

# ITEM 18-090

To set a Public Hearing date of July 23<sup>rd</sup> to consider and act on  
repealing and replacing Section 250 (Subdivision of Land) of the  
Cumberland Code to include new Conservation Subdivision language





# 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:** June 21, 2018  
**Re:** **18-090 – Subdivision Ordinance**

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After an extensive review by the Planning Board, the revised Subdivision Ordinance Chapter 250 of the Cumberland Code is now ready for your review. The new update includes the long awaited Conservation Subdivision Ordinance.

This major overhaul may be best presented to the full Council in two Public Hearings by the Chairs of the Planning Board and Conservation Subdivision Committee and Carla Nixon our Director of Planning.

I would recommend you set your July 9<sup>th</sup> meeting as the night to hearing the overview from both Chairs and staff and to entertain questions from the Town Council and the Public. I would then allow a few weeks for residents to digest the changes and develop additional questions for your July 23<sup>rd</sup> meeting. The second meeting could be a very brief summary and more Q&A from the public and Town Council.

If you do not feel any additional work is needed, the updated ordinance could be adopted on July 23<sup>rd</sup> or sent to the Ordinance Committee for additional tweaking if the Council desires. This is a very important change to our ordinances and the overview by those who have worked closest with the changes and additions may be best heard by the entire Council. The one thing that has been consistent throughout the process is the goal of making all land owners whole. If a landowner was able have 10 lots with the old ordinance, they will be allowed to have 10 lots with the updated ordinances.

Both Planning Board and Conservation Subdivision Committee have done an outstanding job putting this entire new Ordinance into this long awaited document.

**Notice of Decision**

**Date:** June 20, 2018

**To:** William Shane, Town Manager  
Town of Cumberland

**Re:** *Public Hearing: Recommendation to the Town Council to repeal and replace Section 250 – Subdivision Ordinance, to include conservation subdivision option.*

This is to advise you that on June 19, 2018 the Planning Board held a public hearing and voted to recommend to the Town Council to repeal and replace Section 250 – Subdivision Ordinance – to include conservation subdivision and that the Town Council make the necessary changes to the Zoning Ordinance based on the changes to the Subdivision Ordinance.

Cumberland Planning Board

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Stephen Moriarty, Board Chair

## **250. SUBDIVISION OF LAND**

### **Article I General Provisions**

#### **§250-1 Purpose.**

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

1. Promote clustering of houses and structures on less environmentally-sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for development.
2. Promote interconnected greenways and corridors throughout the community.
3. Provide a subdivision option that permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land.
4. Preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.
5. Preserve scenic views both from within and outside the subdivision.
6. Preserve important historic and archaeological sites.
7. Preserve green space through the use of nonstructural storm water runoff and water protection measures.
8. Encourage interaction in the community by clustering and orienting houses closer to the street, providing public gathering places and encouraging the use of parks and community facilities as focal points in the neighborhood.
9. Encourage street designs that reduce traffic speeds and promote interconnectivity.
10. Promote construction of convenient landscaped walking trails and bike paths both within the subdivision and connected to neighboring communities, businesses, and facilities to reduce reliance on automobiles.
11. Reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in development.
12. Promote contiguous green space with adjacent municipalities.
13. Protect rural character and activities such as farming and forestry.
14. Protect water quality and aquifers.

## **250-2 Authority, title and applicability.**

### **A. Authority and title.**

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

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

### **B. Administration and applicability.**

(1) The Planning Board of the Town of Cumberland (hereinafter also referred to as the “Board”) shall administer this chapter.

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

## **250-3 Approval Criteria.**

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

A. **Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- (1) The elevation of the land above sea level and its relation to the floodplains;
- (2) The nature of soils and subsoils and their ability to adequately support waste disposal;
- (3) The slope of the land and its effect on effluents;
- (4) The availability of streams for disposal of effluents; and
- (5) The applicable state and local health and water resource rules and regulations;

B. **Sufficient water.** The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;

C. **Municipal water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

D. **Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

- E. **Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads, existing or proposed;
- F. **Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;
- G. **Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;
- H. **Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
- I. **Conformity with local ordinances and plans.** The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
- J. **Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section, as set forth in § 250-46;
- K. **Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet. To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore. The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter 1, Article 2-B, of the Maine Revised Statutes Annotated or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definition requirements of 30-A M.R.S.A. § 4401, Subsection 1, on September 23, 1983;
- L. **Groundwater.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;
- M. **Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the

applicant, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the one-hundred-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation;

- N. **Stormwater.** The proposed subdivision will provide for adequate stormwater management;
- O. **Freshwater wetlands.** All potential freshwater wetlands, as defined in 30-A M.R.S.A. § 4401, Subsection 2-A, within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district; and
- P. **River, stream or brook.** Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. § 480-B, Subsection 9.
- Q. Conservation subdivisions shall meet the following additional standards:
  - (1) **Applicability of regulations.** The conservation subdivision option replaces the cluster subdivision option in the Rural Residential 1 and Rural Residential 2 zoning districts. The applicant must comply with all other provisions of the zoning ordinance and all other applicable laws, except those that are incompatible with the provisions contained herein.
  - (2) **Ownership of subdivision.** The land to be subdivided may be held in single and separate ownership or in multiple ownerships. If held in multiple ownerships, the site must be subdivided according to a single plan with common authority and common responsibility.
  - (3) **Housing density determination.** The maximum number of lots in a conservation subdivision must be determined using the net residential acreage calculation. The density within the conservation subdivision will be based on the zoning district lot size requirements.
  - (4) **Net residential acreage** must be determined by subtracting from gross acreage the following:
    - (a) Roads and parking as shown on the proposed plan;
    - (b) Slopes in excess of 20% sustained for 30,000 square feet or more;
    - (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, as amended;

- (d) Land in the 100-year flood zone shown on FEMA Flood Insurance Rate Maps, (FIRM) as revised;
- (e) Lands in rights-of-way or easements, but not including land in open space easements; and
- (f) Lands in resource protection districts.

**(5) Development Standards.**

The following standards apply to development in conservation subdivisions in place of the otherwise applicable dimensional requirements for the zoning district in which the development is located.

The following minimum lot standards are required in a conservation subdivision except that sheds and driveways are permitted to a minimum setback of 15 feet from the side and rear lot lines.

Minimum lot size	25,000 sq. ft.
Minimum front yard setback	50 ft.
Minimum side yard setback	20 ft. each side
Minimum rear yard setback	30 ft.
Minimum lot width	100 ft.
Minimum access easement to open space	10 ft.
Minimum open space area required	50% of the gross land area

**(6) Standards to determine open space.**

**(a) Minimum Open Space Requirement.**

The minimum restricted open space must comprise at least 50% of the gross subdivision area.

**(b) Primary Conservation Areas.**

The following are considered primary conservation areas and must be included within the open space, unless the applicant demonstrates to the satisfaction of the Planning Board that due to the unique circumstances of the parcel, a waiver may be granted.

- (i) The regulatory 100-year floodplain as shown on FEMA Flood Insurance Rate Maps, as revised;
- (ii) Buffer areas of at least 75 feet in width along all perennial and intermittent streams, as defined and regulated by Maine Department of Environmental Protection;
- (iii) Slopes above 25% of at least 5,000 square feet contiguous area;



- (iv) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, as amended;
- (v) Archaeological sites, cemeteries and burial grounds; and
- (vi) A buffer area of at least 75' in width between the subdivision and abutting tracts or parcels of land and between the subdivision and existing streets and roads adjoining or abutting the subdivision. Such buffer shall be designed to eliminate mitigate potential adverse impacts (including glare, noise, and unsightly views of service areas). The buffer shall consist of trees, open fields, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in the buffer areas, except that vegetation classified as being an invasive plant may be removed.
- (vii) Existing trails that connect with existing trails on Town-owned land or with existing trails on abutting land in a conservation easement.

(c) **Secondary Conservation Areas.**

The following are considered secondary conservation areas and may be included within the open space:

- (i) Habitats of endangered or threatened species;
- (ii) Significant wildlife habitats per the Maine Department of Inland Fisheries and Wildlife regulations as amended;
- (iii) Important historic sites as defined by the Maine Historic Preservation Commission;
- (iv) Existing healthy, native forests of at least one acre contiguous area;
- (v) Individual healthy trees with a caliper greater than eight inches as measured at 4.5 feet from the ground;
- (vi) Other significant natural features and scenic views such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads;
- (vii) Prime agricultural lands of at least five contiguous acres;
- (viii) Locations with scenic views.

(d) **Additional Standards.**

(i) **Fire protection.** The subdivision design must comply with Chapter **96**, Article **II**, Fire Protection, of this Code. The Fire/EMS Chief shall issue the applicant a certificate of compliance once the applicant has met the design requirements of Chapter **96**, Article **II**.

(ii) **Soil erosion.**

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

(iii) **Identification of freshwater wetlands.** Freshwater wetlands shall be identified in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published by the Federal Interagency Committee for Wetland Delineation, January 1987.

(iv) **Traffic conditions.**

a) Intent. Provisions shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision, avoid traffic congestion on any street, and provide safe and convenient circulation on public streets and within the subdivision.

b) Design standards.

i) No subdivision shall reduce a street giving access to the subdivision and neighboring streets and intersections to a Level of Service of E or below.

ii) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, byways, and traffic controls within public streets.

iii) Accessways to nonresidential subdivisions or to multifamily developments shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A warrant analysis to determine the need for a left-turn storage lane shall be done.

iv) Where topographic and other site conditions allow, provisions shall be made for street connections to adjoining lots of similar existing or potential use, for the purposes of facilitating public safety services and/or to enable the public to travel between the two developments without the need to travel on a collector street.

(e) **Additional Considerations.**

- (i) Utility rights of way and areas of impervious surface may be included within the protected open space but cannot be counted towards the 50% minimum area requirement (exception: historic structures and existing trails may be counted).
- (ii) At least 75% of the open space must be contiguous, where possible, to another open space area. The open space should adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of future protected open space.
- (iii) All lots must be provided with safe, convenient access to the open space.

**(7) Permitted uses of open space.**

Uses of open space may include:

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

**(8) Prohibited uses in the open space.**

The following are prohibited in the open space:

- (a) Roads, parking lots and impervious surfaces, except as specifically authorized in this ordinance; and
- (b) Subsurface wastewater disposal systems and wells.
- (c) Dumping or disposal of any type of yard waste or other debris, organic or inorganic.

Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection, i.e., deed restrictions.

**(9) Ownership, legal protection and maintenance of open space.**

- (a) The open space must be owned jointly by the owners of the residential lots within the subdivision. In the alternative, the open space lands may be permanently conveyed to a natural resources preservation organization or to a conservation land trust, with Planning Board approval. As a further alternative, open space lands preserved for agricultural activity may be leased for agricultural purposes or uses leased for agricultural purposes or used provided that all the agricultural open space within the subdivision is leased to the same entity or individual. A deed restriction prohibiting further use and development of the open space parcel(s) beyond the specified agricultural use(s) and buildings shall be required. Allowance for modification of the uses within that deed restriction shall require a subdivision revision and Planning Board approval.
- (b) All open space within an approved Conservation Subdivision must be maintained by the owner of the open space. Maintenance activities must be listed and approved by the Planning Board as part of the conditions of approval. Such maintenance may include but is not limited to:
  - Prohibition to cutting vegetation, except for an annual mowing to prevent undesirable shrub brush from overtaking protected fields, without an approved management plan.
  - Prohibition of any dumping of any type of organic or inorganic material.
  - Prohibition to building, removal, or alteration of approved open space or trails.
  - Prohibition to additional structures being placed on the open space without Planning Board approval.

The lack of maintenance in an approved conservation subdivision may result in enforcement action by the Cumberland Code Enforcement Officer pursuant to 30-M.R.S.A. Sec. 4452.

**250-4 Definitions.**

In general, words and terms used in these standards shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follows:

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

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

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

**BUFFER:** An area of a subdivision that shall remain free from the development of road and/or structures and which may or may not have visual screening, such as trees or fencing, within it.

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

**COMMON OPEN SPACE:** Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation or accommodate support facilities related to the subdivision and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements.

**CONSERVATION SUBDIVISION:** A subdivision designed to preserve sensitive and/or valuable natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant viewsapes.

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

#### **EASEMENT**

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

#### **ENGINEER**

The Municipal Engineer or consulting engineer licensed by the State of Maine.

#### **FINAL PLAN**

The final drawings on which the subdivider's plan of subdivision is presented to the Planning Board for approval and which, if approved, may be filed for record with the Municipal Clerk and County Registry of Deeds.

#### **LEGISLATIVE BODY**

Cumberland Town Council.

#### **MUNICIPALITY**

Town of Cumberland.

#### **NET RESIDENTIAL ACREAGE**

Net residential acreage shall be determined by subtracting from gross acreage available the following:

- (a) Roads and parking as shown on the proposed plan.



- (b) Slopes in excess of 20% sustained for 30,000 square feet or more.
- (c) Wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, and as amended from time to time.
- (d) Land in the 100 year flood zone shown on FEMA Flood Insurance Rate Maps (FIRM), as revised.
- (e) Land in rights-of-way or easements, but not including land in open space easements under Chapter **315**, Zoning, § **315-43**.
- (f) Lands in Resource Protection districts.

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

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

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

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

**PLANNING BOARD:** Cumberland Planning Board.

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

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

**RECREATION, PASSIVE:** Recreation that involves existing natural resources and has a minimal impact. Passive recreation includes but is not limited to hiking, walking, running, biking, snowshoeing, cross country skiing, picnicking, and bird-watching.

## **REQUIRED IMPROVEMENTS**

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

**REVISION TO AN APPROVED SUBDIVISION:** Any change to an approved subdivision that modifies a subdivision lot, restrictions, easements, roadway, walkway or open space.

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

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

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

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

**SUBDIVISION, MINOR:** A subdivision containing not more than four lots and not otherwise requiring classification as a major subdivision, as defined in this section.

**TRADITIONAL SUBDIVISION:** A type of development where building lots are at least the minimum lot size for the district in which they are located. A small portion of the lot may remain open and free from development.

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

#### **§ 250-5 Clustered, conservation and traditional residential development.**

##### A.

General. In reviewing applications for major subdivision approval involving a residential development consisting of five or more single-family residences and/or duplex dwellings in the Rural Residential 1, Rural Residential 2, Rural Industrial, Medium-Density Residential, Low-Density Residential, and Island Residential Districts, the Planning Board shall be authorized to require that the residential development be designed and constructed as a clustered residential development, a traditional residential development, or a conservation residential development based on the standards and criteria set forth in this section, except that developments with four or fewer lots may be designed as a clustered or conservation development upon a positive finding by the Planning Board that the intent of this section listed below can be met. All such residential developments shall conform to the requirements of this chapter as well as applicable requirements of Chapter 315, Zoning, and all other applicable ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan. The intention of this section is to assure that residential developments are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid contamination from subsurface

wastewater disposal systems or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements, including streets, waterlines, sewer lines, electric lines, gas lines, telephone lines, and other utilities; protect and preserve existing farms and farmland; protect areas in Resource Protection Districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.

B.

**Clustered residential development.** Clustered residential developments are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space, so long as the following requirements are satisfied:

(1)

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

(2)

Setback. Setback requirements for a clustered residential development shall be the same as those required in the zoning district in which the residential development is located.

(3)

Frontage. In Rural Residential Districts 1 and 2, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less than 75 feet of lot frontage on a street.

(4)

Buffering. A buffer area at least 75 feet in depth shall be established between the clustered residential development and abutting tracts or parcels of land and between the clustered residential development and existing streets and roads adjoining or abutting the clustered residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees, landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.

(5)

Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:

(a)

Active farmland or land adjoining active farmland.

(b)

An active trail system or which provides a link to an existing trail system.

(c)

Land which provides a buffer around a sensitive wildlife habitat or other natural area.

(d)

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

(e)

Land which is in resource protection.

(f)

Land which is suitable for active recreation.

(g)

Land which abuts or adjoins an existing public open space.

(6)

Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development, and in such cases the developer shall be required to establish a homeowners' association consisting of individual lot owners which shall include the following:

(a)

Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space, including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.

(b)

The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein, and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.

(c)

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

(d)

All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the Town Attorney and the Planning Board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.

(7)

Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.

(8)

Some or all of the open space may be conveyed to a nonprofit, tax-exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the Town Attorney.

C.

**Traditional residential development.** Traditional residential developments are residential developments in which the dwelling units are located on individual building lots which conform to the minimum lot size for the zoning district in which they are located. A traditional residential development may but is not required to include land set aside as open space, as provided in Chapter 250, Subdivision of Land, § 250-24.

D.

**Conservation residential development.**

Conservation residential developments are residential developments that are designed to preserve sensitive and/or natural areas including, but not limited to, farmland, wetlands, steep slopes, and significant views. Dwelling units are to be located on individual building lots that are located in areas of the site that do not include sensitive or natural areas as outlined in Section 250-3 (Q)

E.

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 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 zoning district in which it is located.

F.

Criteria to be considered. In determining whether a proposed residential development shall be constructed as a clustered residential development, a traditional residential development, or a conservation residential development, the Planning Board shall consider the following criteria as required by 30-A M.R.S.A. § 4404 and Chapter 250, Subdivision of Land.

G.

Standards for requiring clustered residential development. The Planning Board shall require that a residential development be designed as a clustered residential development if the following standards are met:

(1)

The tract or parcel of land to be developed has a public water system or will be connected to the public water system, or the Planning Board determines that adequate wells can be established for each residential unit without risk of contamination or interference with existing wells or groundwater on abutting properties and wells to be located within the proposed residential development.

(2)

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

(3)

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

(a)

Land which is active farmland or which adjoins or abuts active farmland.

(b)

Land which contains an existing trail system used by the public or which can provide a link to existing trails.

(c)

Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.

(d)

Land which may provide physical or visual access to water bodies, including the ocean, lakes, ponds, rivers, streams, and brooks.



(e)

Land which contains or adjoins a Resource Protection District as shown on the Official Zoning Map of the Town of Cumberland.

(f)

Land which adjoins or abuts an existing parcel of land which constitutes public open space.

(g)

Land which is suitable for active recreational activities.

## **ARTICLE II - Subdivision Application Procedures**

### **§250-6 General Procedures**

#### **a. Step 1: Pre-application meeting with Town Planner and Code Enforcement Officer.**

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

#### **b. Step 2: Pre-application workshop with Planning Board.**

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

#### **c. Zoning District Subdivision Options:**

- .1 If the proposed subdivision will be located in the Rural Residential 1 (RR 1) or Rural Residential 2 (RR 2) zoning district, the applicant may propose either a Conservation subdivision or a Traditional subdivision.
- .2 If the proposed development is located in any zoning district other than the Rural Residential 1 (RR1) or Rural Residential 2 (RR 2), the applicant may propose either a Clustered or Traditional subdivision.

#### **d. Application Fees, Consulting Fees and Application Forms.**

- .1 The subdivision review fee schedule is established by order of the Town Council.
- .2 Outside consulting fees shall be charged in accordance with Chapter 315, Zoning, § 315-81.

- .3 Appendix A should be completed for a proposed (major or minor) **Conservation** Subdivision.
- .4 Appendix B should be completed for a proposed **Minor** Traditional or Clustered subdivision.
- .5 Appendix C should be completed for a proposed **Major** Traditional or Clustered subdivision.

**§ 250-7 Procedure for subdivisions in the RR 1 or RR2 Zoning Districts.**

- .1 If the proposed subdivision will be located in the Rural Residential 1 (RR 1) or Rural Residential 2 (RR 2) zoning district, the applicant may propose either a Conservation subdivision or a Traditional subdivision.
- .2 The Conservation subdivision is the preferred option for the Town of Cumberland and a proposed conservation subdivision plan must be submitted by the applicant. The applicant may propose as an alternative, a Traditional subdivision in which case a proposed traditional subdivision plan may also be submitted.
- .3 All plans shall show the natural features of the property , such as topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal system locations (if applicable), steep slopes, open fields, wooded areas, etc. The Board shall then determine which type of subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of open space to be maintained, if applicable. The plan shall also depict how the road(s), lots and stormwater management system, and open space (if any) would be laid out in each option.
- .4 The Planning Board will notify abutters within 500 feet of the proposed subdivision of the meeting date, location and time. The Planning Board will hold a public hearing to solicit public comments on the proposed plan options after which the Board will make a determination on which plan should be selected for development.
- .5 The applicant shall be given a decision at the meeting as to what type of development is most appropriate or be told what additional information is necessary for the Board to make a decision. The Board shall specify in writing its decision within 10 days of the meeting.
- .6 The type of subdivision development approved by the Board shall not be changed unless the Board finds that unforeseen circumstances require the decision to be altered.
- .7 The consideration of the pre-application plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.

**§ 250-8 Procedure for subdivisions not located in the RR 1 or RR2 Zoning Districts.**

- .1 If the proposed development is located in any zoning district other than the RR1 or RR1, two types of subdivision are available: Clustered or Traditional.
- .2 The Clustered subdivision is the preferred option for the Town of Cumberland and a proposed Clustered subdivision plan must be submitted by the applicant. The applicant may propose as an alternative, a traditional subdivision in which case a proposed Traditional subdivision plan may also be submitted.
- .3 All plans shall show the natural features of the property , such as topography, wetlands, watercourses and water bodies, adequate subsurface wastewater disposal system locations (if applicable), steep slopes, open fields, wooded areas, etc. The Board shall then determine which type of subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of open space to be maintained, if applicable. The plan shall also depict how the road(s), lots and stormwater management system, and open space (if any) would be laid out in each option.
- .4 The Planning Board will notify abutters within 500 feet of the proposed subdivision of the meeting date, location and time. The Planning Board will hold a public hearing to solicit public comments on the proposed plan options after which it will make a determination on which plan should be selected for development.
- .5 The applicant shall be given a decision at the meeting as to what type of development is most appropriate or be told what additional information is necessary for the Board to make a decision. The Board shall specify in writing its decision within 10 days of the meeting.
- .6 The type of subdivision development approved by the Board shall not be changed unless the Board finds that unforeseen circumstances require the decision to be altered.
- .7 The consideration of the pre-application plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of 1 M.R.S.A. § 302.

#### **§ 250-9 Review and approval of plan for a minor subdivision.**

##### **A. Procedures.**

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

##### **B. Submission requirements**

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

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

(2) The Town Planner shall then determine whether the application is complete or incomplete and shall notify the applicant of the determination in writing within 30 days of the date that the receipt is issued. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the application complete. When the application is determined to be complete, the Town Planner shall notify the applicant and the application will be placed on the next Planning Board agenda for which the required 21 day notice can be met. Any application not determined to be complete within 180 days of the issued receipt date shall become null and void.

(3) The Planning Board shall, within 45 days from the date that the application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the applicant, hold a public hearing and then vote to either table, approve, approve with conditions, or disapprove the plan. The Planning Board shall specify in writing its decision and findings of fact regarding the decision. A separate copy of the written decision and findings of fact shall be maintained apart from the Planning Board minutes and stored in the Town Planner's files.

C. Minor Subdivision Plan approval and filing.

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

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

(3) This approval is dependent upon and limited to the proposals and plans contained in the application, and supporting documents submitted by the applicant, and all statements made by the applicant to the Planning Board. Any variation from the plans, proposals, supporting documents and statements, except minor field changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

D. Performance guarantees.

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

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

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

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

[3] Any other performance guarantee reviewed by the Town Attorney as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

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

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

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

#### § 250-10 Review and approval of plan for a major subdivision.

A. Review and approval of a plan for a major subdivision shall be a two-step process whereby the Planning Board shall grant preliminary then final approval for a project. This approval may be given at one meeting when deemed appropriate by the Board.



## **B. Preliminary Plan Procedures**

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

(2) Submission requirements. Major Subdivision Plan submissions shall conform to the standards and requirements contained in Appendix C of this chapter.

(3) The Town Planner shall then determine whether the application is complete or incomplete and shall notify the applicant of the determination in writing within 30 days of the date that the receipt is issued. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the application complete. When the application is determined to be complete, the Town Planner shall notify the applicant and the application will be placed on the next Planning Board agenda for which the required 21 day notice can be met. Any application not determined to be complete within 180 days of the issued receipt date shall become null and void.

(4) The Planning Board shall, within 45 days from the date that the application is determined to be complete, or within such other time that may be mutually agreed to by both the Planning Board and the applicant, hold a public hearing and then vote to either table, approve, approve with conditions, or disapprove the preliminary plan. The Planning Board shall specify in writing its decision and findings of fact regarding the decision. A separate copy of the written decision and findings of fact shall be maintained apart from the Planning Board minutes and stored in the Town Planner's files.

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

## **C. Final plan procedures.**

(1) An application for final plan approval and a completed application checklist shall be submitted to the Town planner within 180 days after preliminary plan approval and at least 21 days prior to the meeting at which it is to be considered. The applicant shall submit an electronic version of all required plans and materials listed in the application submission checklist. In addition, three full size paper copies of all required plans and of all materials listed in the application submission checklist shall be provided to the Town Planner.

(2) Prior to submission of the final plan application, the subdivider shall have fulfilled the following requirements:

(a) DEP Approval.

Written approval shall be secured by the Maine Department of Environmental Protection, if the proposed subdivision is subject to review by said Department;

(b) Water Supply

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

(c) Sewer Capacity

Allocation of sewer user units by the appropriate municipal agency shall be secured if said units are required for the proposed subdivision, and the proposed subsurface wastewater disposal system shall conform to § **250-31** of this chapter;

(3) The Town Planner shall determine whether the final application is complete or incomplete and shall notify the applicant of the determination in writing within 30 days of the date that the receipt is issued. If determined to be incomplete, the Town Planner shall list the materials that must be submitted in order to make the application complete. When the application is determined to be complete, the Town Planner shall notify the applicant and the application will be placed on the next Planning Board agenda for which the required 21 day notice can be met. Any application not determined to be complete within 180 days of the issued receipt date shall become null and void.

(4) Public Hearing

A public hearing may be scheduled by the Planning Board within 30 days after the date of the final plan is determined to be complete, with adequate notice given to the general public.

(5) Phasing

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

(6) Performance guarantees.

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

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

[1] An escrow account funded by cash or a certified check payable to the Town of Cumberland and governed by an escrow agreement in a form reviewed by the

Town Attorney and acceptable to the Town Manager. Any interest earned on the escrowed funds shall be retained by the Town.

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

[3] Any other performance guarantee reviewed by the Town Attorney as to form that provides security in an amount substantially equivalent to an escrow account or an irrevocable letter of credit.

(c) Also, notwithstanding the provisions of § **250-10D(7)** and **F(2)** to the contrary, the Planning Board at time of final approval may authorize a delay in the filing of an effective performance guarantee until the preconstruction conference, provided that satisfactory evidence of the developer's ability to obtain the same is submitted at time of final plan approval.

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

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

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

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

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

(9) The plan shall include a note that states:

This approval is dependent upon and limited to the proposals and plans contained in the application, and supporting documents submitted by the applicant, and all statements made by the applicant to the Planning Board. Any variation from the plans, proposals, supporting documents and statements, except minor field changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

(10) The Planning Board shall, within 60 days after the date that the final plan is determined to be complete, or within such other time limit that may be mutually agreed to by both the Planning Board and the applicant, approve, approve with conditions or disapprove the final plan. The Planning Board shall specify in writing its findings of fact and the Board's decision. A separate copy of the written decision and findings of fact shall be maintained apart from the Planning Board minutes and stored in the Town Planner's files. The Planning Board at its discretion may require annotations to be placed directly on the final plan.

(11) This sixty-day time limit may be extended once by 30 days, by the Planning Board, if the Board determines that additional information needs to be secured by the subdivider or the Planning Board.

#### **D. Final plan approval and recording.**

(1) Upon completion of the requirements above and approval of the final plan, the final plan shall be signed by a majority of the voting members of the Planning Board and shall be filed by the applicant with the Town Planner.

(2) The performance bond or irrevocable letter of credit, with the terms and conditions previously set by the Planning Board, shall be filed with the Town Manager before the final plan is released for recording by the developer at his/her expense with the Cumberland County Registry of Deeds.

(3) Electronic auto cad files shall be required prior to plan recording and filing in a format and version specified by the town.

#### **§ 250-11 Plan revisions after approval.**

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

#### **§ 250-12 Public acceptance of streets and recreation areas.**

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

§ 250-13 Times for commencement and completion of construction; preconstruction conference.

A. All improvements required by § **250-19** and all quasi-public improvements required by the Planning Board for approval of the plan shall be completed no later than ~~two~~ three years after approval of the final plan. The applicant may, prior to the expiration of approval, request a one year extension from the Planning Board for good cause shown. Developments that are proposed to be built out in phases shall meet the three year limit for each phase of the development. Where a project requires both subdivision and site plan approval under Chapter 229, the improvements must be completed within the time periods established by this section rather than those established by § 229-11.

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

Article III. Enforcement

§ 250-14 Approval required prior to recording.

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

§ 250-15 Conveyance of land.

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

§ 250-16 Violations and penalties.

Any person, firm, corporation or other legal entity who or which conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by this article or who builds or develops a subdivision other than in strict conformance with the requirements of this

chapter and his/her approval, including any conditions attached thereto, shall be subject to a civil action seeking injunctive relief to prevent any such violation and restore or repair the land, if appropriate, and be further subject to a civil fine, attorney fees and costs of court as provided under 30-A M.R.S.A. § 4452. The municipality or the Code Enforcement Officer may institute such proceedings.

#### § 250-17 Utility service.

No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Planning Board.

#### § 250-18 Grading and construction work prior to final approval.

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

### Article IV. Improvements

#### § 250-19 Required improvements.

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

#### § 250-20 Inspection of required improvements.

##### A. Inspection fee.

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

(a) Pay an inspection fee equal to 2% of the cost of the required improvements, or \$5,000, whichever amount is greater.

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

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

(2) The subdivider shall notify the Town Manager, or his/her appointed designee, in writing of the time when he/she proposes to commence construction of such

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

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

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

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

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

## Article V General Requirements

### § 250-21 Considerations for approval.

In reviewing applications for the subdivision of land, the Board shall consider the following general requirements. In all instances the burden of proof shall be upon the person proposing the subdivision.

### § 250-22 Review and approval by other agencies.

Where review and approval of any subdivision or site plan by any other governmental agency is required, such approval shall be submitted to the Planning Board in writing prior to the submission of the final plan.

### § 250-23 Conformity with other state and local regulations.

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

§ 250-24 Retention of proposed public sites and open spaces.

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

B. Land reserved for park and/or recreational purposes shall be of a character, configuration and location suitable for the particular use intended. A site to be used for active recreational purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Board may deem suitable and shall have no less than 25 feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc., where necessary and appropriate.

C. Where the proposed subdivision is located on a lake, pond, river, or stream, a portion of the waterfront area, when feasible, shall be included in the reserved land. The land so reserved shall be at least 200 feet wide measured perpendicularly from the normal high-water mark.

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

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

F. The provisions of this section shall not apply to multiplex dwellings, mobile homes parks, or residential care facilities. The retention of open space areas in multiplex dwellings, mobile home parks or residential care facilities is governed by Chapter **315**, Zoning, §§ **315-44**, **315-56** and **315-71**.

§ 250-25 Preservation of natural features.

A. The Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees (10 inches in diameter or more), the replacement of trees and vegetation, graded contours, streams and the preservation of scenic, historic, or environmentally desirable areas. The street and lot layout shall be adapted to the topography, and extensive grading and filling shall be avoided.



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

#### § 250-26 Land not suitable for development.

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

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

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

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

#### § 250-27 Blocks.

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

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

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

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

(4) Limitations and opportunities of topography.

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

#### § 250-28 Lots.

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

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

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

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

E.

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

G. Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in these standards.

H. Subdivision lots with frontage on both the collector street and the subdivision road shall be on a lot of at least four acres. The existing land cover on these lots shall be preserved for a depth of at least 75 feet along the collector street. Buildings on these lots shall be sited in a manner which minimizes impacts on areas such as farmlands, wildlife habitats, scenic areas and other significant natural resources.

#### § 250-29 Utilities.

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

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

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

#### § 250-30 Water supply.

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

B. The subdivider shall demonstrate by actual test or by a signed affidavit from an authorized representative of the servicing water company that water meeting State of Maine Rules of the

Department of Health and Human Services Relating to Drinking Water can be supplied to the subdivision at the rate of at least 350 gallons per day per dwelling unit and at an adequate pressure for fire-fighting purposes.

C. Storage shall be provided as necessary to meet peak domestic demands and fire protection needs.

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

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

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

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

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

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

#### § 250-31 Sewage disposal.

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

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

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

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

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

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

#### § 250-32 Trees, open spaces and planting screens.

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

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

#### Article VI Street Design and Construction Standards

##### § 250-33 General street standards.

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

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

**Table 1**

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

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

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

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

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

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

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

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

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

B. Layout.

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

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

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

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

(5) In front of areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial use is contemplated by the municipality, the street right-of-way and/or pavement width shall be increased by such amount on each side as may be deemed necessary by the Board to assure the free flow of through traffic without interference by parked or parking vehicles and to provide adequate and safe parking space for such commercial or business district. In no case shall the street have a right-of-way width and pavement width less than that specified in Table 3.<sup>11</sup>

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

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

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

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

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

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

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

C. Street signs and names.

(1) Streets which join or are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate nor bear phonetic resemblance to the names of existing streets within the municipality and shall be subject to the approval of the Board.

(2) Street name signs shall be furnished and installed by the subdivider. The type, size and location shall be subject to the approval of the Board.

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

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

F. Byways shall be provided along all roads within a proposed development.

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

§ 250-34 Design and construction standards.

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

(1) Open Drainage Systems

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

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

(2) Closed Drainage Systems.

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

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

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

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

D. Dead-end streets.

(1)

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



(2)

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

(3)

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

(a)

Maximum length of dead-end streets shall be limited to 2,000 feet measured from the center line of the feeder street to the center of the turnaround radius. However, the Planning Board may allow longer lengths because of property configuration and/or topographical constraints.

(b)

Radii at cul-de-sac with center island:

[1]

Property line: 70 feet.

[2]

Outer edge of pavement: 60 feet.

[3] Inner edge of pavement: 30 feet.

(c)

Radii at cul-de-sac without center island:

[1]

Property line: 60 feet.

[2]

Outer edge of pavement: 50 feet.

(4)

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

E.

Driveways.

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

#### § 250-35 Roadway construction materials.

##### A. General.

(1)

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

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

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

(b) If the existing native soil through the subbase course area can be defined as being equal in quality and thickness to the minimum requirements specified herein, the Planning Board may waive a portion or all of the minimum requirements for subbase courses. In any event, the ultimate density of any material left in place shall conform to the minimum requirements for compaction specified in § **250-36** contained herein.

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

##### B. Materials.

(1)

The minimum thickness of the various materials courses shall be shown in Table 3.

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

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

#### § 250-36 Construction specifications.

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

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

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

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

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

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

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

#### B. Bases, pavement and curbing.

##### (1)

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

##### (2)

Bases.

##### (a)

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

##### (b)

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

(c)

Where pavement placed joins an existing pavement, the existing pavement shall be cut along a smooth line and to a neat, even, vertical joint. Broken or raveled edges will not be permitted, nor deviation from grade.

(d)

Gradation of aggregates for plant mix hot bituminous pavements shall be as specified in Division 700 of the Maine Department of Transportation Standard Specifications.

C.

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

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

(2)

Vertical or sloped curbing shall be used in accordance with the design standards set forth herein for the particular type of street. All curbs shall have a typical reveal of six inches.

(3)

Type 1 curbing shall be used for radii at all intersections.

D.

Walkways

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

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

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

§ 250-37 Monuments.

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

(1) All street corners;

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

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

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

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

## Article VII. Storm Drainage Design and Construction Standards

### § 250-38 Intent.

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

### § 250-39 Closed and open drainage systems.

#### A.

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

#### (2)

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

#### B.

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

### § 250-40 Surface drainage and storm water management plans required.

A. All subdivision applications shall contain a surface drainage plan with profiles and cross sections designed by a State of Maine registered professional engineer. This plan shall show ditches, culverts, easements and other proposed improvements with a statement in writing attached to the drainage plan indicating that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or in adjacent properties, and properly executed easements as required by the Planning Board shall be filed with the Planning Board. The plan shall also contain a soil erosion and sediment control plan containing the endorsement of the Cumberland County Soil and Water Conservation District.

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

### § 250-41 Performance standards.

Storm water management plans shall show means whereby the peak discharge for the developed site shall not exceed the peak discharge for the undeveloped site for the two- and twenty-five-year storms. Emergency overflow facilities shall be provided for storms in excess of the twenty-five-

year storm. Sediments and other pollutants shall be limited through appropriate management practices to prevent adverse downstream water quality impacts. Regulations specifying hydraulic calculation techniques and design standards for facilities to achieve this performance standard shall be as approved by the Planning Board.

#### § 250-42 Design standards.

##### A. General.

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

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

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

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

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

##### B. Open.

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

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

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

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

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

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

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

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

### C. Open

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

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

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

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

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

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

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

### (4) Culverts.

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

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

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

§ 250-43 Materials for storm drain construction.

The following material shall be utilized for storm drain construction:

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

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

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

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

E. Manholes. Manholes shall be of precast concrete section construction or of precast concrete block construction. BILL SHANE HAD COMMENTED ABOUT CONCRETE ONLY ALLOWED WITH TOWN APPROVAL. CHECK WITH HIM ON THIS Precast units shall conform to the requirements of ASTM Designation C-478. Precast concrete manhole blocks shall be of load-bearing masonry units meeting the requirements of ASTM Designation C-139, radial type. Manhole cones shall be truncated. Manhole bases may be cast-in-place concrete with a twenty-eight-day strength of 3,000 pounds per square inch (psi) or may be of precast concrete.

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

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



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

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

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

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

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

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

#### § 250-44 General construction requirements.

A.

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

B.

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

C.

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

D.

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

E.

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

F.

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

G.

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

H.

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

§ 250-45 Easements for natural drainageways.

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

Article VIII Administration

§ 250-46 Financial and technical capacity.

A.

Financial capacity. The applicant shall have adequate financial resources to construct the required improvements and meet the criteria of the statute and the standards of these regulations. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.

B.

Technical capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

§ 250-47 Waivers and modifications.

A.

Hardships. Where the Planning Board finds that an unnecessary hardship may result from strict compliance with these standards, or where there are special circumstances of a particular plan which the Board finds make a particular standard inapplicable, it may waive these standards,

provided that such waiver will not have the effect of nullifying the intent and purpose of the Comprehensive Plan, this chapter or Chapter **315**, Zoning, and that such waiver will not endanger public safety. An unnecessary hardship shall be defined as a substantial burden on the subdivider which affects his ability to achieve a reasonable economic return on said project. Special circumstances shall relate to the unique circumstances of the property, such as its proximity to similar public improvements or the adequacy of connecting facilities.

B.

Conditions. In granting waivers and modifications, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards so waived or modified.

C.

Appeals. Appeals from the decisions of the Board shall be to the Superior Court.

#### § 250-48 Conflicting provisions.

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