

CHAPTER 16

SUBDIVISION ORDINANCE

TOWN OF CAPE ELIZABETH, MAINE

Effective May 8, 2024

CHAPTER 16

SUBDIVISION ORDINANCE (Adopted effective May 8, 2024)

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ARTICLE I. Purpose, Authority, Scope, Definitions

Sec. 16-1-1. Purpose

This Ordinance is designed to promote the health, safety, convenience and general welfare of the Inhabitants of the Town of Cape Elizabeth by encouraging and ensuring sound planning, the use of the environment under healthful conditions, the imaginative and orderly use of land, compliance with the goals and objectives of the Comprehensive Plan, and development that fits harmoniously into the existing natural environment and rural character.

Sec. 16-1-2. Authority

This Ordinance shall apply to all land within the limits of the Town of Cape Elizabeth, Cumberland County, Maine and shall be administered by the Planning Board of the Town of Cape Elizabeth, hereinafter called “the Planning Board”, and the Town’s designated staff.

Sec. 16-1-3 Scope

- (a) Any person, firm, corporation or other legal entity proposing to sell, lease or convey, or to offer or agree to sell, lease or convey, any land in a subdivision any portion of which is within the limits of the Town of Cape Elizabeth, shall first submit such subdivision for approval by the Planning Board in accordance with this Ordinance and shall record in the Cumberland County Registry of Deeds a plan thereof bearing the approval of the Planning Board.
- (b) No utility installations; no ditching, grading or construction of roads; no grading of land or lots; and no construction of buildings shall be done on any part of the proposed subdivision until a subdivision application has been submitted, reviewed and finally approved as provided by this Ordinance.

Sec. 16-1- 4 Definitions

In general, words and terms used in this Ordinance shall have their customary dictionary meanings, but the following words and terms as used in this Ordinance are defined as follows:

“**Applicant**” - the record owner, or a person having an interest in the land either through written option or contract.

“**Access Road**” - any road which includes (1) an eighteen (18) feet wide traveled way, (2) deeded and actual rights of public emergency access, and (3) year-round maintenance,

including snow plowing of the road, the responsibility of which is documented in a binding written agreement if the road is not located within a public right-of-way.

“Arterial” - a road which is a major link with other communities. This road typically averages in excess of three thousand (3,000) trips per day with an average length of each trip of more than one mile. Arterials accommodate residential, agricultural and most of the Town’s commercial development. Direct access by residential development should be discouraged, and commercial access should be combined with adjacent commercial uses where feasible.

“AASHTO” - the American Association of State Highway and Transportation Officials, an organization that establishes transportation specifications.

“Building Envelope” - the area within a lot where the main and accessory buildings shall be located.

“Cluster Development” - a type of subdivision development for single family detached dwellings, multiplex dwellings, or a combination of both, where lot sizes, lot widths, and building setbacks are reduced below the minimum requirements of this Ordinance and the land gained thereby is set aside as open space.

“Collector” - a road that collects traffic from the most densely settled areas and typically connects to an adjacent community. This road averages in excess of two thousand (2,000) trips per day with an average length of each trip over more than one mile. Collectors are located in areas with a dense, suburban pattern of development. The design of collectors must provide heavy traffic flow capacity and protect sensitive scenic areas and neighborhoods. Direct access by single driveway should be discouraged.

“Dead-end road” - a road with a single, common means of ingress and egress.
[Revision. eff. 7-13-94]

“Digital plan” - the electronic version of plans that are submitted for town review. A digital plan shall comply with the following requirements:

1. Data source. Plans shall be exported as PDFs (portable document format) directly from the design software. Do not print the plans and then scan the plans for sending digitally. (Scanning the printed drawings degrades the images and causes details to be lost, making it difficult for reviewers to accurately evaluate the plans.) Plans may be scanned if there is no ability to output to PDF format natively and must have a minimum scan resolution of 300 dpi (dots per inch) to maintain quality.
2. File naming. File names shall not be longer than thirty (30) characters. File names shall begin with an abbreviated project name, followed by a drawing name/number that matches the drawing. An index of all files shall be provided for plan sets with four (4) or more plans.
3. File format standards. PDF is required for plans and reports. Drawings created in AutoCAD are preferred to be converted in Vector PDF. PDF files should be optimized and shall not contain layers, in order to improve viewing performance and help reduce file size. File size shall not exceed 10 MB (megabyte), unless recommended by the

Town Engineer. Non-drawing files shall be submitted as searchable PDFs. All outputted materials shall be submitted with a minimum resolution of 300 dpi (dots per inch).

4. Uploading. All plan files shall be emailed to the Town Planner. Total attached file size shall not exceed 25 MB for any one email. Multiple emails shall be sent if total attachments exceed 25 MB and the email subject name shall include the project name and part 1, 2, etc as appropriate. (Effective May 8, 2024)

“Ditch” - a channel for conveying surface water outside the traveled way.

“Dwelling unit” - any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multi-family housing, condominiums, apartments and time-share units.

“Easement”- a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity. Examples of easements include but are not limited to drainage, conservation, emergency access, pedestrian, utility, road and open space easements.

“Emergency Access Lane”- a public or private paved road with a minimum width of eighteen (18) feet which is not open to through vehicular traffic. This type of road may provide secondary emergency access to an area served by a dead-end road. [Revision. eff. 6-12-91]

“Esplanade” - a landscaped strip of land located between a road and a sidewalk or between two roads.

“Farmland” - a parcel consisting of five (5) or more acres of land that is (1) classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or (2) used for the production of agricultural products as defined in Title 7 M.R.S.A. Sec. 152, subsection 2.

“Feeder” - a road that connects local roads to other roads. This road is typically densely developed and serves more than one-hundred (100) dwellings or approximately one-thousand (1,000) trips per day. Feeders primarily serve residential traffic where access by single driveway is common.

“Local Road” - a road that provides direct access to adjacent residential land or the Town center area. The local road is the most common road classification and carries a low volume of trips in residential areas, although higher volumes are also common in the Town center area. Local roads should be designed for slow speeds and frequent pedestrian travel.

“Lot” - an area of land in one ownership, regardless of the dates or sources of acquisition thereof and regardless of the buildings and uses existing thereon, having definite boundaries by recorded plan or deed and having an area of less than forty (40) acres.

“Manufactured Housing Unit” - structures, transportable in one or more sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

“Manufactured Housing Park” - a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

“Manufactured Housing Park Lot” - the area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

“MDOT” - the State of Maine Department of Transportation.

“M.R.S.A” - Maine Revised Statutes Annotated.

“MUTCD” - the Manual on Uniform Traffic Control Device Standards.

“Multiplex Housing” - attached dwelling units, as defined in the Zoning Ordinance (Chapter 19).

“Performance Guarantee” - any security that may be accepted by the Town to assure that improvements required as part of an application for development will be completed in compliance with the approved plans.

“Planner” - that person designated by the Town to assist the Planning Board in its subdivision and site plan review.

“Planning Board Decision” - the Planning Board vote to approve or conditionally approve the preliminary or final plan.

“Principal Structure” - any building other than one that is used for purposes wholly incidental or accessory to the use of another building on the same premises.

“Private Road” - a road or way that provides access to more than one principal structure and which is not owned by the Town.

“Resubdivision” - the replatting of all or part of the land included in a subdivision plan already approved by the Planning Board.

“Right-of-way”- (1) a strip of land acquired by conveyance, reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, sidewalk, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, or other similar uses; (2) generally, the right of one to pass over the property of another.

“Road” - a public or private way for vehicular traffic however designated, serving more than one residential unit or more than one lot.

“Rural Connector” - a road that handles trips between different parts of Town and connects rural residential development to arterials. This road typically carries less than (1,000) trips per day with an average length of more than one (1) mile. Rural connectors are located in primarily rural residential areas and the rural character should be maintained. Access by residential development should preferably be by a local road, but may be from a single driveway.

“Sight Distance” - see Section 16-3-2 (a) (1) of this Ordinance.

“Site Improvement” - all changes and construction required of a subdivision to be in compliance with Planning Board approval and Town Standards.

“Spaghetti lot” - any lot in a proposed subdivision with shore frontage on a river, stream, brook, great pond, or coastal wetland, as these features are defined in Title 38 M.R.S.A. Section 480(B), with a lot depth to shore frontage ratio greater than 5 (five) to 1 (one).

“Standard Boundary Survey” - a map of a quantity of real estate prepared by a professional land surveyor registered in the State of Maine and based on (1) adequate research to support a professional opinion of boundary location, (2) field work including an inspection of the real estate and (3) the preparation of a plan, drawn to scale and including property boundary lines, easements and rights-of-way and existing structures, suitable for recording.

“Structure” - anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats. It does not include a wharf, fish weir or trap that may be licensed under Title 38 M.R.S.A. Sections 1021-1027. A new structure or structures includes any structures for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of the Subdivision Ordinance.

“Subdivision” - the division of a tract or parcel of land into three (3) or more lots within any five (5) year period, which period begins after September 22, 1971, whether 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 three (3) or more dwelling units within a five (5) year period, the construction or placement of three (3) or more dwelling units on a single tract or parcel of and the division of an existing structure or structures previously used for commercial or industrial use into three (3) or more dwelling units within a five (5) year period.

A. In determining whether a tract or parcel of land is divided into three (3) or more lots, the first dividing of such tract or parcel is considered to create the first two (2) lots and the next dividing of either of said first two lots, by whomever accomplished, is considered to create a third lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single family residence for a period of at least five (5) years immediately preceding the second division: or

(2) The division of the tract or parcel is otherwise exempt under subsection D below.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to the Ordinance, do not become subject to the Ordinance by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel of land. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

- C. A lot of forty (40) or more acres shall not be counted as lots when the lot is located entirely outside of the Shoreland Performance Overlay District.
- D. Exceptions.
- (1) A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (2) A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (3) A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (4) A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of five (5) years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance. If the real estate exempt under this definition is transferred within five (5) years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of the Ordinance. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this definition can not be given for consideration that is more than one-half (1/2) the assessed value of the real estate.
 - (5) A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
 - (6) A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance. If the real estate exempt under this paragraph is transferred within five (5) years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of the Ordinance.
 - (7) The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under subsection D above, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of the Ordinance.
- E. The division of a tract or parcel of land into three (3) or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

- F. In determining the number of dwelling units in a structure, the provisions of the Ordinance regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
- G. Notwithstanding the provisions of the Ordinance, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to Site Plan Review under the Zoning Ordinance.

“Major Subdivision” - a subdivision containing more than five (5) lots, or requiring substantial extension of municipal facilities or any new public road.

“Minor Subdivision” - a subdivision containing not more than five (5) lots and is not otherwise defined as a major subdivision.

“Through road” - a road with more than one means of ingress or egress. Both means of ingress and egress must, at a minimum, meet the standards of an access road.

“Tract or parcel of land”- 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.

“Town Engineer”- that person designated by the Town to provide engineering advice to the Planning Board in its subdivision and site plan review.

“Traveled Way” - that portion of a right-of-way which is regularly used for vehicular traffic.

Article II. Review Procedures

Sec. 16-2-1. General Procedures

In all stages of the project review process, the burden of proof shall be upon the applicant proposing the project. [Revised eff. 06-08-2022]

(a) Public Record. The Planning Board shall maintain a permanent record of all its meetings, proceedings and correspondence. The Planning Board shall specify in writing its decisions and findings of fact.

(b) Public Notice. When notice to abutters is required, the Planner shall cause notice to be given by mail to the owners, as currently listed by the Town Tax Assessor, of all properties within 500’ of the proposed project property line boundary. If the project abuts an adjacent municipality, the Planner shall notify the adjacent municipality’s planning staff and request that all pertinent property owners be notified of the project proposal. Such notice shall include the date, time and location of the meeting and the location and general description of the proposed development.

If a public hearing is scheduled, mailed notice shall be provided as described above. In addition, the Planner shall cause notice of the date, time and place of the hearing to be published at least two (2) times in a newspaper having general circulation in the Town of Cape Elizabeth. The date of the first publication must be at least seven (7) days before the public hearing.

(c) **Review Escrow Account.** In addition to the application fees set by the Town Council, a Review Escrow Fee to defray the Town's costs for application review by the Town Engineer and/or other independent consulting services shall be provided. The fee shall be recommended by the Town Engineer or consultant and approved by the Town Manager upon initial review of the application and paid to the Town by the applicant prior to the next meeting with the Planning Board. The fee shall be deposited in a Review Escrow Account designated for that application. If the costs of application review by the Town Engineer and/or other consulting services exceed the amount of the Review Escrow Account, the applicant shall pay an additional fee to the Town that shall be recommended by the Town Engineer or consultant and approved by the Town Manager based upon the status of the application. Any balance in the account remaining after a final decision on the application by the Planning Board and satisfaction of any approval conditions shall be returned to the applicant unless there is an appeal or other legal action pending with respect to the Planning Board's approval. All interest from the Review Escrow Account shall accrue to the account and shall be applied toward the Town's cost in reviewing the application. No application amendment or new application for that project shall be submitted for review until any outstanding escrow account costs have been paid in full. [Revision eff. 06-08-2022]

(d) **Duration of Time.** Unless otherwise specified, number of days shall be calculated as calendar days.

Sec. 16-2-2. Pre-Application Process

Prior to submitting an application for subdivision review, the applicant shall meet with the Planning Board at a workshop at least once to discuss the proposal generally, acquaint the Planning Board with the nature of the proposal and the location, topography and other attributes of its site, review potential submission waivers and obtain preliminary classification of the proposal as either a minor or major subdivision. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1(b) of this Ordinance.

Sec. 16-2-3. Review and Approval of Minor Subdivisions

(a) **Procedures.**

1. **Formal Submission.** The subdivision applicant or an agent duly authorized in writing, shall submit to the Town Planner a subdivision application for consideration by the Planning Board together with the fee established in the Town Fee Schedule, and eight (8) paper copies and one (1) digital copy of the proposed subdivision plans and materials. All plans and materials shall be submitted at least fifteen (15) days prior to the Planning Board's next scheduled meeting, or if the fifteenth day falls on a holiday, the day after the holiday. Prior to the first meeting with the Planning Board, the applicant shall also establish a Review Escrow Account under the terms in Sec. 16-2-1(c) of this Ordinance. (Effective May 8, 2024)
2. **Preliminary Completeness.** Within thirty (30) days of the receipt of a subdivision application and accompanying materials, the Planner, in consultation with the Planning

Board Chair, shall make a preliminary determination as to completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the date of the Planner's preliminary written determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Sec. 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.

3. Public Notice. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1 (b) of this Ordinance.
4. Planning Board Completeness. At its first meeting for consideration of an application for approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting, the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination as to completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn, unless said time limitation is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.
5. Site Walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.
6. Public Hearing. The Planning Board shall hold a public hearing on a minor subdivision application within thirty (30) days of the date that the application is determined to be complete. Public notice shall be provided in accordance with Section 16-2-1(b) of this Ordinance.

The Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions, or disapprove the Subdivision Plan: (i) within sixty (60) days from the date of the date that the application is determined to be complete, or (ii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant.

(b) **Submission Requirements.** Minor Subdivision Plan submissions shall conform to the standards and requirements contained in Appendix A of this Ordinance.

Sec. 16-2-4. Review and Approval of Major Subdivision Plans

(a) **Preliminary Plan Procedures.**

1. Formal Submission. The subdivision applicant, or an agent duly authorized in writing, shall submit to the Town Planner a subdivision application for consideration by the Planning Board together with the fee established in the Town Fee Schedule, and eight (8) paper copies and one (1) digital copy of the proposed preliminary subdivision plans and materials. All plans and materials shall be submitted at least fifteen (15) calendar days prior to the Planning Board's next scheduled meeting, or if the fifteenth day falls on a holiday, the day after the holiday. Prior to the first meeting with the Planning Board, the applicant shall also establish a Review Escrow Account under the terms in Sec. 16-2-1(c) of this Ordinance. (Effective May 8, 2024)
2. Preliminary Completeness. Within thirty (30) days of the receipt of a preliminary subdivision application and accompanying materials, the Planner, in consultation with the Planning Board Chair, shall make a preliminary determination as to completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the date of the Planner's preliminary determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board Meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Section 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.
3. Public Notice. The Planner shall arrange for public notice of the meeting in accordance with Sec. 16-2-1(b) of this Ordinance.
4. Planning Board Completeness. At its first meeting for consideration of an application for preliminary approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting,

the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination of completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn unless said time limitation is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.

5. Site Walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.
6. Public Hearing. The Planning Board shall hold a public hearing on a major subdivision application within thirty (30) days of the date that the preliminary subdivision application is determined to be complete. Public notice shall be provided in accordance with Sec. 16-2-1(b) of this Ordinance.

The Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions, or disapprove the Preliminary Plan: (i) within thirty (30) days after the date of the public hearing, or (ii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant. Preliminary Plan approval shall not constitute approval of the Final Plan, but rather shall be deemed an expression of approval of the approach submitted on the Preliminary Plan as a guide to preparation of the Final Plan.

(b) Preliminary Plan Submission Requirements.

Preliminary Plan submissions shall conform to the standards and requirements contained in Appendix B of this Ordinance.

(c) Final Plan Procedures.

1. Formal Submission. Within six (6) months following the Planning Board's approval or approval with conditions of an applicant's Preliminary Plan, the applicant shall file with the Town Planner for Planning Board consideration, a Final Plan application for the subdivision with eight (8) paper copies and one (1) digital copy of the materials herein prescribed. If such application is not filed within such period, the application shall be

deemed withdrawn and shall no longer be considered a pending subdivision application, unless said time limitation is otherwise extended by the Planning Board for good cause.

2. Final Subdivision Plan Preliminary Completeness. Within thirty (30) days of the receipt of a final subdivision application and accompanying materials, the Planner in consultation with the Planning Board Chair, shall make a preliminary determination of completeness. If the application is preliminarily determined to be incomplete, the Planner shall so notify the applicant in writing and shall in the written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) month of the date of the Planner's preliminary written determination, the application shall be deemed withdrawn. When the Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. Once scheduled, the Planner shall promptly notify the applicant of the time and place of such meeting. No action taken by the Planner, either alone or in consultation with the Planning Board Chair, with respect to reviewing a subdivision application, shall result in an application being deemed pending for the purposes of Title 1 M.R.S.A. Sec. 302. The Planner, either alone or in consultation with the Planning Board Chair, shall have no authority to review the substance of a subdivision application to determine whether it complies with the subdivision review criteria.
3. Public Notice. Once a Planning Board meeting is scheduled, the Planner shall also cause notice to be given per Sec. 16-2-1(b) of this Ordinance.
4. Planning Board Final Subdivision Plan Completeness. At its first meeting for consideration of an application for final approval of a subdivision, the Planning Board shall determine whether the application is complete or incomplete. Within seven (7) days of the first regular meeting, the Planning Board shall provide to the applicant a dated letter acknowledging receipt of the application and the Planning Board's determination of completeness. If the application is determined to be incomplete, the Planning Board shall list in its written determination the materials that must be submitted in order to make the application complete. If an applicant fails to submit a complete application within four (4) months of the Planning Board letter or within four (4) months of the written determination of the Planner, the application shall be deemed withdrawn and shall no longer be considered a pending subdivision application, unless said time limitations is otherwise extended by the Planning Board for good cause. When the application is deemed complete, the Planning Board shall begin review of the proposed subdivision.
5. Site walk. One or more site walks may be scheduled by the Planning Board. The applicant shall provide temporary markers of key subdivision elements, such as but not limited to road centerlines and wetland boundaries, on the site prior to the site walk at the request of the Planning Board.
6. Public Hearing. The Planning Board may schedule a public hearing on the final Subdivision plan if it considers any changes in the plan sufficient to warrant further

public comment. Public notice shall be given in accordance with Section 16-2-1 (b) of this Ordinance.

If a public hearing is held, the Planning Board shall conduct the hearing as to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questioning by the public and the Planning Board. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date which shall be announced.

7. Planning Board Decision. The Planning Board shall approve, or approve with conditions or disapprove the Final Subdivision Plan: (i) within thirty (30) days of the date of the public hearing; (ii) within sixty (60) days of the date that the application was determined to be complete if no public hearing is held; or (iii) within such other time that may be mutually agreed upon by both the Planning Board and the applicant.

(d) Final Plan Submission Requirements. Final Subdivision Plan submissions shall conform to the standards and requirements contained in Appendix B of this Ordinance.

Sec. 16-2-5. Amendments to Previously Approved Subdivision Plans

(a) Scope. Any change in an approved final subdivision plan including but not limited to lot lines, road layout, and location of structures and improvements must be reviewed and approved by the Planning Board. De minimus changes to an approved subdivision plan may be placed on the Planning Board Consent Agenda at the discretion of the Planner.

(b) De minimus Changes. De minimus changes shall not include (1) an increase in the number of lots or units, (2) a change to a public or private right-of way or easement, (3) a decrease in proposed buffering or landscaping, or (4) any issue involving a condition placed on the Subdivision approval. Prior to placement on the Consent Agenda, the applicant shall meet with the Town Planner to review the proposed changes and shall provide eight (8) copies and one (1) digital copy of the revised recording plat to the Town Planner at least fifteen (15) days prior to the next regular Planning Board meeting or if the fifteenth day falls on a holiday, the day after the holiday. The decision of the Town Planner to not place an item on the Consent Agenda may be appealed to the Planning Board provided that eight (8) paper copies and one (1) digital copy of the proposed change has been submitted to the Town Planner fifteen (15) days prior to the next Planning Board meeting, or if the fifteenth day falls on a holiday, the day after the holiday.

(c) Procedure. A public hearing may be held concerning a subdivision amendment as prescribed in Sec. 16-2-1(b) of this Ordinance. The Planning Board may request the submission of information included in Appendix A or B and shall review the subdivision amendment for compliance with the standards in Sec. 16-3-1 of this Ordinance. All amended plans must make specific reference to the original plan and its recording information. The Planning Board Decision shall be to approve, approve with conditions or deny the subdivision amendment.

(d) Subdivision vacation. Once a subdivision has been recorded, a subdivision where no lots have been sold or the entire subdivision is owned by one entity and no alteration to commence the subdivision has occurred on the site, may be vacated in its entirety by a vote of the Town Council at the request of the subdivision owner. Anything less than a complete vacation of the subdivision must be submitted to the Planning Board as an amendment. Approval by the Town Council to vacate the subdivision must be recorded in the Cumberland County Registry of Deeds.

Sec. 16-2-6. Post Approval Requirements

(a) Satisfaction of Planning Board Conditions of Approval. Following the Planning Board Decision, the project plans and materials shall be revised by the applicant to comply with any conditions placed on the approval by the Planning Board. Two (2) sets of revised plans shall be submitted to the Planner. The Planner, and other town staff as necessary, shall review all plans for compliance with the Planning Board conditions of approval. The Planner shall determine whether the plans have been revised to comply with the Planning Board approval. If the applicant fails to obtain confirmation from the Planner that the plans are in compliance with the conditions placed on the approval, the applicant may submit the revised project plans to the Planning Board as an approved plan amendment. [Revision eff. 06-08-2022]

(b) Plan Recording. Once the plans are determined to be in compliance with the Planning Board approval, the recording plan shall be properly signed by a majority of the Planning Board, and shall be recorded by the subdivider in the Cumberland County Registry of Deeds. If the subdivision approval includes phasing of the subdivision, the recording plan shall depict all phases of the subdivision. Any final plans not so recorded within ninety (90) days following the date of Planning Board Decision shall become null and void. The applicant may request, prior to the expiration date, that the Planning Board grant an extension due to particular circumstances of the applicant which extension shall not exceed an additional period of ninety (90) days. Once recorded, the subdivider shall provide the Planner with three (3) paper copies of the subdivision plat with the Planning Board signatures and the book and page recording information from the Registry of Deeds.

(c) Performance Guarantee. There shall be no sale of lots, nor building permits issued, nor site work commenced until a Performance Guarantee has been approved by and posted with the Town of Cape Elizabeth Town Manager.

1. **Form.** The Performance Guarantee shall be in the form of an irrevocable letter of credit or escrow account in favor of the Town. Such Performance Guarantee shall be satisfactory to the Town Manager and to the Town Attorney as to the issuer, substantive sufficiency, surety and manner of execution. All performance guarantees shall contain a provision requiring the issuer to notify the Town Manager in writing of the scheduled expiration date at least thirty (30) days and not more than ninety (90) days in advance of its scheduled expiration date. Extensions of the Performance Guarantee may be granted by the Town Manager

for up to three (3) years from the initial expiration date at the request of the applicant for good cause.

2. Amount. The Performance Guarantee amount shall be based on a detailed estimate prepared by the applicant, broken down by unit cost and quantity, and reviewed by the Town Engineer. Costs included in the estimate shall include, but not be limited to, completion of all roads, sewer, water, drainage, open space, landscaping, lighting and other required improvements shown on the approved plans. The cost estimate shall also include a contingency amount equal to ten (10) percent of the Performance Guarantee estimate. When the Performance Guarantee estimate exceeds two hundred fifty thousand (\$250,000) dollars, the contingency amount shall be calculated at a rate of five (5) percent for that portion of the Performance Guarantee estimate in excess of two-hundred fifty thousand (\$250,000) dollars.
3. Phasing. When the Planning Board has approved phasing of a project, a Performance Guarantee may be posted for one (1) or more phases. The amount, terms and conditions of the Performance Guarantee shall correspond with the phase or phases scheduled to be constructed. Construction activity shall only be located and permitted in phases for which a Performance Guarantee has been posted. [Revision eff. 06-08-2022]
4. Reductions and Release. All requests for reduction or release of the Performance Guarantee shall be submitted in writing to the Town Manager. Reduction requests should only be submitted after significant construction has been accomplished. Prior to approving a reduction or release of a Performance Guarantee, the Town Manager shall request a report from the Town Engineer confirming the quality and value of the construction completed. Any reduction or release shall preserve the Town's ability to require or complete construction that is consistent with the approved plans and the Town's construction standards and/or restore and stabilize the site if construction will not be continued. There shall be no final release of any Performance Guarantee until the record drawings have been received and approved by the Town Engineer. [Revision eff. 11-5-2016]

(d) Inspection Fee. In addition to the Performance Guarantee, the applicant shall pay an inspection fee. When the Performance Guarantee equals five hundred thousand dollars (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount of the total performance guarantee, except that the minimum inspection fee amount shall be one-thousand five hundred dollars (\$1,500). When the Performance Guarantee exceeds five hundred thousand dollars (\$500,000), the inspection fee amount shall be two and one-half percent (2.5%) of the cost of the total Performance Guarantee. The fee shall be payable to the Town of Cape Elizabeth. The inspection fee shall be held by the Town to defray the Town's cost for inspection by the Town Engineer and Town staff. Any funds not disbursed for this purpose shall be returned to the applicant upon release of the Performance Guarantee. If the costs for inspection exceed the amount of the inspection fee, the applicant shall pay an additional fee to the Town, which shall be recommended

by the Town Engineer and approved by the Town Manager based on the status of the project. [Revision eff. 06-08-2022]

Sec. 16-2-7. Construction Administration

- (a) Commencement of Construction.** At least ten (10) days prior to commencing construction of required improvements, the applicant shall request a pre-construction meeting with the Town Engineer. At the meeting, the applicant shall submit plans for construction of the project and notify the Town Engineer when construction of such improvements will commence. The applicant is also responsible for communicating ongoing progress of construction so that the Town can cause inspections and so that requirements shall be met during construction and to assure satisfactory completion of all improvements and utilities required by the Planning Board. [Revised eff. 11-11-83; Revision eff. 6-13-90]; [Revision eff. 06-08-2022]
- (b) Site Controls.** Prior to site clearance or any alteration of the site, continuous, physical markers or barriers (for example reflective surveyor's tape or orange snow fencing) shall be installed on the site to mark the boundaries of "no-clear areas" and proposed open space and shall be inspected by the Town Engineer or their designated project inspector. Markers and barriers must be easily visible to equipment operators during site clearance and construction and shall be installed to accurately represent the Planning Board approved plans. At the completion of construction, the applicant and Town Engineer shall confirm that construction has not encroached on "no-clear areas" and proposed open space utilizing the approved plans, the site marker digital record, and as - built conditions. Encroachment into these areas shall require submission to the Planning Board of a plan amendment that includes mitigation and replanting within areas of encroachments. The Planning Board may also recommend to the Town Council that a fine be assessed for the removal of vegetation that was proposed to be preserved and then removed during project construction. [Revision eff. 06-08-2022]
- (c) Notice of Inspection.** To assure proper inspection of roads and other required improvements, the Town Engineer should be given not less than twenty-four (24) hour notice by the applicant for inspections required at the following construction stages: (1) before backfilling of any surface water, sanitary sewer, domestic water or other underground lines or improvements, (2) at completion of road subgrades and after installation of gravel surface, (3) at the commencement of paving, loaming, or other final surface preparation, and (4) upon final completion. [Revision eff. 06-08-2022]
- (d) Supervision of Required Improvements.** A site manager shall be designated by the applicant for any project subject to a Performance Guarantee. The name and contact information for the site manager shall be provided to the Town Engineer and the site manager shall be responsible for keeping the applicant informed of Town communications. The site manager shall provide a schedule of construction to the

Town Engineer, as well as notification when significant construction shall be taking place. The site manager shall be on the site during all periods of time when significant construction is taking place. Significant construction shall include (1) embankments, (2) bedding and backfilling of all underground utilities including water lines, unless the installation is supervised by the utility company, (3) installation of storm drainage and associated structures, (4) installation of sanitary sewers and associated structures, (5) roadway subbase material, (6) roadway base material, (7) paving, (8) compaction testing, and (9) sewer and manhole testing. The duties of the site manager shall also include (1) knowledge of product reports and material submittals, (2) maintenance of a diary of construction progress, and (3) implementation of remedial measures. [Revision eff. 06-08-2022]

- (e) **Authority of Town Engineer.** The Town Engineer shall have access to the site at all times to review the progress of the work and shall have the authority to review the field logs maintained by the site manager. Any deficiencies noted by the Town Engineer shall be brought to the attention of the site manager who shall see that remedial measures are taken. [Revision eff. 06-08-2022]

If the Town Engineer finds upon inspection of required improvements, including an inspection to be done by the Town Engineer before expiration of the Performance Guarantee, that any of such improvements are not constructed in accordance with plans and specifications filed by the applicant, or that in the Town Engineer's judgment the applicant will be unable to complete the required improvement within the period specified in the Performance Guarantee, the Town Engineer shall then so notify the applicant and the Town Manager, who shall take all necessary steps to preserve the rights of the Town under the Performance Guarantee, including authorization to the Town Engineer to stop the construction of said improvements. [Revision eff. 06-08-2022]

- (f) **Field Changes.** If at any time before or during the construction of the required improvements the applicant demonstrates to the satisfaction of the Town Engineer that unforeseen conditions make it desirable to modify the design of such improvements, the Town Engineer may, in consultation with the Public Works Director and Planner, authorize modifications provided that they are within the spirit and intent of the Planning Board approval and do not constitute waiver or substantial alteration of the function of any improvements required by the Planning Board. The Town Engineer shall issue any authorization under this section in writing, and shall transmit a copy of such authorization to the Planner and Planning Board.

- (g) **Record drawings.** Upon completion of construction, the applicant shall present to the Town one (1) set of reproducible mylar, one (1) hard copy, and digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS). The record drawings shall be based on the field logs of the site manager and of a quality acceptable to the Town. The record drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-

built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television. [Revision eff. 06-08-2022]

(h) Completion and Acceptance. Upon completion of the project infrastructure, the applicant shall request that the Town Council accept proposed public improvements. The request shall include confirmation from the Town Manager that the improvements have been constructed consistent with the approved plans and town construction standards and that any applicable deeds have been submitted in a form acceptable to the Town Attorney and signed by the applicant. The applicant shall be required to maintain all improvements and to provide for snow removal on roads and sidewalks, until their acceptance by the Town or the assumption of those responsibilities under such other approved arrangements. Any applicable stormwater maintenance plan shall also be recorded in the Cumberland County Registry of Deeds. [Revision eff. 11-5-2016]. [Revision eff. 06-08-2022]

Article III. Standards

Sec. 16-3-1. Subdivision Review Standards

A subdivision shall meet all of the following standards of review, as determined by the Planning Board.

(a) Pollution

The proposed subdivision will not result in undue water pollution. Factors to consider include:

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

(b) Sufficient Potable Water

The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision. If a public water supply will be used, the proposed subdivision will not cause an unreasonable burden on the existing public water supply.

(c) Erosion

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

(d) Traffic

1. Road congestion and safety. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed, and if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, M.R.S.A. Section 745, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, M.R.S.A Section 704 and any rules adopted under that section.
2. Comprehensive Plan. The proposed subdivision road(s) shall conform to the Comprehensive Plan as adopted in whole or in part by the Town Council.
3. Connectivity. The Planning Board may require provision for the projection of roads or for access to adjoining property, whether subdivided or not. The Planning Board shall require that access from the subdivision to previously existing or proposed public ways include two means of such vehicular access, as described in Sec. 16-3-2(5) of this Ordinance.
4. Safety. All roads within a subdivision and roads providing access to a subdivision shall be designed so that they will provide safe vehicular and pedestrian travel and traffic patterns.
5. Through traffic. The Planning Board may require that local roads be laid out so that their use by through traffic will be discouraged.
6. Topography. Roads in the proposed subdivision shall be laid out in an attractive manner, in order to enhance the livability and amenity of the subdivision. Insofar as possible, roads shall conform to existing topography, and high cuts and fills shall be avoided.
7. Block Length. Block lengths shall not exceed one thousand (1,000) feet except where a greater length suits the topography or character of the subdivision and does not result in an awkward road pattern or detrimental effect to adjacent property.
8. Lot Access. Each property shall be provided with vehicular access to each lot by an abutting public or private road. A private road shall be protected by a permanent easement which shall conform to the Road Classification Standards Table and which shall be shown on the plan.
9. Sidewalks/pedestrian connections. The Planning Board may require sidewalks and/or curbing on either or both sides of any road, where they are or may be necessary for maintenance and/or public safety, as determined by the Planning Board.

Provision of pedestrian easements or other types of pedestrian accessways not less than ten (10) feet wide may be recommended to the applicant, where a pedestrian accessway would add to the Town's Greenbelt System or where the Planning Board

deems it important for pedestrian enjoyment or to provide access to but not limited to schools, playgrounds, shopping centers, recreation areas, open space, trails, shore frontage, and other facilities. Where feasible, the easements shall connect to existing and proposed recreation trails.

10. Road Name. Road names shall not be used which will duplicate or may be confused with the names of existing roads. Road names shall be subject to the approval of the Planning Board and be in compliance with the Town of Cape Elizabeth Addressing Ordinance, Chapter 22, as determined by the Police Chief.

11. Road Construction Standards. Proposed roads are designed in compliance with the Road Construction and Design Standards, Sec. 16-3-2.

(e) Sewage Disposal

The proposed subdivision will provide for adequate sewage disposal and will not cause an unreasonable burden on municipal services if they are utilized. All systems proposed for the disposal of sewage for developments regulated by this Ordinance shall be in compliance with the provisions of the Town of Cape Elizabeth Sewer Ordinance, Chapter 15.

(f) Solid Waste Disposal

The proposed subdivision will provide for adequate disposal of solid waste. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.

(g) Aesthetic, cultural and natural values

The proposed subdivision will not have an undue adverse effect on scenic or natural areas, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

1. Scenic. Consideration shall be given by the applicant and the Planning Board to the impact of the proposed development on scenic vistas and view corridors to and from significant natural features, historic sites, and important topographic features as identified in the Town's Comprehensive Plan. The Planning Board may consider the impact of other design features such as building bulk, architectural style, building placement and landscaping to encourage visual harmony.
2. Wildlife. The applicant shall make adequate provision for the protection of wildlife habitat and fisheries areas, which may include but are not limited to maintenance of

wildlife travel lanes, and the preservation and buffering of wildlife habitat areas from proposed development activities.

3. Natural features. The applicant, whenever practical, shall be required to preserve natural features such as water courses or bodies, existing trees of ten (10) inches or more in diameter (base height), open space, scenic points, historic spots, and unusual or striking topographic features which, if preserved, would add to the attractiveness of the subdivision.
4. Farmland. All farmland within the proposed subdivision shall be identified on maps submitted as part of the application.

(h) Conformity with local ordinances

1. Comprehensive Plan. The proposed subdivision is consistent with applicable provisions of the Comprehensive Plan.
2. Zoning Ordinance. The area and width of lots shall conform to the requirements of the Zoning Ordinance. Side lot lines shall be substantially at right angles or radial to road lines.
3. Multiplex Housing. Multiplex housing and cluster developments shall be so designed, sited and laid out as to minimize disturbance of existing topography and ground cover, provide maximum usable natural or improved open space, reflect imaginative use of the site, and be compatible with any surrounding land uses and their character. The minimum lot size and density requirements for any proposed multiplex housing or cluster development shall comply with the Zoning Ordinance.
4. Addressing Ordinance. The street numbering of the individual residential dwelling units and/or lots must be clearly visible on the plans and shall be done in compliance with the Town of Cape Elizabeth Addressing Ordinance, Chapter 22. For any development with more than one set of attached or multiplex dwelling units, signs clearly identifying the house numbers in each set of dwelling units shall be required to be placed along the road leading to each set of units and shall be subject to approval of the Fire Chief and Police Chief.

(i) Financial and Technical Capability

The applicant shall demonstrate adequate technical and financial capability to complete the project as proposed. In the case where the applicant asserts that public disclosure of confidential financial information may prove detrimental to the applicant or to the success of the subdivision, the Town Manager may review the financial records of the applicant and recommend to the Planning Board that financial capability is adequate.

(j) Surface Waters

Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in Title 38 M.R.S.A. Chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. The Planning Board may determine that the proposed subdivision will not adversely affect surface water quality if the subdivision has been designed to comply with the Shoreland Performance Overlay District.

(k) Ground Water

The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

(l) Flood Areas

The Planning Board shall review all subdivision proposals to assure that: (1) they are designed to minimize flood damage; (2) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage; (3) adequate drainage is provided so as to reduce exposure to flood hazards; and (4) the proposed subdivision otherwise meets the standards of the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Regulations.

(m) Wetlands

Any proposed alteration of wetlands shall adhere to the requirements and standards of Section 19-6-9 and Section 19-8-3 of the Zoning Ordinance.

(n) Stormwater

The proposed subdivision will provide for adequate stormwater management.

For any subdivision involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing or vegetative alteration, a stormwater management plan shall be prepared in compliance with Chapter 25-1, Stormwater Development Review. In the case of any subdivision involving less than ten thousand (10,000) square feet of such impervious surfaces, where a subdivision is traversed by a stream, drainage way or other watercourse, or where the Planning Board with the advice of the engineer feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of way conforming substantially with the lines of such watercourse, and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of owner abutting upon it of such nature, width and location as the Planning Board with the advice of the Town Engineer, deems adequate. (Effective June 7, 2023)

(o) Lake Phosphorus concentration

The long term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision. The Planning Board may consider compliance with the Great Pond Watershed Overlay District, Sec. 19-6-12, Zoning Ordinance, as demonstration of no unreasonable increase.

(p) Impact on adjoining municipality

For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

(q) Land subject to Liquidation Harvesting

The proposed subdivision is not located on land where timber has been harvested in violation of rules adopted pursuant to Title 12 M.R.S.A. Section 8869, subsection 14 or the violation occurred at least five (5) years before the subdivision application has been submitted.

(r) Access to Direct Sunlight

Consideration shall be given by the applicant and the Planning Board to the sensitivity of the proposed subdivision design for the purpose of protecting and assuring access to direct sunlight. The Planning Board may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict, or control development through methods such as but not limited to restrictive covenants, height restrictions, and side yard and setback requirements.

(s) Buffering

Plants or other types of vegetative cover shall be preserved or placed throughout and around the perimeter of any proposed subdivision to provide for an adequate buffer, reduction of noise and lights, separation between the subdivision abutting properties, and enhancement of its appearance.

Off-road parking lots, storage areas, rubbish disposal areas, or similar improvements exposed to public roads or to residential areas shall be screened by walls, earth berms, fences, or vegetation, and shall be properly landscaped.

(t) Open Space Impact Fee

1. Purpose. In order to accommodate the expected needs of the subdivision for open space and recreational areas without diminishing the community standard of public

open space, the applicant shall be required to donate land with legal public access or otherwise conserved with a public benefit or a cash contribution in lieu of actual land dedication, or a combination of the above, at the option of the Planning Board and with the advice of the Conservation Commission. When a subdivision is designed in compliance with Sec. 19-7-2, Open Space Zoning, the open space conserved shall be deemed to satisfy the Open Space Impact Fee. (Effective November 14, 2015)

2. Community Standard. Public open space shall include the inventory of open space for which there is legal public access, including:
 - i. Open space owned by the Town;
 - ii. Open space encumbered by an easement owned by the Town which allows public access;
 - iii. Open space owned by the Cape Elizabeth Land Trust; and
 - iv. Open space encumbered by an easement owned by the Cape Elizabeth Land Trust which allows public access. The Community Standard of public open space shall be defined as the total acreage of open space divided by the Town's population, as of the most recent U.S. Census.
3. Land donation. The required land donation of open space shall be calculated by multiplying the number of lots/units in the proposed subdivision by the average number of persons per household as published in the most recent U.S. Census, and then multiplying the resulting number by the Community Standard of public open space. At least twenty percent (20%) of the land donated shall be land which is not a Resource Protection Zone or buffer and has a slope not to exceed fifteen percent (15%).
4. Fee. If the resulting land dedication would be too small to be useful, or inappropriately located, the Planning Board may require the applicant to pay a fee in lieu of all or part of the required land dedication. The fee shall be calculated by multiplying the amount of acreage which otherwise would have been required to be donated with the proposed subdivision (rounded to the nearest one-hundredth of an acre) by the average fair market value of one acre of vacant land (rounded to the nearest dollar) determined by the Town Assessor using accepted professional valuation methods.
5. Administration. The type of land donated and land conveyance by fee ownership deed or easement shall be consistent with the land included in the town inventory. Open space impact fees shall be segregated from the Town's general revenues and expended only for the acquisition or improvement of public open space. The Town shall refund to the applicant that portion of the collected open space impact fee that is not expended within ten (10) years from the date of receipt. The Community Standard of public open space, average fair market value of one (1) acre of vacant land, and open space impact fee therein derived shall be published in the Fee Schedule approved and periodically updated by the Town Council. The Fee Schedule shall be available for inspection at the office of the Town Clerk. Any

required fee shall be paid prior to the commencement of construction of the subdivision and/or issuance of a building permit.

(u) Utility Access.

All lots shall have access to water, electrical, and telephone and other utilities.

(v) Phasing.

If a subdivision is proposed for development in phases, no portion of the subdivision may be left out of the phasing plan. Sequence of construction of subdivision phases shall be determined. Each phase or, as applicable, sequence of phases shall preserve the standards of review of Sec. 16-3-1 of this Ordinance, with emphasis on emergency vehicle access. The Planning Board may impose such conditions as it deems necessary to assure the orderly development of the subdivision to assure that all necessary improvements are made for each separate phase.

Sec. 16-3-2. Infrastructure Design and Construction Standards. The purposes of the infrastructure construction standards are to minimize traffic safety hazards and the cost of municipal maintenance and reconstruction, to ensure that roads are consistent with the Town's rural character, to promote a sense of community, and to be consistent with the Comprehensive Plan. The standards shall be flexible where an applicant can demonstrate that alternative approaches will meet the above stated purposes. Roads, sidewalks, parking areas and accessways within a project shall be classified by the Planning Board in accordance with their location and their present and contemplated usage. A road which is likely to be upgraded in classification in the foreseeable future shall be laid out to the standards of the potential future classification. The widths and grades for all project roads shall be determined in accordance with the **Road Classification Standards Table**, subject to the following qualifications:

1. Where an existing road with right-of-way of less than fifty (50) feet is being extended, the new right-of-way may be the same width as the existing road upon approval by the Planning Board and Public Works Director.
2. Width of right-of-way may be forty (40) feet for a road shorter than three-hundred (300) feet which ends in a cul-de-sac, upon approval by the Planning Board and Town Engineer.
3. Notwithstanding the **Road Classification Standards Table**, dead-end roads in excess of one thousand (1,000) feet in length must comply with Sec. 16-3-2 (a)(9) of this Ordinance.
4. The Planning Board, with the advice of the Town Engineer, may require rights-of-way wider than those set forth in the **Road Classification Standards Table**, in order to satisfy the purposes of this Ordinance. [Revision eff. 06-08-2022]

A. Road Design

1. Sight Distance

a. New Subdivision Road sight distance.

(1) Measurement. Sight distance shall be measured from a height 3.5 (three and one half) feet above the traveled way, in each direction of the road to a height .5 (one-half) foot above the pavement.

(2) Standard. The road shall be designed to achieve a sight distance in the range indicated on the **Road Classification Standards Table**. The maximum sight distance range shall not be exceeded without reasonable justification which shall be presented by the applicant.

b. Road Intersections.

(1) Measurement. The sight distance for a road entering onto a second road shall be measured from a location fifteen (15) feet behind the edge of traveled way of the side road or drive at an elevation of three and one half (3.5) feet above the finished grade surface to a point four and one quarter (4.25) feet above the pavement in the centerline of the travel lane approaching the intersection. Where unavoidable obstructions are encountered at the fifteen (15) foot setback, the location may be moved to a point no closer than ten (10) feet from the traveled way. Isolated interruptions of minimal time duration in sight distance due to obstructions, such as a single tree, shall not be included in the measurement of sight distance.

(2) Standard. The road intersection shall be designed to achieve a sight distance in the range indicated on the **Road Classification Standards Table**.

c. Single Family driveways. When the Planning Board requires that an individual driveway be shown on the subdivision plan, the sight distance measurement and standard shall meet the requirements in the **Road Classification Standards Table**.

2. Road Geometry. New subdivision roads shall be designed to comply with the **Road Classification Standards Table** and the following standards:

a. Horizontal Alignment. At all changes in alignment, road sidelines shall be connected by horizontal curves. All changes in slope shall be connected with vertical curves whose length shall be consistent with the **Road Classification Standards Table**. When the degree of curvature exceeds two (2) degrees on rural connector, collector, or arterial roads, the curves shall be super-elevated to meet the criteria established by AASHTO, most current edition.

b. Intersection Design

- (1) Roadway grades approaching an intersection shall not exceed three (3) percent for a distance of fifty (50) feet from the edge of paving of the road being entered.
 - (2) Road intersections shall be separated at least one hundred twenty-five (125) feet whenever possible. A separation of less than one hundred twenty-five (125) feet may be acceptable when a low volume of traffic allows for safe traffic circulation.
 - (3) At intersections and common boundaries of subdivisions, roads shall be continuous and in alignment with existing roads if possible. Roads shall be laid out so as to intersect as nearly as possible at right angles, and no road shall intersect any other road at less than a sixty (60) degree angle.
- c. **Traveled Way.** The traveled way shall be designed consistent with the **Road Classification Standards Table**. Every traveled way shall maintain a constant width and shall be centered in its right-of-way. The Planning Board may also shift the traveled way up to five (5) feet from the center to preserve existing mature trees or minimize wetland alterations.
 - d. **Radii.** Radii of curves and lengths of tangents between curves shall be consistent with the **Road Classification Standards Table**. At a minimum, road radii shall provide adequate turning radius for a B-40 vehicle as defined by AASHTO. To measure turning radius, the full width of pavement of both lanes of traffic shall be included, exclusive of shoulder areas. Minimum turning radius shall be required from both directions of the intersecting road.
 - e. **Shoulders.** The width of shoulders and surfacing shall be determined by reference to the **Road Classification Standards Table**. The road lanes shall be striped to provide a traveled way in compliance with the **Road Classification Standards Table**.
3. **Sidewalks.** Sidewalks shall be five (5) feet wide and shall be separated from the traveled way by a grassed esplanade in accordance with the **Road Classification Standards Table**. When locating the sidewalk, a one (1) foot wide buffer strip shall be preserved along the right-of-way between the back edge of the sidewalk and the right-of-way. Sidewalks shall be required on one side of the road and notwithstanding Sec. 16-3-5 of this Ordinance, shall not be waived by the Planning Board. The design of a Rural Connector shall include a sidewalk path within ten (10) feet of the outside edge of the right-of-way. The sidewalk path shall be field located to avoid significant vegetation.
 4. **Curbing.**

- a. **Installation.** Curbing shall be installed at road intersections and have a radius of at least twenty-five (25) feet, unless otherwise approved by the Town Engineer. Curbing may be required to aid in slope stabilization.
 - b. **Material.** Curbing shall consist of granite, extruded concrete or bituminous concrete; design and choice of materials for curbing shall be based upon the anticipated use of the road involved and shall be subject to the approval of the Town Engineer and the Public Works Director. Granite curbing specifications shall be five inch by seventeen (5 x 17) inch vertical plus or minus one (1) inch vertical as required by the Public Works Director. Granite curbing installed at intersection shall be set in concrete.
- 5. Drainage. All roads shall have an underground enclosed drainage system, and no surface drainage shall be conveyed or diverted across a traveled way.
- 6. Road Signs. Road signs shall be approved by the Public Works Director and installed in compliance with MUTCD (Manual on Uniform Traffic Control Device) standards .
- 7. Road Trees.
 - a. **Adjacent to Road.** Each road shall be designed to include, within the right-of-way, at least one (1) tree for every fifty (50) feet of each side of road frontage. Up to twenty (20) percent of road trees may be ornamental trees. All trees shall comply with tree species and size standards further described in Appendix C Road Tree List. Existing trees within the right-of-way which have been preserved may be counted toward this requirement if the species, size, preservation measures, and post-construction condition of the trees are approved by the Tree Warden. Where an esplanade is included in the road design, road trees required on that side of the street shall be planted in the esplanade. The esplanade shall be filled with soil, such as common borrow, suitable for growing trees. Where the esplanade provides insufficient soil volume to support a road tree, structural soils may be used underneath the sidewalk to expand the tree growth area. See also Appendix C, Road Tree List. [Rev. eff. 11-5-2016]
 - b. **Cul-de-sac.** Landscaping including trees and other plant materials shall be required in the center island of a cul-de-sac.
- 8. Dead-End Roads.
 - a. **Length.** Dead-end roads shall not be longer than two thousand (2,000) feet in length and shall not serve more than twenty (20) dwelling units. The maximum length, the maximum number of dwelling units and the mandatory requirements of dead-end roads shall not be waived by the Planning Board, notwithstanding the waiver provision in Sec. 16-3-5 of this Ordinance.

- b. **Minimum Requirements.** Any dead-end road in excess of one thousand (1,000) feet in length shall meet mandatory requirements for the entire length of the dead-end road. Mandatory requirements shall include (1) the placement of all utilities underground, (2) the dedication to the Town of a fifty (50) foot wide right-of-way, and (3) a minimum pavement width of twenty-two (22) feet.
- c. **Added Requirements.** The Planning Board may require improvements such as (1) the placement of sidewalks to Town specifications, (2) limited clearing of the right of-way with the advice of the Town Tree Warden on the stability of adjacent tree growth, (3) the provision of an emergency access lane with a minimum width of eighteen (18) feet and (4) a minimum esplanade width of six (6) feet for divided entrances.
- d. **Measurement.** A dead-end road shall be measured from the end of the existing or proposed dead-end road to the closest intersecting through road. The measurement shall include proposed road(s) and existing road(s), public or private, whether within or beyond the limits of the proposed subdivision. The length of the road shall be measured from the center line of the closest through road, along the center line of the dead-end road to the end of pavement or traveled way. Divided entrances shall be allowed only if they provide direct access to arterial roads as classified by the Town.
- e. **Termination.** All dead-end roads shall end in a cul-de-sac or a T-shaped turnaround and be designed according to the dimensions shown on Appendix D. All cul-de-sacs shall be so designed that water will drain from all portions into a stormwater management system. (Effective: June 7, 2023) The interior of all cul-de-sacs shall be neat and orderly, and shall either be left in its natural condition or be graded, loamed and seeded. Granite monuments shall be installed by the developer at the intersection of each side of the road with the cul-de-sac and at the radius point of the cul-de-sac, as shown in the cul-de-sac diagrams.

A T or L-shaped turnaround may be used and placed on the right side of the road. All T-shaped turnarounds, whether temporary or permanent, shall be paved. No parking is allowed in a turnaround. See also Appendix D, Turnaround Design.

- 9. **Private Road.** The first fifty (50) feet of a private road from the edge of the road shall be paved. A private road shall be constructed in accordance with the right-of-way width, gravel base, traveled way width and monumentation of a local road. The Planning Board may require that a road be constructed to public road standards; further the Planning Board shall require dedication of the roads as public rights-of-way if there is potential for future development that could be accessed through the proposed subdivision.
- 10. **Monuments.** A four (4) inch square granite monument shall be set at each point of curvature and angle point on both sides of every road and at every property line intersection. A surveyor's pin shall be set at each property line corner. Except with the permission of Public Works Director, all monumentation shall set flush with

existing grade. At road intersections and at locations where monuments on one road line would fall within two hundred (200) feet of each other, the Public Works Director may reduce this requirement provided that the reduced monumentation is adequate for road line surveys. [Revised eff. 12-10-03]

B. Infrastructure Construction. [Revision eff. 06-08-2022]

1. Clearing

- a. Prior to site alteration, a land surveyor registered in the State of Maine shall mark the layout of the road and verify for the Town Engineer that the layout is in conformance with the approved plans.
- b. The construction area shall be selectively cleared of all trees, brush and vegetation only as necessary for construction of the roadway, shoulder, utilities and any drainage ways as approved by the Planning Board. Clearing provisions shall be accomplished in accordance with the most recent revision of the Standard Specifications of the Maine Department of Transportation, Section 201.
- c. Limits of clearing shall be marked in the field and may be inspected by the Town Engineer prior to further site preparation. In a Rural Connector, a ten (10) foot wide strip shall be preserved at the edge of the right-of-way, where a sidewalk path may be placed. The ten (10) foot wide strip shall be retained in a natural state and serve as a buffer, although trimming may be allowed to preserve scenic views.

2. Grading to Subgrade

The roadway shall be brought to subgrade through the process of excavation and/or placement of fill. Such earthwork shall be accomplished in compliance with the technical provisions of Section 203 of said MDOT Specifications. Blasted ledge, which is, less than fourteen (14) inches in any dimension, may be used as fill up to a level one foot and one-half (1.5) feet below subgrade, and shall be mixed with sufficient finer material to make a firm, stable embankment. Revised eff. 12-10-03)

3. Gravel for Roadways, Sidewalks, and Parking areas. The total gravel courses shall be a minimum of one and one-half (1.5) feet in depth for roads, parking, access and circulation areas. When subgrade materials are marginal, the Town Engineer may require additional subbase or base gravel.

- a. **Sub Base Gravel Course.** The lower subbase course shall be a minimum of fifteen (15) inches of material and shall conform to the requirement of Section 703.06 (b) Type D of the said MDOT Specifications, except that no particle of rock shall exceed three (3) inches as determined by a three (3) inch square mesh sieve.

- b. Base Gravel Course.** The base gravel course shall be three (3) inches of material and shall conform to the requirements of Section 703.06 (a) Types A and B of said MDOT Specifications except that maximum particle size for Type B shall be two (2) inches.
- c. Compaction.** The total base gravel shall be placed and compacted in accordance with technical requirements of Section 304 of said MDOT Specifications. Initial compaction tests shall be taken at a minimum interval of every fifty (50) linear feet along the roadway for each lift of material placed, and then compaction tests at a greater separation if initial tests pass. Retesting of any failed areas must be conducted after remedial action has been accomplished. Additional compaction tests may be required by the Public Works Director.
- d. Sidewalk.** Gravel for sidewalk base shall be twelve (12) inches in depth and shall meet the requirements of Section 703.06 (a) of said MDOT specifications, Types A, B, or D, placed in one lift compacted to ninety-five (95) percent of optimum density.
- e. Esplanade.** The base of the esplanade located between the road and the sidewalk shall not be filled with gravel. The underlying material under the loam layer shall be common borrow or a similar material conducive to tree growth. The maximum grade of the esplanade cross-slope shall be two (2) percent.

4. Paving.

- a. HMA.** Paving shall be of Hot Mix Asphalt (HMA) meeting the requirements of Section 401 and 403 of said MDOT Specifications. Placement of HMA shall conform to MDOT Specifications (Section 401). Sidewalk HMA shall be placed in two (2) one and one quarter (1.25) inch lifts using 9.5 mm fine mix. HMA thickness shall be as follows:

	Pavement Base Course	Pavement Surface Course	Pavement Surface Course	Total
Arterial	2.5 inches	1.5 inches	--	4 inches
Collector	2.5 inches	1.5 inches	--	4 inches
Rural Connector	2.5 inches	1.5 inches	--	4 inches
Feeder	2.5 inches	1.5 inches	--	4 inches
Local Roads	2.5 inches	1.5 inches	--	4 inches
Sidewalks			2.5 inches	2.5inches
Parking	2.5 inches	1.5 inches		4 inches

[Revised eff. 06-008-2022]

- b. Base Course.** The HMA base course shall be 12.5 mm or 19 mm mix for all classes of roads, sidewalks, access and parking areas. [Revised eff. 06-008-2022]

- c. **Surface Course.** The HMA surface course shall be 9.5 mm mix for all classes of roads, sidewalks, access and parking areas. The Public Works Director may approve use of 12.5 mm mix when not part of a subdivision.
[Revised eff. 06-008-2022]
 - d. **Placement.** Placement of all HMA shall be in compliance with the technical requirements of Section 401 of said MDOT Specifications.
 - e. **Driveways.** Driveway entrances shall include a paved apron starting at the edge of road pavement and extending four (4) feet toward the property being served. In locations where driveways are coincident with sidewalks, the paved apron shall extend from the edge of the road pavement to four (4) feet beyond the back of the sidewalk. Driveway aprons shall meet the criteria for local road paving.
 - f. **Curb Platform.** Where bituminous or extruded concrete curbing is to be placed, the paving shall extend one (1) foot beyond the back of curb to serve as a curb platform.
5. Curbing. Curbing shall be placed in accordance with Section 609 of said MDOT Specifications. Bituminous concrete curbing shall meet the requirements of Section 712.36 of said MDOT Specifications. Extruded concrete curbing shall meet the requirements of Section 712.03 of said MDOT specifications. The curb cross section shall be of the low profile berm curb type and shall be placed on top of the HMA base course.
 6. Stone Fill, Riprap, Stone Ditch Protection. When required for erosion control, stone fill, riprap and stone ditch protection shall be placed in accordance with Section 610 of said MDOT Specifications.
 7. Sodding - Erosion Control Mesh. Where required to prevent erosion and when indicated on the plans, sod shall be placed in accordance with the technical requirements of Section 616 of said MDOT Specifications. When required to prevent erosion and where indicated on the plans, erosion control mesh shall be placed in accordance with the technical requirements of Section 613 of said MDOT Specifications.
 8. Seeding. All exposed slopes and areas not to be paved shall be seeded in accordance with the technical requirements of Section 618 of said MDOT Specifications. Seeding Method 1 shall be used. Mulch shall be applied to all seeded surfaces in accordance with the technical requirements of Section 619 of said MDOT Specifications.

Road Classification Standards Table

	Right of Way	Traveled Way	Minimum Intersection Sight Distance	Width of Shoulder	Horizontal Sight Distance	Design Speed	Sidewalk	Esplanade	Center Line Radius
ARTERIAL	52'	24'	200'	5'	200-400	30-45	5' (1)	5'	300-800
COLLECTOR	50'	24'	200'	1'	200-250	30-35	5' (1)	6'	300-400
RURAL CONNECTOR	50'	24'	200'	4'	200-250	30-35	5'	7'	300-400
FEEDER	50'	24'	150'	0'	150-200	25-30	5'	7'	150-300
LOCAL	50'	22'	125'	0'	125-150	20-25	5'	8'	125-150
(1) Either sidewalk or bikeway. Width should increase for dual purpose									

[Revised eff. 06-08-2022]

See also Appendix E, Road Profiles

C. Stormwater and Surface Water Drainage

1. Stormwater collection and transport systems shall comply with Chapter 25-1. Stormwater Development Review, 25-2 Post Construction Stormwater Maintenance, and 25-4 Erosion and Sedimentation Control. (Effective June 7, 2023)
2. Ditches, where permitted, on the approved plans shall have a slope of at least two (2) percent and side slopes not exceeding three to one (3:1). Where required to prevent erosion, ditches shall be riprapped, sodded, or otherwise protected.
3. Storm drain pipelines and culverts shall be installed in accordance with the technical requirements of Section 603 of said MDOT Specifications. All pipes shall be designed to withstand earth backfill plus H-20 wheel loadings. Trench backfill over drain lines within the paved way shall be compacted to ninety-five (95) percent of optimum density. Outside of paved areas backfill shall be compacted to ninety (90) percent of optimum density.
4. When required to assure a stable subbase, rigid perforated underdrain pipe shall be installed in accordance with the technical requirements of Section 605 of said MDOT Specifications. Coiled underdrain pipe will not be permitted. (Revised eff. 12-10-03)

5. Manholes and catch basins on storm drain lines shall meet the technical requirements of Section 604 of said MDOT Specifications. Shop drawings for the units desired for use shall be submitted to the Town Engineer for approval prior to placement.
6. Upon the advice of the Town Engineer, the Town Council may require an applicant to construct storm or sanitary sewers at a greater depth or of larger diameter than is required to serve the area being developed when said greater depth or larger diameter is deemed necessary to provide proper service for adjacent areas.
[Revised eff. 06-008-2022]

D. Underground Utility Lines

1. All sanitary sewer lines and appurtenances shall be constructed in accordance with the requirements of the Town of Cape Elizabeth Sewer Ordinance, particularly Sec. 15-1-6 and 15-1-7.
2. Any road to be accepted shall be served by a water main if said road joins a road containing a water main. No water main shall be less than eight (8) inches in diameter unless the fire department and the Planning Board certify in writing that a water main less than eight (8) inches in diameter will furnish adequate water service for the road to be accepted and for any future extension of said road.
3. All underground utility mains shall be installed before the gravel surface is placed; and, if possible utility service lines to individual lots shall be installed before gravel surface is placed.
4. Backfill materials for all underground utilities shall be compacted to ninety-five (95) percent of optimum density under paved areas and to ninety (90) percent of optimum density under non-paved areas.

Sec. 16-3-3. Reserved [Revised eff. 06-08-2022]

Sec. 16-3-4. Reserved [Revised eff. 06-08-2022]

Sec. 16-3-5. Waivers

Where the Planning Board finds that undue hardship, practical difficulties or restriction upon imaginative and otherwise desirable design may result from strict compliance with this Ordinance, it may waive one or more of the requirements of this Ordinance, in favor of a proposed alternative upon a showing that, as compared with strict compliance, such alternative (1) will not create more hazardous traffic conditions or less sanitary sewage disposal conditions than strict compliance, (2) will provide more varied and imaginative subdivision layout and design, (3) will secure substantially the standards of road design and construction required by this Chapter and the Zoning Ordinance, and (4) will not have the

effect of nullifying the intent and objectives of the Comprehensive Plan or this Ordinance; provided that in granting such waiver the Planning Board may impose such conditions as they deem necessary to secure the foregoing objectives.

Sec. 16-3-6. Legal Provisions

- (a) Appeals.** All appeals from decisions of the Planning Board under this Ordinance and the Zoning Ordinance shall be taken within thirty (30) days following the date of any such decision in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. This procedure shall apply whether or not the appeal involves issues requiring an interpretation of the Zoning Ordinance.
- (b) Applicability of Road Requirements.** The provisions of this Ordinance shall serve as a guide to, but shall not be binding upon, any state, county or municipal body or authority, which may lay out, alter, widen or improve any public way in accordance with the applicable statutes. This Ordinance shall not apply to any roads within the Town for which road profiles had been approved by the Town Engineer prior to March 13, 1968, which were under actual construction as of March 12, 1968 and which had been completed not later than October 14, 1968.
- (c) Amendments to the Subdivision Ordinance.** This Ordinance may be amended by the Town Council following the procedure outlined in Sec. 19-10-3 of the Zoning Ordinance. [Revised eff. 06-08-2022]
- (d) Historical Interpretation.** This Ordinance replaces the Subdivision Ordinance as amended through 12-10-2003. Most of the prior ordinance provisions have not been substantively changed and have been brought forward into this Ordinance. When that is the case, the interpretation by the Town of the provision in the prior ordinance is carried forward to this Ordinance.

Appendix A

Minor Subdivision Submission Requirements

A. General submission parameters.

An application for a Minor Subdivision shall consist of fourteen (14) sets of plans drawn to a scale of no larger than forty (40) feet to the inch and supporting materials. The size of plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) x thirty-six (36) inches, but may be smaller with the permission of the Planning Board. A digital copy of the complete application shall also be made available upon request.

B. List of Submission items.

The application for approval of a Minor Subdivision shall include all the following information. Information that must be shown on a plan is in **bold type**.

1. Right, Title or Interest. Evidence of right, title or interest in the site of the proposed subdivision.
2. Name of Subdivision/Applicant. **Proposed name of the subdivision, name and address of record owner and applicant, names of adjoining property owners, date of submission, north point, and graphic map scale.**
3. Survey. **A standard boundary survey of the site, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; a plan showing the number of the lot, dimensions of area and building envelope of each proposed lot; existing easements; building lines pertaining to the proposed subdivision and to the adjacent properties; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town; sufficient data to determine readily the location, bearing and length of every lot line, and boundary line and to reproduce such lines upon the ground.** Where practical these should be tied to reference points previously established
4. Water Pollution evaluation.
 - a. Topography. **Contour lines at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum, referenced to mean sea level;**
 - b. Surface drainage. **Surface drainage patterns including drainage channels and watershed areas;** the slope of the land and its effect on effluents; the availability and condition of streams used for disposal of effluents; an evaluation of applicable state and local health and water resource rules and regulations.

- c. **Soils.** A soils report identifying **the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in accordance with the USDA Soil Conservation Service National Cooperative Soil Classification;**
 - d. **Air.** Description of any air emissions not normally included in residential construction and use activities.
5. Potable Water. Confirmation of a clean and adequate supply of water to serve the subdivision; **the location and size of any existing and proposed water mains on the property and adjacent water lines that will provide water supply for the property to be subdivided, as well as details showing connections to water systems; nearest hydrant; Where public water is not to be provided, an alternative means of a clean and adequate water supply shall be shown.**
 6. Erosion. A soil erosion and sedimentation control plan prepared and certified by a professional geologist or professional engineer. (Effective June 7, 2023)
 7. Traffic. **Locations, widths and names of existing, filed or proposed roads, cross-sections of the proposed grading for roadways, sidewalks, etc. including width, type of pavement, elevations and grades, preliminary designs of any bridges or culverts which may be required, designed to comply with the Road Design and Construction Standards, Sec. 16-3-2;** a traffic study evaluating the capacity of adjacent roads to safely accommodate the anticipated traffic generated by the proposed subdivision, including an assessment of the likelihood of cut-through traffic, efforts to provide for road connectivity, and applicability of the Maine Department of Transportation regulations.
 8. Sewage Disposal. **All on site public or shared sewage facilities;** a completed HHE 200 form or other subsurface wastewater design for every lot not served by public sewer; **all designs, specifications and details for a clustered private or public sewer system.**
 9. Solid Waste Disposal. Demonstration of adequate capacity for disposal of construction and solid waste to be generated by the subdivision.
 10. Aesthetic, cultural and natural information. **Location of scenic, unique natural, farmland, parkland, historic, and significant wildlife habitat areas located on or adjacent to the proposed subdivision,** as well as supporting documentation.
 11. Local regulations. **The boundaries and designations of zoning districts; applicable space standard and setback provisions, and evaluation of the proposed subdivision's compliance with applicable provisions such as Open Space Zoning (Sec. 19-7-2).**

12. Financial and Technical Capability. Statement of Technical and Financial Capability, including a list of the applicant's development consultants, a description of all prior development projects, and a letter of firm financial commitment from a bank or other source of financing. In the case where the applicant asserts that public disclosure of confidential financial information may prove detrimental to the applicant or the project, the applicant may substitute a recommendation from the Town Manager that the applicant has adequate financial capability to complete the project.
13. Surface Waters. **Location of any portion of the subdivision in the Shoreland Zone; identification of the normal high water line;** assessment of how water quality will be impacted by anticipated discharge from the subdivision.
14. Ground Water. An assessment of how the proposed subdivision will impact groundwater resources.
15. Floodplain. **Location of any portion of the subdivision in the floodplain;** assessment of how construction in the floodplain will comply with the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Ordinance.
16. Wetlands. **The boundaries of all wetlands in accordance with the Zoning Ordinance;** an assessment of how any alterations of wetlands will comply with The Town of Cape Elizabeth Zoning Ordinance, Chapter 19 wetland regulations, Sec. 19-6-9.
17. Stormwater/Phosphorus. **A surface drainage plan or stormwater management plan, with profiles and cross sections drawn by a professional engineer, registered in the State of Maine, showing preliminary design of all facilities and conveyances necessary to meet the stormwater management standards as set forth in this ordinance.** Where the subdivision includes or abuts Great Pond, an assessment of phosphorus loading amounts and impacts on Great Pond.
18. Liquidation Harvesting. **Identification of any portion of the subdivision where timber has been harvested in violation of Title 12, section 8869, subsection 14.**
19. Landscaping. **An inventory of existing vegetation to be preserved; methods of preserving vegetation to be used during construction; a landscaping plan including planting locations, plant types, quantities and size and time of planting; fencing location, type and material and size.**
20. Open Space. **Designation on the plan of land to be permanently protected as open space; calculation of open space provided to meet the Open Space Impact Fee (Sec. 16-3-1(t)); location of easements;** fee interest or easement deeds of open space to be conveyed to the Town or otherwise conserved;
21. Utilities. Evidence of the capacity to provide electrical and telephone facilities.

22. Phasing. **A phasing plan showing the boundaries and name of each phase.**
23. Related information. Any other data as determined by the Planning Board to ascertain compliance with this Ordinance.

Appendix B

Major Subdivision Submission Requirements

Preliminary Review

A. General submission parameters

An application for preliminary review of a Major Subdivision shall consist of fourteen (14) sets of plans drawn to a scale of no larger than forty (40) feet to the inch and supporting materials. The size of the plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) x thirty-six (36) inches. A digital copy of the complete application shall also be made available upon request.

B. List of submission items

The application for preliminary approval of a major subdivision shall include all the following information. Information that must be shown on a plan is in **bold type**.

1. Right, Title or Interest. Evidence of right, title or interest in the site of the proposed subdivision.
2. Name of Subdivision/Applicant. **Proposed subdivision name; name and address of record owner and applicant; names of adjoining property owners; date of plan submission, north point and graphic map scale.**
3. Survey. **A standard boundary survey of the site giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; a plan showing the number of the lot, conceptual dimensions of area and building envelope of each proposed lot sufficient to demonstrate minimum compliance with zoning requirements; existing easements; building lines pertaining to the proposed subdivision and to the adjacent properties; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town; sufficient data to determine readily the location, bearing and length of every lot line and boundary line and to reproduce such lines upon the ground.**
4. Water Pollution Evaluation.
 - a. Topography. **Contour lines at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum and referred to mean sea level;**
 - b. Surface drainage. **Surface drainage patterns including drainage channels and watershed areas;** the slope of the land and its effect on effluents; the availability

and condition of streams used for disposal of effluents; an evaluation of applicable state and local health and water resource rules and regulations.

- c. **Soils. A soils report identifying the soils boundaries and names in the proposed development with the soils information superimposed upon the plot plan in accordance with the USDA Soil Conservation Service National Cooperative Soil Classification.**
 - d. **Air.** Description of any air emissions not normally included in residential construction and use activities.
5. **Potable Water.** Confirmation of a clean and adequate supply of water to serve the subdivision; **the location and size of any existing or proposed water mains on the property and adjacent water lines that will provide water supply for the property to be subdivided, as well as proposed connections to water systems; nearest hydrant; where public water is not to be provided, an alternative means of a clean and adequate supply shall be shown.**
 6. **Erosion.** A soil erosion and sedimentation control plan shall be prepared and certified by a professional geologist or professional engineer. (Effective June 7, 2023)
 7. **Traffic. Location, widths and names of existing, filed and proposed roads;** a traffic study evaluating the capacity of adjacent roads to safely accommodate the anticipated traffic generated by the proposed subdivision, including an assessment of the likelihood of cut-through traffic, efforts to provide for road connectivity, and applicability of the Maine Department of Transportation Regulations.
 8. **Sewage Disposal. All on site public or shared sewage facilities;** a completed HHE 200 form or other subsurface wastewater design for every lot not served by public sewer.
 9. **Solid Waste Disposal.** Demonstration of adequate capacity for disposal of construction and solid waste to be generated by the subdivision.
 10. **Aesthetic, cultural and natural information. Location of scenic, unique natural, farmland, parkland, historic and significant wildlife habitat areas located on or adjacent to the proposed subdivision,** as well as supporting documentation.
 11. **Local regulations. The boundaries and designations of zoning districts; applicable space standard and setback provisions of the Zoning Ordinance, and evaluation of the proposed subdivision's compliance with applicable provisions such as Open Space Zoning (Sec. 19-7-2).**
 12. **Financial and Technical Capability.** Statement of Technical and Financial Capability, including a list of the applicant's development consultants, a description of all prior development projects, and a letter of firm financial commitment from a bank or other source of financing. In the case where the applicant asserts that public disclosure of

confidential financial information may prove detrimental to the applicant or the project, the applicant may substitute a recommendation from the Town Manager that the applicant has adequate financial capability to complete the project.

13. Surface Waters. **Location of any portion of the subdivision in the Shoreland Zoning; identification of the normal high water line;** assessment of how water quality will be impacted by anticipated discharge from the subdivision.
14. Ground Water. As assessment of how the proposed subdivision will impact groundwater resources.
15. Floodplain. **Location of any portion of the subdivision in the floodplain;** assessment of how construction in the floodplain will comply with the Town of Cape Elizabeth Construction Code, Chapter 6, Floodplain Ordinance.
16. Wetlands. **The boundaries of all wetlands in accordance with the Zoning Ordinance;** an assessment of how any alterations of wetlands will comply with the Town of Cape Elizabeth Zoning Ordinance, Chapter 19, Sec. 19-6-9.
17. Stormwater/Phosphorus. A conceptual surface drainage plan or stormwater management plan, showing preliminary design of all facilities and conveyances necessary to meet the stormwater management standards as set forth in this Ordinance. Where the subdivision includes or abuts Great Pond, an assessment of phosphorus loading amounts and impacts on Great Pond.
18. Liquidation Harvesting. **Identification of any portion of the subdivision where timber has been harvested in violation of Title 12, section 8869, subsection 14.**
19. Landscaping. **An inventory of existing vegetation to be preserved;** methods of preserving vegetation to be used during construction; **a conceptual landscaping plan.**
20. Open Space. **Designation on the plan of the land to be permanently protected as open space; calculation of the open space provided to meet the Open Space Impact Fee (Sec. 16-3-1(t)); location of easements;** fee interest or easement deeds of open space to be conveyed to the Town or otherwise conserved.
21. Utilities. Evidence of the capacity to provide electrical and telephone facilities.
22. Phasing. A concept phasing plan, if the project will be phased.
23. Related Information. Any other data as determined by the Planning Board to ascertain compliance with this Ordinance.
24. Community Impact Analysis. The Planning Board may require the applicant to conduct a community impact analysis which will consist of the following demographic features.

- a. Demographic Description. The analysis must identify the demographic market the project intends to serve, including:
 - (1) type of family;
 - (2) average family size;
 - (3) number and ages of children; and
 - (4) anticipated time period to fill all units or lots.

Associated data, such as anticipated income levels, type of employment, and projected housing costs may also be presented to support projections associated with the above demographic description.

- b. Community Impact Analysis. Utilizing the above demographic data, the applicant shall conduct analyses of the following:
 - (1) Estimated impact of traffic systems, including the impact of projects trips on flow characteristics and the impact of traffic on the immediate, existing road structures;
 - (2) Estimated impact on the school system;
 - (3) Estimated impact on public safety providers;
 - (4) Estimated impact on the public works department, including solid waste disposal;
 - (5) Estimated impact on existing storm water management systems including flow and water quality;
 - (6) Estimated impact on the recreation resources and provision of methods to meet proposed needs;
 - (7) Estimated impact on wildlife habitat areas;
 - (8) Impact on the stated goals and objectives of the Comprehensive Plan; and
 - (9) Any other study deemed appropriate by the Planning Board.

Once these analyses have been completed, the applicant shall present this information and impact assessments to the Planning Board for its review and comment.

Final Review

- A. General submission parameters. Same as for Preliminary Review.
- B. List of submission items
 1. Preliminary Approval. All information required to be shown on the preliminary plans, with all amendments required by the Planning Board and other reviewing agencies and those suggested by the Planning Board and adopted by the applicant, and further augmented as follows:
 2. Survey. **Final plan showing the number of the lot, final calculations of lot area, property line dimensions and building envelope for each proposed lot.**

3. Potable Water. **The preliminary plan approved by the Planning Board for water supply supplemented to include final design, details and specifications of installation and connection to existing water mains.**
4. Traffic. **The preliminary plan approved by the Planning Board for road access and traffic supplemented to include final design, details and specifications of proposed roads, driveways as needed, and connections to existing roads.**
5. Sewage Disposal. **The preliminary plan approved by the Planning Board for public or private cluster sewage system supplemented to include final design, details, and specifications of proposed sanitary waste infrastructure and connections to public sewer lines.**
6. Local regulations. **The preliminary plan approved by the Planning Board updated to reflect any changes to how the project complies with local regulations.**
7. Financial Capability. Performance guarantee estimate with detail of unit cost and quantity for the subdivision, segmented into phases if the proposed subdivision will be phased; draft performance guarantee document including issuing agent.
8. Stormwater/Erosion. **The preliminary plan approved by the Planning Board for stormwater management and erosion and sedimentation control supplemented to include final design, details, and specifications of the proposed stormwater infrastructure and any connections to existing stormwater facilities.** (Effective June 7, 2023)
9. Landscaping. **The preliminary plan approved by the Planning Board for landscaping supplemented to include final design, details and specifications including but not limited to a detailed planting plan showing vegetation to be preserved, preservation plan, new planting locations, planting types, quantities and size at time of planting, fencing location, type, size and materials.**
10. Open Space. The preliminary plan approved by the Planning Board for open space preservation supplemented by draft written conservation restrictions, easement deeds, survey descriptions, and any other documentation.
11. State and Federal permits. Written evidence of the issuance of all permits, licenses and approvals required for the subdivision from any federal, state or other local agency.
12. Conditional Municipal Approval. Written evidence of (i) the offer and conditional municipal approval by the Town Council of all roads, sewer lines, drainage easements, proposed public open space, recreation land, and other such common areas and facilities proposed to be dedicated to the Town; or (ii) satisfactory agreements or other documents showing the manner in which private roads, sewer lines and systems, drainage ways, open space, recreation land, and other such common areas and facilities are to be maintained. Written agreements of a dedication to a third party other than the Town must also be submitted and deemed satisfactory by the Planning Board.

13. Phasing Plan. **If the subdivision will be constructed in phases, the phasing plan shall show the entire subdivision and every part of the subdivision shall be assigned to a phase.** The plan shall also identify the sequence of construction of phases and **show how utilities, emergency vehicle access, turnaround space and any other element of the development that will be impacted by phasing will be accommodated for each phase.**

13. Recording Plat. **A Subdivision Plat suitable for recording which includes a prominent notation that there shall be no sale of lots, nor issuance of building permits, nor site work commenced until the required performance guarantee has been approved in accordance with Sec. 16-2-6(c) of this Ordinance.**

APPENDIX C

Road Tree List

[Revised eff. 11-5-2016]

Introduction

The selection of tree species to plant along roadsides, sidewalks and parking lots, including in islands and esplanades, is governed by the Town's commitment to maintaining a sustainable forest canopy. Sustainability requires managing for diversity at the genus level, and to the extent possible, selecting tree species from genera that are considered less susceptible to exotic tree pathogens. The Town's goal is to work toward a forest canopy in which no more than 5% of trees are from the same genus.

Prohibited Species

At the present time, trees species from the following genera are not approved for planting: Acer (Maples), Betula (Birches), Fraxinus (Ashes), Quercus (Oaks), Populus (Aspens), and Tsuga (Hemlocks).

Priority Species

The following tree species are from monotypic genera (ie. each genus has only one species), and are thus considered highly resistant to exotic tree pests. These trees may not be appropriate for many locations, but they should receive priority consideration when site characteristics are appropriate. These tree species are recommended for planting to meet the road tree requirements, subject to final approval by the Tree Warden based on site characteristics. The list includes the scientific and common tree name, whether the tree is native to Maine, expected height at maturity, and comments when applicable. All trees must be planted with a minimum caliper of 2 inches.

Scientific	Common	Native	Height	Comments
Cercidiphyllum japonicum	Katsuratree	N	60'	
Eucommia ulmoides	Hardy Rubber Tree	N		
Ginkgo biloba	Maidenhair Tree	N	60'	Male trees only
Gymnocladus dioicus	Kentucky Coffeetree	N		
Maackia amurensis	Amur Maackia	N	40'	
Maclura pomifera	Osage Orange	N		
Ptelea trifoliata	Hoptree	N	20'	

Acceptable Species

The tree species listed below are acceptable for planting to meet the road tree requirements, subject to final approval by the Tree Warden based on site characteristics. The list includes the scientific and common tree name, whether the tree is native to Maine, expected height at maturity, and comments when applicable. All trees must be planted with a minimum caliper of 2 inches.

Scientific	Common	Native	Height	Comments
Aesculus hippocastanum	Horsechestnut	N	70'	
Aesculus x carnea	Red Horsechestnut	N	40'	
Carpinus betulus	American Hornbeam	Y	30'	
Carpinus caroliniana	European Hornbeam	N	40'	
Carya ovata	Shagbark Hickory	Y	80'	
Cladrastus kentuckea	Yellowwood	N	60'	
Corylus columnna	Turkish Filbert	N	50'	
Gleditsia triancanthos	Honey Locust	N	40	Var. inermis
Juglans nigra	Black Walnut	N	70'	
Koelreuteria paniculata	Paniced Goldenraintree	N	30'	
Liriodendron tulipifera	Tuliptree	N	70'	
Liquidambar styraciflua pods	Sweetgum	N	60'	Spiny seed
Magnolia spp.	Magnolia	N	Various	
Nyssa sylvatica	Tupelo	Y	60'	
Ornamental spp.	Pears, Crabapples, Dogwoods, Cherries, tree form of Hydrangea & Hibiscus, etc.	Y/N	Various	As approved by tree Warden
Ostrya virginiana	Eastern Hophornbeam	Y	30'	
Oxydendrum arboreum	Sourwood	N	30'	

Platanus x acerfolia	London Plane	N	75'	
Platanus occidentalis	American Sycamore	Y	75'	
Sorbus alnifolia	Korean Mountain Ash	N	35'	
Stewartia pseudocamelia	Japanese Stewartia	N	30'	
Syringa reticulata	Japanese Tree Lilac	N	30'	
Tilia americana	American Basswood	Y	70'	Cultivars only
Tilia cordata	Littleleaf Linden	N	60'	
Tilia tomentosa	Silver Linden	N	60'	
Ulmus hybrids	Accolade, Triumph	N	50'	
Ulmus parvifolia	Chinese Elm	N	50'	
Zelkova serrata	Zelkova	N	50'	
Other species	E.g., Conifer spp.	Y/N	Various	As approved by Tree Warden

Cultivars and Hybrids

Cultivars and hybrids of the tree species listed above, unless specifically identified above, require approval of the Tree Warden.

Esplanade and Islands

The key to planting sustainable trees in esplanades and islands is to ensure there is sufficient soil volume available to support the expected size of maturity for the tree species selected. Accordingly, any plan to plant trees species from the lists above in an esplanade or island must be accompanied by an analysis of available soil volume, and reference to a soil volume table or other guide showing the soil volume available is sufficient to support the tree selected.

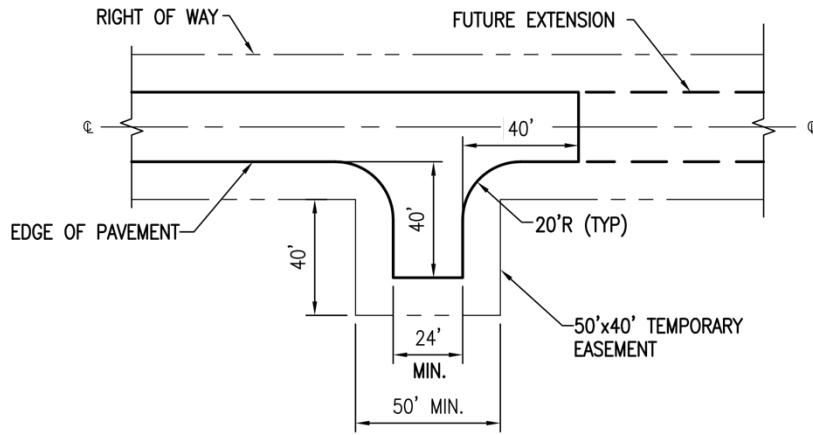
Site and Tree Characteristics

Tree species vary in their environmental needs and response to site characteristics. Just because a tree species is listed above doesn't mean it is the right tree for a particular location. Site characteristics such as moisture, presence of roadside or aerial salts, soil pH, and sun exposure must all be considered in selecting the right tree for the right location. Tree characteristics such as expected height and crown spread at maturity, fruit dropping, and presence of thorns, must also be considered for particular sites. Tree Warden approval is required to help ensure that site and tree characteristics are appropriate for a desired planting location.

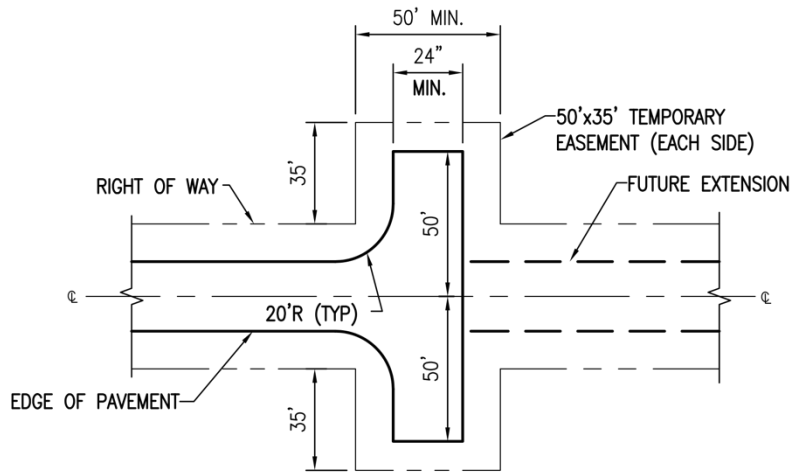
Appendix D

Turnaround Designs

Page 1 of 2



ALTERNATE #1



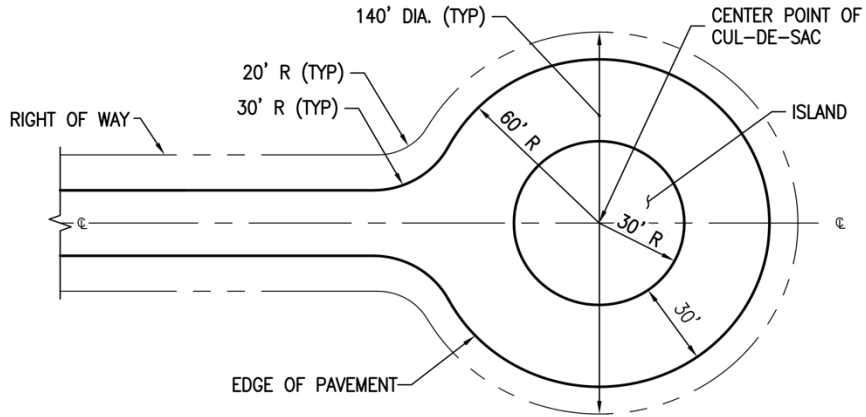
ALTERNATE #2

MINIMUM DIMENSIONS
TURN-AROUNDS
NOT TO SCALE

Appendix D

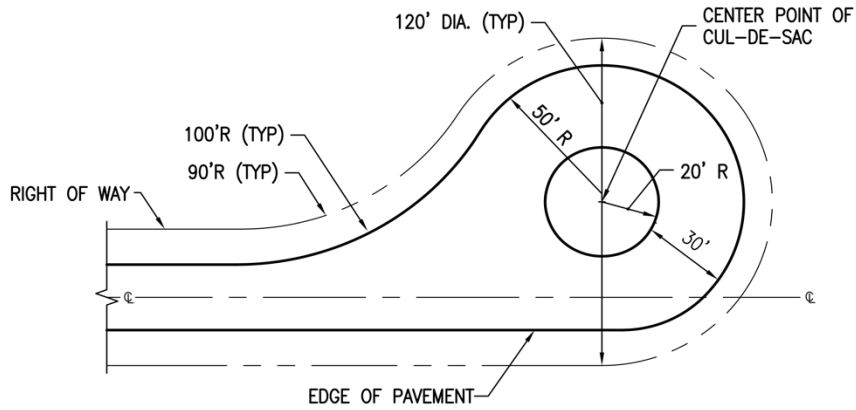
Turnaround Designs

Page 2 of 2



MINIMUM DIMENSIONS
CUL-DE-SAC WITH ISLAND

NOT TO SCALE

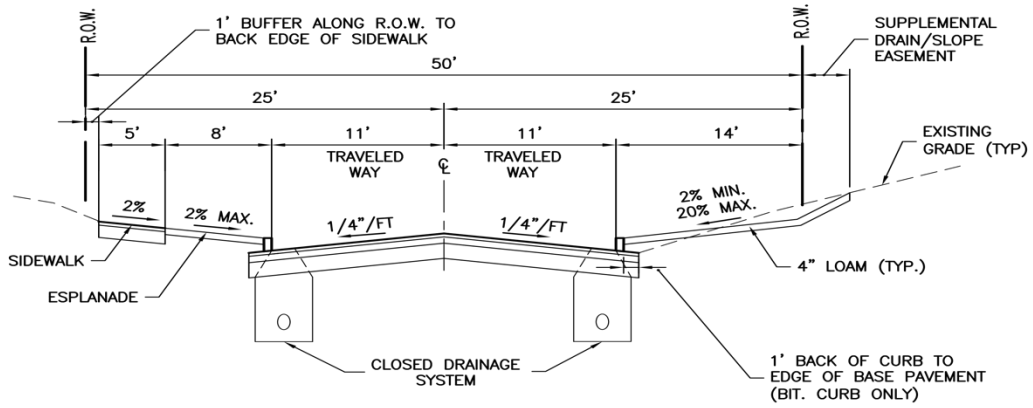


MINIMUM DIMENSIONS
CUL-DE-SAC WITH ISLAND

NOT TO SCALE

Appendix E

Road Cross Sections - Local Road

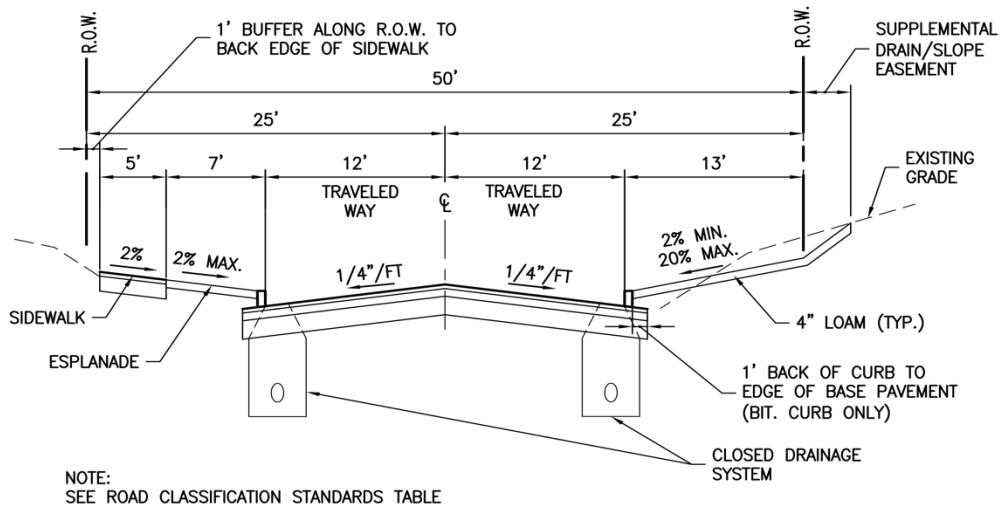


NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

LOCAL ROAD
NOT TO SCALE

Appendix E

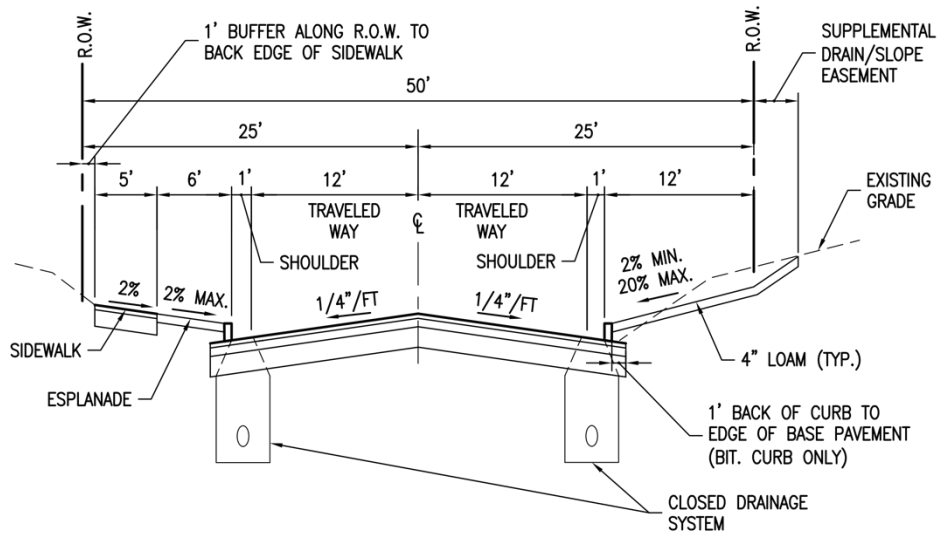
Road Cross Sections - Feeder Road



FEEDER ROAD
NOT TO SCALE

Appendix E

Road Cross Sections - Collector Road

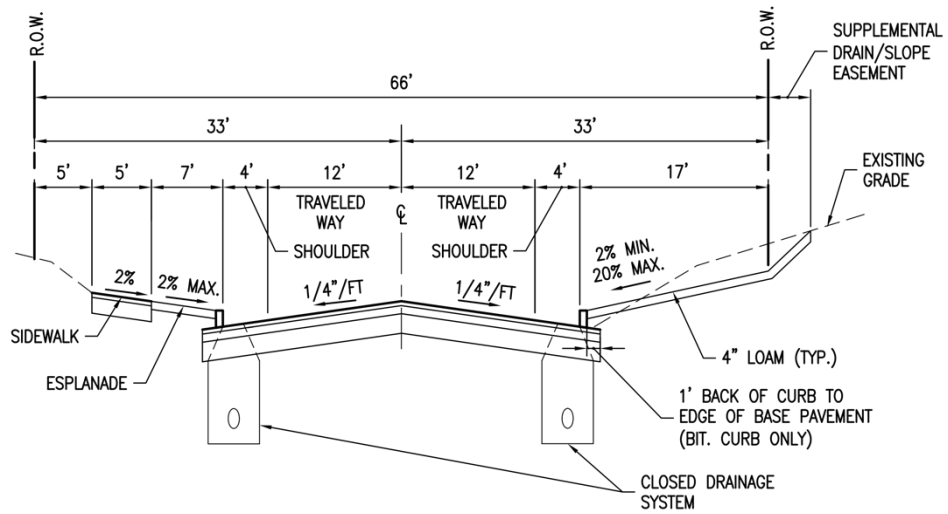


NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

COLLECTOR ROAD
NOT TO SCALE

Appendix E

Road Cross Sections - Rural Connector

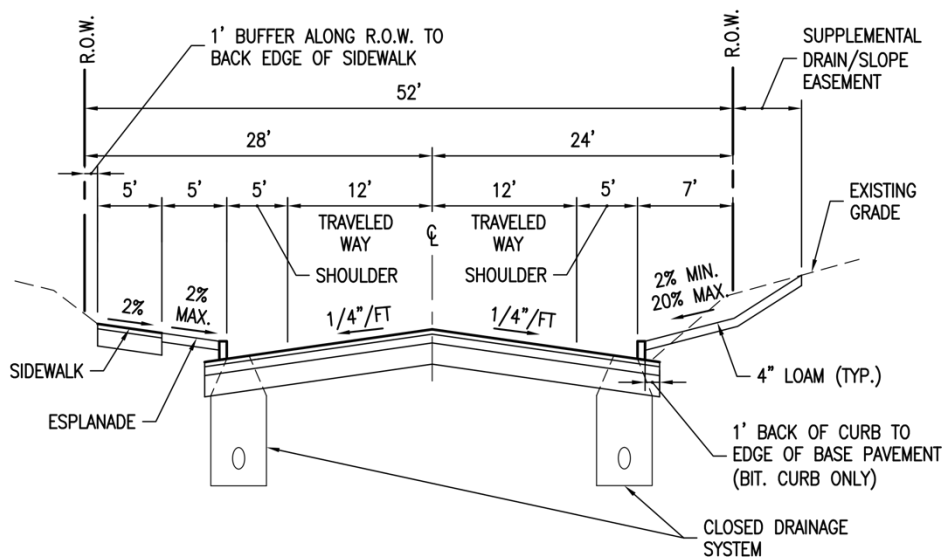


NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

RURAL CONNECTOR ROAD
NOT TO SCALE

Appendix E

Road Cross Sections - Arterial Road



NOTE:
SEE ROAD CLASSIFICATION STANDARDS TABLE

ARTERIAL ROAD
NOT TO SCALE