Violette, Executive Director

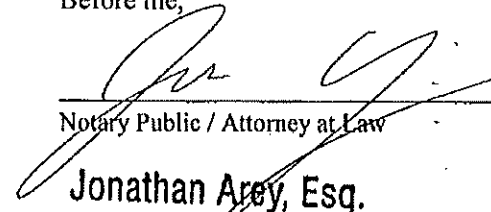
STATE OF MAINE
COUNTY OF CUMBERLAND ss

January
November 11, 2010

Personally appeared before me the above named Paul E. Violette, Executive Director of the Maine Turnpike Authority, and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of said corporation.

SEAL

Before me,


Notary Public / Attorney at Law

Jonathan Arey, Esq.

EXHIBIT A

A certain parcel of land situated on the north side of Upper Methodist Road, so called, in the Town of Cumberland, County of Cumberland and State of Maine, being the westerly portion of that parcel conveyed to this grantor from Vernie B. Stratton by deed recorded in the Cumberland County Registry of Deeds in book 2166 page 237, the parcel hereby described and conveyed being bounded southwesterly by the Upper Methodist Road aforesaid, northwesterly by the land of B. R. Property, LLC, and easterly by a 150 foot wide strip along the west side of the Maine Turnpike that is to be retained by the grantor herein, said parcel hereby described and conveyed being more particularly bounded and described as follows, to wit:

Beginning at the southerly terminus of the easterly sideline of the parcel hereby described and conveyed at a certain survey marker set in the northerly sideline of the Upper Methodist Road, said marker situated N 73°-18'-51" W of the westerly sideline of the Maine Turnpike a distance of 160.14 feet as measured along the northerly sideline of said Upper Methodist Road, said marker and easterly sideline also being 300 feet westerly of the center line of the Maine Turnpike, and proceeding around the parcel hereby conveyed in a counter-clockwise fashion;

Thence N 03°-49' W maintaining a distance of 300 feet westerly and perpendicular to the aforesaid Maine Turnpike center line for a distance of 1033.22 feet to a certain survey marker and the southerly bounds of B. R. Property, LLC as described in parcel two of the deed recorded in said registry in book 27325 page 312 and was known formerly as the Shaw lot;

Thence S 34°-41'-23" W along the easterly bound of the said B. R. Property, LLC for a distance of 915.10 feet to a field stone monument set in the northerly sideline of Upper Methodist Road;

Thence S 57°-50'-58" E along the apparent northerly sideline of Upper Methodist Road for a distance of 365.6 feet;

Thence S 73°-18'-51" E along the apparent northerly sideline of Upper Methodist Road for a distance of 292.36 feet to a certain survey marker and remaining land of the Maine Turnpike Authority and **Point of Beginning** herein, encompassing an area of 7.09 acres, more or less.

The above described parcel of land was subject to a certain pole easement now of the Central Maine Power Company, as described in the deed recorded in book 980 page 149, the said location of which having been adjusted by license recorded in book 2931 page 317.

The above description was prepared by benefit of a survey plan and on the ground survey performed by Royal River Survey Company entitled, "Plan of Survey of Properties in the Town of Cumberland" dated October 14, 2010. All bearings cited herein are based upon the north orientation prescribed by the right of way surveys and plans of the Maine Turnpike Authority. All markers cited herein as "certain survey marker" are 5/8 inch diameter steel rebar with identification caps inscribed, "Royal River PLS 1154".

Maine Turnpike Authority to BR Properties, LLC
Page 2 of 2

Received
Recorded Register of Deeds
Jan 14, 2011 01:38:13P
Cumberland County
Pamela E. Lovley



| NET RESIDENTIAL ACREAGE (TOTAL PARCEL ACREAGE = 40.9 / 1,781,604 S.F.): | |
|---|------------------|
| AREA | QUANTITY S.F. |
| A. AREA FOR ROADS & PARKING (PROPOSED) | 3.3 AC / 145,027 |
| B. LAND CUT OFF, ISOLATED, UNAVAILABLE FOR BUILDING | 0 |
| C. OTHER AREAS DIFFICULT TO DEVELOP | |
| - SLOPES IN EXCESS OF 20% FOR 30,000 S.F. OR MORE | 3.8 AC / 168,313 |
| - WETLANDS | 0 |
| - LAND IN 100 YEAR FLOOD ZONE | 0 |
| D. LAND IN EASEMENTS OR RIGHT-OF-WAY | 0 |
| E. RESOURCE PROTECTION DISTRICTS | 0 |
| TOTAL DEDUCTED LAND | 7.1 AC / 313,340 |
| 1,781,160 - 313,340 = 1,467,820 / 20,000 = 73.3 UNITS ALLOWED - 72 UNITS PROPOSED | |

| ON SITE SUBSURFACE WASTEWATER DISPOSAL SYSTEM CALCULATION: | |
|--|--|
| SINGLE FAMILY & DUPLEX DWELLING UNITS (MULTI-FAMILY STYLE CONDO DEVELOPMENT) REQUIRES 120 GPD PER DAY PER BEDROOM AND 20,000 S.F. OF AREA IS REQUIRED FOR EVERY 300 GPD. | |
| - 72 SINGLE FAMILY UNITS X 3 BEDROOMS X 120 GPD = 25,920 GPD REQUIRED | |
| - 25,920 / 300 GAL.=86.4 X 20,000 = 1,728,000 S.F. | |
| TOTAL AREA NEEDED = 1,728,000 S.F. | |
| TOTAL AREA PROPOSED = 1,781,604 S.F. | |

| ROAD FRONTAGE: | |
|--|--|
| EXISTING BLACKSTRAP ROAD = 866 FT.± | |
| EXISTING UPPER METHODIST ROAD = 1,563 FT.± | |

- PROPOSED CONDOMINIUM SUBDIVISION PROJECT
DEVELOPED UNDER 315-28.1 WEST CUMBERLAND HOUSING OVERLAY DISTRICT:
- 40.9 ACRE PARCEL
 - 72 SINGLE FAMILY HOMES (36 AFFORDABLE & 36 MARKET RATE)
 - 26.9 ACRES OF OPEN SPACE (10% REQUIRED / 65% PROVIDED)
 - PROPOSED ROAD LENGTH = 2,857' L.F.±
 - 20 GUEST PARKING SPACES

- SINGLE FAMILY HOUSE
- MINIMUM FRONT SETBACK = 25 FT.

- ROAD DESIGN (RESIDENTIAL SUBDIVISION GREATER THAN 50 VEHICLES PER DAY
- 50 FT. R.O.W.
 - 22 FT. TRAVEL WAY
 - 2 FT. OR 4 FT. GRAVEL SHOULDER (DEPENDING ON "ON-STREET PARKING"
 - 5' WIDE SIDEWALK (ONE SIDE)
 - MAXIMUM GRADE = 8%
 - MINIMUM CENTERLINE RADIUS = 180
 - MIN. GRADE APPROACHING INTERSECTION 3% FOR 50 FT.

- ZONING SUMMARY:
- INDUSTRIAL ZONE & WEST CUMBERLAND HOUSING OVERLAY DISTRICT
- OPEN SPACE REQUIRED = 10% (4 ACRES)
 - MINIMUM FRONTAGE = 100 FT.
 - MINIMUM FRONT SETBACK = 25 FT.
 - MINIMUM SIDE SETBACK = 10 FT.
 - MINIMUM REAR SETBACK = 50 FT.
 - PUBLIC WATER REQUIRED
 - REQUIRED BUFFER BETWEEN RESIDENTIAL DEVELOPMENT AND ABUTTING TRACTS OF NONRESIDENTIAL USES = 50 FT.

UNIT SUMMARY & LEGEND

TOTAL UNITS = 72
AFFORDABLE UNITS REQUIRED (50%) = 36

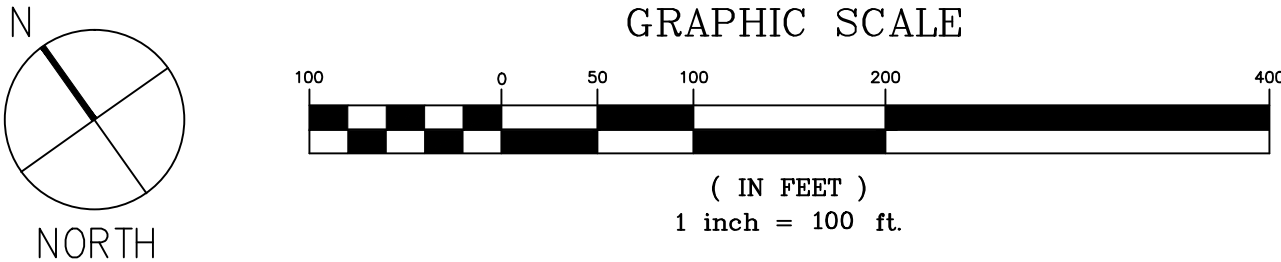
AFFORDABLE UNITS =36
MIX OF RANCH & COLONIAL
FULL BASEMENT/NO GARAGE

MARKET RATE UNITS = 36
MIX OF COLONIALS WITH
SINGLE CAR GARAGE & FULL
BASEMENT

OPEN SPACE

OPEN SPACE BOUNDARY

FRONT BLDG. SETBACK



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TOWN OF CUMBERLAND
Affordable Housing Agreement and
Declaration of Covenants, Conditions, Restrictions and
Option to Purchase

This Affordable Housing Agreement and Declaration of Covenants, Conditions, Restrictions, and Option to Purchase (the “**Declaration**”) is entered into by and between the **TOWN OF CUMBERLAND**, a municipal corporation organized and existing under the laws of the State of Maine, with a mailing address of 290 Tuttle Road, Cumberland, Maine 04021 (the “**Town**”) and **B.R. PROPERTY, LLC**, a Maine limited liability company with a mailing address of 875 Princes Point Road, Yarmouth, Maine 04096 (the “**Developer**”).

W I T N E S E T H

WHEREAS, the Town has enacted the West Cumberland Housing Overlay District (Town of Cumberland Code of Ordinances § 315-28.1) to “encourage the development of affordable housing units by assisting developers in making the provision of these units economically viable, while providing assurances to the Town that these units will maintain a high degree of quality and will remain affordable to the target population over a reasonable period of time”; and

WHEREAS, the Developer is the owner in fee simple of certain real property located at 77 Blackstrap Road in Cumberland, which is more particularly defined as Map R7, Lot 53 of the Tax Maps of the Town of Cumberland and is more particularly described in **Exhibit A** (the “**Property**”); and

WHEREAS, the Developer intends to construct seventy-two (72) single-family homes on the Property, all of which will be units within a single condominium to be declared (the “**Development**”); and

WHEREAS, the Development was approved by the Town of Cumberland Planning Board on ____, which said approved development plan was recorded in the Cumberland County Registry of Deeds in Plan Book ____, Page ____ (the “**Plan**”); and

WHEREAS, the Development was approved by the Planning Board on the condition that fifty percent (50%) of the total number of units in the Development be made affordable for those making up to 120% of AMI, as defined herein (“**Affordable Housing Units**”); and

WHEREAS, the Developer has designated thirty-six (36) single-family homes within the Development as Affordable Housing Units, being Units ____, as more particularly shown on the Plan; and

WHEREAS, a condition of approval of the Plan was that the Town and Developer execute and record this Declaration prior to the issuance of the certificate of occupancy for any such Affordable Housing Unit; and

WHEREAS, in order to fulfil these conditions of approval and the purpose of the West Cumberland Housing Overlay District, the Developer hereby agrees to place certain restrictions on

the sale and sale price of certain units in the Development on the terms and conditions hereinafter provided, and in accordance with Maine law, including but not limited to 33 M.R.S. § 121, *et seq.*

NOW THEREFORE, in consideration of the mutual undertaking set forth herein, the Town and the Developer hereby agree as follows:

1. **Parties' Intent.** The terms and conditions contained in this Declaration have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of the Developer and the Town set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for residents of the Town of Cumberland. It is the express understanding and intent of the parties that the terms and conditions of this Declaration will enhance the marketability of the Property by making the Property affordable to moderate-income families who, without such provisions, would be unable to afford property within the Town of Cumberland.
2. **Term.** The term of this Declaration shall be for a period beginning on the date that it is recorded in the Cumberland County Registry of Deeds (the "Effective Date") and ending on the date that is **thirty (30) years** from the Effective Date, after which time this Declaration shall automatically expire and the covenants and restrictions set forth herein shall be deemed satisfied and released.
3. **Enforceability of Covenants.** The covenants and restrictions set forth herein are intended to be and shall be considered covenants that run with the Property described in **Exhibit A** and shall bind all subsequent owners and holders of any interest in said real estate, including the owners of any individual Affordable Housing Unit therein, and the resulting condominium association. The Town may enforce the covenants set forth herein as a contract beneficiary. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, a foreclosure or transfer of title in lieu of foreclosure, or the repayment of any loan, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law, or an action of a governmental agency that prevents the Town from enforcing the covenants.
4. **Transfer to Qualified Buyer.** Except as set forth herein, the Developer may only sell, transfer, or otherwise dispose of an Affordable Housing Unit to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer, or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth herein, shall be **null and void**. For purposes of this Declaration, the term "**Qualified Buyer**" means a person or household with a gross income not exceeding **120%** of the HUD Greater Portland Metropolitan Statistical Area median income figures ("**AMI**") for a household of the size as calculated by the Town and which person or household must intend to and in fact occupy the Affordable Housing Unit as their primary residence. Affordable Housing Units may not be rented out by the Developer, or a Qualified Buyer, for short or long-term periods during the term of this Declaration.

5. **Notice to the Town; Procedure for Sale; Town's Option to Purchase.**

A. Prior to listing an Affordable Housing Unit for sale, or the Developer entering into a purchase and sale agreement for the sale or other disposition of a Affordable Housing Unit, or otherwise taking any steps to consummate the sale of a Affordable Housing Unit, the Developer shall first give the Town written notice of such intent (the "**Notice of Intent**"), addressed to the Town at the address set forth herein or at such other address as the Town shall provide to the Developer by written notice.

B. Within ten (10) business days of receiving the Notice of Intent, the Town shall determine: (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) the Affordable Housing Unit's "**Maximum Allowable Price,**" being the most recent price established by the Maine State Housing Authority that is affordable to a Qualified Buyer. The Town shall communicate the results of such determinations to Developer within said ten (10) business day period (the "**Notice of Determination**").

C. The Affordable Housing Unit shall not be marketed for a price in excess of the Maximum Allowable Price. The Town shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The Town shall have ten (10) business days from the date it receives all information about a prospective buyer necessary to determine if the prospective buyer is indeed a Qualified Buyer. Developer shall contractually require such potential buyers to provide the Town with whatever reasonable information the Town requests in order to make the determinations required under this subsection. To the extent permitted by law, all information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the Town. The Qualified Buyer shall sign, acknowledge and agree to be bound by the terms and conditions of this Affordable Housing Declaration of Covenants, Conditions, Restrictions and Option to Purchase in substantially the same form as that attached hereto as **Exhibit B** (the "**Buyer's Agreement**") and, as part of the purchase of any of the Affordable Unit, shall assume, in writing, all of the obligations of the "Developer" hereunder with respect to said Affordable Unit. The Buyer's Agreement shall be recorded in the Cumberland County Registry of Deeds concurrently with the deed from the Developer conveying the Affordable Housing Unit. The Developer shall not be liable for the Qualified Buyer's performance of its obligations under the Buyer's Agreement.

D. In the event that Developer is unable to find a ready, willing, and able Qualified Buyer after marketing the Affordable Housing Unit for at least 365 days (such period being the "**Restricted Period**") following the issuance of the certificate of occupancy, the Developer then shall notify the Town that it wants to market that Affordable Housing Unit to non-Qualified Buyers. The Developer grants to the Town the option to purchase the Affordable Housing Unit after the expiration of the Restricted Period on the terms set forth below:

(i) Developer must establish, to the Town's reasonable satisfaction, that the Developer made good faith efforts to market the Affordable Housing Unit for the entire Restricted Period for sale to Qualified Buyers at a price not in excess of the Maximum Affordable Price;

(ii) Upon a determination by the Town of such marketing efforts, which the Town shall make within ten (10) business days after the last day of the Restricted Period, the Town shall have thirty (30) days to decide if it will exercise its option to purchase the Affordable Housing Unit for the Maximum Allowable Price.

(iii) If the Town decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the “**Notice to Exercise**”) to the Developer. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Affordable Housing Unit to Qualified Buyers shall cause the Town’s option to expire.

(iv) The Town shall complete its purchase of the Affordable Housing Unit pursuant to this paragraph within sixty (60) days of the date of service of the Notice to Exercise (the “**Town Closing Period**”). Developer shall cooperate fully in Town’s efforts to acquire the Affordable Housing Unit and shall take all reasonable steps necessary to clear any title defects. If the Town fails to close on the Affordable Housing Unit within the Town Closing Period for any reason other than liens voluntarily placed on the Affordable Housing Unit by Developer, then Developer shall immediately be free to sell the Affordable Housing Unit to a non-Qualified Buyer.

E. If the Town decides not to exercise its option to purchase the Affordable Housing Unit (including as a result of a failure to give a Notice to Exercise), the Developer shall be free to sell the Affordable Housing Unit to a non-Qualified Buyer at any such agreed sale price provided however, that to the extent the agreed sale price exceeds the Maximum Allowable Price, then any amount between the actual sale price and the Maximum Allowable Price (the “**Excess**”) shall be paid to the Town at the time of the closing on the sale of the Affordable Housing Unit, and such Excess is to be set aside for affordable housing purposes by the Town. Upon the payment of the Excess, if any, Developer and Developer’s heirs, successors and assigns, shall thereafter be free to sell the Affordable Housing Unit free of the terms and conditions of this Declaration, which shall be deemed terminated as to such Affordable Housing Unit.

F. At the request of Developer, and provided there has been full compliance by Developer with the terms of this Declaration, the Town shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of the Affordable Housing Unit which results in the release of the Developer and the Affordable Housing Unit from the terms of this Declaration.

6. **Construction and Duration.** The covenants and restrictions contained herein shall run with the Property and shall continue until the expiration of the Term established in Section 2 above. Developer covenants and agrees for themselves and their heirs, personal representatives and assigns that the rights and restrictions contained herein shall be for the benefit of the Town, its successors and assigns, and shall be binding on all future purchasers of an Affordable Housing Unit in the Development. Developer and the Town agree and intend that this Declaration and the covenants contained herein are to be interpreted as “Affordable Housing Covenants” as defined by 33 M.R.S. § 121.

7. **Applicability of This Agreement to Mortgagees.** Notwithstanding anything to the contrary contained herein, the terms of this Declaration shall not apply to the following types of transfers of an Affordable Housing Unit:

- A. Transfers by the Developer to a mortgagee in lieu of foreclosure;
- B. Transfers by a mortgagee immediately following a transfer to such mortgagee by deed in lieu of foreclosure;
- C. Transfers by a mortgagee of Developer pursuant to and as a result of a foreclosure judgment and sale;
- D. Transfers by a mortgagee immediately following a transfer to such mortgagee as a result of a foreclosure; or
- E. Transfers by the transferee of any transfer described in subsection C above which results from a mortgage servicing relationship between a servicing lender and a governmental entity serving as a secondary market mortgage purchaser;

provided, however, that this Declaration shall apply in full to all subsequent transfers of the Affordable Housing Unit not described in subsections A through E of this Section 7, and any such subsequent transferees shall own the Affordable Housing Unit as an “Owner” subject in all respects to all of the terms and conditions of this Declaration. The provisions in this paragraph shall apply in the same manner to all subsequent holders of mortgages on the Property.

9. **Violation.** In the event of any violation of this Declaration by the Developer or its heirs, successors, or assigns, including but not limited to any owner/prospective seller of a Affordable Housing Unit, the Town shall be entitled to exercise any of its rights under this Declaration and applicable law, maintain an action in law or in equity to recover damages incurred by the Town from such failure, including but not limited to reasonable attorney’s fees and costs, and to require the Developer or prospective seller, through injunctive relief or specific performance, to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein.

10. **Indemnification.** The Developer shall indemnify and hold the Town and its agents harmless from and against any and all claims, demands, liability, loss, cost, or expenses, including but not limited to attorney’s fees and other costs of litigation incurred by the Town arising out of or in any way related to the Developer’s breach of any of its obligations under this Declaration or any action taken by the Town to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the Town. Under no circumstances shall the provision of indemnification under this Declaration be construed to waive or otherwise limit any of the defenses, immunities, or limitations of liability available to the Town under the Maine Tort Claims Act, 14 M.R.S. § 8101, *et seq.*, or other applicable law. The provisions of this Section shall survive the term of this Declaration indefinitely.

11. **Amendments.** This Declaration may only be amended or modified, in whole or in part, by written agreement of the Developer and the Town clearly express the intent to modify the Declaration.

12. **Severability.** The validity of any clause, part, or provision of this Declaration, shall not affect the validity of the remaining parts thereof.

13. **Successors and Assigns.** This Declaration shall be binding upon the Developer's respective heirs, personal representatives, executors, administrators, transferees, successors, and assigns, and shall inure to the benefit of and shall be enforceable by the Town, its successors, transferees, and assigns. The Developer shall reference this Declaration in any deed, condominium declaration, or other conveyance documents that conveys all or part of the Development.

14. **Governing Law.** This Declaration shall be construed in accordance with and governed by the laws of the State of Maine, without regard to any contrary conflict of laws provisions.

15. **Additional Documents.** The Developer shall execute such other documents the Town reasonable deems necessary in order to effectuate the intent and purpose of this Declaration.

16. **Notices.** Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States Mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer, its heirs and assigns, or the Town at their respective addresses as set forth above, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

17. **Integration.** This Declaration completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Town and the Developer relating to the specific subject matter of this Declaration.

18. **Waiver.** Notwithstanding anything contained herein, failure of the Town to complain of any act or omission on the part of Developer, or its heirs, successors, or assigns, no matter how long the same may continue, shall not be deemed to be a waiver by the Town of any of under this Declaration.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Town of Cumberland and B.R. Property, LLC as of this _____ day of _____, 2023.

TOWN OF CUMBERLAND

Witness

William R. Shane, P.E., its
Town Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 2023

Personally appeared before the above-named William R. Shane, duly authorized Town Manager of the Town of Cumberland, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Town of Cumberland.

Before me,

Notary Public / Attorney at Law

Name:

B.R. PROPERTY, LLC

Witness

David Chase, its
Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 2023

Personally appeared before the above-named David Chase, duly authorized Manager of the B.R. Property, LLC, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said B.R. Property, LLC.

Before me,

Notary Public / Attorney at Law

Name:

EXHIBIT A
Property Description

A certain lot or parcel of land, with the buildings and improvements thereon, situated in the Town of Cumberland, County of Cumberland, and State of Maine, lying on the easterly side of the Blackstrap Road, and being more particularly described as follows:

BEGINNING at the southwest corner of land of Durward W. Safford on the line of said road;

THENCE, running easterly on said Safford line to an iron stake and land of one Leavitt;

THENCE, running southerly on line of said Leavitt land to an iron stake and said Leavitt land;

THENCE, running westerly on the line of said land of said Leavitt to the road aforesaid;

THENCE running northerly on the line of the road to the PLACE OF BEGINNING.

Excepting that portion of the premises conveyed by deed of Cumberland Sand and Gravel Company, Inc. to Antonio Mancini and Pauline Mancini, dated June 3, 1966 and recorded in the Cumberland County Registry of Deeds in Book 2973, Page 140.

Further excepting that portion of the premises conveyed by deed of Alton R. Russell and Hilda W. Russell to Maine Turnpike Authority, dated January 26, 1954 and recorded in said Registry in Book 2166, Page 439.

Meaning and intending to describe a portion of the premises, more particularly "Parcel III," as conveyed to Grantor by deed of Pike Industries, Inc., dated October 14, 2009 and recorded in said Registry of Deeds in Book 27325, Page 312.

EXHIBIT B

Owner Acknowledgement

RECEIPT OF AFFORDABLE HOUSING AGREEMENT,
DECLARATION OF COVENANTS, RESTRICTIONS,
AND OPTION TO PURCHASE FOR
UNIT #_____

I/We _____ (insert names) hereby acknowledge and agree that I am/we are in receipt of a copy of the Affordable Housing Agreement, Declaration of Covenants, Restrictions and Option to Purchase for _____ which was recorded at the Cumberland County Registry of Deeds on _____ [date] at Book _____ and Page _____ (the "Covenants"). I/We acknowledge and agree that the Covenants are binding upon our unit identified as Unit Number _____ at 77 Blackstrap Road (the "Affordable Housing Unit") and that as owner(s) of the Affordable Housing Unit, I am/we are bound by the all of the terms and restrictions on the sale and occupancy as set forth in the Declaration. Such terms and restrictions of the Declaration include but are not limited to: prohibitions on renting out the Affordable Housing Unit for short or long term periods to other households; mandatory certification that the Affordable Housing Unit is the primary residence; restrictions on the future buyers and sale price of the Unit.

I/We further understand and acknowledge that violation of the Declaration is subject to enforcement against me/us by the Town of Cumberland, which said enforcement may include civil penalties and injunctive relief.

Witness

[Buyer Name]

Witness

[Buyer Name]

STATE OF MAINE
CUMBERLAND, ss.

_____, 2023

Personally appeared before the above-named _____, and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public / Attorney at Law

Name:

Chapter 315. Zoning

Article III. Overlay Districts

§ 315-28.1. West Cumberland Housing Overlay District.

[Added 4-14-2014]

- A. Purpose. The purpose of the West Cumberland Housing Overlay District is to allow residential uses with greater density in order to create additional housing opportunities within the existing rural residential and industrial districts. These regulations are intended to encourage the development of affordable housing units by assisting developers in making the provision of these units economically viable, while providing assurances to the Town that these units will maintain a high degree of quality and will remain affordable to the target population over a reasonable duration of time.
- B. District. The West Cumberland Housing Overlay District, as delineated on the official Town of Cumberland Tax Assessor's Map, is hereby designated as an overlay district within the Rural Residential and Industrial Districts for the purposes designated herein. Properties in the West Cumberland Housing Overlay District shall continue to be governed by the regulations applicable to the underlying zoning districts except as specifically provided herein.
- C. Permitted uses. In addition to the permitted uses allowed in the underlying zoning districts and notwithstanding anything to the contrary in the regulations for the underlying zoning districts, the following uses are permitted uses in the West Cumberland Housing Overlay District:
 - (1) Single-family detached dwellings.
 - (2) Duplex dwellings.
 - (3) Multiplex dwellings, subject to the provisions of § **315-44**.
 - (4) An accessory dwelling unit as permitted in § **315-45A**.
- D. Lot standards. Notwithstanding anything to the contrary in the regulations for the underlying zoning districts, the following lot standards apply within the West Cumberland Housing Overlay District:
 - (1) Setbacks. Setbacks shall be the lesser of the distance from the existing building to the nearest property line or the stated limit below. The following minimum setbacks are required for all structures in the West Cumberland Housing Overlay District:
 - (a) Front: 25 feet.
 - (b) Rear: 50 feet, except that sheds may be permitted to a minimum setback of 15 feet from the rear lot line.
 - (c) Side: 10 feet, combined width a minimum of 25 feet.
 - (2) Minimum lot size.
 - (a) 20,000 square feet for single-family dwelling units.

- (b) 8,000 square feet per bedroom for duplex and multiplex dwelling units.
- (3) Lot frontage. There shall be no less than 100 feet of lot frontage for all dwelling units in the West Cumberland Housing Overlay District.
- (4) Public water. All residential structures built after the effective date of this regulation in accordance with the provisions established herein shall be connected to the public water system.
- (5) Open space. At least 10% 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.
 - (a) Open space shall consist of land which has one or more of the following characteristics:
 - [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 preserves and 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 which is in resource protection.
 - [6] Land which is suitable for active recreation.
 - [7] Land which abuts or adjoins an existing public open space.
 - (b) 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:
 - [1] 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.
 - [2] 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.
 - [3] 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.
 - [4] 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.
 - (c) 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.

- (d) 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.
- (6) Buffering. Notwithstanding anything to the contrary in the regulations for residential subdivisions, a buffer area of 50 feet shall be established between the residential development and abutting tracts or parcels of land that include nonresidential uses. 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.
- (7) Net residential density. The maximum number of dwelling units permitted on the tract or parcel of land proposed for any type of residential development shall be determined by dividing the net residential acreage of the tract or parcel by the overlay 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 requirement of the overlay zoning district in which it is located.