

Ordinance Committee

Cumberland Town Council

Thursday, July 7, 2022 - 5 PM

Cumberland Council Chambers - Town Hall

AGENDA

- Item 1. Planning Board This Month – Private Roads**
- Item 2. Overview of Items**
- a. Blasting
 - b. Charter Change – June 30th term expiration
 - c. (EPA) Erosion & Sedimentation Control & Low Impact Development
 - d. Impact Fees
 - e. Site Plan & Subdivision (Foundation Elev. & Foot Drains)
 - f. Telecommunication Towers
 - g. Murray Policy
- Item 3. Timing with Zoning Items & also November Elections**
- August 18th PB Telecommunications
 - Blasting – new Vet Center- lots of ledge closer to houses
 - Elections- ballots absentee voting
- Item 4. Work Schedule – meeting times & dates for committee meetings**
- Item 5. Other Business**
- Item 6. Adjournment**

Meeting Notes

Town of Cumberland Ordinance Committee

Council Chambers

Thursday, July 7, 2022, 4:15 PM

Members present: Councilors Edes, Storey-King, Vail

Others present: Manager William Shane, William Longley, Carla Nixon, and Abbey Lombard

I. Planning Board – Private Roads

- a. Discussion to eliminate the 5-foot easement for snow on private roads

II. Action Items

- a. Blasting: Proposal to expand blasting notification from 500 feet to 1000 feet
- b. Charter Change: Proposal to change the Councilors term expiration to June 30th
 - i. Public Hearings for Charter Changes must be posted 7 days prior to the meeting
- c. EPA: Will discuss in depth at another time
- d. Impact Fees: Proposal to update the Impact Fees for recreational facilities
- e. Site Plan & Subdivision:
 - i. Update rules asking developers to show and explain foundation footings and drainage
 - ii. Proposal to require developers to have monumentation prior to construction
- f. Telecommunication Towers: Contracting with companies that want to build towers to allow us to place our equipment on them as part of the rental agreement
- g. Murry Policy: Review and update the policy

III. Next Meeting

- a. Wednesday, July 20, 2022

Item 1- Planning Board July – Council 7-25

SUBDIVISION OF LAND

250 Attachment 1

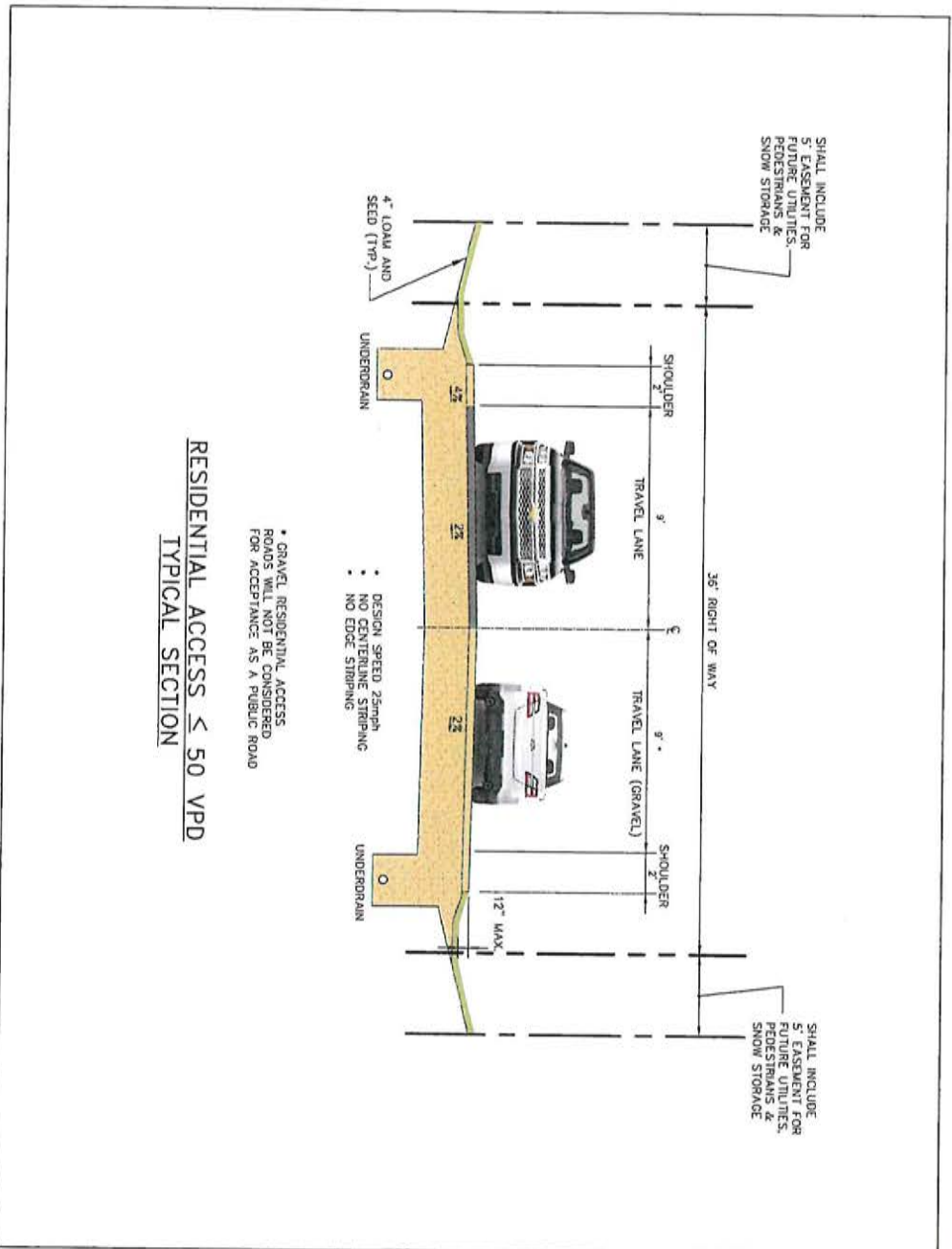
Town of Cumberland

Subdivision Road Standards

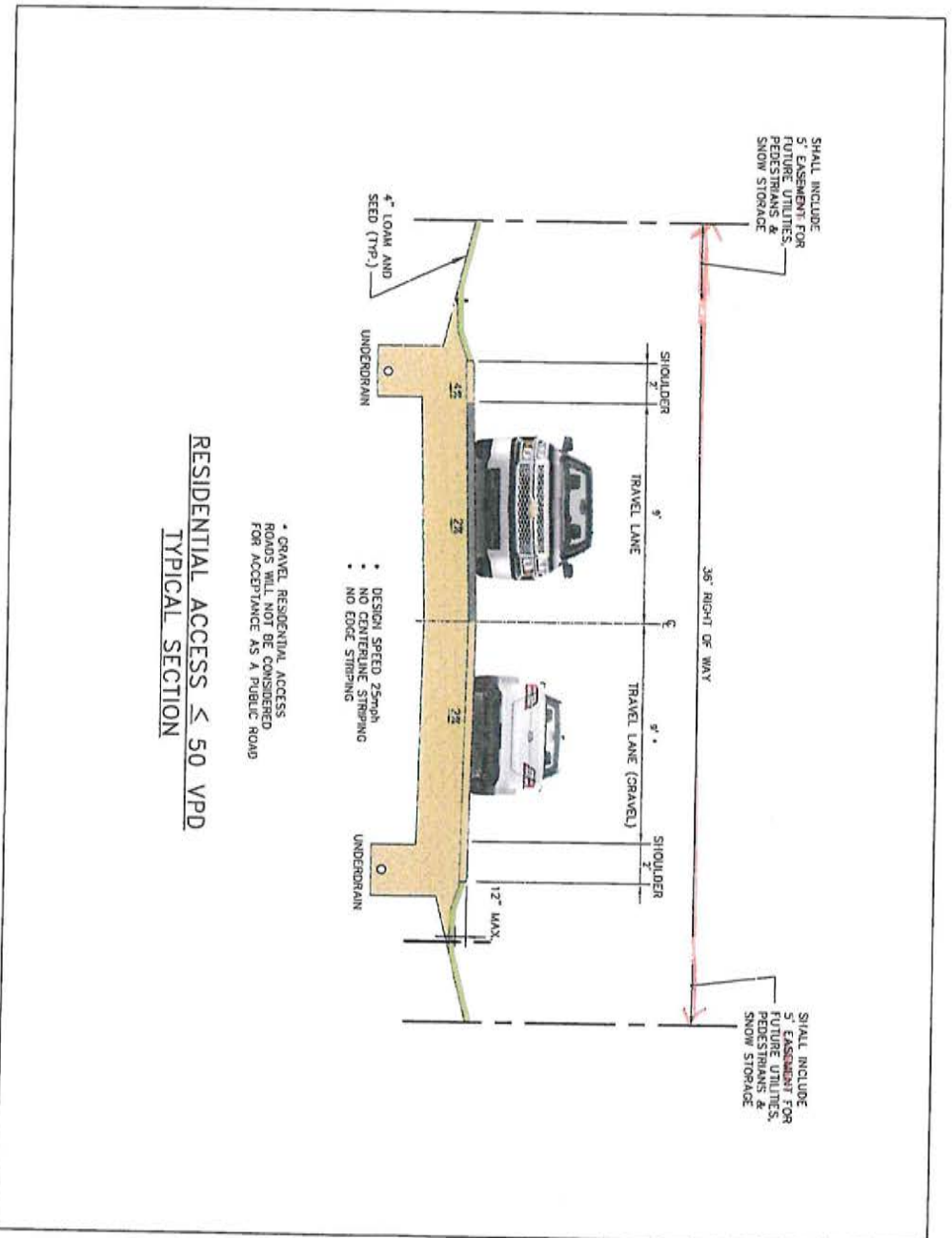
Table 2: Geometric Design Standards (See Also Associated Figures Following this Table)
[Amended 7-25-2016]

Dimensional Description	Residential Access < / = 50 vpd	Residential Access > 50 vpd	Mixed-Use Commercial Access	Trip generation estimate based on latest edition of the ITE Trip Generation Manual for Single-Family Housing using Average Rates
Design speed (miles per hour)	25	25	30	*Legal speed limits set by MaineDOT
Posted speed (miles per hour)	25*	25*	25*	*May require additional easements
Right-of-way width (feet)	36 feet**	50 feet*	60 feet*	**Must include 5-foot snow storage inside easement on each side
Pavement width of traveled way, edge to edge (see road cross section)	18 feet*	22 feet	24 feet	*May be unpaved, but road will not be accepted as a public road
Curbing for entrance radius	Type 1	Type 1	Type 1	MaineDOT Standard Specifications Section 609 shall be applicable. No headstones allowed. Type 1 is vertical granite curb.
Curbing at remaining locations	Optional, Type 1 or 2 if used	Optional, Type 1 or 2 if used	TBD by project, Type 1 or 2 if used	MaineDOT Standard Specifications Section 609 shall be applicable. No headstones allowed. Type 2 is extruded concrete.
Shoulder widths (each side): Add to above pavement width of traveled way				
Without parking	2 feet (gravel)	2 feet (gravel)	4 feet (gravel)	
With parking	NA	4 feet (gravel)	4 feet (paved)	When parking is provided on one side of the road, it should be located on the right-hand side when entering the subdivision. On-street parking shall be limited to non-sidewalk side of the roadway.
Center line striping	NA	TBD by project	Yes	
Shoulder (edge line) striping	NA	TBD by project	Yes	
Sidewalk width	NA	TBD by project	TBD by project	
Minimum pavement crown: inch per foot (%)	1/4 (2%)	1/4 (2%)	1/4 (2%)	
Minimum slope of shoulder: inch per foot (%)	1/2 (4%)	1/2 (4%)	1/2 (4%)	

SUBDIVISION OF LAND



SUBDIVISION OF LAND



* GRAVEL RESIDENTIAL ACCESS
ROADS WILL NOT BE CONSIDERED
FOR ACCEPTANCE AS A PUBLIC ROAD

RESIDENTIAL ACCESS ≤ 50 VPD
TYPICAL SECTION

§ 315-61 Street construction.

[Amended 8-10-1998; 3-24-2003; 9-10-2012; 5-9-2016]

Private streets meeting the following standards, as determined by the Code Enforcement Officer, may be used to satisfy the lot frontage requirement for residential uses:

- A. Except in the IR Zone, the private street application shall be accompanied by a plan showing the private street(s), which plan shall be prepared by a registered land surveyor. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the surveyor preparing the plan. The plan shall be labeled "Plan for a Private Street" and shall provide an approval block for the signature of the Code Enforcement Officer, the date of the approval, and the words "Private Street, Approved by the Town of Cumberland Code Enforcement Officer." The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private street. Where a proposed private street contains severe slopes, stream crossings, or a significant amount of cut and fill, the applicant shall also provide a profile of the street. In addition, a street plan and cross section shall be submitted for each private street serving two or more dwelling units. The plan shall also 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 street shown on this plan." The original plan(s) shall be recorded in the Cumberland County Registry of Deeds within 90 days of approval of the plan of the private street, and proof of such recording shall be submitted to the Code Enforcement Officer prior to the issuance of any building permit. If the plan is not recorded within this period, the approval shall be void.
- B. If the private street provides access to two or more dwelling units, the applicant shall prepare a maintenance agreement in a form acceptable to the Town Attorney and shall submit this as part of the application. This maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private street. The applicant shall record this maintenance agreement in the Cumberland County Registry of Deeds within 90 days of approval of the plan of the private street by the Code Enforcement Officer and shall submit proof of such recording to the Code Enforcement Officer prior to the issuance of any building permit. Deeds to new lots located on private streets servicing two or more dwelling units shall include references to the required maintenance agreement.
- C. Except in the IR Zone, private streets shall have a minimum right-of-way width of 36 feet which includes with five-foot easements on each side for snow storage and future utilities and a paved apron at least five feet in length commencing at the edge of pavement where it intersects with the existing street. The paved apron shall be constructed to the following standards:
 - (1) Fifteen inches of base gravel meeting MDOT Spec. 703.06 Type D.
 - (2) Three inches of surface crushed gravel meeting MDOT Spec. 703.06 Type A.
 - (3) The thickness of paving of the apron shall be a total thickness of three inches of hot bituminous pavement, with a surface course (9.5 mm) of one inch and a base course (19 mm) of two inches.
 - (4) A negative two-percent grade from the existing edge of pavement to an appropriate drainage way, but in no case less than five feet from the travel surface of the public street it intersects.
 - (5) The approach radius shall be specified by the Public Services Director.
 - (6) All entrances shall be located so that the sight distance in both directions is 10 feet of sight for every one mile of posted speed limit. This standard may be reasonably reduced by the Public Services Director in circumstances where no reasonable alternative exists.

D. Private streets.

- (1) Except in the IR Zone, the construction of private streets shall meet the following minimum standards:

Minimum roadway width (feet)	18
Minimum base (inches)	15
Wearing surface (inches)	3
Maximum length	None
Maximum grade	10%
Minimum grade	0.5%
Minimum center-line radius (feet)	100
Minimum tangent between curves of reverse alignment (feet)	0
Minimum angle at street intersections	75°
Turnaround at dead end	See required turnaround
Stormwater drainage	Approved by Town

- (2) Where a proposed private street will be located adjacent to lots with existing structures that are not part of the development that will be served by the proposed private street, the traveled portion of the private street shall be located in a manner that retains an undeveloped portion of the street adjacent to the existing structures, with such undeveloped portion including an effective landscaped buffer.

- E. Private streets shall be inspected by the Public Services Director, unless the Public Services Director determines physical conditions such as stream crossings or wetland areas require inspection by a registered professional engineer or other qualified land use professional. Prior to the issuance of building permits for lots served by a private street, the Public Services Director shall certify to the Code Enforcement Officer that the private street(s) has been constructed in accordance with this section. The applicant shall be responsible for the cost of each inspection by a registered professional engineer.

F. Fees.

- (1) To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the private street application, at the time of filing the private street application, the applicant shall pay to the Town of Cumberland fees and deposits in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order.
- (2) All fees shall be nonrefundable, except unexpended escrow deposits, which shall be refunded in accordance with Chapter 229, Site Plan Review.

- G. The Code Enforcement Officer, the Town Planner, and the Public Services Director shall review and approve applications for private streets serving dwelling units when such private streets meet the standards set forth in this chapter. The Code Enforcement Officer shall issue decisions under this section in writing. Such decisions may be appealed by filing a written notice of appeal stating the reasons therefor with the Cumberland Board of Adjustment and Appeals within 30 days of the date of decision.
- H. This amendment applies to all private streets proposed to be created after the effective date of this amendment and to existing private streets upon which one or more new dwelling units are proposed to be constructed after the effective date of this amendment, unless such dwelling is to be constructed on a lot that was in existence on August 10, 1998.
- I. In the IR Zone, an applicant shall submit to the Code Enforcement Officer an application for a private right-of-way required to provide access to a structure located within that zone. The application shall specify the location of the proposed right-of-way, the proposed width, the materials to be utilized in the construction of the road, grades, provisions for drainage, and sight distances at any turning radius. The Code Enforcement Officer shall approve any plan that makes adequate provision for these items, provided that the Fire/EMS Chief approves the application for sufficiency of access for emergency vehicles.
- J. The provisions of this section shall not apply to privately owned roads within a mobile home park.

Blasting

CHAPTER 78
EXPLOSIVES
Amended July __, 2022

§ 78-1. PURPOSE

The purpose of this chapter is to protect the public's health, safety, and general welfare by regulating and controlling blasting operations within the town, and to ensure that any damages caused by a person who uses an explosive device in Cumberland are adequately covered by insurance.

§ 78-2. APPLICABILITY

This chapter shall apply to all blasting operations related to construction and development of real estate within the town and also shall apply to any person using or detonating explosive devices within the Town for gravel extraction or personal use

§ 78-3. DEFINITIONS

For the purpose of this chapter, the following term shall have the meaning indicated:

1. **Applicant:** Define?
2. **Explosive Devices:** Dynamite, blasting caps and other detonating agents such as those used for construction, well blasting and other related activities.

§ 78-4. PERMIT REQUIRED

A.

No person or entity may conduct blasting operations within the Town without first obtaining a permit from the CEO as required by the National Fire Protection Association 1 Fire Prevention Code, as adopted and amended in Chapter 96 of Town of Cumberland Code of Ordinances. Fees for this permit shall be as established by order of the Town Council.

This permit will be granted only after the applicant certifies to the Code Enforcement Officer, in writing, the following information:

- (1) Applicant's name and address and information on the length of time the company has been in business;
- (2) Property owner's name and address;
- (3) Names of all abutters within 500 feet of the property as shown by the Town tax records; and proof that the abutters have all been notified of the date and approximate time of the detonation.
- (4) Proof that all public utilities such as water, sewer and natural gas have been notified.

(5) All public and private wells within 1000' must be tested prior to, and following completion of, blasting. If a permit is issued, a copy these test results shall be provided to the CEO and permanently maintained in his/her office.

(6) A blasting plan which includes the number of cubic yards of materials to be removed, the anticipated dates and times that blasting will occur, and information on where the blasted material will be taken, if to be removed from the site. If on-site crushing or processing is to occur, information on the amount of material and dates and times of work will be required.

B.

The Applicant shall provide a written certificate of insurance with a company licensed to do business in Maine in an amount no less than \$500,000. Where the extent of blasting requires, the **Town Manager or CEO?** may require the Applicant to offer pre- and post-blasting photography of buildings to property owners within 500 feet of the blasting site. If a permit is issued, a copy of the pre and post blasting photography shall be provided to the CEO and permanently maintained in his/her office.

78.5 STORAGE AND HANDLING:

All explosives shall be stored and handled in accordance with the provisions of this code, the laws of the State of Maine, and the National Fire Protection Association 1 Fire Prevention Code.

78.6 NOTICE REQUIREMENTS:

NOTE FROM MEETING W/BILL S. AND BILL L.: BILL L. TO DRAFT NEW LANGUAGE BASED ON MEETING NOTES:

78.6.1 Basic noticing requirements

At least 10 days prior to the start of any blasting operation, notice shall be published in a newspaper of local publication and shall be mailed by first class mail to all property owners within the distance specified below of the perimeter of the blasting site:

A. Small blast (trench blast or under 50 cubic yards of rock removed). All property owners within 250 feet of the perimeter of the blasting site.

B. Medium blast (removal of 50-300 cubic yards of rock material). All property owners within 500 feet of the perimeter of the blasting site.

C. Large blast (removal of over 300 cubic yards of rock material). All property owners within 600 feet of the perimeter of the blasting site.

78.6.2 Content of notice

Notice shall conform to the model notice contained in Section 3 of the City of Portland Technical Manual and shall include a description of the proposed blasting operations, estimated schedule and duration of blasting operations, description of the blasting signals to be used during operations, the complaint protocol and the complete address, telephone numbers and email contact for the blasting contractor, the Planning Authority, and Fire Department where neighbors and property owners

may request further information and notification. 22.7.3 Additional noticing requirements

A. For medium blasts where 50-300 cubic yards of rock material is to be removed, and large blasts where over 300 cubic yards of rock material is to be removed, additional notification requirements shall apply during construction,

as detailed in Section 3 of the City of Portland Technical Manual.

B. If blasting operations are to occur within 250 feet of any structure, additional notification requirements shall apply, as detailed in Section 3 of the City of Portland Technical Manual, in order to prevent adverse public health and safety impacts due to blasting-related carbon monoxide migration.

78.7 HOURS OF BLASTING

Blasting shall occur Monday through Friday, between the hours of 9 a.m. and 4 p.m., unless otherwise approved by the Planning Board. Requests for extension of hours of blasting must be submitted by the applicant in writing to the CEO 24 hours in advance of blasting date.

78.8 SUSPENSION OF BLASTING OPERATIONS

If it is determined that blasting operations pose any risk to public health, safety, or general welfare, the Code Enforcement Officer shall have the authority to suspend the blasting permit at any time until they deem it safe for blasting operations to continue

78.9 ENFORCEMENT

In the event that there are more than three documented violations of the blasting plan, blasting

submittal, or blasting permit, or any other violation of this article, a stop work order may be issued on all construction or development related to the permitted operation. The permittee shall then be required to submit a revised blasting plan to the Fire Chief for review and approval. Work shall not be allowed to continue until the revised blasting plan is approved.

78.10 PENALTIES

In addition to the possibility of a stop work order in the event of a violation, the permittee shall be subject to the following penalties:

1st offense \$500

2nd offense \$1,000

Subsequent offenses \$1,000

OR KEEP THE FOLLOWING:?

Violations and penalties.

Any person acting in violation of this chapter shall be subject to a fine of up to \$1,000 and appropriate injunctive relief. Each instance shall constitute a separate offense.

78.11 WAIVERS

Upon written request by the Applicant, the CEO may waive all or a portion of the blasting provisions provided that all waivers are consistent with the purposes set forth in Section

78.12 SEVERABILITY LANGUAGE???

Charter Change

CHARTER AMENDMENT PROCEDURES

1. Public hearing to **set/give notice of proposed Charter Amendment required**; 7 days prior to the public hearing, publish notice of hearing.
2. Within 7 days **after the public hearing**, the Town Council can order the proposed amendment be placed on ballot at the next regular municipal election held at least 30 days **after** the order is passed; or they may order a special election to be held at least 30 days from the date of the order.
3. The ballot question shall be phrased:
"Shall the municipality approve the Charter Amendment reprinted (summarized) below?"
4. Voter Information:

The proposed amendment shall be made available and summaries prepared and made available as follows:

At least 2 weeks before the election, the Town Council shall:

1. Have the proposed amendment and any summary of the amendment prepared printed;
2. Make copies available to the voters in the Clerk's office; and
3. Post the amendment and any summary of the amendment in the same manner that proposed ordinances are posted (7 days published notice).

Any summary must fairly describe the content of the proposed amendment and may not contain information designed to promote or oppose the amendment.

In order to be effective, (a) an amendment must receive a majority of the votes cast on the question and (b) the total number of votes cast for and against the question must equal or exceed 30% of the total votes cast in Town in the last gubernatorial election.

Charter amendments adopted by the voters take effect on the date determined by the Town Council, but not later than the first day of the next municipal year.

Timing

August 8 th & August 22 nd	Council Public Hearing
August 22 nd & September 12 th	Council Public Hearing
September 13 th	To the Printers for Ballots
October 11 th	Absentee Ballots available
November 8 th	Election



Town of Cumberland

Council Manager Charter

**TOWN OF CUMBERLAND
COUNCIL MANAGER CHARTER
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TOWN OF CUMBERLAND
Council Manager Charter

ARTICLE I

Grant of Power to the Town

Section 1. Incorporation

The inhabitants of the Town of Cumberland, within the limits as now established or as hereafter established in the manner provided by law, shall be a municipal corporation, by the name of Town of Cumberland.

Section 2. Powers and duties

The town shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises of municipal corporations incorporated under the laws of the State of Maine. The town shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise pertaining to or incumbent upon the town as a municipal corporation or upon the inhabitants or municipal authorities thereof. The town may enact reasonable bylaws, regulations and ordinances for municipal purposes, not inconsistent with the Constitution and the laws of the State of Maine, and may impose penalties for the breach thereof, to be recovered for such uses as said bylaws, regulations or ordinances shall provide. The town may acquire property within or without its municipal boundaries for any town purpose, in fee simple or any lesser, interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, mortgage, hold, manage and control such property as its interest may require.

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the town would have if the particular power were not mentioned. The charter shall be liberally construed in favor of the town to the end that the town may have all the powers necessary or convenient for the conduct of its municipal affairs, including all powers the town may assume pursuant to the Constitution and the laws of the State of Maine.

Section 3. Intergovernmental Relations

The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil subdivisions or agencies thereof, or with the United States or any agency thereof.

ARTICLE II

Town Council

Section 1. Number, election term

The administration of all fiscal, prudential and municipal affairs of the town, with the government thereof, except the general management, care, conduct, and control of the schools of the town, and also except as otherwise provided by this charter, shall be vested in one body of seven members, which shall constitute and be

called the Town Council. All members of the Council shall be inhabitants of the town, and shall be sworn in the manner hereinafter prescribed. Each member of the Council shall be elected by the registered voters of the entire town. Four members shall be considered "at large" Councilors and shall be residents of any area of the town. Three members shall be considered "area" Councilors, and one "area" Councilor shall be a resident of each of the following areas of the town:

(a) Cumberland Foreside, Basket Island and Sturdivant Island, which shall consist of the area bounded on the south by the Atlantic Ocean, on the west by Falmouth, on the east by Yarmouth and on the north by the railroad now or formerly known as the Grand Trunk Railroad (railroad located between Middle Road and Route One);

(b) Cumberland Center, which shall consist of the area bounded on the south by the railroad now or formerly known as the Grand Trunk Railroad, on the west by Falmouth, on the east by Yarmouth and North Yarmouth, and on the north by a line bisecting the Bruce Hill Road and extended west to the Falmouth town line and east to the North Yarmouth town line;

(c) West Cumberland, which shall consist of the area bounded on the south by a line bisecting the Bruce Hill Road and extended west to the Falmouth town line and east to the North Yarmouth town line, on the west by Falmouth, on the north by Windham and Gray, and on the east by North Yarmouth.

Each member shall be elected for a term of three (3) years and until a successor is elected and qualified.

Section 2. Qualifications, vacancies

- (a) Councilors** shall be qualified voters of the town and must have been residents of the town for one year immediately prior to the time of election, and shall reside in the town during their term of office.
- (b) Holding other office:** Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Cooperation Act, no Councilor shall hold other town elected office or employment, and no Councilor shall serve on a Council-appointed committee, except as an ex-officio member, during the term for which he or she was elected to the Council. No former Councilor shall hold any compensated appointed town office or employment until one year after the expiration of the term for which he or she was elected to the Council. With the exception of the Fire Chief and Rescue Chief, membership in the Cumberland Fire and Rescue Department, alone, shall not be grounds for disqualification from holding office as a Councilor.
- (c) Forfeiture of Office:** A Councilor shall forfeit office if he or she:
 - 1) Lacks at any time during his or her term of office any qualification the office prescribed by this charter or by law,
 - 2) Violates any express prohibition of this charter,
 - 3) Is convicted of a crime or offense which is reasonably related to an inability to serve as a Councilor; or
 - 4) Fails to attend three consecutive regular meetings of the Council without being excused by the Council.

An "area" Councilor shall forfeit office if he or she ceases to be a resident of the area of town which he or she was elected to represent.

- (d) **Vacancies:** The office of Councilor shall become vacant upon nonacceptance, resignation, abandonment, death, recall, or removal from office in any manner authorized by law, forfeiture of office, or permanent physical or mental disability causing inability to perform required duties after reasonable accommodation has been made by the town pursuant to state and federal law.
- (e) **Filling of Vacancies:** If a seat on the Town Council becomes vacant more than six (6) months prior to the next regular election, the Council shall call a special election to fill the unexpired term to be held within sixty (60) days from the date that the vacancy occurred. If a seat on the Council becomes vacant less than six (6) months prior to the next regular election, the Council shall, at its option, either:
 - 1) Call a special election to fill the unexpired term to be held within sixty (60) days from the date that the vacancy occurred; or
 - 2) Appoint a qualified voter of the town to serve as Councilor until the next regular election, at which time an election shall be held to fill the unexpired term; provided that the appointment must be made within sixty (60) days from the date that the vacancy occurred.

If a vacancy occurs in a seat previously held by an "area" Councilor, the person elected or appointed to fill the vacancy must be a resident of that same area.

Section 3. Enumeration of powers

Without limitation of the foregoing, the Council shall have power to:

- (a) Appoint the Manager for an initial term not to exceed three years, reappoint the Manager for additional terms not to exceed three years, and remove the Manager for cause by a majority of its members. At least thirty (30) days before such removal shall become effective, the Council shall, by a majority vote of its members, adopt a preliminary resolution stating the reasons for the Manager's removal. The Manager may reply in writing and may request a public hearing, which shall be held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. After such public hearing if one be requested, and after full consideration, the Council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution, the Council may suspend the Manager from duty, but the regular salary of the Manager shall continue to be paid to the Manager during the period of suspension. If removal is voted the Council shall cause to be paid to the Manager, forthwith, any unpaid balance of his salary for the next one calendar month. The Council shall review annually the performance of the Town Manager and present said review to the Town Manager in executive session.
- (b) Appoint the Town Attorney and the Town Auditor to serve at the will of the Council.

- (c) Appoint the Board of Assessment Review, the Board of Adjustment and Appeals, the Planning Board, the Personnel Appeals Board, and all statutory and advisory boards to serve such terms of office and subject to removal under such conditions as may be established by ordinance or statute.
- (d) Appoint the Town Assessor for an initial term not to exceed three years, reappoint the Assessor for additional terms not to exceed three years, and remove the Assessor by a majority of Council members.
- (e) Create, change, and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The Council may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency. The Council may, however, where not prohibited by law, vest in the Town Manager all or part of the duties of any office under this charter.
- (f) Make, alter and repeal ordinances, including the power to enact ordinances providing for the grant of licenses and permits for the conduct of any business, as set forth in the laws of the State of Maine, for such periods of time and in accordance with such rules and regulations not inconsistent with the law and upon payment by the licenses of such fees as the Council may establish in such ordinance.
- (g) Make investigations into the affairs of the town and the conduct of any town department, office or agency. For this purpose the Council shall enact an ordinance providing for the compulsory attendance of witnesses, the administering of oaths, the taking of testimony, and the compulsory production of evidence.
- (h) Adopt, modify and carry out plans proposed by the Planning Board.
- (i) Adopt the annual budget.
- (j) Provide for an annual audit.
- (k) Exercise all the legislative, financial, borrowing and other powers now or hereafter given by statute to inhabitants of towns acting town meeting; and also exercise all the powers now and hereafter given by statute to municipal officers of towns.
- (l) Establish the salaries of officials appointed by the Council, including the salary of the Town Manager.
- (m) Provide for necessary and actual expenses of the town officers and officials in the exercise of their official duties.

Section 4. Compensation

Councilors shall receive \$100.00 for each Council meeting attended, not to exceed in the aggregate \$2,000 per year in full for their services, and shall be paid quarterly. The Council Chairman shall receive \$2,400 per year.

Such compensation shall be changed by ordinance, but no such ordinance increasing the salary of members of the Town Council shall take effect during the then current municipal year.

Section 5. Induction of Council into office

The Council shall meet at the municipal building on the first Monday following the regular town election, and at said meeting Councilors-elect shall be sworn to the faithful discharge of their duties by a Notary Public or by the Town Clerk.

Section 6. Council to judge qualifications of its members

The Council shall be the judge of the election and qualifications of its members and for such purposes shall have power to subpoena witnesses and require production of records. The Council shall also determine whether the office of Councilor has become vacant or has been forfeited as provided herein; provided however, that the Council shall conduct a public hearing and give notice and an opportunity to be heard prior to determining that a seat on the Council has become vacant or has been forfeited.

Section 7. Regular Meetings

The Council shall establish a regular place and time for holding its regular meetings, and shall meet regularly at least once a month. It shall also provide a method for calling special meetings. During each meeting there shall be opportunity for public discussion upon each item on the agenda. The agenda for each Council meeting shall be posted and distributed in such public places and private establishments as the Council shall determine.

Section 8. Rules of Procedure: Journal

The Council shall determine its own rules and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection.

Section 9. The Presiding Officer

The Council shall elect from among its members, officers of the town who shall have the titles of Chairman and Vice Chairman, each of whom shall serve at the pleasure of the Council. The Chairman shall preside at meetings of the Council, shall be entitled to vote on all questions and shall be recognized as head of the town government for all ceremonial purposes, and by the Governor for purposes of military law, but shall have no administrative duties. The Vice Chairman shall act as Chairman during the absence or disability of the Chairman.

Section 10. Quorum

A majority of the Council shall constitute a quorum for the transaction of business. At least four (4) votes shall be registered in favor of passage of any ordinance, order or resolution. A smaller number may adjourn from time to time or may compel attendance of absent members by subpoena. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

Section 11. Ordinances in general

- (a) **Form:** Every proposed ordinance shall be introduced in writing and in the form required for final adoption. The enacting clause shall be "The Town of Cumberland hereby ordains...". Any ordinance which repeals or amends an existing ordinance shall set out in full the ordinance sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.
- (b) **Procedure:** A proposed ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the Secretary to the Council shall distribute a copy to each Council member and to the Town Manager; shall file a reasonable number of copies in the office of the Clerk and such other public places as the Council may designate, and shall publish the same as defined in Section 11 (d) together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the publication by at least seven (7) calendar days, or by such longer period as may be required by statute, and may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard. After the hearing the Council may adopt the ordinance with or without amendment or reject it; but if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedure herein before required in the case of a newly introduced ordinance.
- (c) **Effective Date:** Except as otherwise provided in this Charter, every adopted ordinance shall become effective immediately when adopted or at such other date as established by the Town Council in its adoption.
- (d) **"Publish" Defined:** As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the town:
 - 1) The ordinance or a brief summary thereof prepared by the Council Secretary,
 - 2) The places where copies of it have been filed and the times when they are available for public inspection, and
 - 3) The date, time and place of the public hearing.
- (e) **Emergency Ordinances:** To meet a public emergency affecting life, health, property or public peace, the Council may adopt one or more emergency ordinances. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least the majority plus one member shall be required for adoption. After its adoption the ordinance shall be posted in three public places. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one authorizing the issuance of emergency notes shall stand repealed as of the sixty-first (61st) day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.
- (f) **Authentication and Recording:** All ordinances adopted by the Council shall be authenticated by the signature of the Secretary of the Council and recorded in full in a properly indexed book kept for that purpose.
- (g) **Codification:** At least every ten (10) years after adoption of this charter the Council shall provide for the preparation of a general codification of all ordinances. The general codification shall be

adopted by the Council by ordinance and shall be printed promptly in bound or loose leaf form, together with this charter and any amendments thereto, and any pertinent provisions of the Constitution and the laws of the State of Maine as the Council may specify. Any codification ordinance may be published by title. This compilation shall be known and cited officially as the Cumberland Code. Copies of the code shall be furnished to officials, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the Council.

- (h) **Printing of Ordinances:** The Council shall cause each ordinance, and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the Council. Following publication of the first Cumberland Code and at all times thereafter, the ordinances and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the Constitution and other laws of the State of Maine, or other rules and regulations included in the code.

Section 12. Council Secretary

The Town Manager shall appoint a Council Secretary who shall serve as the recorder of the Council meetings and keep record of all Council proceedings.

Section 13. Independent annual audit

The Council shall designate the State Department of Audit or private certified public accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the town government and shall submit their report to the Council and the Town Manager. Such accountants shall not maintain any accounts or records of the town business, but shall post-audit the books and documents kept by any office, officer, department or agency of the town government.

ARTICLE III

Town Manager

Section 1. Town Manager, qualifications

The Town Manager shall be chosen by the Council solely on the basis of character and executive and administrative qualifications with special reference to actual experience in, or knowledge of accepted practice in respect to the duties of the office as hereinafter set forth. At the time of appointment, the Manager need not be a resident of the town or state. The Manager may reside outside the Town of Cumberland while in office only with the approval of the Town Council.

Section 2. Town Manager, restrictions

No Councilor shall receive appointment to the office of Town Manager during the term for which he or she shall have been elected, not within one (1) year after the expiration of his or her term, nor shall any member of

the Council act in that capacity. The Town Manager shall give bond for the faithful discharge of all duties to the Town of Cumberland in surety or sureties to be approved by the Council. The premium on the bond shall be paid by the Town.

Section 3. Powers and Duties of Town Manager

The Town Manager shall be the chief administrative officer of the town, and shall be responsible to the Council for the direction and administration of all town affairs and of all departments. The Manager shall have the following powers and shall perform the following duties:

- (a) Serve as Tax Collector, Town Treasurer, Overseer of the Poor, and Road Commissioner, and shall have and exercise all powers and perform all the duties conferred or imposed by law upon said respective officers.
- (b) Appoint and remove pursuant to the laws of the State of Maine or town ordinance the Town Clerk and department heads. The Manager shall appoint all other town employees, but may authorize a department head to appoint or remove subordinates in such department or office except as may otherwise be required by statute, by this charter, or by the personnel ordinance adopted by the Council.
- (c) Review the performance of the Town Clerk and department heads on an annual basis, and summarize the results of such reviews with the Town Council in executive session, within such restrictions or limitations as may be imposed by the laws of the State of Maine.
- (d) Perform all responsibilities assigned pursuant to the personnel ordinance adopted by the Council.
- (e) Establish initial salaries of appointees of the Manager, provided that such salaries shall not exceed the budgeted amount on a pro-rated basis.
- (f) Attend all public meetings and executive sessions of the Town Council, except when the annual evaluation of the Manager is being discussed or prepared. The Manager shall have the right to take part in discussions but may not vote.
- (g) Ensure that all laws and provisions of this charter and all acts and resolutions of the Council, subject to enforcement by the Manager or by department heads or town employees subject to the Manager's direction and supervision, are faithfully executed.
- (h) Prepare and submit the annual budget and capital program to the Council.
- (i) Submit to the Council and make available to the public a complete report on the finances and administrative activities of the town within one hundred twenty (120) days after the end of each fiscal year.
- (j) Prepare and submit to the Council such reports and perform such duties as the Council may require and make such recommendations to the Council concerning the affairs of the town as are deemed desirable.
- (k) Assist, insofar as possible, residents and taxpayers in discovering their lawful remedies in cases involving complaints of unfair vendor, administrative, and governmental practices.
- (l) Act as purchasing agent for all departments of the town and submit to competitive bids any transaction involving \$50,000 (fifty thousand dollars) or more except by order of the Council.

Section 4. Vacancy in office of Town Manager

During any vacancy in the office of Town Manager, and during the absence or disability of the Town Manager, the Council shall designate a properly qualified person, not a member of the Council, to perform the duties of

Manager and fix compensation. The acting Town Manager shall have the same powers and duties as those given to and imposed on the Town Manager. Before entering duties, the acting Town Manager shall give bond to the Town of Cumberland in a sum and with surety or sureties to be approved by the Council. The premium on said bond shall be paid by the town.

ARTICLE IV

Personnel Management

Section 1. Personnel Ordinance

Within ninety (90) days after the effective date of this charter, the Town Council shall enact a personnel ordinance setting forth standards of conduct and performance for town employees, establishing generally recognized principles of progressive discipline, and establishing a procedure for appeals from disciplinary action. The Council shall thereafter review the personnel ordinance annually.

Section 2. Duties of Town Manager

The Town Manager shall be responsible for the administration of the town's personnel program, and shall perform all duties assigned pursuant to the personnel ordinance. The Manager shall update and review the personnel ordinance, and shall submit recommendations to the Council for its annual review of the ordinance.

Section 3. Personnel Appeals Board

There shall be a Personnel Appeals Board consisting of five members appointed by the Council from among qualified voters of the town. The members shall serve such terms of office as may be established by the personnel ordinance. The personnel ordinance may provide for alternate and replacement members. The Personnel Appeals Board shall hear appeals brought by any department head or employee of the town as the result of disciplinary action consisting of termination or suspension without pay for more than five days.

Section 4. Town Council: Appointments

A majority of the Town Council must approve the initial appointment of all department heads when recommended for employment by the Town Manager. Except as specified above, the Council shall not otherwise participate in appointments, and neither the Council nor any of its members shall direct or request the appointment of any person to office by the Manager.

Section 5. Town Council: Discipline and Removals

The Council shall not participate in discipline and removals, and Council approval shall not be required for discipline and removals. Neither the Council nor any of its members shall direct or request that disciplinary action or proceedings for removal be undertaken against a department head or employee of the town.

Section 6. Town Council: Relations with Employees

Except for purpose of inquiry, the Council and its members shall deal with department heads and town employees solely through the Manager. Neither the Council nor any of its members shall give orders to any subordinates of the Manager either publicly or privately.

ARTICLE V

School Administrative District

Section 1. The management of public schools

The management of the public schools of the Town of Cumberland shall be vested in School Administrative District No. 51, in accordance with the laws of the State of Maine.

Section 2. Qualifications for the Board of School Directors

The members of the Board of School Directors of School Administrative District No. 51, representing the Town of Cumberland, shall be qualified voters of the town and must have been residents of the town for one (1) year immediately prior to the time of election, and shall reside in the town during their term of office. They shall hold no other elected office under the town charter or ordinances.

Section 3. Filling of Vacancies

If a seat representing the Town of Cumberland on the Board of School Directors becomes vacant, the Town Council shall appoint an interim director to fill the vacancy until the next regular election. The interim director shall serve until a successor is elected and qualified.

Section 4. Term of Office

The term of office for members of the School Board of Directors representing the Town of Cumberland shall begin on the first day of July following the annual municipal election.

ARTICLE VI

Budget

Section 1. Fiscal Year

The fiscal year of the Town of Cumberland shall be determined by the Council.

Section 2. Preparation and submission of the budget

The Town Manager, at least thirty five (35) days prior to the beginning of each budget year, shall submit to the Council a budget and an explanatory budget message. The budget authority of the Council shall be limited to

the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the town.

This budget shall contain:

- (a) Exact statement of the financial condition of the town;
- (b) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
- (c) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable and the proposed method of financing each such capital expenditure;
- (d) An itemized statement of estimated revenue from all sources, other than taxation, and a statement of taxes required, comparative figures from current and next preceding year.
- (e) The Town budget shall include an appropriation in the amount of all principal and interest that is scheduled to become due and payable during the ensuing fiscal year on any general obligation bonds and notes, other than (i) bond anticipation notes; (ii) bonds which the town Council has ordered to be refunded, and (iii) principal and interest payments on bonds already funded by the Town such as by sinking fund payments, debt service reserve funds or otherwise.
- (f) Such other information as may be required by the Council.

Section 3. Capital Program

- (a) **Submission to the Council.** The Manager with the assistance of the Planning Board shall prepare and submit to the Council a five-year Capital Program at least three months prior to the final date for submission of the budget.
- (b) **Contents.** The Capital Program shall include:
 - 1. A clear general summary of its contents;
 - 2. A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
 - 3. Cost estimates, method of financing and recommended time schedules for each improvement; and
 - 4. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Section 4. Approval

The proposed budget prepared by the Manager shall be reviewed by the Council, which shall approve the budget with or without amendments. A general summary of the Town Budget as approved by the Council shall be printed and distributed and the Council shall fix the time and place for holding a public hearing on the budget, and shall give a public notice of such hearing as provided in this charter. The Council shall then review

the budget and adopt the same, with amendments, if any, no later than sixty (60) days from the beginning of the fiscal year.

Section 5. Budget establishes appropriations

From the date of adoption of the budget, the several amounts stated herein as proposed appropriations shall be and become appropriated to the several agencies and purposes therein named.

Section 6. Budget establishes amount to be raised by property tax: certification to Town Assessor

From the date of adoption of the budget, the amounts stated therein as the amount to be raised by the property tax shall constitute a determination of the amount of the levy for the purposes of the town in the corresponding fiscal year. A copy of the budget as finally adopted shall be certified by the Manager and filed by him with the Town Assessor, whose duty it shall be to levy such taxes for the corresponding fiscal year.

Section 7. Expenditures and departmental revenue

The budget for all departments shall include all proposed expenditures; and the Council shall make a gross appropriation for each department for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the Council.

Section 8. Transfers of appropriations

At the request of the Town Manager and within the last three (3) months of the budget year, the Council may by resolution transfer any unencumbered appropriations, balance or portion thereof between general classification of expenditures within a department. Following the close of the fiscal year the Council may also continue unexpended balances in capital accounts and prepaid items.

Section 9. Interim expenditures

In the period between the beginning of the fiscal year and the appropriation of funds, the Council may authorize expenditures for current departmental expenses chargeable to the appropriations for the year when made in amounts sufficient to cover the necessary expenses of the various departments.

Section 10. Work program: allotments

Before the beginning of the budget year, the head of each office, department or agency shall submit to the Town Manager a work program of the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The Town Manager shall review the requested allotments in light of the work program of the office, department or agency concerned, and may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

Section 11. Amendments after adoption

- (a) **Supplemental Appropriations.** If during the fiscal year the Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council may make supplemental appropriations for the year up to the amount of such excesses.
- (b) **Emergency Appropriations.** To meet public emergency affecting life, health, property, or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance. To the extent that there are no available un-appropriated funds to meet such appropriations, the Council may by emergency ordinance authorize the issuance of temporary notes, which may be renewed from time to time, but the temporary notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.

ARTICLE VII

Tax Assessment and Review

Section 1. Assessor

There shall be established a division of assessment, the head of which shall be the Town Assessor. The Assessor, appointed as herein before provided, shall perform all duties and responsibilities provided for assessors under the laws of the State of Maine.

Section 2. Board of Assessment Review: appointments: vacancies

There shall be a Board of Assessment Review to consist of three (3) members, who shall be appointed by the Council for a term of three (3) years. Members may be removed for cause after hearing by the Council. Vacancies in the membership of the Board shall be filled by appointment by the Council for the unexpired term. The Board shall perform such duties and responsibilities as may be specified by the laws of the State of Maine or by town ordinances.

ARTICLE VIII

Nominations and Elections

Section 1. Municipal elections

The regular election for the choice of members of the Council and representatives to the Board of School Directors shall be held on the second Tuesday of June. Special elections for vacancies on the Town Council shall be held in accordance with Article II, Section 2 (e) of this charter. All regular and special elections shall be conducted on a nonpartisan basis and without party designations on the election ballot.

Section 2. Nomination

Any qualified voter of the town may be nominated for the Council or as a representative to the Board of School Directors, by the use of nomination papers in accordance with the laws of the State of Maine, subject to the provisions of Article II and Article V of this charter.

Section 3. Conduct of municipal elections

The provisions of the laws of the State of Maine relating to the qualifications of voters, the registration of voters, the nomination for any office, the manner of voting, the duties of election officers and all other particulars relative to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this charter.

Section 4. Voting places

The voting places for municipal elections shall be those, which have been or may hereafter be established for state elections.

ARTICLE IX

The Town Meeting

Section 1. Annual meeting There shall be no town meeting.

ARTICLE X

Initiative, Referendum and Recall

Section 1. Petition for overrule of action of Council

The following shall be subject to overrule by referendum as follows:

- (a) All Ordinances;
- (b) Order or resolves appropriating \$100,000 or more for a single, capital improvement or expenditure;
- (c) Orders or resolves authorizing bond issues of \$100,000 or more for capital improvements or expenditures.

If within thirty (30) days after the enactment of any such ordinance, order or resolve, a petition signed by not less than 10% of the registered voters of the Town of Cumberland is filed with the Town Clerk requesting its reference to a referendum, the Council shall call a public hearing to be held within thirty (30) days from the date of the filing of such petition with the Town Clerk, and shall within fourteen (14) days after said public hearing call a special town election for the purpose of submitting to a referendum vote the question of adopting such

ordinance, order or resolve. Pending action by the voters of the town, the referred ordinance, order or resolve shall be suspended from going into operation until it has received a vote of the majority of the voters voting on said questions. The question for any overrule referendum shall be phrased in such a manner that a "yes" vote would support the Council's action and a "no" vote would overrule it.

These provisions shall apply whether or not payment for a capital improvement or a single expenditure is to be made in more than one fiscal year.

Section 2. Petition for enactment of ordinances

No less than 10% of the registered voters of the town may at any time petition for the enactment of any proposed lawful ordinance by filing such petition, including the complete text of such ordinance, with the Town Clerk. The Council shall call a public hearing to be held within thirty (30) days from the date of the filing of such petition with the Town Clerk, and shall within (30) days after said public hearing call a special town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the call for said town election, such ordinance shall be enacted by the Council. Such ordinance shall take effect on the tenth (10th) day after the conclusion of such referendum, provided a majority of these voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by the Town Attorney before being submitted to referendum. The Town Attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to ensure accuracy in its text and references and clearness and preciseness in its phraseology, but he shall not materially change its meaning and effect.

Section 3. Form of ballot for initiative or referendum

The form of the ballot for the proposed ordinance, or repeal of such ordinance, order or resolve, shall be substantially as follows:

"Shall the proposed ordinance, order or resolve be adopted?"

YES		NO	
<input type="checkbox"/>		<input type="checkbox"/>	
OR			
YES	← →	NO	← →

(The voters shall indicate their options by a cross or check mark placed in the box under the words "YES" or "NO", or by completing the arrow next to the words "YES" or "NO".)

Section 4. Council not to reenact or reject

The Council shall not reenact ordinances, orders, resolves rejected by voters at referendum elections for a period of at least one (1) year. The Council shall not modify or abolish ordinances adopted by voters at initiative elections for a period of at least one (1) year.

Section 5. Recall

Upon written request from one or more qualified voters of the town, the Town Clerk shall issue appropriate petition blanks for the commencement of proceedings to recall a Town Councilor or a member of the Board of School Directors of School Administrative District #51 representing the Town of Cumberland, or any other elected town official. All copies of the petition shall contain the name of the person or persons who obtained the petition. Each petition shall be limited to the recall of a single individual.

Any petition issued by the Clerk must be returned and filed with the Clerk no later than thirty (30) days from the date of issuance. The petition shall be signed in the presence of the Clerk by the individual or individuals who requested the petition. Within ten (10) days after the circulation period ends, the Clerk shall certify to the Council whether the petition has been signed by not less than twenty percent (20%) of the registered voters of the town. Should less than twenty percent (20%) of the registered voters of the town sign the petition, the petition shall have no further force or effect, and no new petition for the recall of the same individual can be initiated until one hundred eighty (180) days from the filing of the previous petition.

Should twenty percent (20%) or more of the registered voters of the town sign the petition, the Council shall, upon receipt of certification, call a special election on the question of recall to be held within thirty (30) days of the certification. The Council or member of the Board of School Directors shall be recalled when a majority of those voting thereon have voted in the affirmative. Any Councilor or member of the Board of School Directors against whom the recall proceedings have been initiated may continue to hold office until recalled. A recalled Councilor or member of the Board of School Directors may not be appointed to serve the balance of the unexpired term, and may not run as a candidate in a special or regular election to fill the balance of the unexpired term. A recalled Councilor or member of the Board of School Directors may seek election to a full term to the same or any other office at any election after the date of recall.

Section 6. Form of ballot for recall

The form of the ballot in a recall election shall be substantially as follows:

“Shall (name of elected official) be recalled from (name of the position to which elected) to which he or she was elected?”

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
OR	
YES ← →	NO ← →

(The voters shall indicate their options by a cross or check mark placed in the box under the words “YES” or “NO”, or by completing the arrow next to the words “YES” or “NO”).

ARTICLE XI

General Provisions

Section 1. Repealing clause

All acts and parts of Acts of the private and special laws of Maine relating to the Town of Cumberland, inconsistent with the provisions of this charter, are repealed.

Section 2. Separability clause

If any portion of this charter shall be held to be invalid, such decision shall not affect the validity of the remaining portions thereof.

Section 3. Short title

This charter shall be known and may be cited as the “Council-Manager Charter of the Town of Cumberland”. The Clerk shall cause it to be printed and made available to the public promptly.

Section 4. Existing contracts not invalidated, unless inconsistent

All rights, actions, proceedings, prosecutions and contracts of the town or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent herewith, shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Section 5. Rights and privileges preserved

Nothing within this charter, unless otherwise specifically provided, shall affect or impair the rights or privileges of persons who are town officers or employees at the time of its adoption. All department heads and town employees shall continue in office or position subject to the laws of the State of Maine, existing town ordinances, and personnel ordinance to be adopted pursuant to Article IV, Section 1 of this charter.

Section 6. Oath of Office

Every officer of the town shall, before entering upon the duties of office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the Town Clerk:

“I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the

Town of Cumberland and statutes of the State of Maine, and will faithfully discharge the duties of the office of

Section 7. Ordinances not inconsistent continue in force

All ordinances of the Town of Cumberland in force at the time when this charter takes effect, not inconsistent with the provisions of this charter, shall continue in force until amended or repealed.

Revised/adopted 11/07/95 – Effective – January 1, 1996

Amended 11/06/06 – Article II, Section 1 – Number, election term, Effective July 1, 2007

Article II, Section 4 – Compensation, Effective January 1, 2007

Article III, Section 3 – Powers and duties of Town Manager, Effective January 1, 2007

Article VI, Section 2 – Preparation and submission of the budget, Effective January 1, 2007

(EPA)

Notes for Future Adopters

Elements required for MS4 compliance are in black text – this text should not be modified without careful consideration of 2022 MS4 General Permit.

Optional elements incorporating Maine Climate Council Recommendations or items more stringent than Chapter 500 are shown in blue italicized text. Municipalities may or may not incorporate these elements as they wish.

Much of the text is standard ordinance language and is shown in green. Municipalities may modify this to conform to their own ordinances and procedures.

Some sections of this model ordinance contain placeholders (underlined) for municipalities to fill in, such as municipal code references or the Enforcement Authority for the ordinance.

Comments are provided in the margins for better understanding (In the document ribbon, under the Review tab, select comments from the “Show Markup” pulldown menu).

Maine Model Ordinance for Erosion and Sedimentation Control at Construction Sites

4/21/2022 Final



Credits: This model ordinance was prepared by SMPDC, CCSWCD, and Integrated Environmental Engineering, Inc. under award CZM NA20NOS4190064 to the Maine Coastal Program from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the Department of Commerce.

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Section 1 Purpose

The purpose of this Ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control erosion at construction sites and prevent migration of sediment from construction sites so that erosion and sedimentation do not adversely impact off-Site natural resources, properties, or the Regulated Small MS4.

Section 2 Definitions

Adverse Impact – Means any undue deleterious effect due to erosion or sedimentation from Construction Activity on Waters of the State, Protected Natural Resources, the infrastructure of the Regulated Small MS4, or off-Site. Such undue deleterious effect is or may be potentially harmful or injurious to human health, welfare, safety, or property to biological productivity, diversity, or stability, or may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Erosion and Sedimentation Control Best Management Practices (Erosion and Sedimentation Control BMPs) - Means schedules of activities, prohibitions of practices, maintenance procedures, and other methods, techniques, designs, and management practices to prevent or reduce the pollution of Waters of the State and to control erosion (Erosion Control BMPs) and sedimentation (Sedimentation Control BMPs). BMPs also include treatment requirements, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Common Plan of Development or Sale - Means a “subdivision” as defined in Title 30-A M.R.S. §§ 4401 *et seq.* (the Maine Subdivision statute) and in _____ of the Municipality’s code of ordinances.

Construction Activity – Means any activity on a Parcel that results in Disturbed Area.

Discharge - Means any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of pollutants to the Waters of the State located within the Municipality’s Urbanized Area and not including groundwater.

Disturbed Area - Means all land areas of a Parcel that are stripped, graded, grubbed, filled, or excavated at any time during the Site preparation or removing vegetation for, or construction of, a project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Enforcement Authority – The _____, and their designee, are authorized to enforce this Ordinance. The use of Enforcement Authority in this Ordinance is synonymous with “Enforcement Authority or their designee”.

General Permit – Means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved October 15, 2020 and modified November 23, 2021 and any amendment or renewal thereof.

Impervious Area - Means the total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and underdrained artificial turf fields are all considered impervious.

Municipal Separate Storm Sewer Systems (MS4) - Means a conveyance or system of conveyances designed or used for collecting or conveying stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater.

Municipality – Means the City/Town of _____.

Parcel - Means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or Parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

Permitting Authority - Means the Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the Municipality’s ordinances to approve development or redevelopment projects.

Person - Means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency, or other legal entity which creates, initiates, originates, or maintains a Discharge authorized or regulated by the General Permit.

Protected Natural Resource - Means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds, or rivers, streams or brooks as defined in the *Natural Resources Protection Act* at 38 M.R.S. §480-B.

Qualified Professional – Means a person who has been certified by Enviro-Cert International in erosion and sedimentation control practices or has been certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.

Regulated Small MS4 - Means any Small MS4 authorized by the most recent, in-force MS4 General Permit or the general permits for the Discharge of stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within an Urbanized Area.

Small MS4 - Means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state or federally owned systems, such as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16).

Site - Means the portion(s) of a Parcel upon which Construction Activity subject to this Ordinance is located.

Urbanized Area - Means the area of the Municipality so defined by the inclusive sum of the 2000 decennial census and the 2010 decennial census by the U.S. Census Bureau.

Waters of the State – Means Waters of the State as defined in 38 M.R.S. §361-A (7).

Section 3 Applicability

This Ordinance applies to Construction Activity on a Parcel or Common Plan of Development or Sale commencing after the effective date of this Ordinance, with stormwater Discharges to the Regulated Small MS4 within the Municipality's Urbanized Area, that results in:

- a. Disturbed Area of one or more acres of land, or
- b. Disturbed Area that is less than one acre of land if the Construction Activity creating Disturbed Area less than one acre of land is part of a larger Common Plan of Development or Sale that as approved or amended would create Disturbed Area of one acre or more, or
- c. 2,000 square feet of new Impervious Area regardless of total Disturbed Area.

Section 4 Procedure

4.1 Erosion and Sedimentation Control Plan Required

No Person shall commence Construction Activity subject to the Applicability Section of this Ordinance without first preparing and obtaining approval for an Erosion and Sedimentation Control Plan in accordance with this Ordinance.

4.2 Submission

When Construction Activity is subject to subdivision, site plan, or other review under the Municipality's planning, zoning, and land use ordinances which includes a review for erosion and

sedimentation control, an Erosion and Sedimentation Control Plan meeting these requirements shall be submitted to the Permitting Authority concurrently with that review. When a concurrent review is not otherwise required, an Erosion and Sedimentation Control Plan shall be submitted to the Enforcement Authority.

4.3 Review

The Erosion and Sedimentation Control Plan shall be reviewed by the Enforcement Authority or incorporated into the municipal review of a subdivision, site plan, or other review under the Municipality's planning, zoning, and land use ordinances by the Permitting Authority, in accordance with subsection 4.2 above. The Enforcement Authority and the Permitting Authority, as appropriate, will conduct the review under the standards of this Ordinance, and will accept and consider public comment provided as part of that review.

The Enforcement Authority or Permitting Authority, as appropriate, will review the Erosion and Sedimentation Control Plan for compliance with the standards of Section 5, Section 6, and Appendix 1 of this Ordinance and may provide comments where standards have not been met. Once an applicant has submitted an Erosion and Sedimentation Control Plan that the Enforcement Authority or Permitting Authority finds is in compliance with the standards of Section 5, Section 6, and Appendix 1 of this Ordinance, the Enforcement Authority or Permitting Authority shall provide written confirmation to the applicant. The Enforcement Authority or Permitting Authority may approve the Erosion and Sedimentation Control Plan, approve it with conditions, or deny the Erosion and Sedimentation Control Plan, and that decision shall be in writing and supported by findings of fact and conclusions of law. Appeals from decisions of the Enforcement Authority regarding the Erosion and Sedimentation Control Plan may be taken within 30 days of the date of decision to the Board of Appeals as provided under the Municipality's Zoning Ordinance; appeals from decisions of the Permitting Authority regarding the Erosion and Sedimentation Control Plan may be taken within 30 days of the date of decision in the same manner as appeals are taken under the Municipality's subdivision or site plan ordinance, as appropriate.

4.4 Pre-Construction Meeting

At least ten (10) days prior to commencing Construction Activity, the applicant shall request a pre-construction meeting with the Enforcement Authority. At a minimum, attendance at the meeting is required by the Enforcement Authority and the applicant or their representative in charge of construction. If the representative in charge of construction is not the primary earthwork contractor, a representative of the earth work contractor must also attend the pre-construction meeting. Meeting minutes must be prepared by the Municipality's representative and distributed to all attendees and the Municipality's Planner.

4.5 Compliance with Requirements

The applicant shall implement and comply with the Erosion and Sedimentation Control Plan as approved throughout all phases of Construction Activity.

4.6 Notice of Permanent Stabilization

The applicant shall provide notice to the Enforcement Authority when permanent stabilization of the Site has been achieved to allow for final inspection per Section 7 of this Ordinance.

Section 5 Submission Requirements

5.1 Project Contacts and Qualifications

The applicant shall provide contact information (i.e., name, company if applicable, phone number, physical address, and email address) as described below:

- Applicant,
- Qualified Professional, and
- Contractor (if applicable)

5.2 Erosion and Sedimentation Control Plan Content

The Erosion and Sedimentation Control Plan shall be prepared in accordance with the performance standards contained in Appendix 1.

The Erosion and Sedimentation Control Plan shall consist of a graphic representation of the Site at a scale no smaller than 1 inch = 100 feet showing:

- Parcel boundaries,
- Locations of Protected Natural Resources,
- Locations of all potential sources of authorized and unauthorized non-stormwater discharges,
- Locations of all Erosion and Sedimentation Control BMPs to be used,
- Topography for Site pre-and post-construction conditions as 2-foot elevation contours,
- Details for all Erosion and Sedimentation Control BMPs to be used,
- Details and timing associated with phasing of Construction Activity in Disturbed Areas at the Site, and phasing of installation and stabilization of Erosion and Sedimentation Control BMPs (if applicable),
- Erosion and Sedimentation Control BMPs Notes with construction standards,
- A narrative description of the timing, inspections, and Erosion and Sedimentation Control BMPs to be used,
- Example inspection form,
- Dewatering plan if necessary, and
- Locations of areas not to be disturbed by Construction Activity, including trees, vegetation, and areas intended for infiltration.

The Erosion and Sedimentation Control Plan shall also include documentation of any variances or releases provided by the Maine Department of Environmental Protection from Chapter 500 performance standards.

Section 6 Requirements and Standards

The Enforcement Authority shall determine if the following standards are met in accordance with Appendix 1.

- a. **Qualified Professional.** The Erosion and Sedimentation Control Plan has been prepared by a Qualified Professional.

- b. **Timing of Installation and Maintenance.** The Erosion and Sedimentation Control Plan requires that Sedimentation Control BMPs shall be in place before construction begins, additional Erosion and Sedimentation Control BMPs shall be installed as needed and shall be phased in if phasing is used, and shall be maintained until permanent stabilization is achieved.
- c. **Inspection.** The Erosion and Sedimentation Control Plan provides for inspection of the Site by the applicant to confirm that Erosion and Sedimentation Control BMPs are in place and functioning. The Erosion and Sedimentation Control Plan also provides for corrective action if erosion is occurring or there is a discharge of sediment or turbid water from the construction Site.
- d. **Spill Prevention.** The Erosion and Sedimentation Control Plan includes measures that prevent construction Site pollution and spills from entering stormwater.
- e. **Groundwater Protection.** The Erosion and Sedimentation Control Plan restricts the storage or handling of liquid petroleum products and other hazardous materials that may drain to an "infiltration area."
- f. **Fugitive Sediment and Dust.** The Erosion and Sedimentation Control Plan includes provisions to prevent erosion of soils, tracking or migration of soils into the right of way, discharge of sediment from the Site, and fugitive dust emissions during or after construction.
- g. **Debris.** The Erosion and Sedimentation Control Plan includes provisions to minimize the exposure of construction materials and waste to stormwater runoff and prevent them from migrating off-Site.
- h. **Excavation Dewatering.** The Erosion and Sedimentation Control Plan must include provisions to remove or properly disperse the collected water in a manner that prevents sediment from entering stormwater.
- i. **Non-stormwater Discharges.** The Erosion and Sedimentation Control Plan minimizes non-stormwater discharges and, if non-stormwater discharges are allowed, they are identified in the Erosion and Sedimentation Control Plan with appropriate pollution measures for discharge.

Section 7 Inspection

The Enforcement Authority will inspect the Site as follows at a minimum:

- a. Once before any disturbance begins and after all Erosion and Sedimentation Control BMPs specified in the Erosion and Sedimentation Control Plan are in place
- b. Three times during the active earth moving phase of construction
- c. Once at project completion to ensure the Site has reached permanent stabilization and all temporary erosion and sedimentation controls have been removed

Additional inspection requirements to be completed by the applicant during construction are contained in Appendix 1.

Section 8 Enforcement

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S. § 4452 and this Section.

Section 8.1 Right of Entry

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon the Parcel at reasonable hours with the consent of the owner, occupant, agent, or contractor to inspect the Parcel for compliance with this Ordinance.

Section 8.2 Notice of Violation

Whenever the Enforcement Authority finds that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this Ordinance by written notice of violation to that Person indicating the nature of the violation(s), a statement of the Ordinance provision(s) alleged to have been violated, including a statement of the penalties for violation, and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations and the cessation of practices or operations in violation of this Ordinance;
- b. At the Person's expense, compliance with or repair of the Erosion and Sedimentation Control BMPs required as a condition of approval of the Erosion and Sedimentation Control Plan, and/or the restoration of any affected portion(s) of the Parcel;
- c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs;
- d. If abatement of a violation, compliance with the Erosion and Sedimentation Control Plan, repair of Erosion and Sedimentation Control BMPs, and/or restoration of affected portions of the Parcel is required, the notice shall set forth a deadline within which such abatement, compliance, repair, and/or restoration must be completed.

Section 8.3 Stop Work Notice

The Enforcement Authority may issue a Stop Work Notice whenever:

- a. A Person has not acted on a notice of violation issued pursuant to this Ordinance within the time set forth in the notice, or
- b. A Person subject to the applicability section of this Ordinance undertakes Construction Activity without first submitting an application for and obtaining approval of an Erosion and Sedimentation Control Plan.

The Enforcement Authority will attempt to deliver the Stop Work Notice to the applicant, the Person performing the Construction Activity, or the owner or occupant of the Parcel, as appropriate, by any means reasonable calculated to effectuate delivery.

Once the Stop Work Notice has been delivered, no further Construction Activity at the Site may proceed other than as is necessary to correct the non-compliance. Construction Activity may resume only when the Enforcement Authority provides written notice that the Person may resume that Construction Activity.

Section 8.4 Penalties/Fines/Injunctive Relief

Any Person who violates this Ordinance, including, but not limited to the Erosion and Sedimentation Control Plan, shall be subject to fines, penalties, and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any

Person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages, and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for enforcement of violation(s) of Federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to any penalties, fines, or injunctive relief imposed under this Section.

Section 8.5 Consent Agreement

The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and of recovering fines, costs, and fees without court action.

Section 8.6 Appeal of Notice of Violation

Any Person receiving a Notice of Violation or Stop Work Notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section 8.7 Enforcement Measures

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Section 9 Severability and Conflicts

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any Person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the Municipality, the more restrictive provision shall control.

Section 10 Waivers

Where the Enforcement Authority finds that there are special circumstances of a particular Erosion and Sedimentation Control Plan that make a particular submission requirement or standard inapplicable, a waiver may be granted, provided that such waiver will not have the effect of nullifying the intent and purpose of this Ordinance. The applicant shall submit, in writing, the reason for the requested waiver. In

granting waivers or modifications, the Enforcement Authority may require such conditions that will substantially secure the objectives of the standards so waived or modified.

Section 11 Authority

The Municipality enacts this Erosion and Sedimentation Control Ordinance pursuant to 30-A M.R.S. §§3001 et seq. (municipal home rule ordinance authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Municipality as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this Ordinance as part of the Municipality's stormwater management program in order to satisfy the minimum control measures for Construction Site Stormwater Runoff Control.

Appendix 1 – Erosion and Sedimentation Control Standards

The following are the mandatory minimum standards for Construction Activity subject to this Ordinance. The Erosion and Sedimentation Control Plan required under this Ordinance shall be developed and implemented to include these mandatory minimum standards, which are based upon the Maine Department of Environmental Protection's 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C.

Where not otherwise specified in this Appendix, the Erosion and Sedimentation Control BMPs shall be designed using Performance Standards specified in the Maine Erosion and Sediment Control BMPs Manual for Designers and Engineers developed by the Maine Department of Environmental Protection (October 2016 or most current version).

Erosion and Sedimentation Control BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables, or the NOAA Atlas 14 precipitation data (https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

The Erosion and Sedimentation Control Plan shall be prepared by a Qualified Professional as defined in this Ordinance.

General Timing of Installation and Maintenance until Permanent Stabilization

Sedimentation Control BMPs must be in place before Construction Activity begins.

- Additional Erosion and Sedimentation Control BMPs must be phased in as appropriate.
 - Erosion and Sedimentation Control BMPs must remain in place and functional until the Site is permanently stabilized.
 - Adequate and timely maintenance of Erosion and Sedimentation Control BMPs must be conducted until permanent stabilization is achieved.
1. Pollution Prevention: Minimize Disturbed Area and protect natural downgradient buffer areas, and any areas where stormwater may flow off-Site to the extent practicable. Control stormwater volume and velocity within the Site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater Discharges, including both peak flow rates and volume, to minimize erosion at outlets. The Discharge shall not result in erosion of any open drainage channels, swales, stream channels or stream banks, upland, or coastal or freshwater wetlands off the project Site.
 - a. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource.
 - b. If it is not practicable to maintain the 50-foot buffer of no disturbance, the Erosion and Sedimentation Control Plan must include redundant (at least two) perimeter control measures that are appropriate for the soil and slope.
 2. Sediment Barriers: Prior to construction, properly install sediment barriers at the downgradient edge of any area to be disturbed and adjacent to any drainage channels within the Disturbed Area. Sediment barriers shall be installed downgradient of soil and sediment stockpiles and stormwater must be prevented from running onto the stockpile. Maintain the sediment barriers by removing accumulated sediment, or removing and replacing the barrier, until the Disturbed Area is

permanently stabilized. Where a Discharge to a storm drain inlet occurs, you must install and maintain protection measures that remove sediment from the Discharge. Storm drain inlet protection must include effective curb inlet or “back throat” protection, where applicable.

3. Stabilized Construction Entrance: Prior to construction, properly install a stabilized construction entrance (SCE) at all points of egress from the Site. The SCE is typically a stabilized pad of aggregate, underlain by a geotextile filter fabric, or an engineered track out control mat which has been approved by Maine DEP which is used to prevent traffic from tracking material away from the Site onto public ROWs. Maintain the SCE until all Disturbed Areas are stabilized. If an alternate SCE has been approved by Maine DEP, provide proof of this with the Plan or application.
4. Temporary Stabilization:
 - a. Within 7 days of the cessation of Construction Activities in an area that will not be worked for more than 7 days, stabilize any exposed soil with mulch, or other non-erodible cover.
 - b. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.
5. Removal of Temporary Measures: Remove any temporary control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.
6. Permanent Stabilization: If the Site or a portion of the Site will not be worked for more than one year or has been brought to final grade, then permanently stabilize the area within 7 days by planting vegetation, seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using vegetation for stabilization, select the proper vegetation for the light, moisture, and soil conditions; amend the Disturbed Area subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting, and seeding so to avoid die-off from summer drought and fall frosts. Newly seeded or sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and concentrated runoff until the vegetation is well-established with 90% cover by healthy vegetation. If necessary, areas must be reworked and restabilized if germination is sparse, plant coverage is spotty, or topsoil erosion is evident. Permanent Stabilization Definitions are as follows:
 - a. Seeded Areas: For seeded areas, permanent stabilization means a 90% cover of the Disturbed Area with mature, healthy plants with no evidence of washing or rilling of the topsoil.
 - b. Sodded Areas: For sodded areas, permanent stabilization means the complete binding of the sod roots into the underlying soil with no slumping of the sod or die-off.
 - c. Permanent Mulch: For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion control mix may be used as mulch for permanent stabilization according to the approved application rates and limitations.
 - d. Riprap: For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.
 - e. Paved Areas: For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed, provided it is free of fine materials that may runoff with a rain event.

- f. Ditches, Channels, and Swales: For open channels, permanent stabilization means the channel is stabilized with a 90% cover of healthy vegetation, with a well-graded riprap lining, turf reinforcement mat, or with another non-erosive lining such as concrete or asphalt pavement. There must be no evidence of slumping of the channel lining, undercutting of the channel banks, or down-cutting of the channel.
- 7. Winter Construction: Winter construction is Construction Activity performed during the period from November 1 through April 15. If Disturbed Areas are not stabilized with permanent measures by November 1 or new soil disturbance occurs after November 1, but before April 15, then these areas must be protected and runoff from them must be controlled by the following additional winter construction measures and restrictions:
 - a. Site Stabilization: Hay mulch is applied at twice the standard temporary stabilization rate. At the end of each construction day, areas that have been brought to final grade must be stabilized. Mulch may not be spread on top of snow.
 - b. Sediment Barriers: All areas within 75 feet of a Protected Natural Resource must be protected with a double row of sediment barriers.
 - c. Ditch Lines: Ditch lines must be stabilized with an appropriate stone lining backed by an appropriate gravel bed or geotextile unless specifically released from this standard by the Maine DEP. If release from Maine DEP has been granted, provide proof of this with the Plan or application.
 - d. Slopes: Mulch netting must be used to anchor mulch on all slopes greater than 8% unless erosion control blankets or erosion control mix is being used on these slopes. Unvegetated slopes less than 8% must be protected with an erosion control blanket, erosion control mix, or riprap.
- 8. Stormwater Channels: Each channel shall be constructed in sections so that the section's grading, shaping, and installation of the permanent lining can be completed the same day. If a channel's final grading or lining installation must be delayed, then diversion berms must be used to divert stormwater away from the channel, properly-spaced check dams must be installed in the channel to slow the water velocity, and a temporary lining installed along the channel to prevent scouring.
- 9. Sediment Basins: Sediment basins that will be used to control sediment during construction activities must be designed to provide storage for either the calculated runoff from a 2-year, 24-hour storm or provide for 3,600 cubic feet of capacity per acre draining to the basin. Outlet structures must discharge water from the surface of the basin whenever possible. Erosion controls and velocity dissipation devices must be used if the discharging waters are likely to create erosion. Accumulated sediment must be removed as needed from the basin to maintain at least half of the design capacity of the basin. Clearly visible staking must be installed with marks showing the elevation of half design capacity for easier inspection.

The use of cationic treatment chemicals in Sediment Basins, such as polymers, flocculants, or other chemicals that contain an overall positive charge designed to reduce turbidity in stormwater may only be used if proof of approval by Maine DEP is provided.

- 10. Phasing Plan Requirements: No phasing plan is required if contractor will limit Disturbed Area to a maximum of 5 acres of disturbance across the Site at any time. If the Construction Activity will result

in more than 5 acres of Disturbed Area at any one time, the Contractor shall provide a phasing plan showing:

- a. the initial 5-acre area to be disturbed;
- b. which portions of the initial disturbance will be stabilized, and what temporary or permanent stabilization methods will be used;
- c. which areas will be subsequently disturbed and what temporary or permanent stabilization methods will be used; and
- d. each phase of disturbance and stabilization must clearly show the total areas in square feet or acres such that the 5-acre Disturbed Area limit at any one time is met throughout the entire project.

Inspection, Maintenance and Corrective Action by Applicant On-Site Personnel During Construction

During construction, the following are the inspection, maintenance, and corrective action requirements which must be implemented by the applicant or their on-Site representative:

1. Inspection: Disturbed and Impervious Areas, Erosion and Sedimentation Control BMPs, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the Site are inspected at least once a week as well as before and within 24 hours after a storm event (rainfall), and prior to completing permanent stabilization measures. A [Qualified Professional](#) shall conduct the inspections.
2. Maintenance and Corrective Action: If Erosion or Sedimentation Control BMPs need to be maintained, or repaired or [enhanced](#) (corrective action), the work shall be initiated upon discovery of the problem but no later than the end of the next workday. If additional Erosion or Sedimentation Control BMPs or significant repair of Erosion or Sedimentation Control BMPs are necessary, implementation must be completed prior to any storm event (rainfall) and within 7 calendar days of identification. All measures must be maintained in effective operating condition until areas are permanently stabilized.
3. Documentation: A log (report) summarizing the inspections and any repairs or enhancements (corrective actions) added must be maintained by the applicant. The log must include the name(s) and qualifications of the person making the inspections, the date(s) of the inspections, and major observations about the operation and maintenance of erosion and sedimentation controls, materials storage areas, and vehicles access points to the Parcel. Major observations must include Erosion and Sedimentation Control BMPs that need maintenance, Erosion and Sedimentation Control BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional Erosion and Sedimentation Control BMPs are needed. The log must document each Erosion and Sedimentation Control BMP requiring maintenance, Erosion and Sedimentation Control BMP needing replacement, and location needing additional Erosion and Sedimentation Control BMPs, as well as the corrective action taken and when it was taken. The log shall be maintained for at least three years from the completion of permanent stabilization.

Housekeeping Requirements

1. Spill Prevention: Controls must be used to prevent pollutants from construction and waste materials stored on-Site from entering stormwater, which includes storage practices to minimize exposure of the materials to stormwater. The Site contractor or operator must develop, and

implement as necessary, appropriate spill prevention, containment, and response planning measures.

2. **Groundwater Protection:** During construction, liquid petroleum products and other hazardous materials with the potential to contaminate groundwater may not be stored or handled in areas of the Site draining to an infiltration area. An infiltration area is any area of the Site that by design or as a result of soils, topography, and other relevant factors accumulates runoff that infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that prevent discharge to groundwater may be used to isolate portions of the Site for the purposes of storage and handling of these materials.
3. **Fugitive Sediment and Dust:** Actions must be taken to ensure that activities do not result in noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be used for dust control, but other water additives may be considered as needed. A stabilized construction entrance shall be included to minimize tracking of mud and sediment. If off-Site tracking occurs, public roads shall be swept immediately and no less than once a week and prior to significant storm events. Operations during dry months, that experience fugitive dust problems, shall wet down unpaved access roads once a week or more frequently as needed with a water additive to suppress fugitive sediment and dust.
4. **Debris and Other Materials:** Minimize the exposure of construction debris, building and landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials to precipitation and stormwater runoff. These materials must be prevented from becoming a pollutant source. [Sediment generated by concrete or mortar mixing, brick cutting & saw cutting activities must be contained \(e.g., sausage boom, straw bales, etc.\) and cleaned up using dry methods \(i.e., sweeping or vacuuming\) to prevent it from entering drainage structures or water resources. These activities shall be done on vegetated areas whenever possible and away from drainage structures and water resources.](#)
5. **Excavation Dewatering:** Excavation dewatering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water removed from the ponded area, either through gravity or pumping, must be spread through natural wooded buffers or otherwise treated to collect the maximum amount of sediment possible, like a coffer dam sedimentation or sediment filter bag. Avoid allowing the water to flow over Disturbed Areas of the Site. [If the Maine DEP has approved equivalent measures, provide proof of approval. Note that discharge of excavation dewater fluids from the Site must be visually clear \(no visible suspended or settleable solids\).](#)
6. **Washout from Concrete, Stucco, Paint, Curing Compounds, or Other Construction Materials:** [If washout/cleanout is to be completed on the Site, a designated area\(s\) shall be established and marked on the Erosion and Sedimentation Control Plan. This area shall be a minimum of 50 feet from all drainage structures, ditches, waterbodies, and resource areas, as well as property boundaries. The area shall not have an outlet to discharge wastes or flows. No detergents shall be used or vehicles washed in this location. A leak-proof pit or container shall be established in the washout area\(s\), to which washings shall be directed. This area shall be used for washout containment and dewatering by evaporation only. The pit shall not allow infiltration to occur. To prevent clean water from entering the pit, the washout area shall be covered during](#)

precipitation events. Inspections of the pit shall be conducted daily to ensure no leaks are present and no discharge is occurring.

7. Authorized Non-stormwater Discharges: Identify and prevent contamination by non-stormwater Discharges. Where allowed non-stormwater Discharges exist, they must be identified, and steps shall be taken to ensure the implementation of appropriate pollution prevention measures for the non-stormwater component(s) of the Discharge. Authorized non-stormwater Discharges are:
 - a. Discharges from firefighting activity
 - b. Hydrant flushing if dechlorinated to 0.05 mg/l or less
 - c. Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage, and transmission washing is prohibited)
 - d. Dust control runoff if it does not cause erosion
 - e. Routine external building washdown, not including surface paint removal, that does not involve detergents
 - f. Pavement wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material had been removed) if detergents are not used
 - g. Uncontaminated air conditioning or compressor condensate
 - h. Uncontaminated groundwater or spring water
 - i. Foundation or footer drain-water where flows are not contaminated
 - j. Uncontaminated excavation dewatering per item 5 Excavation Dewatering
 - k. Potable water including waterline flushings
 - l. Landscape irrigation
8. Unauthorized Non-stormwater Discharges: The following Discharges are prohibited:
 - a. Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds, or other construction materials;
 - b. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
 - c. Soaps, solvents, or detergents used in vehicle and equipment washing; and
 - d. Toxic or hazardous substances from a spill or other release.

Alternate Appendix 1 – Erosion and Sedimentation Control Standards

The Erosion and Sedimentation Control Plan required under this Ordinance shall be developed and implemented to conform to the Maine Department of Environmental Protection's 06-096 CMR Chapter 500 Stormwater Management Rule Appendices A, B, and C as mandatory minimum standards with the following additional standards (shown as underlined text and deletions shown as strikethrough text).

Where not otherwise specified in this Appendix, the Erosion and Sedimentation Control BMPs shall be designed using Performance Standards specified in the Maine Erosion and Sediment Control BMPs Manual developed by the Maine DEP (October 2016 or most current version).

Erosion and Sedimentation Control BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables, or the NOAA Atlas 14 precipitation data (https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

The Erosion and Sedimentation Control Plan shall be prepared by a Qualified Professional as defined in this Ordinance.

Chapter 500 Appendix A. Erosion and Sedimentation Control:

~~Erosion and~~ Sedimentation Control BMPs must be in place before Construction Activity begins.

- Additional Erosion and Sedimentation Control BMPs must be phased in as appropriate.
 - BMPs must remain in place and functional until the Site is permanently stabilized.
 - Adequate and timely maintenance of Erosion and Sedimentation Control BMPs must be conducted until permanent stabilization is achieved. ~~And temporary and permanent stabilization measures must be taken.~~
1. Pollution Prevention: Minimize Disturbed Areas and protect natural downgradient buffer areas, and any areas where stormwater may flow off-Site to the extent practicable. Control stormwater volume and velocity within the Site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater Discharges, including both peak flow rates and volume, to minimize erosion at outlets. The Discharge may not result in erosion of any open drainage channels, swales, stream channels or stream banks, upland, or coastal or freshwater wetlands off the project Site.
 - a. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource.
 - ~~b. If disturbance activities take place between 30 feet and 50 feet of any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled. If disturbance activities take place less than 30 feet from any protected natural resource, and stormwater discharges through the disturbed areas toward the protected natural resource, perimeter erosion controls must be doubled and disturbed areas must be temporarily or permanently stabilized within 7 days.~~
 - c. If it is not practicable to maintain the 50-foot buffer of no disturbance, the Erosion and Sedimentation Control Plan must include redundant (at least two) perimeter control measures that are appropriate for the soil and slope.

2. Sediment Barriers: Prior to construction, properly install sediment barriers at the downgradient edge of any area to be disturbed and adjacent to any drainage channels within the Disturbed Area. Sediment barriers shall be installed downgradient of soil and sediment stockpiles and stormwater must be prevented from running onto the stockpile...

And Add to end: Storm drain inlet protection must include effective curb inlet or "back throat" protection, where applicable.

3. Stabilized Construction Entrance: Prior to construction, properly install a stabilized construction entrance (SCE) at all points of egress from the Site. The SCE is typically a stabilized pad of aggregate, underlain by a geotextile filter fabric, or an engineered track out control mat which has been approved by Maine DEP which is used to prevent traffic from tracking material away from the Site onto public ROWs. Maintain the SCE until all Disturbed Areas are stabilized. If an alternate SCE has been approved by Maine DEP, provide proof of this with the Plan or application.
7. Winter Construction: Add to item c. Ditch: If release from Maine DEP has been granted, provide proof of this with the Plan or application.
9. Sediment Basins: Add to end of first paragraph: Clearly visible staking must be installed with marks showing the elevation of half design capacity for easier inspection.

Items 10, 11, 12 and 13 of Chapter 500 Appendix A do not apply to ESC requirements during construction and are therefore not applicable to this Model Ordinance

10. Add: Phasing Plan Requirements: No phasing plan is required if contractor shall limit disturbance to a maximum of 5 acres of Disturbed Area across the Site at any time. If the Site shall result in more than 5 acres of Disturbed Area at any one time, the contractor shall provide a phasing plan showing:
 - a. the initial 5-acre area to be disturbed
 - b. which portions of the initial disturbance shall be stabilized, and what temporary or permanent stabilization methods shall be used
 - c. which areas shall be subsequently disturbed and what temporary or permanent stabilization methods shall be used
 - d. each phase of disturbance and stabilization shall clearly show the total areas in square feet or acres such that the 5-acre Disturbed Area limit at any one time is met throughout the entire project

Chapter 500 Appendix B Inspection and Maintenance

1. During Construction:

- a. Inspection and Corrective Action: Add: A Qualified Professional shall conduct the inspections.
 - b. Maintenance: If Erosion or Sedimentation Control BMPs need to be repaired or enhanced, the repair work shall be initiated upon discovery of the problem but no later than the end of the next workday.
2. Post-construction, 3. Re-certification, 4. Duration of Maintenance: these sections of Chapter 500 Appendix B do not apply to ESC requirements during construction and are therefore not applicable to this Model Ordinance

Chapter 500 Appendix C Housekeeping

4. Debris & Other Materials: Minimize the exposure of construction debris, building and landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials to precipitation and stormwater runoff. These materials must be prevented from becoming a pollutant source. Sediment generated by concrete or mortar mixing, brick cutting & saw cutting activities must be contained (e.g., sausage boom, straw bales, etc.) and cleaned up using dry methods (i.e., sweeping or vacuuming) to prevent it from entering drainage structures or water resources. These activities shall be done on vegetated areas whenever possible and away from drainage structures and water resources.
5. Excavation Dewatering: Excavation dewatering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water removed from the ponded area, either through gravity or pumping, must be spread through natural wooded buffers or otherwise treated to collect the maximum amount of sediment possible, like a coffer dam sedimentation basin. Avoid allowing the water to flow over Disturbed Areas of the Site. ~~Equivalent measures may be taken if approved by the Department.~~ If the Maine DEP has approved equivalent Erosion and Sedimentation Control BMPs, provide proof of approval. Note that Discharge of excavation dewater fluids from the Site must be visually clear (no visible suspended or settleable solids).
6. Authorized Non-SW Discharges change only item b:
 - b. Fire hydrant flushing if dechlorinated to 0.05 mg/l or less
9. Add New item: Washout from concrete, stucco, paint, curing compounds, or other construction materials: If washout/cleanout is to be completed on-Site, a designated area(s) shall be established and marked on the Erosion and Sedimentation Control Plan. This area shall be a minimum of 50 feet from all drainage structures, ditches, waterbodies, and resource areas, as well as property boundaries. The area shall not have an outlet to Discharge wastes or flows. No detergents shall be used or vehicles washed in this location. A leak-proof pit or container shall be established in the washout area(s), to which washings shall be directed. This area shall be used for washout containment and dewatering by evaporation only. The pit shall not allow infiltration to occur. To prevent clean water from entering the pit, the washout area shall be covered during precipitation events. Inspections of the pit shall be conducted daily to ensure no leaks are present and no Discharge is occurring.

Maine Model Ordinance for Low Impact Development Strategies

Final Draft 6/21/2022



CUMBERLAND COUNTY
SOIL & WATER
CONSERVATION DISTRICT

Credits: This model ordinance was prepared by SMPDC, CCSWCD, and Integrated Environmental Engineering, Inc. under award CZM NA20NOS4190064 to the Maine Coastal Program from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of NOAA or the Department of Commerce.

Background and Notes for Future Adopters

The performance standards contained in this document were developed to assist municipalities in addressing the 2022 General Permit for Stormwater Discharges to Municipal Separate Storm Sewer Systems (MS4s), which applies to 30 municipalities in Maine.

An Ordinance Committee and Technical Expert Panel reviewed the elements contained in this document. A white paper describing the rationale for the content of this Model Ordinance is a companion to this document.

Text in black in this document reflects elements that the Authors, and Technical Expert Panel agreed were important for implementation of Low Impact Development in most Maine developments. During comment and reviews, it became apparent that not all elements will be appropriate for implementation in all MS4 municipalities. Therefore, the full Ordinance Committee was polled to assess what elements should be removed from this Model Ordinance, and any elements with a 2/3 majority of votes (one vote per municipality) to remove were removed or made to be optional. Even the resulting recommendations provided in black text may not be consistent with some municipal policies, strategies, or Comprehensive Plans.

Municipalities that elect to adopt elements of this model ordinance should review its contents, determine if any elements are inconsistent with existing municipal policies, strategies, or Comprehensive Plans.

On or before 9/1/2022, each permittee must submit to MDEP a Model Low Impact Development Ordinance for stormwater management on new and redevelopment sites in accordance with the General Permit for their community.

Maine DEP will post the model ordinance for public comments and approve it, with or without modifications, on or before 11/1/2022.

Then MS4 communities must adopt an ordinance that is at least as stringent as the required elements of the model ordinance by 6/30/2024.

Because municipal ordinances are structured differently, with varying thresholds for development review, submittal requirements, and performance standards, this Model Ordinance does not contain complete language for each section. Instead, it is anticipated the municipalities will embed the required elements in their own Subdivision and Site Plan Ordinances or Regulations. Municipalities may need to adjust some text to be consistent with their own ordinance language.

Instructions to Adopters are contained in bounded text boxes at each section.

Optional elements incorporating Maine Climate Council Recommendations or recommendations from other sources is shown in blue in italics. Municipalities may or may not incorporate these elements as they wish.

Some standard ordinance language is shown in green, also in italics. Municipalities may modify this to conform to their own ordinances and procedures.

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Section 1 Purpose

The Purpose of this Ordinance is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to minimize the adverse effects of development and redevelopment on the environment.

Section 2 Definitions

Note to Future Adopters: Review your Subdivision and Site Plan definitions for inclusion of the following definitions:

Buffers – Means all three kinds of buffers listed below unless a subset of the three is specifically called out:

- **Stormwater Vegetative Buffer** – a buffer constructed in accordance with Appendix F in Chapter 500 for the purposes of providing pollutant removal.
- **Shoreland Zoning Setback Buffer** – A buffer required by the municipal Shoreland Zoning Ordinance to protect a water of the State.
- **General Buffer** – a buffer required by the municipal ordinances to provide screening to parcels or developments from light, noise, other parcels, rubbish areas, or other areas.

Climate Resilient Northeast Native Vegetation – Means plants identified as native to the Northeast as identified by the Northeast Regional Invasive Species & Climate Change (RISCC) Network or a Maine Licensed Landscape Architect.

Common Plan of Development or Sale - Means a “subdivision” as defined in Title 30-A M.R.S. §§ 4401 *et seq.* (the Maine Subdivision statute) and in _____ of the Municipality’s code of ordinances.

Note: Common Plan of Dev. Or Sale is same definition as MS4 General Permit.

§§ 4401.4 "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

Construction Activity – Means any activity on a Site that results in Disturbed Area.

Disturbed Area - Means all land areas of a Site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a Site. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Note: Disturbed Area definition is from the MS4 General Permit plus addition of the last sentence to ensure that redevelopment sites removing buildings take into account that area as Disturbed Area.

Drainageway – Means the same as "Drainageway" defined in Maine DEP Chapter 500

General Permit – Means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved October 15, 2020, and modified November 23, 2021 and any amendment or renewal thereof.

High Intensity Soil Survey – Means a Class A survey defined by the March 2009 Guidelines for Maine Certified Soil Scientist for Soil Identification and Mapping, prepared by the Maine Association of Professional Soil Scientists

High Permeability Soils – Means hydrologic soil groups A or B as determined by on-site soil testing by a certified soil scientist using a High Intensity Soil Survey.

Impervious Area - Means the total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and under drained artificial turf fields are all considered impervious. For the purpose of determining whether a Site exceeds the Impervious Area thresholds requiring conformance to LID performance standards, the municipality may exclude these from calculation of Impervious Area if these are designed to be infiltration Stormwater Treatment Measures.

Note: this definition is the same as Chapter 500 definition of Impervious Area except Chapter 500 has a sentence at the end was removed, saying that the DEP can exclude Pervious pavement from calculation of Impervious Area was modified.

Low Impact Development (LID) - Means a broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the site are suitable for development and

then utilizes Stormwater Treatment Measures to manage runoff from the proposed developed impervious areas. In LID, Stormwater Treatment Measures using natural processes such as vegetated buffers are given preference over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development.

Maine Licensed Landscape Architect – Means a person who has an active Landscape Architects license from the Maine Board of Licensure for Architects, Landscape Architects, and Interior Designers.

Maine Native Vegetation – Means vegetation including grass seed mixtures, identified as native to Maine from lists maintained by: US Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine Licensed Landscape Architect.

Municipal Separate Storm Sewer Systems (MS4) - Means a conveyance or system of conveyances designed or used for collecting or conveying stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal roads, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater.

Municipality – Means the City/Town of _____.

Parcel – Means the same as "Tract or parcel of land" as defined at 30 M.R.S. §4401.6 *et seq.* (or alternately, the municipality may reference their own definition of parcel).

§4401.6 Tract or Parcel of land means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

Permitting Authority - Means the Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the Municipality's ordinances to approve development or redevelopment of Sites.

Protected Natural Resource - Means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds, or rivers, streams or brooks as defined in the *Natural Resources Protection Act* at 38 M.R.S. §480-B.

Regulated Small MS4 - Means any Small MS4 authorized by the most recent, in-force MS4 General Permit or the general permits for the Discharge of stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within an Urbanized Area.

Runoff – Means the part of precipitation from rain or melting ice and snow that flows across a surface as sheet flow, shallow concentrated flow or in Drainageways.

Rural Areas – Areas designated as follows on the municipal zoning map: _____

Small MS4 - Means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state, or federally owned systems, such as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16).

Significant and Essential Wildlife Habitats – Means the areas identified as Significant or Essential Habitats of endangered or threatened species as identified by the Maine Department of Inland Fisheries and Wildlife either on the Beginning with Habitat viewer or in consultation with the Maine Department of Inland Fisheries and Wildlife.

Site - Means the portion of a Parcel or Common Plan of Development, which is proposed for Construction Activity including open space, Stormwater Treatment Measures, and Disturbed Area, subject to this Ordinance.

Stream Crossing - Means the mechanism by which any road, sidewalk or other structural feature of a Site will cross or pass over or through a Water of the State which has a stream bank full width of 6 feet or less.

Stream Crossing designed in accordance with Maine Stream Smart Principles – Means a Stream Crossing designed by a Maine Professional Engineer who has completed the Maine Audubon Society Stream Smart Workshops (Parts I and II), which includes the standards recommended by that program's stream span, elevation, slope and skew and substrate to promote passage of fish and other organisms and to limit road-damaging flows from extreme weather.

Stormwater Treatment Measure – Means a stormwater management system or innovative treatment measure as described in Maine DEP Chapter 500 4.c.(3) Types of treatment measures allowed. These measures include wet ponds, vegetated soil filters, infiltration, buffers, or innovative treatment measures. For purposes of this Ordinance these are cumulatively referred to as Stormwater Treatment Measures, or individually referred to as Stormwater Treatment Wet Pond, Stormwater Treatment Vegetated Soil Filter, Stormwater Treatment Infiltration Measure, Stormwater Treatment Buffer, or Stormwater Treatment Innovative Measure.

Suburban Areas – Means areas designated as follows on the municipal zoning map: _____

Time of Concentration – Means the same as "Time of concentration" defined in Maine DEP Chapter 500.

Urban Areas – Means areas designated as follows on the municipal zoning map: _____

Urbanized Area - Means the area of the Municipality so defined by the inclusive sum of

the 2000 decennial census and the 2010 decennial census by the U.S. Census Bureau.

Waters of the State – See 38 M.R.S. §361-A (7).

Section 3 Applicability

Note to Future Adopters: Thresholds may be updated by inserting the applicability thresholds into applicability sections for Site Plan and Subdivisions. If a municipality has a table of Land Uses, identifying when certain types of reviews are required, a line item should be added specifying that disturbance of one or more acres requires Site Plan review in either all Zones (optional) or in the Urbanized Area of the municipality.

The LID Performance Standards contained in Section 7 apply to any Site initially applying for a permit from the municipality after 6/30/2024, with stormwater discharges to the Regulated Small MS4 within the Municipality's Urbanized Area, which results in:

- a. Construction Activity with Disturbed Area of one or more acres of land, or
- b. Construction Activity with Disturbed Area that is less than one acre of land if the Construction Activity creating Disturbed Area less than one acre of land is part of a larger Common Plan of Development or Sale that as approved or amended would create Disturbed Area of one acre or more, or
- c. *20,000 square feet or more of new Impervious Area in the watershed of an Urban Impaired Stream or a Lake Most at Risk, both of which are defined in Maine DEP Chapter 502.*
- d. *5,000 square feet or more new Impervious Area regardless of total Disturbed Area.*

Section 4 Procedure

Note to Future Adopters: No procedure is provided for this Model Ordinance because municipalities will rely on their existing Subdivision and Site Plan procedures for review and approval.

Section 5 Submission Requirements

Note to Future Adopters: Ensure the following elements are contained in your Subdivision and Site Plan submission lists where applicable.

5.1 Site Narrative

The applicant shall provide a Site narrative describing:

- *the overall approach to stormwater management at the site*
- *a listing of Stormwater Treatment Measures that will be in use and which will be maintained privately and which will be offered to the municipality for operation*
- *how they have prioritized protection of the sensitive areas from disturbance as required in Section _____*
- *a rationale for any exceptions from performance standards (see Sections 7 and 11)*

5.2 Site Contacts and Qualifications

The applicant shall provide contact information (i.e., name, company if applicable, phone number, physical address, and email address) as described below:

- Maine Licensed Landscape Architect
- Maine Certified Soil Scientist
- Maine Professional Engineer

5.3 Plan Content

The Site Plans shall consist of a graphic representation of the Site at a scale no smaller than 1 inch = 100 feet showing:

- Waters of the State and their associated Shoreland Protection areas
- Protected Natural Resources
- Predevelopment drainage areas, Drainageways and associated Time of Concentration
- High Permeability Soils
- Maine Native and Climate-Resilient Northeastern Native Vegetation in General Buffer areas and Shoreland Zoning Buffer areas
- Significant and Essential Wildlife Habitats
- Limits of disturbance
- Post-development drainage areas, Drainageways and associated Time of Concentration
- Locations of snow storage areas
- Stormwater Treatment Measures to be used

5.4 Submittals related to Infiltration Performance Standard

The LID Performance Standards for Infiltration require the following submittals:

- Information required by Chapter 500 Section (7)(D)(5)(c) Infiltration Submittals including a plan for use of de-icing materials, pesticides and fertilizers within the drainage area of any infiltration Stormwater Treatment Measures.
- Locations of any Uncontrolled Hazardous Substance Sites, Voluntary Response Action Program sites, RCRA Corrective Action sites, or Petroleum Remediation sites on or adjacent to the Site.

Section 6 Approval Standards

Note to Future Adopters: The following text is suggested for inclusion in Findings of Fact to reflect that the LID Performance Standards have been reviewed and adhered to by the applicant. Note that this text is a simple paraphrasing of the intent of the Performance Standards.

The following criteria shall be used by the Permitting Authority in reviewing applications for site plan/subdivision review and shall serve as minimum requirements for approval of the Site application:

- The Site protects sensitive areas, provides on-site volume control, provides treatment of stormwater, and minimizes impervious areas*

Section 7 Performance Standards

Note to Future Adopters: Review the following elements for addition to your Subdivision and Site Plan Performance Standards under existing Stormwater Management Standards or create a new Performance Standard titled: Low Impact Development.

To show conformance to the MS4 General Permit Requirements, we have included information about which LID Measure from Table 1 Appendix F of the 2022 MS4 General Permit the performance standard addresses. To assist municipalities in applying these performance standards, we have identified whether the standard should apply to Rural, Urban or Suburban Areas.

Regarding Maintenance of Stormwater Treatment Measures, MS4 communities maintain a Post-Construction Runoff Control Ordinance which automatically covers any Stormwater Treatment Measures required under the LID performance standards. Therefore, no Maintenance requirements are contained here. Non-MS4 communities implementing these LID strategies should also adopt the Post Construction Maintenance Ordinance.

Performance Standard	LID Measure(s) addressed (shown only for informational purposes)	Where Standard Applies within Urbanized Area
Prioritize the protection of the following sensitive areas as listed below (highest priority listed first) by not disturbing land in these areas: <ul style="list-style-type: none">i. Waters of the State and associated shoreland protection areas.ii. Protected Natural Resourcesiii. Predevelopment Drainagewaysiv. High Permeability Soils	<ol style="list-style-type: none">1. Minimize Site Clearing2. Protect natural drainage system4. Minimize Impervious Area5. Minimize Effect of Impervious Area6. Minimize Soil Compaction	Rural, Suburban and Urban

<p>v. Maine Native and Climate-Resilient Northeastern Native Vegetation in General Buffer areas and Shoreland Zoning Setback Buffer areas</p> <p>vi. Significant and Essential Wildlife Habitats</p> <p>Note that the applicant will need to provide a description in their narrative of how they have prioritized these areas for protection from disturbance. These areas may be counted toward the open space requirements.</p> <p>Exception: Removal of Maine Native and Climate-Resilient Northeastern Native Vegetation that is diseased or in poor condition is allowed.</p>		
<p>Construction documents shall depict limits of disturbance. Limits of disturbance shall be established on-site prior to disturbance using flagging, fencing, signs or other means to provide a clear indication.</p>	<ol style="list-style-type: none"> 1. Minimize Site Clearing 7. Minimize Soil Compaction 	<p>Rural, Suburban and Urban</p>
<p><i>Optional: Rural new developments shall preserve at least 40% of the development as open space and Suburban new developments shall preserve 25% of the development as open space.</i></p> <p><i>Exception: Municipalities may allow exceptions per their municipal ordinances. For example, applicants may be allowed to pay a fee-in-lieu which is dedicated to open space or may provide open space in an alternate locations within the same watershed.</i></p>	<ol style="list-style-type: none"> 1. Minimize Site Clearing 4. Minimize Impervious Area 7. Minimize lawns and maximize landscaping that encourages runoff retention. 	<p>Rural and Suburban</p>
<p>Stream Crossings for Waters of the State shall use Maine Stream Smart Principles to preserve natural pre-development Drainageways.</p> <p>Exception: Stream crossings over portions of streams that are artificially channelized are not subject to this standard.</p>	<ol style="list-style-type: none"> 2. Protect natural drainage system 3. Minimize decrease in time of concentration 	<p>Rural, Suburban and Urban</p>
<p>Rural and Suburban developments shall preserve the natural pre-development Drainageways on site by using the natural flow patterns and pathways for the post-construction drainage system.</p> <p>Exceptions are allowed if the Time of Concentration for predevelopment Drainageways is the same as for post development Drainageway.</p> <p>Exception: The applicant may submit an “alternative analysis” which demonstrates that this performance standard is impracticable.</p>	<ol style="list-style-type: none"> 2. Protect natural drainage system 3. Minimize decrease in time of concentration 	<p>Rural and Suburban</p>

<p>Sites that disturb one acre of land or more shall include Stormwater Treatment Measures in accordance with Maine DEP Chapter 500 Section 4.C General Standards 4.C.(2) Treatment requirements, 4.C.(3) Treatment Measures, and 4.D Phosphorus standard (for lake watersheds only) and additionally:</p> <ul style="list-style-type: none"> • Individual Stormwater Treatment Measure may not treat more than 1-acre of Impervious Area • Vegetation used in Stormwater Treatment Measures shall be Maine Native or Climate-Resilient Northeastern Native Vegetation • <p>Note that although Chapter 500 General Standards and Phosphorus standard have higher thresholds for developed and impervious area, these standards apply to sites within the urbanized area of the municipality at a lower threshold.</p>	<ol style="list-style-type: none"> 2. Protect natural drainage system 5. Minimize Effect of Impervious Area 7. Minimize lawns and maximize landscaping that encourages runoff retention. 10. Stormwater Quality Treatment and Retention Requirements 	<p>Rural, Suburban and Urban</p>
<p>Provide volume control on-site (through infiltration or storage) in accordance with the following:</p> <ul style="list-style-type: none"> • Volume to be controlled= (total area of Impervious Area after development – total area that existed before development) x Rd • Where Rd is the groundwater recharge depth based on the USDA/NRCDS hydrologic soil group as follows: Rd = 0.40 inches or rain for type A soils, 0.25 inches of rain for type B soils, 0.10 inches of rain for type C soils and 0 for type D soils • Stormwater Treatment Measures with liners may not be used to meet the volume requirement via storage. • Restrictions and requirements identified in Sections D(2) through D(4) of Appendix D Infiltration basins, drywells, and subsurface fluid distribution systems; of Chapter 500 apply. <p>Exception: For sites in Rural and Suburban areas where infiltration will disrupt the preservation of the predevelopment Drainageways, an exception from the infiltration standard will be allowed.</p> <p>Exception: If any Uncontrolled Hazardous Substance Sites, Voluntary Response Action Program sites, RCRA Corrective Action sites, or Petroleum Remediation sites</p>	<ol style="list-style-type: none"> 2. Protect the natural drainage system 3. Minimize the decrease in time of concentration 5. Minimize Effect of Impervious Area 	<p>Rural, Suburban and Urban</p>

<p>are on or adjacent to the Site, the Site does not need to meet the volume control standard.</p> <p>Exception: Municipalities may allow infiltration on an alternate site within the same watershed in lieu of on-site infiltration.</p>		
<p>Minimize Impervious Area and the Effect of Impervious Area from road runoff:</p> <ul style="list-style-type: none"> At least 70% of Roadway runoff shall be directed into a Stormwater Treatment Measure <p><i>Optional:</i></p> <ul style="list-style-type: none"> Dead-end streets shall be no longer than 1000 feet (rural and suburban areas). Dead-end roads shall be constructed to provide a hammerhead (when less than 200 feet), or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space, and/or a Stormwater Treatment Measure as described below (rural and suburban areas). Cul-de-sac roads shall be constructed with the center island used for Stormwater Treatment Measures or vegetation unless type A or B soils are present in the center, in which case this area should be used to promote natural infiltration on-site. 	<p>4. Minimize Impervious Area</p> <p>5. Minimize Effect of Impervious Area</p>	<p>Rural, Suburban and Urban</p>
<p>Minimize Impervious Area from parking areas:</p> <p>a. Compact car parking standards 9-foot x 16-foot space</p> <p>Exceptions for public safety</p> <p><i>Optional: (not fully developed as part of this ordinance)</i></p> <p><i>Establish "In Lieu of" Parking programs with the following components:</i></p> <ul style="list-style-type: none"> Fee in lieu of parking Car-share-in-lieu of parking Transit-in-lieu Bike/pedestrian infrastructure improvements <p><i>Note that the in-lieu program may optionally be tied to incentives, such as density or height bonuses.</i></p> <p><i>Establish shared parking provisions</i></p>	<p>4. Minimize Impervious Area</p>	<p>Rural, Suburban and Urban</p>

<p><i>Minimum Parking requirements shall be based on reasonable parking needs instead of peak use, and maximum parking limits should be established for appropriate areas. Establish maximum parking requirements at current minimum standards.</i></p> <p><i>Reductions in parking volume requirements should consider presence of transit routes within ¼ mile, existing on-road parking, and transportation/parking demand management plan for Sites over a certain size.</i></p> <ul style="list-style-type: none"> <i>Commercial parking space size shall be a maximum 9-foot width and an 18-foot length with an allowance for reduction in length at a 1 to 1 ratio for available overhang (1 foot reduction allowed if 1 foot overhang possible).</i> <i>Parking lot travel aisles shall be a maximum of 22 feet wide.</i> <p><i>Require garages/under above building where appropriate, optionally tied to a density or height bonus</i></p>		
<p>Runoff from on-site roofs, sidewalks, and peak-use overflow parking runoff shall be directed into Stormwater Treatment Buffers or Stormwater Treatment Infiltration Measures.</p>	<p>5. Minimize Effect of Impervious Area</p> <p>8. Provide vegetated open-channel conveyance systems</p>	<p>Rural, Suburban and Urban</p>
<p>Construction equipment movement, laydown areas and parking shall be restricted to the disturbed area.</p> <p>Areas to be vegetated shall be tilled and the soils amended with organic matter as needed based on the results of soil tests.</p>	<p>6. Minimize Soil Compaction</p>	<p>Rural, Suburban and Urban</p>
<p>Snow storage areas shall be depicted on site plans.</p> <p>The location of snow storage areas in Stormwater Treatment Measures and Shoreland Zoning Setback Buffers shall be prohibited.</p>	<p>5. Minimize Effect of Impervious Area</p>	<p>Rural, Suburban and Urban</p>
<p><i>Optional Standard: Require the implementation of precipitation storage (e.g., cisterns or rain barrels) for later reuse for landscaping.</i></p>	<p>9. Rainwater Capture and Reuse</p>	<p>Rural, Suburban and Urban</p>

Note to Future Adopters: By embedding the performance standards into Site Plan and Subdivision Performance Standard, those enforcement provisions, Severability and Conflicts and Waivers provisions will automatically cover the LID Performance Standards. No additional Enforcement requirements need apply, so those provisions have not been included here.

Section 8 Enforcement

Section 9 Severability and Conflicts

Section 10 Waivers

Additionally, Notwithstanding other provisions in municipal ordinances or state law, requirements to plant “Climate-Resilient Maine Native Vegetation”, “Maine Native Plants” or “Climate Resilient Northeast Native Vegetation” shall not be construed as a restriction on the rights of individuals to engage in agricultural practices that are legally protected by the Maine Agriculture Protection Act and the “Right to Food” provision in the Maine Constitution (Constitution, Art. I, §25). Move up to Section 7

Section 11 Authority

The Municipality enacts the LID Model Ordinance Strategies Provisions pursuant to 30-A M.R.S. §§3001 et seq. (municipal home rule ordinance authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency’s regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Municipality as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this Ordinance as part of the Municipality’s stormwater management program in order to satisfy the minimum control measures for Post Construction Stormwater Management in New Development and Redevelopment.

Impact Fees

IMPACT FEES

137 Attachment 1

Town of Cumberland

Recreational Facilities and Open Space Impact Fee Methodology [Adopted 6-28-2001; amended 4-9-2012]

This methodology sets out the procedure for determining the impact fee that should be paid by development for recreational facilities and open space.

The Need for Expanded Facilities: In 2000, the Town's Comprehensive Plan and Open Space Plan identified the need to expand the supply of recreational facilities and open space to serve a growing population and proposed the use of impact fees to fund some of this cost. The impact fee was established in 2001 based upon the anticipated need for additional or improved recreational facilities and open space resulting from expected population growth.

In 2000, Cumberland had approximately 600 acres of permanent open space, the largest portion of which is the Twin Brook Recreation Facility acquired through two purchases. The first was a one-hundred-forty-eight-acre parcel on Tuttle Road in 1994 for \$530,000 and the second a one-hundred-acre parcel on Greely Road in 1996 for \$390,000. The total open space in 2000 also included Chebeague Island and resulted in 0.084 acre of open space per capita based upon a population of 7,159. Between 2000 and 2010, Chebeague Island seceded from the Town of Cumberland, causing the population of Cumberland to decrease by 341 residents. Cumberland's total population, however, experienced a net increase of 52 residents, for a total of 7,211 in 2010.

In 2003, the Town purchased a two-hundred-sixteen-acre parcel, the Rines Forest, to be utilized as open space for residents of the community. Then in 2006 the Town began a comprehensive upgrade to the existing two-hundred-forty-eight-acre Twin Brook recreation facility that was completed in 2009. Today, Cumberland has a total of 1,135 acres of open space which translates to 0.157 acre per capita. The significant increase in open space and improved recreational facilities coupled with minimal population growth has allowed the Town of Cumberland to meet the needs identified in the Town's Comprehensive Plan and Open Space Plan, as well as to provide excess capacity for anticipated future growth.

The Share of Need Attributable to Growth: In 2000, Cumberland had 2,548 households including Chebeague Island. In 2010, Cumberland had 2,697 households and Chebeague Island had 171 households. Adjusting for the loss of households on Chebeague Island, Cumberland experienced a net increase of 320 households. The Town of Cumberland's Growth Management Ordinance limits growth permits for new dwellings to a maximum of 50 per year, while the average of actual new development over the last 10 years was 36 dwellings per year.

Who Should Pay the Fee: Housing development has been relatively stable over the past 10 years, but population appears to be declining, as evidenced by the decrease in average household size from 2.8 in 2000 to 2.67 in 2010. The current average household size of 2.67 translates to 0.42 acre of recreational facilities and open space per household. Although housing development may remain consistent, the reducing population means that the existing recreational facilities and open space should be adequate for the current population and

CUMBERLAND CODE

anticipated growth in the near future. The acquisition of the Rines Forest and the upgrades to Twin Brook satisfy the needs for open space and recreational facilities of projected future development. Therefore, new residential development should continue to be assessed an impact fee to contribute to the costs of acquiring and improving these facilities.

There does not appear to be any justification for charging nonresidential development an impact fee for recreation and open space facilities. Typically, nonresidential uses do not generate a direct demand for these types of facilities and thus should not be charged a fee.

Calculation of the Fee: The cost to acquire the Rines Forest in 2003 was \$1,241,000, \$5,745 per acre. Additionally, over the course of three years, the improvements to Twin Brook cost a total of \$1,594,546. The total cost of acquiring this additional open space and upgrading existing recreation facilities was \$2,835,546. The total of all impact fees collected prior to June 30, 2011, is \$730,814. The difference between the total cost of acquiring additional open space and upgrading existing recreation facilities (\$2,835,546) and the impact fees collected (\$730,814) equals \$2,104,732, the net cost of acquisition of the Rines Forest and upgrades to the Twin Brook recreational facility. Assuming that this net cost of acquisition is a debt to be paid over 30 years at 4%, the annual cost of open space acquisition and recreational facility upgrades is \$121,717. Based on the maximum allowable new development of 50 units and the average gross living area of 1,739 square feet (2,739 minus 1,000 square feet exemption), the impact fee to new development equals \$1.40 per square foot.

Rines Forest Acquisition	\$1,241,000
	+
Twin Brook Improvements	\$1,594,546
Total Costs	\$2,835,546
	-
Impact Fees Collected to Date	\$730,814
Total Unpaid Debt	\$2,104,732
Annual Debt	\$121,717 (Total Debt over 30 years at 4% interest)
Cost per Home	\$2,434 (Annual Debt/50 max permits per year)
Cost per Square Foot (Impact Fee)	\$1.40 (Cost per Home/1,739 square feet avg. home size)

IMPACT FEES

Town of Cumberland

Sample Impact Fee Amounts

Gross Floor Area (GFA)	Fee Amount (GFA - 1,000 square feet x \$1.40 per square foot)
1,548 square feet (average home in Small's Brook)	\$767
1,827 square feet (average 3-bedroom home in Cumberland)	\$1,158
2,000 square feet	\$1,400
2,739 square feet (average home in Cumberland)	\$2,435
3,000 square feet	\$2,800
4,000 square feet	\$4,200
5,000 square feet	\$5,600

CUMBERLAND CODE

**Impact Fee Instruction Sheet
for the
Recreational Facilities and Open Space Impact Fee Ordinance of the
Town of Cumberland, Maine**

1. Using dimensioned building plans provided by the applicant, calculate the gross floor area in accordance with the following definition as found in the Recreational Facilities and Open Space Impact Fee Ordinance of the Town of Cumberland, Maine:

GROSS FLOOR AREA – Includes the entire floor area of each floor measured from the outside of exterior walls, and shall include all interior partitions and spaces whether finished or not, but shall exclude basements, garages, unheated porches and any portion of a room or attic with sloping ceilings measuring less than five feet from floor to ceiling.

2. To aid the gross floor area calculation, you may choose to sketch out and dimension the floor plan for each floor of the proposed structure, excluding the basement level, on the reverse side of this sheet.
3. To the gross floor area as calculated in accordance with the definition above and expressed in square feet apply the following formula:

$$\begin{aligned} &[\text{Gross Floor Area} - 1,000 \text{ square feet}] \times \$1.40 \text{ per square foot} \\ &= \text{Total Impact Fee*} \end{aligned}$$

*** Please show this calculation on the Impact Fee Information and Calculation Sheet**

4. This fee amount is due to the Code Enforcement Officer prior to the granting of any building permit for a residential use in the Town of Cumberland.

IMPACT FEES

<p align="center"><i>Town of Cumberland</i></p> <p align="center">Residential Impact Fee Information and Calculation Sheet</p>		IMPACT FEE #:
		DATE RECEIVED:
		TIME RECEIVED:
		RECEIVED BY:
APPLICANT:	APPLICANT ADDRESS:	APPLICANT PHONE #:
PROPERTY OWNER:	PROPERTY OWNER ADDRESS:	PROPERTY OWNER PHONE #:
LOCATION/PROPERTY ADDRESS:	TAX MAP & LOT #:	EXEMPTIONS IF ANY:
PROJECT DESCRIPTION:		
IMPACT FEE CALCULATION		
TOTAL AMOUNT OF IMPACT FEE ASSESSED:		
<p>I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IS COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF:</p> <p>SIGNATURE OF APPLICANT: _____ DATE: _____</p>		

Site Plan & Subdivision

Miscellaneous Items

Foundation Drains

Changes to Site Plan & Subdivision rules to ask developers to show and explain how foundation footings will be drained. Too often there is no plan and sump pumps dumped into the street cause problems in winter months especially. Buffer encroachments have been notoriously all due to foundation drains.

Foundation Elevations

Similar as above, except in subdivisions where it would be very helpful to see if foundation elevations were depicted as part of the approval process. We could lessen street drainage impacts if garages weren't built 2' lower than the street – even if it were a minimum foundation elevation and or first floor elevation that would be a big help.

Telecommunication

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 315-72 Telecommunications facilities.

- A. Purpose. The purpose of this section is to provide a uniform and comprehensive set of performance standards and requirements to be used by the Planning Board during the site plan review process when it reviews an application for the placement and construction of wireless telecommunications facilities. These standards and requirements are intended to regulate the location and installation of such facilities in order to:
- (1) Protect and promote public health, safety and welfare from potential problems, examples of which are falling ice, telecommunications wave interference and attractive nuisance of towers to children;
 - (2) Protect and preserve the aesthetic quality of Cumberland as set forth in the goals, policies and objectives of the adopted Comprehensive Plan, examples of which are the protection of scenic vistas, rural character and important historical areas, and the regulations of this chapter, including but not limited to buffering requirements, by carefully regulating siting and design of wireless telecommunications facilities;
 - (3) Protect adjacent properties from potential damage from tower failure and falling ice through careful siting regulations and engineering requirements;
 - (4) Facilitate and encourage the managed development of telecommunications infrastructure while at the same time not unduly restricting the development of needed telecommunications facilities, including important amateur radio installations; and
 - (5) Encourage co-location on existing and future wireless telecommunications towers and maximize the use of existing and approved towers and other existing structures, such as utility poles, water towers and buildings, to accommodate new wireless telecommunications antennas in order to reduce the number of new towers needed to serve the community's needs.
- B. Exemptions. The following uses are exempt from these regulations:
- (1) A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which is no higher than 35 feet in height and is not licensed or used for any commercial purpose. The Code Enforcement Officer may permit additional height up to a maximum of 75 feet only if:
 - (a) Engineering documentation substantiating the need for the excess height is submitted to and is acceptable to the Code Enforcement Officer; and
 - (b) The Code Enforcement Officer determines that a height in excess of 35 feet is technically necessary to successfully engage in this activity.
 - (2) Radio or television satellite dish antenna for the sole use of the resident occupying a residential parcel on which the satellite dish is located.
 - (3) A single ground- or building-mounted receive-only radio or television antenna, including any mast, for the sole use of the occupant of a residential parcel on which the radio or television antenna is located, with an antenna height not exceeding 35 feet.
 - (4) A ground- or building-mounted citizens band radio or two-way FM antenna, including any mast, if the height (post, and antenna and support structure are not on the ground) does not exceed 35 feet.
 - (5) A municipal, public safety or public works wireless telecommunications facility up to a maximum height of 100 feet; the one-hundred-foot height limitation shall not include the height of any building that the telecommunications facility (TCF) may sit upon. [Amended 8-10-2012]

- C. Submission requirement. In addition to all of the relevant site plan review submission requirements listed in Chapter 229, Site Plan Review, the following submissions shall be required unless waived by the Planning Board:
- (1) A report from a registered professional engineer in the State of Maine that describes the tower, the technical reasons for the tower design and the capacity of the tower, including the number(s), type(s), and volume(s) of antenna(s) that it can accommodate and the basis for the calculation of capacity.
 - (2) Written approval by all applicable state and federal agencies, including but not limited to the Federal Aviation Administration (FAA) and Federal Communications Commission (FCC), including a description of any conditions or criteria for the approval, or a statement from the agency that no approval is required.
 - (3) A letter of intent that commits the tower owner and his or her successors in interest to:
 - (a) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant.
 - (b) Negotiate in good faith for shared use by third parties that have received an FCC license or permit.
 - (c) Allow shared use if an applicant agrees in writing to pay reasonable charges.
 - (4) Proof of financial capacity to build, maintain, and remove the proposed tower.
 - (5) An inventory of all of the provider's existing and approved towers, antennas or sites within the Town of Cumberland and locations in surrounding communities where wireless telecommunications are proposed to be utilized in conjunction with the facility proposed in the application.
 - (6) Photos showing site vegetation, existing and adjacent structures, views of and from the proposed site, topography, and land uses on the proposed parcel and on abutting properties.
 - (7) Landscaping plan reflecting location of proposed screening and fencing, planting areas, proposed plantings, existing plant materials to be retained and trees or shrubs to be removed.
 - (8) Elevation drawings, cross-sectional area or silhouette of the facility, drawn to scale, and showing all measurements, both linear and volumetric, showing front, sides and rear of the proposed facility, including all fencing, supporting system for transmission cables running between the tower and accessory structures, control panels, antennas, and existing structures and trees. The submission shall reference any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
 - (9) Detail of the tower base or method of attachment to a structure. If the facility will be attached to an existing building or structure, provide measurements and elevations of the structure.
 - (10) A visual analysis, which may include photo montage, field mock-up, or other techniques, which identifies the potential visual impacts, at design capacity, of the proposed facility. Consideration shall be given to views from public areas as well as from private residences and from archaeological and historic resources, including but not limited to the National Register of Historic Places or those that are eligible for such listing. The analysis of the impact on historical and archaeological resources shall meet the requirements of the Maine State Historic Preservation Officer in his/her review capacity for the FCC. The overall analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable communication facilities in the area and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed communication service.
 - (11) Identify any other telecommunications facilities existing or proposed on the site.

(12) Details of all accessory structures, including buildings, parking areas, utilities, gates, access roads, etc.

(13) Structural requirements.

- (a) Telecommunications towers shall be designed and installed in accordance with the most current standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
- (b) The applicant's engineer shall provide documentation showing that the proposed transmission tower meets or exceeds the most current standards of the American National Standards Institute ANSI/EIA/TIA-222 for Cumberland County relative to wind and one-half-inch ice loads when the tower is fully loaded with antennas, transmitters, and other equipment as described in the submitted plan.
- (c) For towers or antennas placed on buildings or alternative tower structures (ATS), the applicant shall also provide written certification that the building or ATS itself is structurally capable of safely supporting the tower or antennas and their accompanying equipment.

D. Space and bulk standards.

(1) Tower height. Towers shall not exceed a height of 100 feet, except that where evidence of acceptable design and co-location is provided, the Planning Board may approve an additional 25 feet of tower height per each additional wireless communication service co-locator, not to exceed the following maximum tower heights:

(a) Highway Commercial District (HC): 175 feet.

(2) Antennas.

(a) Height. Installing antennas on alternative tower structures is permitted, provided that the resulting alternative tower structure height does not exceed the following maximum heights:

[1] Rural Residential Districts 1 and 2 (RR1 and RR2), Low-Density Residential District (LDR), Medium-Density Residential District (MDR), Island Residential District (IR), Industrial District (I), Office Commercial District (OC), and Rural Industrial District (RI): 150 feet.

(b) Mounting and dimensions. The mass and dimensions of antennas on a tower or alternative tower structure shall be governed by the following criteria:

[1] Whip antennas shall not exceed 20 feet in length for an individual antenna and shall be limited to two per mount, with no more than three mounts at a given level.

[2] Microwave dish antennas. The aggregate diameters of microwave dish antennas mounted within a twenty-foot vertical section of a tower may not exceed 24 inches, with no single dish being more than eight inches in diameter and five feet in depth, unless otherwise required per the path reliability and/or tower structural studies.

[3] Panel antennas. The horizontal center line of all panel antennas of a single carrier must be aligned in the same horizontal plane, with each antenna not to exceed eight feet in length or two feet in width.

(3) Lot area. A new wireless telecommunications tower shall not be constructed on a lot that does not conform to the minimum lot area required in the zoning district even if such lot is a lawful nonconforming lot of record.

(4) Setbacks.

- (b) Equipment facilities shall meet the required district setbacks.
- (c) If more than one tower is proposed on a single lot or parcel, they shall be clustered as closely together as technically possible.
- (d) Notwithstanding the height and setback limitations within a zoning district, in order to accommodate the co-location of an additional antenna, a tower existing as of December 13, 1999, may be modified or rebuilt to a taller height, not to exceed a total maximum of 30 feet more than the tower's height as of December 13, 1999, but only if that additional height will not require any lighting or obstruction painting. The additional tower height shall not require increased lot setbacks.
- (e) There shall be setback requirements for antennas mounted on alternative tower structures. The standard district setbacks shall continue to apply for alternative tower structures and equipment facilities, where applicable.

E. Co-location requirements.

(1) On existing towers.

- (a) Applicants for site plan review for a new wireless communication tower must send written notice by pre-paid first-class United States mail to all other such tower and alternative tower structure owners and licensed wireless communication providers in the Town utilizing existing towers and alternative tower structures and to owners of such towers and alternative structures within a one-mile search radius of the proposed tower, stating their needs and/or co-location capabilities. Evidence that this notice requirement has been fulfilled shall be submitted to the Planning Board and shall include a name and address list, copy of the notice which was sent, and a statement, under oath, that the notices were sent as required. An application for a new tower must include evidence that existing or previously approved towers and alternative tower structures within the Town and search area cannot accommodate the communications equipment (antennas, cables, etc.) planned for the proposed tower. Such evidence shall be documentation from a qualified and licensed professional engineer that:
 - [1] Planned necessary equipment would exceed the structural capacity of existing and approved towers and alternative tower structures, considering the existing and planned use of those towers and alternative tower structures, and the existing and approved towers cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost;
 - [2] Planned equipment will cause electromagnetic frequency interference with other existing or planned equipment for that tower or alternative tower structure, and the interference cannot be prevented at a reasonable cost;
 - [3] Existing or approved towers and alternative tower structures do not have space on which planned equipment can be placed so it can function effectively and at least in parity with other similar equipment placed or approved; or
 - [4] Other documented reasons that make it technically or financially unfeasible to place the equipment planned by the applicant on existing and approved towers and alternative tower structures.
- (b) Shared use shall be conditioned on the applicant's agreement to pay a reasonable fee and costs of adapting existing facilities to the proposed use.
- (c) Once the Planning Board has determined that telecommunications equipment proposed by the applicant cannot be accommodated on an existing or approved tower or alternative tower structure, each tower or alternative tower structure so determined is presumed unable to accommodate similar equipment that may be proposed in the future unless the Board determines, after additional information is provided, that new technology or other considerations enable the existing or approved tower or alternative tower structure to accommodate the equipment

- (d) The Planning Department will maintain a list of existing and approved towers and alternative tower structures, including the name and address of owner(s), within the Town of Cumberland.
- (2) Construction of new towers.
 - (a) A proposal to construct a new co-located communication tower taller than the maximum height permitted for a single wireless communication service must include evidence that the tower can structurally support a minimum of three antenna arrays for each anticipated co-locating entity. (See Subsection **D** on tower height.)
 - (b) Prior to the issuance of any building permits for a co-located tower in excess of the height of a single user tower, the applicant will submit to the Code Enforcement Officer executed agreements documenting commitments to co-locate from the number of co-locators approved by the Planning Board.
- F. Interest of telecommunications entity. A proposal to construct or modify a wireless communication tower must include evidence of a commitment from a duly licensed entity to utilize the tower to provide wireless communication services. All wireless communication entities which are contracted to locate on the tower must join as applicants.
- G. Design standards.
 - (1) Wireless communication facilities.
 - (a) Except where dictated by federal or state requirements, the Planning Board may require that a proposed tower be camouflaged or designed to blend with its surroundings. This may include, but not be limited to, having a galvanized finish and being painted "flat" blue gray or in a skytone above the top of surrounding trees and earthtone below treetop level.
 - (b) Equipment facilities shall be adjacent to the tower base unless an alternate location will be less visually obtrusive or topographic considerations require an alternative location.
 - (c) Equipment facilities shall be no taller than one story in height and shall be treated to look like a building or facility typically found in the area.
 - (d) No obstruction painting or any lighting shall be permitted on any towers, except where dictated by federal or state requirements. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views.
 - (e) Manually operated or motion-detecting security lighting is permitted.
 - (f) The Planning Board may require special design of the facilities where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views and/or community features).
 - (g) Sufficient anti-climbing measures and other security measures preventing access to the site shall be incorporated into the facility as needed to reduce the potential for trespass and injury.
 - (2) Antenna arrays. Antenna arrays located on an existing structure or alternative tower structure shall be placed in such a manner so as to not be visible from a ground-level view adjacent to the structure. If, however, circumstances do not permit such placement, the antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure.
- H. Location.
 - (1) Wireless telecommunications facilities shall not be sited in areas of high visibility unless the

visibility" shall mean areas with no visual clutter such as trees and buildings. If the facility is to be sited above the ridgeline it must be designed to minimize its profile by blending with the surrounding existing natural and man-made environment.

- (2) No facility shall be located so as to create a significant threat to the health or survival of rare, threatened, or endangered plant or animal species.

I. Additional standards and criteria.

- (1) Mitigation measures have been utilized to screen antennas and towers from view from public rights-of-way or scenic vistas, either via landscaping, fencing or other architectural screening.
- (2) Creative design measures have been employed to camouflage facilities by integrating them with existing buildings and among other uses.
- (3) Other technically feasible sites have been investigated and, if available, the proposed facility has been relocated in order to minimize the effect of the location on visually sensitive areas such as residential communities, historical areas and open space areas.

J. Waiver provision. The Planning Board, in its sole discretion, may modify or waive any of the submission requirements, application procedures, or standards of Subsection C when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary to determine compliance with the approval standards. The Planning Board must additionally determine that such modification or waiver would not adversely affect properties in the vicinity or the general safety and welfare of the Town. The burden of proof regarding any such modification or waiver rests solely with the applicant and must be shown to be consistent with federal and state law. Notwithstanding the authority of the Planning Board to grant a waiver, in no instance may the height of a new tower exceed 250 feet or may the height of an alternative tower structure be increased to more than 250 feet.

K. Amendments. Any change to existing, previously approved and proposed towers requires site plan approval as noted in Chapter 229, Site Plan Review. Changes include, but are not limited to, modifications to approved height and to approved attachments such as antennas and dishes as well as requests for additional attachments.

L. Removal of abandoned wireless communication facility.

- (1) The owner of a telecommunications facility (TCF) shall notify the Town Planner of the date of cessation of use of the facility or any component(s) thereof within one month from the date of such cessation. If the owner fails to give the notice required by this subsection, the Code Enforcement Officer shall make a determination of such date, which determination shall be conclusive.

- (2) Any TCF or component thereof that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of abandoned TCF or component thereof shall remove it within 90 days of receipt of notice from the Code Enforcement Officer of determination of abandonment. All aboveground structures, equipment, foundations, guy anchors, utilities and access roads or driveways specifically constructed to service the telecommunications facility shall be removed and the land returned to a condition as near to the original preconstruction condition as possible.

[Amended 9-10-2012]

- (3) At the time of approval, the applicant for a new tower shall post a performance guarantee in the form of a continuous corporate surety bond, an irrevocable letter of credit, or an escrow account in favor of the Town equal to 125% of the estimated demolition and removal cost of the tower and associated facilities if abandoned at any time by the applicant. Such performance guarantee shall be satisfactory to the Town Manager as to the issuer, form, sufficiency, surety, and manner of execution. All performance guarantees shall be on a continuous basis, with any provision for cancellation to include that a minimum thirty-day notice of cancellation or nonrenewal be sent by certified mail to the Town

- (4) If there are two or more users of a single tower or TCF, then this provision shall not apply until all users cease using the tower or TCF.
- (5) If all antennas above a manufactured connection on a tower are removed, the resulting unused portions of the tower shall subsequently be removed within six months.
- (6) The replacement of all or portions of a TCF previously removed requires a new site plan approval.

M. Inspections.

- (1) Inspection of towers by a registered professional engineer in the State of Maine shall be performed to ensure structural integrity; such inspections shall be performed as follows:
 - (a) Monopole towers: at least once every seven years following completion of construction. The inspection shall take place between the sixth and seventh year of the repeat sequence.
 - (b) Self-supporting towers: at least once every five years following completion of construction. The inspection shall take place between the fourth and fifth year of the repeat sequence.
 - (c) Guyed towers: at least once every three years following completion of construction. The inspection shall take place between the second and third year of the repeat sequence.
- (2) The inspection report shall be submitted to the Town Engineer within 30 days of its receipt by the tower owner. Based upon the results of the inspection, the CEO, upon recommendation by the Town Engineer, may require repair or demolition of the tower.
- (3) The cost of such inspections, reports, repairs or demolition required under this section shall be borne entirely by the tower owner. Required repairs shall be completed within 90 days or less as required by the CEO and agreement by the Town Engineer for safety reasons.
- (4) Failure to provide required inspection reports in the required time schedule shall be deemed prima facie evidence of abandonment.

Murray Policy

TOWN OF CUMBERLAND
TAX ACQUIRED PROPERTY POLICY

Murray Policy

1. Definitions

"Owner" means the owner of record as shown in the Cumberland County Registry of Deeds at the time the tax lien ripens and if the owner is deceased then that person's spouse or children.

"Person" means every natural person and also any corporation, partnership, trust or other legal entity.

"Property" means real estate and the buildings thereon, if any.

2. Owner's Options After Tax Lien Ripens

When real estate is acquired by the Town through the tax lien process, the owner shall be given a written notice that in order to recover his or her property they have three (3) months to either:

- A. Pay the taxes due for which the property was foreclosed, together with interest, administrative fees and attorney fees as explained below;
- B. Deed to the Town property or interests in property, such as development rights and easements, as explained below; or
- C. Enter into an installment agreement, as explained below.

Failure of the owner to receive notice shall not affect the validity of the procedure of this Policy so long as notice was mailed by regular mail to the owner's last known address as shown on the Town's tax records.

3. Payment of Taxes During the Three Month Period.

The Town shall give the owner a release deed if during the three month period the owner pays the Town

- A. The amount due for all taxes remaining unpaid up to the date of the tax lien foreclosure,
- B. Interest on the unpaid taxes, prime plus 5%;
- C. Administrative fees sufficient to cover the estimated cost of the time which Town employees spend sending out the notice, calculating amounts due, getting approval from the Council, dealing with the owner and others; and
- D. Attorney's fees necessary to prepare and/or review the release deed and to advise the Town on any aspect of the tax lien foreclosure process regarding the property, including assistance in negotiating, drafting and reviewing an installment agreement.

The Town may require that the owner give the Town a right of first refusal for the property if it is property which the Town, with the advice of the Board of School Directors, Planning Board, or Lands and Conservation Commission, determines is or will become valuable to the Town or SAD 51 or if acquisition would further some public policy of the Town. This right of first refusal shall not apply to a sale to the owner's spouse or children, but shall otherwise run with the property even in the event of a sale to the owner's spouse or children.

4. Deeding Land to the Town as Payment of Taxes

The owner may offer his or her property (including property which is not the subject of the tax lien foreclosure) or interests in property to the Town in lieu of payment or as partial payment of the amounts otherwise due in paragraph 3. If the Town, with the advice of the Board of School Directors, Planning Board, or Lands and Conservation Commission determines that the property or interest so offered are or will become valuable to the Town or SAD 51 or that acquisition would further some public policy of the Town, the Town may accept such property or interests in it in full or partial payment of the amounts otherwise due in paragraph 3. Interests in property include, but are not limited to, easements, development rights, and other restrictions.

5. Installment Agreement Provisions

An installment agreement must include the following provisions:

- A. The term shall not exceed three (3) years;
- B. The Town shall not give a release deed until all installment payments have been made and all sums due pursuant to paragraph 3 have been paid in full;
- C. Regular or scheduled payments must be made with or without a balloon payment as determined appropriate by the Town;
- D. The payments must include interest, administrative fees and attorney fees in accordance with paragraph 3;
- E. The payments must cover all overdue taxes, including taxes for which a subsequent lien has not ripened and taxes for which a subsequent lien has not yet been filed;
- F. If an owner falls behind in two (2) consecutive payments, the installment agreement becomes null and void. The Town shall keep all payments made and the property shall be sold at auction (subject, however, to the Town's right to keep the property or impose conditions or restrictions as outlined below);
- G. In any case, the Town may retain a right of first refusal for the property if it is property which the Town, with the advice of the Board of School Directors, Planning Board or Lands and Conservation Commission, determines is or will become valuable to the Town or SAD 51 or if acquisition would further some public policy of the Town;
- H. If the Town determines that an owner has defaulted on the installment agreement and the owner contests that determination and brings suit but is unsuccessful and does not prevail, the owner shall be liable for the Town's attorney fees and costs.

The Town Attorney shall review and approve each such agreement to insure it meets the requirements of this policy.

Provided however, before any property becomes the subject of an installment agreement the Board of School Directors, Planning Board, or Lands and Conservation Commission may recommend whether the Town should attempt to negotiate for all or a portion of the property, retain easements, retain development rights, or impose land use restrictions. During the negotiations for an installment agreement the Town shall consider the recommendations of the Board of School Directors, Planning Board, or Lands and Conservation Commission. If the Town desires to retain all or a portion of the property, retain easements or development rights or impose land use restrictions and the owner agrees, the Town shall pay the owner fair market value (determined as of the date of foreclosure) of what the Town retains, less all sums owed in accordance with paragraph 3. In retaining the property or an interest in the property, the Town may use a variety of payment methods including forgiving all or a portion of past or future taxes as well as any other mutually agreeable and appropriate means.

6. Failure to Pay Taxes or Make Installment Agreement or Keep Provisions of Installment Agreement

In the event that during the three month period specified in paragraph 2 the owner fails to pay the amounts required by paragraph 3 or fails to transfer land as permitted by paragraph 4 or fails to enter into an installment payment agreement as permitted by paragraph 5, or if having entered into an installment payment agreement later breaches that agreement, the Town may, in its discretion, exercise the following options:

- A. The Town may retain all or a portion of the property or interest therein:
 - 1. If the Town, with the advice of the Board of School Directors, Planning Board or Lands and Conservation Commission, determines that all or a portion of the property or interest therein is or will become valuable to the Town or SAD 51, or if retention would further some public policy of the Town. In such circumstances, the Town shall pay the owner the fair market value as of the time of foreclosure of the retained property and interest therein subject to the following provisions:
 - i. If the owner has failed to pay taxes or enter into an installment within the three month period specified in paragraph 2, the Town shall subtract from the fair market value all amounts owed pursuant to paragraph 3 and all other overdue taxes, including taxes for which subsequent lien has not ripened and taxes for which a subsequent lien has not been filed;
 - ii. If the owner has entered into an installment agreement but has breached that agreement, the Town shall subtract from the fair market value all amounts required to be paid pursuant to the agreement, and all other amounts owed pursuant to paragraph 3, including taxes for which a subsequent lien has not ripened and taxes for which a subsequent lien has not yet been filed;

- iii. The fair market value shall be determined as of the date of foreclosure by the Town in its sole discretion based upon at least one appraisal of the property;
 - iv. The cost of any appraisal(s) of the property shall be ~~deducted as~~ considered an administrative expense and subtracted from the fair market value of the property; or fee within the meaning of paragraph 3:
 - v. In the event the Town retains less than all of the property or interest therein, the Town shall give the owner a release deed for the balance thereof; provided, that the Town shall not make payment to the owner or give the owner a release deed until the owner gives the Town a release deed.
- B. The Town may auction the property or that portion not retained by the Town under paragraph 6(A) and pay any amount in excess of amounts owed to the Town pursuant to paragraph 3 in accordance with the following:
- 1. The auction shall be public;
 - 2. Notice will be published and written notice shall be provided to the owner by regular mail to the owner's last known address as shown on the Town's tax records;
 - 3. There shall be a minimum bid equal to all amounts calculated in accordance with paragraph 3 plus all overdue taxes, including taxes for which a subsequent lien has not ripened and taxes for which a subsequent lien has not yet been filed, plus all amounts which should have been paid pursuant to any installment agreement entered in pursuant to paragraph 5. The amount of the minimum bid shall also include costs of the auction (including but not limited to advertising, rental fees, and professional fees) and all other related costs that the Town has incurred;
 - 4. The property shall be sold to the highest bidder whose bid exceeds the minimum price set by the Town;
 - 5. Upon completion of the auction and payment of the bid price, the Town shall:
 - i. Give the successful bidder a quit claim deed;
 - ii. Retain from the bidder's payment the minimum auction price which has been set by the Town; and
 - iii. Pay over the balance to the owner in return for a release from the "owner" and a release deed from the owner to the successful bidder.
 - 6. If no bid equal to or greater than the minimum bid is received, the Town may thereafter dispose of the property for any price and in any way it deems appropriate.
 - 7. The Town may, in its discretion, bid at the auction.

7. Provisions for owner-occupied property

Notwithstanding the foregoing, in the event an owner who is also an occupant of a residence on the property which has been acquired by the Town through the tax lien process has within the three (3) month period specified in paragraph 2 failed to take advantage of the provisions of paragraph 2 or has breached an installment agreement, the Town Council may nevertheless permit continued occupancy by the owner and his or her family after taking into consideration:

- A. Whether the owner has the financial ability to pay the taxes or transfer land to pay the taxes in accordance with paragraph 4;
- B. Whether the owner has a reasonable residential alternative;
- C. Whether eviction of the owner would cause the owner to be eligible for Town public assistance;
- D. Whether the owner can pay some rent (sufficient at least to cover necessary insurance); and
- E. Whether there are any other humanitarian reasons for not evicting the owner.

The provisions of this paragraph are not to be deemed to give the owner any rights, and decisions under this paragraph are within the sole discretion of the Town. Any arrangements made by the Town Council under this paragraph shall be reviewed by the Town Council at least annually and may be terminated unilaterally by the at any time.

8. Retention of Ownership by the Town

Notwithstanding the provisions of any of the preceding paragraphs, if more than one (1) year has elapsed from the date on which notice to the owner was mailed pursuant to paragraph 2 and the owner has not exercised the options available pursuant to paragraph 2 or has entered into an installment agreement but has breached that agreement, the Town shall retain ownership of the property as established by the tax lien foreclosure process and shall have no obligation to pay the owner any sums in excess of the amounts owed pursuant to paragraph 3.