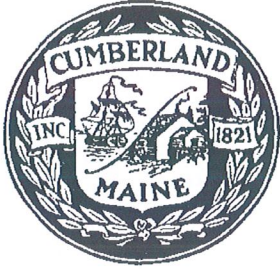


ITEM 18-050

To accept the Contract Zone Agreement amendment #5 for Heritage Village Development (CFV) and begin the CZA amendment process.



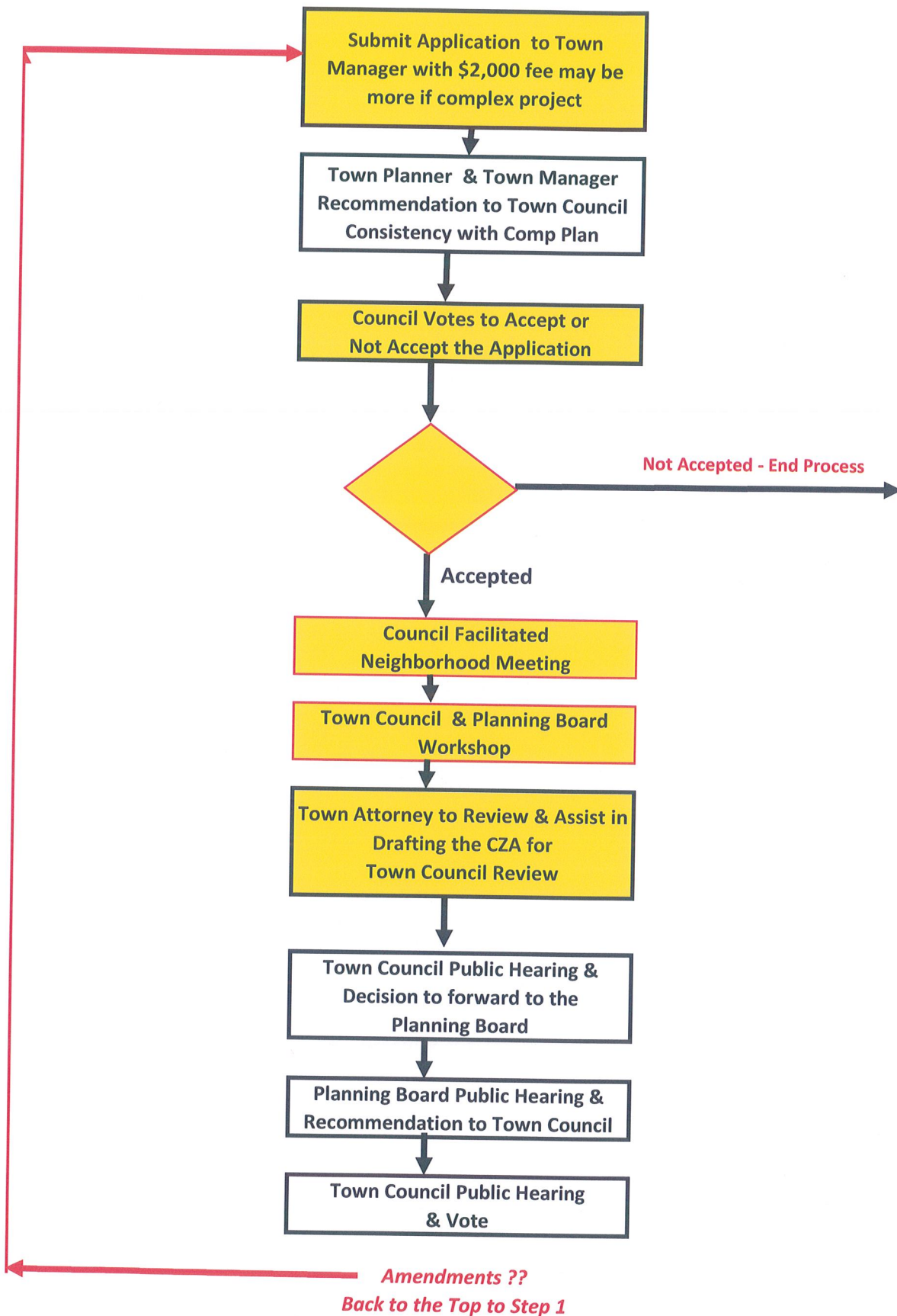
M E M O R A N D U M

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: April 4, 2018
Re: CZA Amendment #5 – Kennedy – Formerly Chase

This is the first step in the process. It is ready to move forward- fee has been paid, copy submitted to the Town Attorney.

Carla and I have also reached out to the abutting HOA's on Rt 1 and will be meeting with them prior to the "Council- Neighborhood" meeting the week of April 16th. It's very early in the process and we are allowing the applicant to propose the changes. Staff is not in agreement with many of the requests, but the applicant has the right to ask, so we are allowing the process to move forward. We will withhold our comments until the Council- Planning Board Workshop to be held at the end of the month.





**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774-1200
F (207) 774-1127

Philip R. Saucier
(207) 228-7160 direct
psaucier@bernsteinshur.com

April 3, 2018

William Shane, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, Maine 04021

Re: Application for Amendment to Contract Zone Agreement
Heritage Village Development Group, LLC (formerly Cumberland Foreside
Village, LLC)

Dear Bill,

Our office represents Heritage Village Development Group, LLC, which as you know purchased land subject to the Contract Zone Agreement from Cumberland Foreside Village last year. Thank you for the opportunity to present this proposed amendment to the Agreement.

We understand that you will review this package for completeness and forward it to the Town Council for their initial review. We respectfully request to be included on the Town Council's April 9, 2018 agenda.

The proposed amendment would make the following changes to the existing Contract Zone Agreement, among other clarifying edits:

1. Section II.A., Light manufacturing and residential care facilities are expressly included as permitted uses (rather than relying on the underlying zoning district where they are already permitted uses).
2. Section II.D., the buffering requirements for indoor warehouse and storage facilities and whole distribution facilities do not apply to Lots 4, 5 and the portion of 8 west of Clipper Street.
3. Section III. A. 2, side yard setbacks for interior commercial lots have been reduced from 20 to 15 feet.
4. Section III.A. 2., the 10 foot driveway setback is removed for driveways shared by 2 or more lots.

5. Section III.A.4, the side yard setback is reduced from 25 to 15 feet for indoor warehouse and storage and wholesale distribution facilities.
6. Section III.A.4, the rear yard setback is reduced from 25 feet to 20 feet for indoor warehouse and storage and wholesale distribution facilities.
7. Section III. B., the frontage requirement for interior lots is reduced from 150 feet to 75 feet.
8. Section III.C., the requirements for interior roads, other than driveways and alleyways, serving commercial lots have been clarified to require an enclosed storm drainage system and must be constructed in accordance with the geometric design standards for commercial subdivisions found in Chapter 250 of the Cumberland Code.
9. Section III.J., the minimum lot size for commercial lots has been reduced from 60,000 square feet to 35,000 square feet.
10. Section III.M. has added with the following requirements for assisted living facilities and residential care facilities: minimum lot size of two acres; site coverage of 30%; open space of 25%, and maximum building height of 50 feet.
11. Exhibit A, Contract Zone Illustrative Plan, has been amended to show the former Lot 9 as two lots, among other clarifying edits.
12. Exhibit A-1, Legal Description, has been clarified to include Lots 9A and 9B as previously intended.
13. Exhibit B, Estimated Schedule of Completion, has been updated.
14. Exhibit C, Design Guidelines, has been amended as follows:
 - Under Specific Design, first guideline, the following text has been removed: "The use of split-face concrete block should be used in limited quantities."
 - Under Specific Design, third guideline, the text "should be avoided" has been replaced by "not allowed."
 - Under Specific Design, sixth guideline, in line two, the minimum roof pitch has been changed from "8 in 12" to "6 in 12."
 - Under Specific Design, ninth guideline, the following text has been added to the end of the sentence "shielded from view from the street."
 - Under Specific Design, fourteenth guideline, the word "paved" has been removed in reference to the path along Route 1 since the path is no longer required to be paved per previous amendments.

Finally, reference to the approved (and amended) subdivision plan for the property has been deleted to avoid confusion with the Contract Zone Illustrative Plan.

Enclosed with this letter please find the following:

1. A draft amendment to the Contract Zone Agreement, including Exhibits A-E.
2. A check in the amount of \$2,000.00 for the deposit and application fee.

April 3, 2018

Page 3

We look forward to working with you and will provide any additional information you need for your review.


Sincerely,



Philip Saucier

Enclosures

cc: Peter Kennedy, Sole Member, Heritage Village Development Group, LLC
Stephen Mohr, Mohr & Seredin
Philip Gleason
Alyssa Tibbetts, Jensen Baird


 **PETER D. KENNEDY
KENNEDY INTERNATIONAL**
CONSULTING COMPANY
2630 HARBOURSIDE DR
LONGBOAT KEY, FL 34228

566
64-240/611

26 MARCH 18
Date

Pay to the
Order of TOWN OF CUMBERLAND \$ 2,000

TWO THOUSAND & 00/100 Dollars

 **FIDELITY
BANK**
Atlanta, GA
www.fidelitybank.com

For CZA APPLICATION Peter D. Kennedy NP

⑆061102400⑆ 333 2000314⑈ 0566

Heritage Village

Route 1 - CZA

5TH AMENDMENT

April 2018

AMENDED AND RESTATED CONTRACT ZONING AGREEMENT
BY AND BETWEEN THE TOWN OF CUMBERLAND

AND

CUMBERLAND FORESIDE VILLAGE, LLC
HERITAGE VILLAGE
DEVELOPMENT GROUP, LLC

RELATING TO THE CUMBERLAND FORESIDE
HERITAGE VILLAGE
(formerly "HERITAGE-CUMBERLAND FORESIDE VILLAGE") SUBDIVISION
ROUTE 1, CUMBERLAND, MAINE

This Amended and Restated Contract Zoning Agreement is entered into this ____ day of _____, ~~2017~~2018, by and between the Town of Cumberland, a municipal corporation (the "Town"), ~~and Cumberland Foreside Village, LLC~~ Heritage Village Development Group, LLC, a ~~Maine-Florida~~ limited liability company qualified to do conduct business in Maine ("the Developer"), pursuant to the Conditional and Contract Rezoning Provisions set forth in 30-A M.R.S.A. Section 4352 (the "Act") and Section 315-79 of the Cumberland Code, as may be amended from time to time.

WHEREAS, the Town and Peter Kennedy ("Kennedy") entered into a Contract Zoning Agreement dated September 10, 2002, which is recorded at the Cumberland County Registry of Deeds in Book 18114, Page 330 (the "Original Agreement"); and

WHEREAS, Kennedy conveyed his property which is subject to the Agreement to ~~the Developer~~ Cumberland Foreside Village, LLC ("CFV") by Deed dated December 27, 2005 and recorded at the Cumberland County Registry of Deeds in Book 23549, Page 231; and

WHEREAS, Kennedy assigned his interest in the Original Agreement to ~~the Developer~~ CFV by Assignment of Contract Zoning Agreement dated December 27, 2005 and recorded at the Cumberland County Registry of Deeds in Book 23652, Page 65; and

WHEREAS, the Town and ~~the Developer~~ CFV amended and restated the Original Agreement in its entirety in the Amended and Restated Contract Zoning Agreement dated January 31, 2007, which is recorded at the Cumberland County Registry of Deeds in Book 24825, Page 242 (the "Amended and Restated Agreement"); and

WHEREAS, the Town and ~~the Developer~~ CFV amended the Amended and Restated Agreement on October 23, 2014 by document titled First Amendment to Amended and Restated Contract Zoning Agreement (the "First Amendment"), which is recorded at the Cumberland County Registry of Deeds in Book 31899, Page 262; and

WHEREAS, the Town and ~~the Developer~~ CFV amended and restated the Original Agreement and the First Amendment in its entirety on February 27, 2015 by document titled Amended and Restated Contract Zoning Agreement, which is recorded at the

Cumberland County Registry of Deeds in Book 32162, Page 191 (the "2015 Amended and Restated Agreement"); and

WHEREAS, the Town and ~~the Developer~~CFV amended and restated the Original Agreement in its entirety in order to incorporate subsequent amendments (the Amended and Restated Agreement, the First Amendment and the 2015 Amended and Restated Agreement), and proposed additional amendments to expand the permitted residential development and revise the lot lines of the parcels consistent with the development goals of the Original Agreement, which is recorded at the Cumberland County Registry of Deeds in Book 33880, Page 87 (the "2016 Amended and Restated Agreement"); and

WHEREAS, the Town and CFV amended and restated the 2016 Amended and Restated Agreement in its entirety on May 11, 2017 in order to amend and clarify the requirements set forth herein related to the common walkway/path and the buffers along Interstate 295 and Route 1 corridors, which is recorded at the Cumberland County Registry of Deeds in Book 34000, Page 177 (the "2017 Amended and Restated Agreement"); and

WHEREAS, CFV conveyed its property which is subject to the 2017 Agreement to the Developer by Deeds dated October 10, 2017 and recorded at the Cumberland County Registry of Deeds in Book 34376, Page 330 and to David Chase (as to Lot 9A/B only) by Deed dated October 10, 2017 and recorded at the Cumberland County Registry of Deeds in Book 34376, Page 332.

WHEREAS, the Town and the Developer desire to amend and restate the ~~2016~~ 2017 Amended and Restated Agreement in its entirety in order to amend and clarify the requirements set forth herein related to ~~the common walkway/path and the buffers along the Interstate 295 and Route 1 corridors~~the development of the commercial lots; and

NOW THEREFORE, the ~~2016-2017~~ 2017 Amended and Restated Agreement is hereby amended and restated in its entirety, as follows, it being understood that this Amended and Restated Contract Zoning Agreement supersedes and replaces the Original Agreement, the former Amended and Restated Agreement dated January 31, 2007, the First Amendment dated October 23, 2014, the 2015 Amended and Restated Contract Zoning Agreement dated February 27, 2015~~and~~, the 2016 Amended and Restated Contract Zoning Agreement dated April 12, 2016, and the 2017 Amended and Restated Contract Zoning Agreement dated May 11, 2017, which shall be of no further force and effect:

WHEREAS, the Property subject to this Amended and Restated Contract Zoning Agreement consists of the approximately 74.90 acre parcel of land (the "Project") located off U.S. Route One, depicted as Lots 1 – ~~9-10B~~ on **Exhibit A** (the "Plan") prepared by Mohr & Seredin dated March 12, 2018 and more particularly described in **Exhibit A-1** attached hereto; and

WHEREAS, ~~the Developer~~CFV received subdivision approval from the Cumberland Planning Board on August 16, 2016, in accordance with the subdivision plan prepared by Owen Haskell dated August 18, 2016 and recorded in the Cumberland

County Registry of Deeds in Plan Book 216, Page 335, and subsequently amended on March 21, 2017 in accordance with the subdivision plan prepared by Owen Haskell dated January 26, 2017 and recorded in the Cumberland County Registry of Deeds in Plan Book 217, Page 85 and attached hereto as ~~Exhibit B~~ (the "Subdivision Plan") and which may be further amended from time to time, such amendments to be expressly incorporated herein; and

WHEREAS, the Developer's Updated Estimated Schedule of Completion of the Project is attached hereto as ~~Exhibit CB~~; and

WHEREAS, in order for the Project to be financially feasible for the construction and sale of commercial buildings and residential dwelling units while meeting all applicable codes, certain amendments with respect to density, setbacks, road lengths and certain other performance standards of the Cumberland Code are required; and

WHEREAS, on ~~March 28, 2017~~ _____, the Cumberland Town Council approved the execution of this Amended and Restated Contract Zoning Agreement, subject to later compliance with Subdivision and Site Plan Standards as set forth in Chapter 229 and Chapter 250 the Cumberland Code, provided such Ordinance provisions are not in conflict with the Act.

NOW THEREFORE, pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 315-79 of the Cumberland Code (as may be amended from time to time), the Cumberland Town Council hereby finds that this Amended and Restated Contract Zoning Agreement:

A) is consistent with the Comprehensive Plan duly adopted by the Town of Cumberland on April 14, 2014; and

B) establishes a contract zone area consistent with the existing and permitted uses in the original zone of the area involved; and

C) only includes conditions and restrictions which relate to the physical development and future operation of the proposed development; and

D) imposes those conditions and restrictions which are necessary and appropriate for the protection of the public health, safety and general welfare of the Town of Cumberland.

The parties agree as follows:

I. Establishment of the Contract Zone:

The Town hereby agrees that the approximately 74.90 acres shown on the Plan shall be a Contract Zone pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 315-79 of the Cumberland Code.

II. Permitted Uses Within the Contract Zone:

The development permitted within the Contract Zone established in paragraph I above shall be as follows (Note: References to lot numbers herein shall be to those lot numbers as shown on the Plan attached hereto as **Exhibit A**, unless expressly stated otherwise):

A) All uses authorized as of the date of execution of this Amended and Restated Contract Zoning Agreement and as may be amended hereafter either as permitted uses or special exceptions in the Office Commercial South District, including assisted living and residential care facilities and light manufacturing as defined in Section 315-4 of the Cumberland Code.

B) Up to 150 residential dwelling units, which may be either detached dwelling units (single family) or attached duplex or multiplex dwellings, on Lots 10A and 10B 8 as shown on the Plan; said residential development to include buffering as set forth in Section III of this Agreement. Individual house lots shall contain not less than 5,000 square feet. Multiplex dwelling units shall be developed for rent or lease only and shall not be converted to condominiums for private sale without prior approval of the Town Council. At least one dwelling unit contained within each multiplex dwelling structure developed under this Paragraph must be occupied by a tenant that is 55 years of age or older and at least 20% (not less than nineteen) of the total dwelling units contained within all of the multiplex dwelling structures developed under this Paragraph must be occupied by a tenant that is 55 years of age or older. The Developer shall have the right to (i) vary the mix between detached dwelling units, duplex and multiplex dwellings, and (ii) convey or subcontract all or any portion of the Project to one or more third parties, subject to the provisions of this Agreement. The residential development permitted under this Paragraph shall be subject to the net residential density requirements of Section 315-43(E); provided, however, that the requirements of Section 315-43(E) shall not apply to the development of multiplex dwellings under this Paragraph. The development of multiplex dwellings permitted under this Paragraph shall also be exempt from the regulations of Section 315-44 of the Cumberland Code related to multiplex dwellings.

C) Commercial development of not less than six (6) lots, as shown on the Plan; said commercial development to be developed with buffering from the adjacent residential areas of the Project as set forth in Section III of this Agreement.

D) On proposed Lots 7 and 8 only (and on any lots created by further subdivision of Lots 7 and 8), indoor warehouse and storage facilities and wholesale distribution facilities as defined in Section 315-4 of the Cumberland Code shall be permitted, provided that such facilities are set back at least 300 feet from the U.S. Route One right of way and only if no residential use is created or existing on the same lot. Indoor warehouse and storage facilities shall include enclosed buildings for the keeping of nonhazardous goods, commodities, equipment, materials or supplies in which buildings there are not any sales, manufacturing, production or repair activity, except on an incidental or occasional basis. Outdoor storage of any goods, commodities, equipment, materials or supplies in conjunction with an indoor warehouse and storage facility shall not be permitted. If an indoor warehouse and storage facility or a wholesale distribution facility is adjacent to residential property, the buffering requirements set forth in Section

III of this Agreement shall apply except for Lots 4 and 5 on Route 1 and the portion of Lot 8 west of Clipper Street. Nothing in this section shall preclude the establishment of any other commercial use allowed by the terms of this Agreement.

E) A communications tower properly buffered from all residential uses in accordance with Section 315-72 of the Cumberland Code.

F) On Lot 1 only, retail stores (uses may include any shop or store for the retail sale of goods or personal services, excluding any drive-up service, freestanding retail stand, gasoline and motor vehicle repair service, new and used car sales and service, and trailer and mobile home sales and service).

G) Tradesmen's offices (*i.e.*, the office of a self-employed craftsman or person in a skilled trade) involving only the management of the business; interior storage of materials and goods related to the business; and outdoor storage of vehicles, equipment and material ancillary to the business provided that such items are not visible from a public way. No on-site retail sales or wholesale distribution shall be permitted as part of such use, except as otherwise permitted within the Office Commercial South District.

H) Site preparation activities including grading and aggregate processing, as defined in Section 315-4 of the Cumberland Code, which substantially alter terrain and site character shall be permitted subject to the requirements set forth herein. Site preparation activities shall be permitted by the Developer and/or his subcontractor and shall include aggregate processing of materials on site for use in conjunction with the development of the site or off-site, but shall not be permitted unless in preparation of the site for proposed or approved development. The foregoing activities shall be performed in accordance with Maine Department of Environmental Protection requirements for ledge removal and materials processing, regardless of whether such use actually requires a permit from the Maine Department of Environmental Protection. If a permit from the Maine Department of Environmental Protection is not required for the use, the Town shall have the authority to enforce these requirements. Any such activities and any other site work proposed on the site, including development permitted under the terms of this Agreement shall be subject to review and approval by the Planning Board and shall be completed pursuant to all applicable sections of the Cumberland Code including, but not limited to, Sections 315-48 and 315-49. All site preparation activities must be completed within one year of approval unless an extension is requested by the Developer from the Planning Board prior to the expiration date. The Planning Board is authorized to extend the project completion not more than two times for a period of up to six months each time. The Planning Board shall deny a request for extension if the site preparation activities are not at least 35% completed within one year from the date of approval and if an application for site plan and/or subdivision including the area for which site preparation activity was permitted has not been approved.

III. Restrictions within the Contract Zone:

A) The setback provisions within the Contract Zone shall be as follows. All setbacks shall be measured from the exterior wall of the structure and shall not include overhangs, which overhangs shall not exceed one foot on any side of the structure.

(1) setbacks for detached dwelling units:

- Front yard setback not less than 15 feet.
- Side yard setback not less than 9 feet each side; .
- Rear yard setback not less than 15 feet.
- Driveway setback not less than 5 feet.
- If a residential lot is adjacent to a commercial lot, there shall be a 25 foot buffer of undisturbed or replanted vegetation. The Developer shall provide for additional plantings, as approved by the Planning Board, within the 25 foot undisturbed buffer where existing conditions do not provide adequate screening between the properties.

(2) setbacks for commercial lots:

- Front yard setback not less than 25 feet.
- Side yard setback not less than 20 feet each side for lots with frontage on Route 1; not less than 15 feet on each side for interior lots.
- Rear yard setback not less than 40 feet.
- Driveway setback not less than 10 feet, unless driveways are shared for access by 2 or more lots in which case there are no driveway setback requirements.
- If a commercial lot is adjacent to a residential lot, there shall be a 25 foot buffer of undisturbed or replanted vegetation. The Developer shall provide for additional plantings, as approved by the Planning Board, within the 25 foot undisturbed buffer where existing conditions do not provide adequate screening between the properties.

(3) setbacks for assisted living facilities and duplex and multiplex dwellings:

- Front yard setback not less than 50 feet.

- Side yard setback not less than 30 feet each side.
- Rear yard setback not less than 50 feet.
- Driveway setback not less than 5 feet.
- If an assisted living facility, duplex or multiplex dwelling is adjacent to a commercial lot, there shall be a 25 foot buffer of undisturbed or replanted vegetation. The Developer shall provide for additional plantings, as approved by the Planning Board, within the 25 foot undisturbed buffer where existing conditions do not provide adequate screening between the properties.
- Any building that is constructed for the sole purpose of and used exclusively in connection with the development of multiplex dwellings and located on the same lot as the multiplex dwellings, such as a community center or rental office, shall be subject to the setback requirements of this section; provided, however, that the rear setback for such building shall be not less than 25 feet.

(4) setbacks for indoor warehouse and storage and wholesale distribution facilities:

- Front yard setback not less than 25 feet.
- Side yard setback not less than ~~25~~15 feet each side.
- Rear yard setback not less than ~~25~~20 feet.
- If indoor storage and warehouse facilities or wholesale distribution facilities are adjacent to residential development, the above minimum setbacks shall be increased to 60 feet and there shall be a 75 foot undisturbed or replanted buffer on the property line between the commercial and residential uses. The Developer shall provide for additional plantings, as approved by the Planning Board, within the 75 foot undisturbed buffer where existing conditions do not provide adequate screening between the properties.

(5) A setback of not less than 100 feet shall be maintained along the entire length of the property boundary that borders the Interstate 295 highway. The setback shall be measured from the edge of the I-295 right of way and shall remain at all times undisturbed. The Town shall periodically survey this setback to ensure that it has been maintained. In

the event that this area is disturbed for any reason, the Developer shall be required to prepare and submit a landscape plan to be approved by the Town Council and shall be required to complete plantings in accordance with the approved plan within a timeframe designated by the Town Council. Additional plantings consisting of evergreen trees shall be field located with Town staff. Plantings shall be at least five feet (5') tall when planted. Plantings shall be required within the portion of the setback that runs along ~~Lot 100~~the Cumberland Foreside Village Apartments, as shown on **Exhibit B-A** to provide a visual buffer of the multiplex dwelling units constructed on that lot.

B) The minimum frontage on the street providing access to each residential lot shall be 50 feet and for each commercial lot shall be 150 feet for lots with frontage on Route 1 and 75 feet for interior lots.

C) The length of Skyview Drive, the dead-end road serving the commercial portion(s) of the Project, shall be not more than 3,000 feet, and the road right-of-way be established at 50 feet in width, with a paved width of at least 24 feet (base shall be 30 feet wide), a five foot paved sidewalk for Skyview Drive, a four foot esplanade and an enclosed drainage system. All other roads, except for driveways and alleyways, within the interior commercial lots in the project shall be constructed with a paved width of at least 24 feet, ~~and do not shall require an enclosed drainage system,~~ curbing and a five foot paved sidewalk, and be constructed in accordance with the geometric design standards for commercial subdivisions found in Chapter 250 of the Cumberland Code.

D) The height restriction on all nonresidential structures and multiplex dwellings shall be 50 feet and the height restriction on all detached (single family) and duplex dwellings shall be 40 feet.

E) There shall be no other variances from the Cumberland Zoning Ordinance granted to any lot owner beyond those expressly set forth herein, unless the Town and Developer agree by written and duly authorized amendment to this Agreement.

F) This Agreement shall be subject to the Town's Impact Fee Ordinance to the extent applicable. Impact Fees shall be calculated based on the gross floor area of the total structure for each multiplex dwelling structure constructed under Section II(B) of this Agreement. The gross floor area of the multiplex dwelling structure shall be reduced by the gross floor area of any dwelling unit within that structure that is designated to be occupied by a tenant that is 55 years of age or older. The residential development permitted under Section II (B) of this Agreement shall be exempt from the requirements of the Town's Growth Management Ordinance pursuant to Section 118-6(D) of the Cumberland Code; provided, however, that the Developer shall be responsible to pay a fee of \$100 per multiplex dwelling unit in lieu of a growth permit.

G) Any commercial development or multiplex dwelling development shall be subject to the "Design Guidelines for Commercial Properties & Multiplex Dwellings" which are attached hereto as **Exhibit DC**.

H) The Route 1 buffer shown on the Plan shall be 35 feet from the Route 1 right of way. 25 feet of the Route 1 buffer shall be undisturbed vegetation and the remaining 10 feet shall be used for a common walkway/path. The common walkway/path shall be constructed within the Route 1 right of way beginning at Sky View Drive and ending at the northerly lot line of Lot 5, subject to approval by the Town, or within 25 feet of the Route 1 right of way beginning at Sky View Drive and ending at Lot 11-C of the Town of Cumberland's Tax Map R01, shown as the "Seafax" Lot (Seafax) as shown on Exhibit ED. The common walkway/path shall be completed prior to the occupancy of any residential dwellings constructed pursuant to Section II(B). No additional buffer shall be required along Route 1 for Lots 9A and 9B as shown on Exhibit BA, provided that the front setback for the property as set forth in Section III(A) is met and that the setback area includes undisturbed vegetation to the greatest extent practicable and additional plantings as necessary to create a sufficient vegetated buffer within the setback.

I) Notwithstanding anything in Section III(A) above to the contrary, the building setback from Route 1 shall be 65 feet from the Route 1 right of way, except that the building setback from Route 1 on Lots 9A and 9B only shall be 25 feet from the Route 1 right of way.

J) The minimum lot size for commercial lots shall be 60,000 square feet, except that the minimum lot size for Lots 9A and 9B shall be 35,000 square feet.

K) The use of bituminous or concrete curb throughout the road network and on site plans shall be allowed at the developer's option.

L) The parking requirements of Section 315-57 of the Cumberland Code shall apply to development under this Agreement; provided, however, that the minimum number of parking spaces required for multiplex dwellings under Section II(B) shall be two (2) spaces per dwelling unit. A landscaped berm shall be installed on the exterior perimeter of each parking area designated for the multiplex dwelling structures developed under Section II(B). Such berms shall be designed and constructed to provide screening from vehicle headlights within the parking area facing outward in both easterly and westerly directions.

M) Notwithstanding anything in the Town's Zoning Ordinance to the contrary, assisted living facilities and residential care facilities shall be subject to the following requirements:

(1) Minimum lot size of two acres;

(2) Site coverage. The facility, as measured by the area of the building footprint of all structures, shall not cover more than 30% of any site's gross acreage. This limitation on site coverage applies only to structures and does not apply to drives, parking areas, walkways, and gardens;

(3) Open Space. At least 25% of the gross site acreage shall be devoted to vegetated open space. The open space may include lawn areas, forest areas, areas

with a vegetative cover, and gardens. Open space shall not include areas covered by structures, parking areas, drives, walkways, swimming pools, tennis courts, or similar improvements; and

(4) Height. The maximum building height shall not exceed 50 feet.

Subject to the following, the Cumberland Planning Board shall have review authority under the applicable provisions of the Cumberland Subdivision, Site Plan and Zoning Ordinances to impose conditions of approval pursuant to said Ordinances relating to the development and construction of the Project.

IV. Miscellaneous Provisions:

A) Offsite Improvements: The Developer and the Town agree to negotiate the respective obligations of each party as it relates to ~~shall be responsible for~~ the design, engineering and construction of all offsite improvements as may be required by the owners or operators of property within the Project or as may be required by rule, regulation, law or determination of a governmental agency or utility in conjunction with the development of any Lots within the Project, except that the Town shall be responsible for the widening, paving and striping of a designated portion of Route 1 as may be necessary pursuant to the plan titled "Route 1 Roadway Improvements" drafted by Gorrill-Palmer Consulting Engineers and ~~dated July 2007~~ November 15, 2016, attached hereto as **Exhibit FE**, or as otherwise approved by the Town Council.

B) Survival Clause: The terms and conditions of this Agreement shall run with the land and be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto except as specifically set forth herein. A true copy of this Agreement shall be recorded in the Cumberland County Registry of Deeds.

C) Arbitration Clause: In the event of any dispute between the parties hereto arising out of the Town's approval of (or failure to approve) eligible and qualified purchasers, such dispute shall be submitted to arbitration pursuant to the rules and regulations of the American Arbitration Association, or such other similar arbitration tribunal as the parties may select. The decision of such arbitration panel shall be final, binding and conclusive as to all issues arbitrated therein. Any and all other disputes, claims, counterclaims, and other matters in question between the parties hereto arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction.

D) Further Assurances: In order to effectively and properly implement this Agreement, the parties agree to negotiate in good faith the terms and conditions of such further instruments and agreements as may be reasonably necessary from time to time to give effect to this Agreement.

E) Maine Agreement: This contract is a Maine agreement, entered into in the State of Maine and shall be governed by and enforced in accordance with the laws of the State of Maine.

F) Binding Covenants: The above-stated restrictions, provisions, and conditions are an essential part of this contract and shall run with the subject premises, shall bind the Developer, its successors and assigns with respect to the Project or any part thereof or any interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the Town, by and through its duly authorized representatives. However, if all site work related to the infrastructure on the subdivision plan is not substantially completed within five (5) years from the date of this Amended and Restated Agreement, then the Town Council shall review the status of the project and shall determine whether to initiate a rezoning of the property to the current zoning classification as it exists at the time of the rezoning determination.

G) Severability: In the event any one or more clauses of this Agreement shall be held to be void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses shall be deemed to be severable and of no force or effect in such jurisdiction, and the remainder of this Agreement shall be deemed to be valid and in full force and effect, and the terms of this Agreement shall be equitably adjusted if possible so as to compensate the appropriate party for any consideration lost because of the elimination of such clause or clauses.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as of the day and year first above written.

WITNESS:

TOWN OF CUMBERLAND

Name: _____

By: _____
William R. Shane
Town Manager

CUMBERLAND FORESIDE
VILLAGE HERITAGE VILLAGE DEVELOPMENT GROUP, LLC

Name: _____

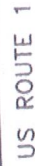
By: _____
~~David Chase~~ Peter D. Kennedy
Sole Member and Manager

State of Maine
County of Cumberland, ss. _____,
2017 2018

Then personally appeared the above-named William R. Shane in his capacity as Town Manager of the Town of Cumberland and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Cumberland.

Before me,

Notary Public
Print Name: _____
Commission Expires: _____



(1999)

1 inch = 300 ft.

ENTIRE CONTRACT ZONE INCLUDES LOTS 1-3: 74.87 ACRES.
CONTRACT ZONE DOES NOT INCLUDE THE "SEAFAX" LOT:
2.99 ACRES

CONTRACT ZONE ILLUSTRATIVE PLAN
THIS IS NOT A SUBDIVISION PLAN

EXHIBIT A – CONTRACT ZONE 5TH AMENDMENT

HERITAGE VILLAGE DEVELOPMENT GROUP, LLC
CUMBERLAND FORESIDE VILLAGE
US ROUTE ONE, CUMBERLAND

MOHR & SEREDIN
Landscape Architects, Inc.
18 Pleasant Street, Portland, Maine 04101
p: 1.207.871.0003 fax: 1.207.871.1419
p: 1.207.871.0003

SCALE: AS SHOWN DATE: MAR. 27, 2018 CHECK BY: SBMPROJECT: 111-NC

6	4/2/18	SPLIT LOT 9
5	3/27/18	DIVIDED COMM. LOT, ADD R.O.W. & ADD COMM. LOTS
4	2/19/16	REVISED LOT USES
3	1/28/16	ADDED TAX MAP & LOTS, CLARIFY ADDITIONAL AREA
2	1/25/16	DIVIDED LOT 9 FROM LOT 8
1	1/22/16	ADDED AREA TO CONTRACT ZONE



390 U.S. Route 1, Unit 10 • Falmouth, ME 04105 • 207-774-0424 • FAX: 774-0511 • www.owenhaskell.com

Description
of
Amended Contract Zone 3-21-2018

A certain lot or parcel of land situated on the westerly side of U.S. Route One in the Town of Cumberland, County of Cumberland, and State of Maine bounded and described as follows:

Beginning at the intersection of the westerly sideline of said U.S. Route One and the Cumberland/Falmouth town line;

Thence, N-55°-09'-09"-W along said town line 1034.93 feet to the Easterly sideline of I-295;

Thence, Northerly by the following courses and distances along the Easterly sideline of Said I-295:

Thence, Northerly along a curve to the right having a radius of 22,668.32 feet an arc length of 595.32 feet

Thence, N-54°-46'-38"-E 100.00 feet;

Thence Northerly along a curve to the right having a radius of 22,768.32 feet an arc length of 992.02 feet;

Thence N-37°-43'-09"-E 661.39 feet;

Thence Northerly along a curve to the left having a radius of 6073.58 feet an arc length of 1206.99 feet;

Thence S-55°-06'-49"-E along land of Eleanor A. Randall 278.96 feet;

Thence N-36°-43'-05"-E along land of said Randall 396.71 feet;

Thence S-54°-17'-11"-E along land of said Randall 274.45 feet to Said U.S. Route One;

Thence Southerly along said U.S. Route One and along a curve to the right having a radius of 7092.03 feet an arc length of 774.63 feet;

Thence N-62°-15'-59"-W along land now or formally of BBW Real Estate LLC 367.24 feet;

Thence S-19°-34'-32"-W along land of said BBW Real Estate LLC 327.21 feet to land of the Town of Cumberland;

Thence S-51°-07'-38"-E along the common line between the land of said BBW Real Estate LLC and said Town of Cumberland 368.93 feet to said U.S. Route One;

Thence Southerly along a curve to the right having a radius of 7902.03 feet and along said U.S. Route One and arc length of 909.60 feet;

Thence S-36°-58'-14"-W along said U.S. Route One 86.37 feet;

Thence S-30°-44'-43"-W along said U.S. Route One 1737.04 feet to the point of beginning; all bearings are magnetic.

EXHIBIT B

Updated Estimated Schedule of Completion of the Project Cumberland Foreside Village March 2018

A.	Schedule of Regulatory Reviews	2018
	- Complete project plans and supporting documents	1-2 months (May/June 2018)
	- Planning Board Subdivision Review	1-4 months (May - August 2018)
	- Planning Board Site Plan Review (concurrent with subdivision)	1-4 months (May - August 2018)
	- Planning Board anticipated approval within	4 months (May - August 2018)
	- DEP SLODA review and approval	1-3 months (May - July 2018)
B.	Anticipated Construction Schedule	August 2018 – December 2020
	- Start construction within 1 month of approval (cul-de-sac & berm)	June 2018
	- Construction of subdivision private drive and infrastructure	12 - 18 months
	- Sitework – Lots 10 through 13	12 - 24 months
	- Sitework Lots 3, 4, and 5	24 - 30 months

Cumberland Foreside/Heritage Village Contract Zone

Design Requirements for Commercial Properties and Multiplex Dwellings

The following design guidelines have been prepared as a part of the Contract Zone for the Cumberland Foreside/Heritage Village Subdivision. These will serve to assist in the development of the parcel in an orderly manner and will establish the design criteria to guide the development of the individual buildings on all lots used for commercial purposes or as multiplex dwellings. The overall intent of these design guidelines is to assure that the building designs are well thought through and have coordinated architectural forms, massing, materials and color ranges.

A. General Design Guidelines:

- The design for the buildings at Cumberland Foreside (CFV)/Heritage Village (HV) are to be encouraged to draw upon elements found in traditional New England vernacular architecture.
- All buildings proposed for CFV/HV should be designed by an architect registered in the State of Maine; buildings designed by Engineers are acceptable as long as the guidelines contained herein are closely followed.
- Individual building designs should have all of the elements coordinated to achieve harmony and continuity in the structure's appearance.
- Adjacent structures must be considered in the design for all new buildings. This should include scale of building, use of materials, and general building form.
- Buildings within 200 feet of US Route One, and in particular building elevations directly fronting on US Route One, need to have well designed, carefully detailed facades that have architectural interest and appeal. The existing Seafax and Exactitude structures can be referred to with regard to this guideline.

B. Specific Design:

- Exterior siding materials are encouraged to be traditional appearing building materials common to Northern New England. The use of asphalt shingles, T-111, or highly reflective siding materials is not permitted.
- The mass of larger structures needs to be broken down through the use of architectural detailing, changes in materials or other means so as to create visual interest. Main entrances to the buildings should be emphasized by architectural detailing, glazing, lighting, etc.
- Arbitrary or frequent changes in siding materials, applied embellishments, or the addition of architectural details that are not integrated into the building form or function are not allowed.
- All functional elements visible on the exterior of the structure (eg. meters, service connection, downspouts, vents, etc.) shall be treated as integral parts of, and incorporated into, the building design.
- All buildings shall provide an appropriate proportion of windows, doors or other fenestration so as to break up the building façade visible from Route 1 and any public view. The building fenestration should provide sufficient transparency to provide views to the interior of the building as functionally appropriate. Careful attention must be paid to the relative size, detailing and positioning of all openings in the building elevations.

- On small buildings, eg. those under 5,000 s.f., flat roofs should be avoided on one-story structures. Pitched roofs with traditional slopes (eg. higher than 6 in 12) are encouraged. Where the roof will be visible from adjoining public ways, the roofing materials should be selected so as to compliment the buildings façade. Preferred roofing materials shall include architectural grade asphalt shingles, standing-seam metal roofing, or natural materials.
- Color selected for the exterior surfaces of buildings should be earth-toned, or colors that are earth-tones, muted and not garish. The use of bright colors must be limited to areas where accents are desired (eg. doors, window trim, entrances, etc.).
- Where roofs are flat, parapets or other architectural elements should be used to break up a large expanse (eg. greater than 80 feet) of flat roof-line. Roof-top mounted mechanical or other equipment shall be screened/shielded from view from the street.
- Long horizontal facades of buildings (those greater than 80 feet in length) should be made more interesting through either changes in the façade plane or selection of materials to provide interest through color, shadow, non-functional windows, etc.
- Buildings with multiple entrances or uses shall be designed to be visually unified through complimentary detailing and use of materials, with no awnings allowed.
- Separate accessory structures on the same lot as a principal structure shall have consistent architectural detail so as to provide unified project design.
- Underground utility connections are required.
- Sidewalks along buildings and a trail in the I-295 buffer are required.
- A 5' walkway, with 10' of cleared space, is required within the Route 1 buffer zone as shown in Exhibit D.
- Signage shall consist of natural materials (wood, stone, etc.) and shall not be internally lit.

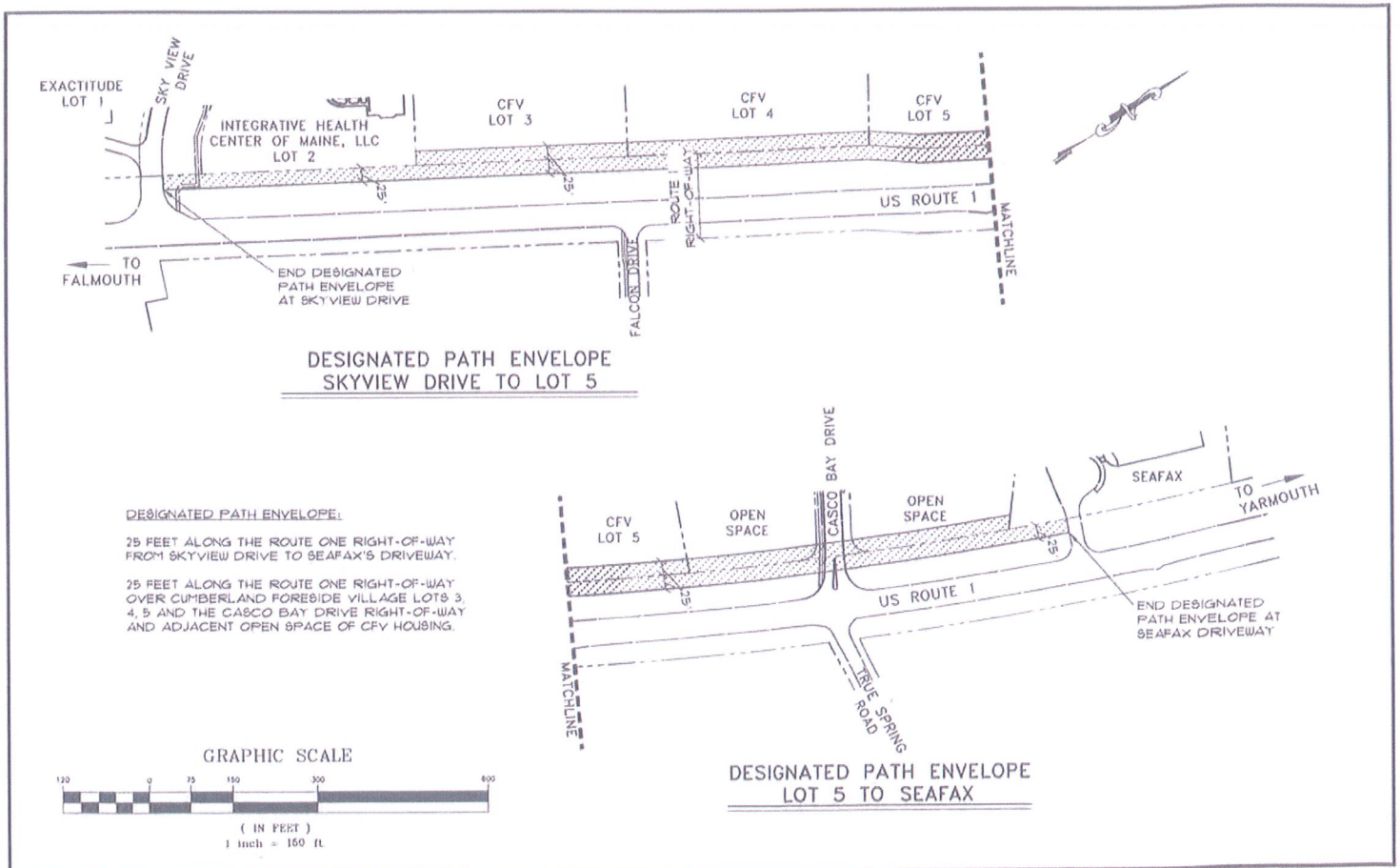


EXHIBIT D
COMMON WALKWAY/PATH

APRIL 2016

LINE NO. LOCAL NO.	DATE	INVOICE #	QUANTITY	UNIT PRICE	TOTAL
1	10/10/00	10000	1	10000	10000

SHEET NO.	DESCRIPTION
1	TITLE SHEET
2	GENERAL NOTES & TYPICAL S
3-9	STRIPING PLANS
10-31	CROSS SECTIONS

CLIENT:
TOWN OF CUMBERLAND
290 TUTTLE ROAD
CUMBERLAND, ME 04021

90% PLANS
11/15/16

NOTE: THIS PLAN SET IS ISSUED FOR REVIEW PURPOSES AND SHALL NOT BE USED FOR CONSTRUCTION.

Drawing No. 1
Title Sheet
Route 1 Roadway Improvement Project Cumberland, Me
Town of Cumberland 2000 T. 10th Road, Cumberland, Me 04201
Client:
Design:
Planning:

Relationships. Responsiveness. Results.
www.gornilpalmer.com
202.772.2515






































































































































Design	E.C.	Depth	1.08	Date	April, 2016
Checked	D.N.	Scale	45° (North)	Job No.	11C2013
File Name: 11C2013-02016.dwg					

[illegible][illegible]

EXHIBIT E - ROUTE 1 CENTER TURN LANE

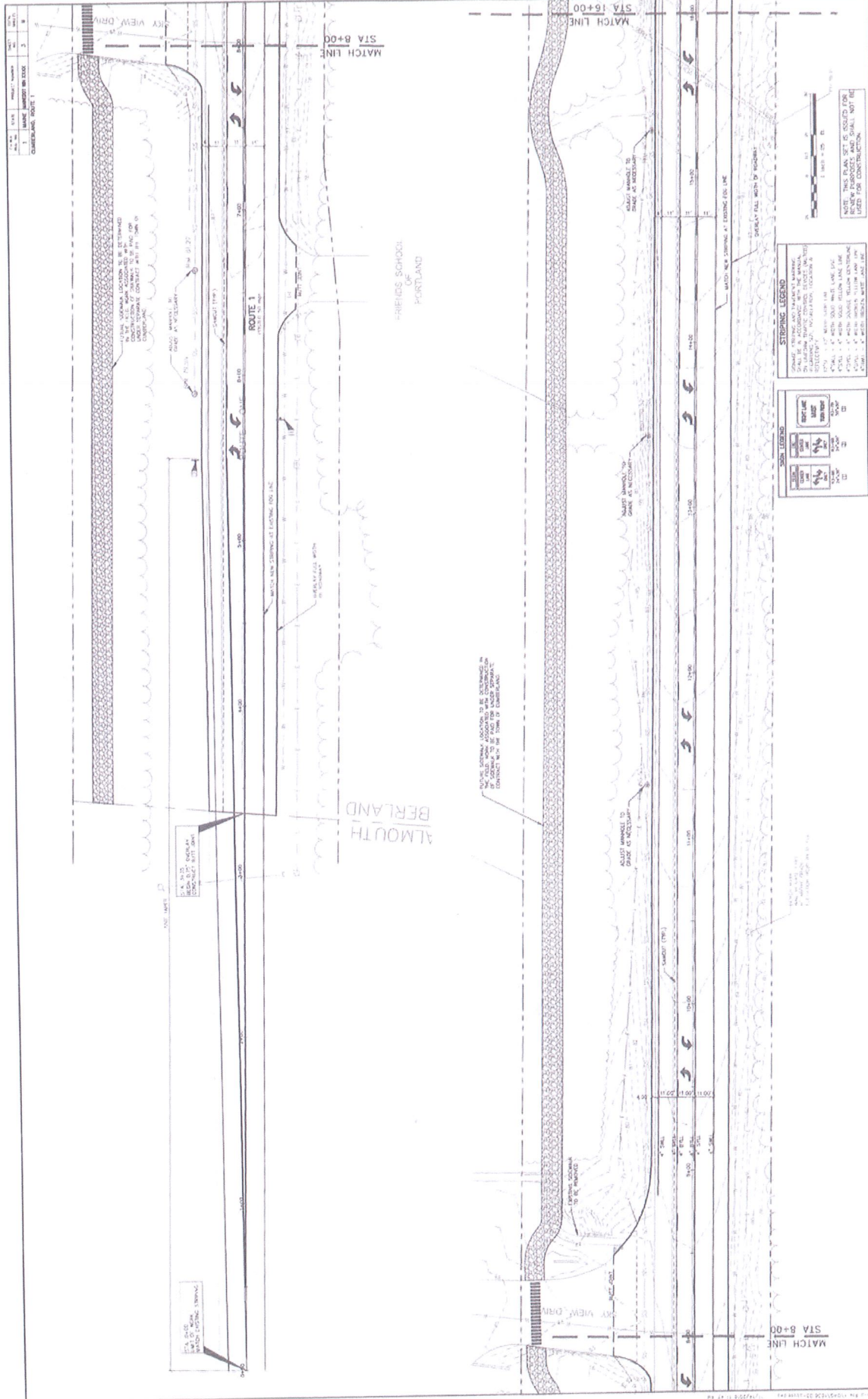


CONVENTIONAL SYMBOLS		PROPOSED	EXISTING	PROPOSED
ENGINE	                                                                                                                                   <			

NOTE: GORRILL PALMER WILL BE CONDUCTING THE FIELD OBSERVATION/ENGINEERING DURING CONSTRUCTION. DOUGLAS REYNOLDS, P.E. WILL BE THE ENGINEER RESPONSIBLE FOR THE PROJECT.

NOTE: ALL WORK CONTAINED UNDER THIS CONTRACT SHALL BE GOVERNED BY AND BE IN CONFORMITY WITH THE MAINEDOT STANDARD SPECIFICATIONS (REVISION OF NOVEMBER 2014), AND THE STANDARD DETAILS (REVISION OF NOVEMBER 2014) EXCEPT AS MODIFIED BY THE PLANS OR SPECIFICATION SPECIAL PROVISIONS AND ANY AND ALL CORRECTIONS, REVISIONS OR ADDITIONS ISSUED BY MAINEDOT.

NOTE:
 * MAINTENANCE OF TRAFFIC PER THE MANUAL ON UNIFORM
 TRAFFIC CONTROL DEVICES (MUTCD 2009 EDITION).
 * CONTRACTOR SHALL USE THE B.M.P. (BEST MANAGEMENT
 PRACTICES FOR EROSION AND SEDIMENT CONTROL) AS A
 MINIMUM STANDARD.



STRIPE LEGEND

CONTRACT: 290 ALICE ROAD, CUMBERLAND, ME 04221

DATE: 11/15/2017

SCALE: 1" = 40'

NOTES: THIS PLAN IS FOR THE PURPOSE OF CONSTRUCTION. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE.

Sheet No. **3**

3 of 5

Stripping Plan
 Route 1 Roadway Improvement Project
 Cumberland, Me
 Town of Cumberland
 290 ALICE ROAD, CUMBERLAND, ME 04221

GP GORRILL PALMER

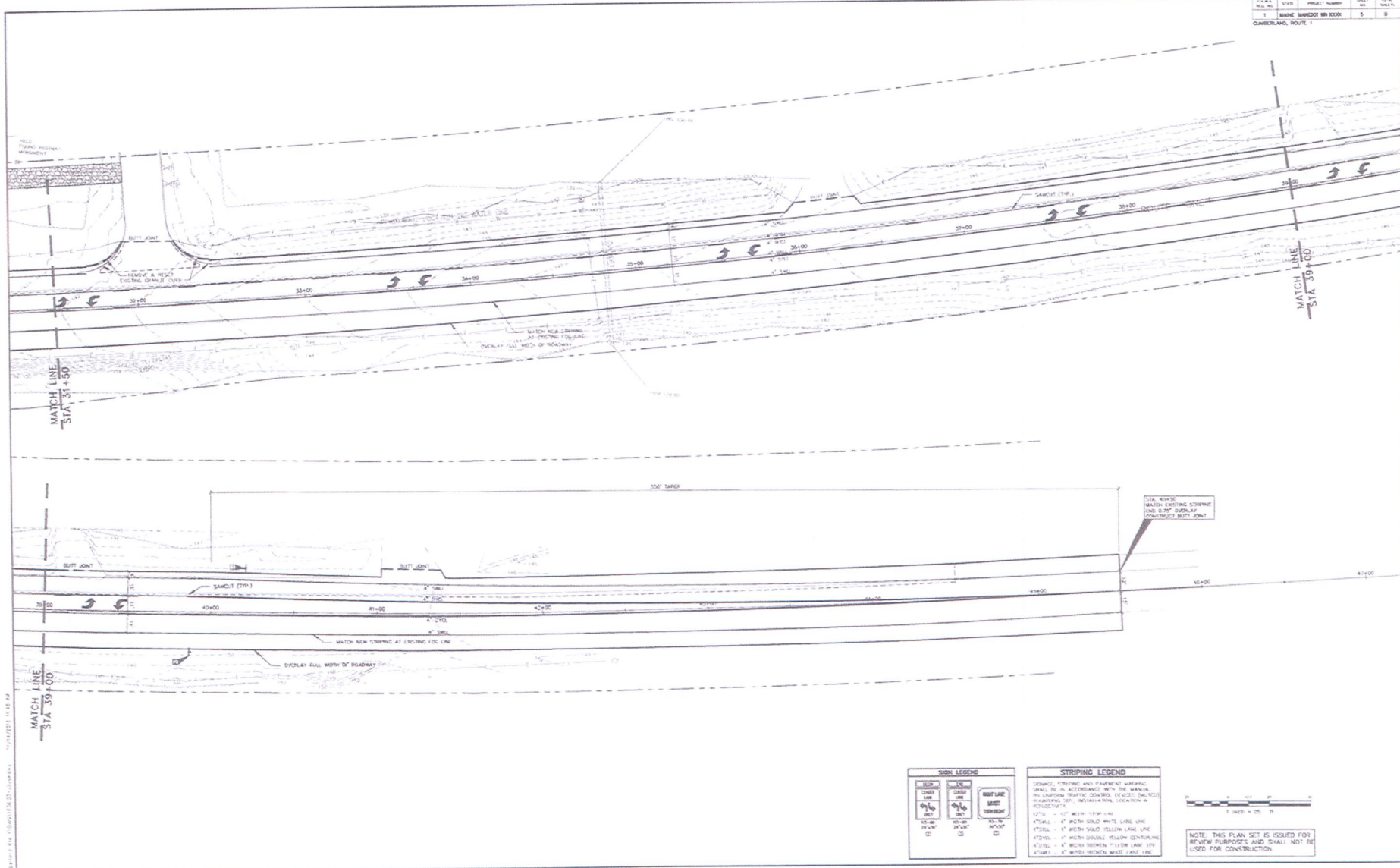
Relationships, Responses, Results
 www.gorrillpalmer.com
 207.777.2515

Rev	Date	Description
1	11/15/2017	Initial Design

Rev	Date	Description
1	11/15/2017	Initial Design

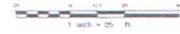
DATE	BY	PROJECT NUMBER	SHEET NO.	TOTAL SHEETS
1	NAME	SHARDOT 00 XXXX	5	9

CUMBERLAND, ROUTE 1



MARK LEGEND	
EXISTING	NEW
STRIPING	STRIPING
SHOULDER	SHOULDER
SIDWALK	SIDWALK

STRIPING LEGEND	
12' WIDE	14' WIDE
4' WIDE	4' WIDE
4' WIDE	4' WIDE
4' WIDE	4' WIDE
4' WIDE	4' WIDE



NOTE: THIS PLAN SET IS ISSUED FOR REVIEW PURPOSES AND SHALL NOT BE USED FOR CONSTRUCTION.

C:\Gorri\Projects\2016\03\Shardot\00 XXXX\05-Striping\05-Striping.dwg 11/14/2016 11:48 AM

Rev.	Date	Revision
1	11/14/2016	Initial Design

Rev.	Date	Revision
1	11/14/2016	Initial Design

Design: S.C. Staff: S.C. Date: 11/14/2016
 Checked: S.C. Date: 11/14/2016
 File Name: 05-Striping.dwg
 This plan set may be modified without written permission from S.C. Palmer (GP).
 All information, furnished or otherwise, shall be at the user's sole risk and without liability to GP.



Relationships, Responsiveness, Results.
 www.gorripalmer.com
 207.772.2515

Striping Plan	
Project:	Route 1 Roadway Improvement Project Cumberland, Me
Client:	Town of Cumberland 290 Tuttle Road, Cumberland, Me 04021

Sheeting No.	5
--------------	---