

**DURHAM PLANNING BOARD  
REGULAR MEETING AGENDA  
Durham Town Offices, 6:30 p.m.  
January 4, 2022**

***NOTE: No public comment will be taken on individual applications at the meeting unless the Board schedules a formal public hearing with required notice posted. Comments on applications can be submitted in writing to the Town Planner and will be forwarded to the Planning Board and the applicants.***

1. Roll Call & Determination of a Quorum
2. Amendments to the Agenda
3. Acceptance of the Minutes of Prior Meetings (December 7, 2022)
4. Informational Exchange on Non-Agenda Items:
  - a) Town Officials
  - b) Residents (Public comment will be taken)
  - c) Non-Residents (Public comment will be taken)
5. Continuing Business
  - a) Completeness Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)
  - b) Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)
6. Other Business:
  - a) Board Discussion of Draft Land Use Ordinance Amendments (Public comment will not be taken)

### **3. Acceptance of the Minutes of Prior Meetings (December 7, 2022)**

## 1. Roll Call & Determination of a Quorum

**In attendance:** John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Ron Williams, Tyler Hutchison (late arrival) and George Thebarga (Town Planner).

**Absent:** Anne Torregrossa

**Guests:** Charles Burnham (Applicant for Deer Creek Project)  
Kevin Clark (Agent from Sitelines, for James & Grace Cullum)

## 2. Amendments to the Agenda: None

## 3. Acceptance of the Minutes of prior meeting (November 2, 2022)

Allan Purinton moved to accept the minutes from November 2, 2022 meeting as presented. Ron Williams seconded; the Board approved 4-0.

## 4. Informational Exchange on Non-Agenda Items:

### a.) Town Officials

- The Conservation Commission held a public informational meeting on December 6, 2022 at the Eureka Center to review the draft amendments to the zoning map to recalculate the town's Resource Protection.
- The Town Planner received an update from the consultant doing the town's GIS Digital Tax Mapping. The new system will be available soon and the information will be put up on the town website.

### b.) Residents – None

### c.) Non-residents – None

## 5. Continuing Business

- ### a.) Completeness Review of Final Plan for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)

Town Planner Comments:

- The application was found to be incomplete at the November 2 meeting due to the following items:
  - DEP approval of the new stream crossing and removal of the existing one.
  - Army Corps of Engineers (ACOE) approval of the new stream crossing.
  - MDOT permit for the road entrance.
  - Assessor's map and lot number of the subject parcel on the recording plan.
- The applicant has submitted copies of their DEP and ACOE permit applications.
- The applicant has submitted a stormwater permit application to DEP.
- According to the email from Heather Stukas of ACOE, permits are required for certain aspects of the construction (email 11-21-22).
- The applicant is still waiting for the MDOT permit as of the updated submissions on November 23, 2022.
- Per section 6.8.C of the Land Use Ordinance, the applicant is to obtain approvals from outside agencies prior to submission of the final plan.
- The Planning Board has authority to grant submission waivers under Section 6.35.A. The applicant has not submitted a request for waiver of outside agency approvals.
- The Town Planner has prepared draft complete and incomplete letters for Board consideration.

Ron Williams moved that the application is complete on condition of receiving the three outside agency permits. Allan Purinton seconded. The motion failed 2-3.

Juliet Caplinger motioned that the application has been deemed incomplete based on the missing permits. Tyler Hutchison seconded. The motioned passed 3 – 2.

The Planning Board will meet with the applicant at the next meeting, January 4, 2023.

## 6. New Business:

### a.) Completeness Review of Final Plan Application for Amendment to the Brown Road Subdivision Map 1, Lot 9A (Public comment will not be taken)

#### Town Planner Notes:

- The applicant submitted a final plan application on November 23, 2022.
- The application includes a procedural waiver request to combine preliminary and final approvals per the standards of Section 6.36.B:
- The proposed new lot is an amendment to a recorded subdivision plan involving two lots.
- It is not clear on what basis the original subdivision approval was required or requested since divisions involving the creation of two lots are exempt from subdivision review.
- It may have been related to a discontinued road separating parts of Lot 9A-1 shown on the original subdivision plan leading someone to conclude that three lots were being created or a prior division within the 5 years preceding the split.
- A subdivision plan for that division was approved by the Planning Board and recorded in the Androscoggin County Registry of Deeds on April 2, 1996.
- Per Section 6.11, revisions to approved subdivision plans must go through preliminary and final approval processes.
- Section 6.35.B was adopted to deal with what many towns treat as “minor subdivisions” providing a simplified and expedited review process for small projects. Rather than treating all subdivisions with a limited number of lots as minor subdivisions, Durham follows a State model where subdivisions are reviewed on a case-by-case basis to determine if there are issues that warrant more thorough treatment. A procedural waiver can be granted by the Planning Board if such issues are not present.
- The applicant is seeking a procedural waiver to combine preliminary and final approval and has submitted a waiver request to that end.
- The Board decision on granting the procedural waiver affects the completeness determination.
- The application is substantially complete if the procedural waiver is granted.
- Draft letters of completeness and incompleteness are provided for the Board’s consideration.

**Waivers of Procedural Requirements:** The Board may allow an applicant to combine the final plan and preliminary plan application steps into one procedure, upon making all the following written findings of fact:

1. No new streets are proposed;
2. No approvals are required from the Maine Department of Environmental Protection under the Site Location of Development Act, Stormwater Law, or Natural Resources Protection Act, other than a “Permit by Rule;”

3. The Board agrees to approve a waiver from the requirements to submit a stormwater management plan and sedimentation and erosion control plan; and,
4. The application contains all other applicable submissions required for both the preliminary and final plan steps, except for those items for which a waiver of a required submission has been requested and granted by the Planning Board.

Motion made by Ron Williams: The proposed subdivision meets the criteria for granting a waiver to combine preliminary and final approvals. Motion seconded by Tyler Hutchison. The motioned passed 5-0.

**b.) Substantive Review of Final Plan Application for Amendment to the Brown Road Subdivision Map 1, Lot 9A (Public comment will not be taken)**

**Town Planner Notes:**

- The Planning Board granted subdivision approval for Lot 9-A in 1996.
- Under Section 6.11 amendments to recorded subdivision plan require amended plan approval by the Planning Board.
- The applicant submitted a procedural waiver under Section 6.35.B. to combine preliminary and final approval stages.
- The proposed lot has sufficient road frontage on Brown Road and will meet the minimum lot size of 90,000 square feet.
- The main issues involved are making sure that the lot passes a septic system soil test and there are no significant site constraints or environmentally sensitive features on the lot.
- The applicant's submissions indicate there are no steep slopes or wetland areas on the proposed lot.
- The applicant is requesting a waiver of the standard for on-site water supply for fire protection purposes.
- The applicant has also submitted a waiver request for the requirement to put a well exclusion zone around the septic system.
- Well exclusion zones are important in cluster subdivisions where well locations are limited by septic systems (100-ft separation required) on abutting lots.
- The applicant has submitted an erosion and sedimentation control plan for the new home construction.
- The Town Planner reviewed the readily available State data on sensitive natural resources in the Comprehensive Plan and did not find any evidence of such resources being present at this location.
- To avoid confusion, new lot should be designated as Lot 9A-1 rather than Lot K-2 as shown on the proposed subdivision plan and the existing house and lot should be designated as Lot 9A.
- The Town Planner has prepared draft findings and approval conditions.

Tyler Hutchison motions to accept the application as complete. Allan Purinton seconds. Motion carries 5 – 0.

**Waivers of Performance Standards:** Where the Board makes written findings of fact that due to special circumstances of a particular tract proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or an alternative design is equal to or better in meeting the statutory review criteria, it may waive the design standards, subject the following criteria:

1. The applicant has provided the Planning Board with a factual basis for granting the waiver that is supported by sound engineering and/or environmental analysis (cost considerations are not justification);
2. The waiver(s) do not have the effect of nullifying the intent and purpose of the zoning regulations or these subdivision regulations;
3. The performance standards of these regulations have been substantially met and the criteria of the subdivision statute have been or will be met by the proposed subdivision; and,
4. The requested performance standard waivers are noted on the recorded subdivision plan (submission waivers and procedural waivers are not noted on the plan.)

Motion made by Tyler Hutchison: The applicant has provided documentation based on sound engineering and/or environmental analysis that the following standard can be waived for the proposed subdivision and is not requisite to provide for the public health, safety, and welfare subject to the proposed conditions of subdivision approval. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

Juliet Caplinger moved to approve a waiver for Section 6.9.B.6 and Section 6.35.C. Allan Purinton seconded. Motion carried 5 – 0.

### **Subdivision Review Criteria**

1. **Pollution:** Will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
  - a. The elevation of the land above sea level and its relation to the flood plains;
  - b. The nature of soils and subsoils and their ability to adequately support waste proposal;
  - c. The slope of the land and its effect on effluents;
  - d. The availability of streams for disposal of effluents; and,
  - e. The applicable State and local health and water resources rules and regulations;

Motion made by Tyler Hutchison. Motion seconded by Ron Williams. Motion carried 5 – 0.

2. **Sufficient Water:** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

Motion made by Tyler Hutchison. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

3. **Erosion:** Will not cause unreasonable soil erosion or reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

Motion made by Tyler Hutchison. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

4. **Traffic:** 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 the urban compact municipality, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. §704 and any rules adopted under that section;

Motion made by Ron Williams. Motion seconded by Allan Purinton. Motion carried 5 – 0.

5. **Sewage Disposal:** Will provide for adequate sewage waste disposal;

Motion made by Allan Purinton. Motion seconded by Ron Williams. Motion carried 5 – 0.

6. **Municipal Solid Waste Disposal:** Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized;

Motion made by Ron Williams. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

7. **Aesthetic, Cultural, and Natural Values:** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

Motion made by Allan Purinton. Motion seconded by Tyler Hutchinson. Motion carried 5 – 0.

8. **Conformity with Local Ordinances and Plans:** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;



Motion made by Tyler Hutchison. Motion seconded by Allan Purinton. Motion carried 5 – 0.

9. **Financial and Technical Capacity:** The developer has adequate financial and technical capacity to meet the standards of this Article;

Motion made by Juliet Caplinger. Motion seconded by Ron Williams. Motion carried 5 – 0.

10. **Surface Waters:** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or river as defined in 38 M.R.S.A. §435-490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

Motion made by Allan Purinton. Motion seconded by Tyler Hutchison. Motion carried 5 – 0.

11. **Groundwater:** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

Motion made by Allan Purinton. Motion seconded by John Talbot. Motion carried 5 – 0.

12. **Flood Areas:** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain;

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

13. **Freshwater Wetlands:** All freshwater wetlands within the proposed subdivision have been identified on maps submitted as part of the application, regardless of the size of these wetlands;

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

14. **Farmland:** All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance has been identified on maps submitted as part of the application;

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

15. **River, Stream, or Brook:** Any river, stream, or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application. For purposed of this section, “river, stream or brook” has the same meaning as in 38 M.R.S.A. §480-B.9;

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carries 5 – 0.

16. **Storm Water:** The proposed subdivision will provide for adequate storm water management;

Motion made by John Talbot. Motion seconded by Allan Purinton. Motion carried 5 – 0.

17. **Spaghetti-Lots Prohibited:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined inn 38 M.R.S.A. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5:1) to one;

Motion made by Juliet Caplinger. Motion seconded by Ron Williams. Motion carried 5 – 0.

18. **Great Pond 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;

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

19. **Impact on Adjoining Municipalities:** 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;

Motion made by Allan Purinton. Motion seconded by Tyler Hutchison. Motion carried 5 – 0.

20. **Land Subject to Liquidation Harvesting:** Timber on the tract being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A. §8869.14.

Motion made by Allan Purinton. Motion seconded by Juliet Caplinger. Motion carried 5 – 0.

## Final Plan Application Phase

**Decision on Final Plan Application:** Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Planning Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in 30-A M.R.S.A. §4404 and the standards of these regulations. If the Board by majority vote finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If by majority vote the Board finds that any of the individual criteria of the statute or the performance standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

Motion made by Allan Purinton to approve the final subdivision application with the conditions of approval as written, with the addition of the performance standards added to the plan. Juliet Caplinger seconded. Motion carried 5 – 0.

## 7. Other Business:

### a) Board Discussion of Affordable Housing Response Options

- A public opinion survey on the three options is being conducted on the Town website.
- The three options are:
  - Be less restrictive than current zoning and the minimum State requirements per recommendations in the Comprehensive Plan and the need for more housing options.
  - Be more restrictive than current zoning as allowed by the new State requirements based on concerns over impacts of allowing more housing units.
  - Be neutral and simply adopt the new State requirements.
- The Town Planner has drafted Ordinance amendments to move in any of the three policy directions.
- Once a policy direction is chosen, the draft amendments for that option can be further refined.

The Board discussed narrowing down to the first two options. The Planning Board will meet on January 4<sup>th</sup>, 2023 at the Town Hall at 6:30 pm to discuss this further.

## 8. Adjourn: The meeting adjourned at 8:18 pm.

## **5. Continuing Business:**

### **a. Completeness Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A.**

#### **TOWN PLANNER COMMENTS:**

- The application was found to be incomplete at the December 7 meeting due to the following items:
  - DEP approval of the new stream crossing and removal of the existing one.
  - ACOE approval of the new stream crossing.
  - MDOT permit for the road entrance.
- The applicant has submitted copies of their DEP and ACOE permit applications.
- The applicant has submitted a stormwater permit application to DEP.
- According to the email from Heather Stukas of ACOE, permits are required for certain aspects of the construction (email 11-21-2022).
- The applicant is still waiting for the MDOT permit as of the updated submissions on December 7, 2023.
- Per Section 6.8.C of the Land Use Ordinance, the applicant is to obtain approvals from outside agencies prior to submission of the final plan.
- The applicant has asked the Planning Board to grant final approval subject to the outside agency approvals.
- The Town Planner has prepared draft complete and incomplete letters for Board consideration.



**TOWN OF DURHAM**  
**630 Hallowell Road**  
**Durham, Maine 04222**

**Office of Code Enforcement  
and Planning**

**Tel. (207) 353-2561**  
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## **PRELIMINARY SUBDIVISION APPROVAL**

### **Deer Creek Crossing Subdivision**

### **Conditions of Approval**

1. Per Section 6.6.C, the Planning Board will request technical peer review of the following submissions:
  - a. Determination of the need or lack thereof for a high intensity soil survey to confirm the wetland delineation and engineering designs;
  - b. Recommendation on the optimum location of the proposed stormwater detention basin with respect to the stream and associated wetlands;
  - c. Review of the engineering designs for road construction, utilities, stormwater management, erosion & sedimentation controls, and the proposed fire pond; and,
  - d. Review of the engineer's construction cost estimates for the project infrastructure.
2. Per Section 6.6.L.1., the applicant shall make the following changes to the preliminary plan as directed by the Planning Board decision:
  - a. A right of way shall be extended from the turnaround to the southwest tract boundary for future road connection; and,
  - b. A fire pond meeting the requirements of Section 6.16.C shall be constructed near the road turnaround but outside of the proposed road right of way extension.
3. Per Section 6.6.L.3., the Board considers that the engineer's construction estimates and performance guarantee for the project will include the following common improvements:
  - a. Access road construction;
  - b. Electrical service;
  - c. Stormwater management system;
  - d. Erosion and sedimentation control system; and,
  - e. Fire protection system.
4. Per Section 6.7.C.3. the applicant submitted a certified boundary survey showing all existing easements. That survey clearly indicated the areas of questionable title and calculation of the area that should be deducted from the proposed open space due to questionable title. The Board granted a waiver of the preliminary plan submission requirements to allow the applicant to place monuments on the corners of the subject parcel dividing Lot 32A from Lot 32L of Tax Map 7 after final approval when the monuments are set for the individual lots.
5. Per Section 6.7.E., to address concerns raised at the public hearing and in written comments, the applicant shall provide the following additional information with the final plan as required by Planning Board to verify compliance with the subdivision standards:

- a. Survey Accuracy – See draft approval condition #4 above.
  - b. Drainage Concerns – Engineering peer review of the stormwater and erosion control plans
  - c. Location of Stormwater Basin – See draft approval condition #1.c above.
  - d. Sensitivity of Stream Crossings – DEP & ACOE permits for stream restoration and new stream crossing.
  - e. Concern for Impacts on Aquifer – Review by the Durham Code Officer of standards applicable to portions of project in the Aquifer District boundary.
  - f. Concern for Continuing Zoning Violations – Review by the Durham Code Officer for zoning violations.
6. Per Section 6.8.A. the final plans shall be submitted within six (6) months of preliminary plan approval and shall be consistent with the preliminary plan except for changes required by the Planning Board or outside reviewing agencies (such changes will be reviewed per the subdivision review criteria & standards). Failure to submit a final plan application within six (6) months shall require resubmission & re-review of the preliminary plan. Prior to expiration of the preliminary plan approval, the applicant may request an extension accompanied by explanation of the causes for delay, documentation of progress made in fulfilling the preliminary plan approval conditions, and confirmation that the Land Use Ordinance has not been amended such that changes affect the project approval.
  7. Per Section 6.17.A & B., an erosion and sedimentation plan meeting the requirements of Appendix 2 shall be submitted with the final plans.
  8. Per Section 6.17.C., areas intended for vegetation clearing shall be shown on the final plan plans to support the stormwater management plan assumptions and required buffers along water bodies shown on the recording plan and referenced in the plan notes.
  9. Per Section 6.18.B.1 & 2., the final plan application shall include required MDOT permits. The applicant shall ask MDOT to address the safety of the intersection offset from Patriot Way.
  10. Per Section 6.18.C.2., the applicant shall obtain and submit with the final plan written approval for the street name and all other requirements of Article 13. by the Durham Street Addressing Officer.
  11. Per Section 6.18.D.2., the final plans shall include engineered drawings of the road meeting the requirements of Appendix 1.
  12. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
  13. Per Section 6.21.B.1., the applicant shall seek consultation with the Maine Department of Conservation, Agriculture, and Forestry's Maine Natural Areas program for information on rare and exemplary botanical features in the project area and shall provide any response from the Department with the final plan application.
  14. Per Section 6.21.B.2., the applicant shall seek consultation with the Maine Historic Preservation Commission for information on any historic or prehistoric resources in the project area and shall provide any response from the Commission with the final plan application.
  15. Per Section 6.21.C., the applicant shall seek consultation with the Maine Department of Inland, Fisheries, and Wildlife for information on habitat for species appearing on the official state or

federal lists of endangered or threatened species in the project area and shall provide any response from the Department with the final plan application.

16. Per Section 6.21.D., the final recording plan notes and the deeds shall include notice of the clearing restrictions for lots including areas covered by shoreland zoning or resource protection.
17. Per Section 6.23.A. and 6.34.A, the applicant shall submit an engineer's construction cost estimate to cover the full costs of all required improvements, including roads, utilities, stormwater management, fire protection water supplies, and erosion and sedimentation controls along with a letter of commitment from a lending institution referencing said engineer's cost estimates.
18. Per Section 6.28.B., the final plans shall include the DEP stormwater permit and shall be consistent with requirements of that permit.
19. Per Section 6.32.D. the final plans shall include copies of covenants, articles of incorporation, and homeowner association bylaws using the template prepared by the Town Attorney or a version reviewed and approved by the Town Attorney at the applicant's expense.
20. Per Section 6.33.B.8, the applicant shall provide detailed grading plans for the building sites on Lots 6 and 7 which shall become part of the final subdivision approval conditions that can be amended with further subdivision review.
21. Per Section 6.34.B., the final plan application shall include the proposed form and amount of the performance guarantee needed to cover the costs of all improvements noted in COA #17 above, which can be a cash deposit or irrevocable letter of credit in a form satisfactory to the Town Attorney (template provided). Any other proposed performance guarantee must be reviewed by the Town Attorney at the applicant's expense.



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**Tel. (207) 376-6558**  
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## **NOTICE OF COMPLETE APPLICATION**

Date: January 4, 2023  
Name: Jack Doughty  
Address: 231 Flying Point Road, Freeport, Maine

Dear Mr. Doughty;

The Planning Board of the Town of Durham has reviewed your application for final subdivision review of the Deer Creek Crossing subdivision on Hallowell Road (Map 7. Lot 32A). In accordance with Section 6.8.F, the Board has determined that your application is complete and ready for formal review.

The Planning Board has scheduled a meeting for \_\_\_\_\_ at 6:30 p.m. at which time your application will be reviewed for conformance with the criteria and performance standards of the Town of Durham subdivision regulations.

Sincerely,

George Theborge, Town Planner





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and Planning**

**Tel. (207) 353-2561**  
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## NOTICE OF INCOMPLETE APPLICATION

Date: January 4, 2022

Name: Jack Doughty

Address: 231 Flying Point Rd. Freeport, Maine

Mr. Doughty:

The Planning Board of the Town of Durham has reviewed your application for preliminary subdivision review of a project on Hallowell Road (Map 7, Lot 32A). In accordance with Section 6.8.F., the Board has determined that your application is incomplete, and the Board cannot begin a formal review of your application until all information stated in the application checklist is submitted.

For your application to be considered complete and adequate for review by the Planning Board, the following materials must be submitted:

- a. Section 6.8.C.2 – DEP approval of the new stream crossing and removal of the existing stream crossing
- b. Section 6.8.C.3 – ACOE approval of the new stream crossing
- c. Section 6.8.C.4 – MDOT permit for the road entrance

Respectfully,

George Theborge, Town Planner

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## 5. Continuing Business:

### b. Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A.

#### TOWN PLANNER COMMENTS:

- The applicant submitted a response to peer review comments on November 23, 2022 and December 7, 2022.
- Substantial changes have been incorporated based on the peer reviewer's comments.
- A point-by-point response is provided by the applicant in the packet for the initial and follow up peer reviews.
- Peer review comments and applicant responses where there is disagreement between the peer review and applicant's engineer are highlighted in yellow, as well as points where the response and/or proposed modification affect facts upon which the Planning Board granted preliminary approval (e.g., removal of stream crossings for the trails).
- The Planning Board is not bound by the opinions of the peer reviewer and can judge between their input and the applicant as to whether the burden of proof has been met for compliance with the criteria and standards of the Ordinance.
- Points of divergence in the professional opinions can be addressed at the point of Board deliberation of the draft findings and conclusions and a position established by majority vote of the Board.
- The final points of divergence between opinions of the engineers include the level of design detail needed for the stream road crossing, calculations of drainage areas that affect road ditch treatment, demonstration of adequate water supply for the fire pond, and finalization of all details and plans for Planning Board approval and signing.
- The subdivision recording plan dated October 17, 2022 does not include an easement for the proposed stormwater treatment area on the land to be retained by Dean Smith, therefore the Homeowners Association will lack legal right to enter the property to do required maintenance of the underdrain treatment system.
- That subdivision recording plan does include an easement for the fire pond indicating that the easement is to be conveyed to the Town of Durham (Section 6.16.C.4). The Homeowner's Association is fully responsible for maintaining both the stormwater treatment and fire protection water supply systems (as well as the road and open space), and all final plan documents should clearly indicate that responsibility and authority. The access easement gives the Town authority to access the pond and take corrective action in cases of failure of the Homeowner Association to maintain the pond in working order.

- The applicant's engineer considers that the level of detail and accuracy advocated by the Town's peer review engineer and Town Planner is excessive, and he seems to assume that contractors will work out the details in the field as conditions warrant. The applicant's engineer acknowledges that the submissions are "not perfect" and asks the Town to overlook such discrepancies so that the project can move forward.
- The Town peer review engineer's and Town Planner's experiences indicate that fully designed, documented, and accurate details assure compliance with the criteria and standards of the Land Use Ordinance. They are also important for proper construction and expedite the construction and inspection processes. Inaccurate or insufficient construction details lead to construction defects, arguments over what the Planning Board approval required, and increased costs of inspection and construction as well as project delays like those being experienced in the review process.
- Per a letter from the applicant's engineer dated October 25, 2022, the applicant is requesting a conditional approval under Section 6.34.C which requires completion of all subdivision infrastructure improvements prior to the sale of any lots or issuance of any building permits. The applicant can return to the Board for posting of a financial performance guarantee for remaining improvements at any point in the construction. They will also need to provide a performance guarantee for the erosion controls and site stabilization. A note to this effect should be placed on the subdivision recording plan.
- The Town Planner has prepared draft of findings and approval conditions based on the preliminary plan approval, the submissions, peer review, and checklist for Board processing of the application.
- The Board can vote to add, delete, or modify any of the draft findings and approval conditions.
- To grant approval, a Board majority must make findings that the applicant has met the burden of proof of compliance with each subdivision criterion and standard.
- The Board can apply approval conditions necessary to assure compliance and should seek applicant input on acceptance of such proposed conditions of approval.
- If a Board majority finds that the applicant has not met the burden of proof of compliance with one or more of the criteria and standards, it should adopt such findings to serve as the basis for denial.

**\*\*DUE TO THE LARGE FILE SIZE, SUBMISSIONS FOR DEER CREEK  
ARE SEPARATE FROM THE PACKET\*\***

## Grange Engineering LLC

New Gloucester, Maine  
Grange.Engineering.Me@gmail.com  
207 712 6990

George Thebargé  
Deer Creek Crossing  
Final Approval Application- Comment Response

December 7, 2022

Town of Durham Planning Board,

In response to the peer reviews second round of comments, I have prepared the following letter and supporting documentation.

Thanks,

Charlie Burnham, P.E.  
Project Engineer

Attachments:

A – DEP NRPA Permit  
B – Plan Set

1. The plan view on sheet C-200 has the stream crossing culvert called out as 48", revise the size.

*Note changed to say the 60" arch.*

2. Sheet C-305 shows the stream crossing. We recommend that the detail be improved to show the size of the culvert footers and the top and bottom elevations of the footers. It is not clear if the cross section on this sheet is drawn to scale, (no scale provided). It is not clear what the effective cross-section of the new culvert will be as it appears that the top of the arch is set just about at the top of the existing stream banks, which may not be the intent. The culvert that is drawn in the section appears to be a metal "box" culvert shape rather than an "arch" shape. We have concerns that if more detail is not provided, it will be confusing at the time of construction on how to construct this culvert. The notes on this sheet could be confusing because they appear to be generic notes from the USACE General Permit. For example, notes 2.a, 2.b, and 5.2 do not apply to the arch-type culvert that is being installed for this project.

*The details have been updated. The culvert could be boxed or arched as long as it spans 60".*

3. Sheet C-200 calls out invert-in and invert-out elevations for the culvert, however, since the structure is an open bottom arch, the inverts will be the natural inverts of the stream channel.

*Inverts have been removed.*

4. The response to prior comment #31 states that General Note 4 on Sheet C-101 has been removed. General Note 4 still indicates that if side setbacks are cleared during the grading of the lots or road, the same number of trees that were removed will be replanted. Our question remains. How will the number of trees that are removed during construction be quantified so the correct number can be replanted. It would be more appropriate to restrict tree cutting in the side setbacks.

*Note #4 has been removed this time.*

5. Provide a rip rap spillway detail for the ponds.

*A note has been added specifying the spillway details on C-303.*

6. Response #14 states that separating the roadway runoff from the total runoff would not affect the peak flows. We still recommend that the ditch flows and capacities should be checked as noted in the original comment to verify the stability of the roadside ditches. We also recommend revising the HydroCAD stormwater calcs and culvert capacity calcs to account for the impervious runoff. We performed a quick check of the peak runoff from the roadway, (pavement and ditch), from the southerly side of the road from approximately Station 9+00 to 16+00. The calculated peak flows were 0.12 cfs for the 2 yr. storm, 0.43 cfs for the 10 yr. storm and 0.74 cfs for the 25 yr. storm at the cross culvert to the underdrained soil filter, which are close to your calculated peak flows from the entire site. As stated in the original comment, combining the roadway runoff with the large wooded HSG A areas artificially suppresses the peak flows from the roadway. Additionally, the ditch flows may collect runoff from the developed lots as well.

*It is our opinion that the stormwater model as provided took an extremely conservative approach. Subcatchment lines were drawn along the edge of streams and the actual area draining to the Point of Analysis is so large that any changes to our site would have been negligible. We chose to analyze smaller areas and provide treatment in accordance with the sizing standards set forth by the DEP. Each Subcatchment was drawn in accordance with what areas are draining to our points of interest. It is our opinion that despite the difference in smaller storms, the 25-year storm as modeled had a greater peak runoff than the 0.74 mentioned above. Therefore, it is our opinion that the model provides appropriate stormwater quality and quantity treatment.*

7. As noted previously, the subdivision plan shall be stamped by the surveyor and the engineer.

*The recorded plan will be hand stamped by the engineer and surveyor.*

8. As noted previously the transformer easements shall be added to the subdivision plan.

*A note was added to the Subdivision Plat requiring that all transformers and public utilities be located inside the ROW. Utilities shown are for permitting purposes only. It is our understanding/experience that CMP will locate the transformers wherever they want them inside the ROW.*

9. The use of erosion control blankets for slopes greater than 15% is recommended by the MDEP Maine Erosion and Sediment Control Best Management Practices manual for Designers and Engineers. An erosion control blanket shall be specified for slopes greater than 15% rather than the 3:1 proposed in your response.

*Note has been updated.*

10. As noted previously, Route 9 should be labelled on sheets C101, C102, C200.

*“Hallowell Road” has been added to each plan.*

11. Show the stream setbacks on plan sheet C303.

*Stream setbacks have been added to C-303.*

12. Response #44 states that an NRPA permit application has been submitted. It does not appear that the impact to the stream by the underdrained soil filter has been included in the NRPA application as an impact adjacent to a protected natural resource. The application shall be revised to include the underdrained soil filter impact within the stream setback.

*NRPA application has been revised and a copy of the application is attached.*

13. The loam and seed on the sloped banks of the underdrained soil filter shall be called out on Detail Sheet C303. A reference to the seeding plan in the erosion control notes should be added to the underdrained soil filter detail for seeding of the soil media.

*C-303 has been updated.*

14. Response #77 noted that a reference to the Town's Dry Hydrant Standard is on Sheet C-302. A reference to the standards was not found.

*A note has been added to the C-302 requiring Fire Chief signoff on all Dry Hydrant materials/equipment prior to installation.*

15. The comment to supply a typical house lot erosion control plan was not addressed in the response letter.

*A page from the Maine DEP contractor's manual has been included which shows a typical house lot erosion control plan.*

16. A MaineDOT entrance permit is pending. The permit shall be submitted to the Town upon receipt.

*Still pending.*

17. A ditch is required on the right side of the road from approximately 15+00 to 18+00 to direct uphill drainage including potential lots from draining into the road.

*Spot grades have been added to show that there is depression along the northside of the road.*

## Engineering Review Memorandum

**To:** George Theborge, Town Planner  
**From:** Will Haskell, PE, Gorrill Palmer  
**Date:** December 22, 2022  
**Subject:** Final Submission – Subdivision Application  
**Project:** Deer Creek Crossing Subdivision  
**Applicant:** Jack Doughty

The Deer Creek Final Submission Peer Review Response Package dated December 7, 2022, was reviewed for compliance with the Town of Durham Subdivision requirements as well as generally accepted civil engineering standards and we offer the following comments. The application and plans were prepared by Grange Engineering, LLC.

1. As noted previously, the stream crossing culvert detail does not appear to provide the necessary detail for construction. Sheet C-305 shows the stream crossing culvert. We recommend that the detail be improved to show the top and bottom elevations of the footers. The proposed culvert does not span the existing stream channel as the existing channel meanders over the length of the existing culvert. A new channel will need to be constructed inside of the new culvert. The roadway slopes extend past the culvert ends. We have concerns that if more detail is not provided, there will be confusion for the contractor and the Town's inspector on how to construct this culvert.
2. Submit the USACOE permit to the Town upon receipt.
3. Sheet C-200 has inverts of the stream culvert shown in the profile view. Remove the inverts.
4. A note describing the rip-rap spillway for the grassed underdrained soil filter has been provided rather than a detail. Is the invert of the rip-rap spillway at the top of the rip-rap? An impermeable barrier needs to be installed within the rip-rap to prevent flow through the stone below the invert elevation.
5. No ditch flow calculations have been provided. Based on the ditch slopes and apparent tributary area, it does not appear that the ditches will require rip-rap lining. Since ditch flow calculations have not been provided, we recommend that a geotextile erosion control blanket be placed at the bottom of all the roadside ditches to prevent erosion until the ditch is stabilized with vegetation. Call out the erosion control blanket on the typical roadway section detail.
6. The Applicant has stated that a note has been added to the subdivision plan requiring the installation of electrical transformers within the right of way. A revised subdivision plan has not been provided.
7. Call out seeding of the surface of the soil filter media for the grassed underdrained soil filter on the filter detail.
8. A MaineDOT entrance permit is pending. The permit shall be submitted to the Town upon receipt.
9. As noted previously a ditch is required on the right side of the road from approximately 15+00 to 18+00 to direct uphill drainage including potential lots from draining into the road. The



response stated that spot grades were added to the plans. A revised plan C-201 showing the roadway was not provided.

Please let me know if you want to review and discuss any of the comments.

Sincerely,  
Gorrill-Palmer

A handwritten signature in black ink that reads "William C. Haskell". The signature is written in a cursive style with a large initial "W".

William C. Haskell, PE  
Principal

## Grange Engineering LLC

New Gloucester, Maine  
Grange.Engineering.Me@gmail.com  
207 712 6990

George Thebarge  
Deer Creek Crossing  
Final Approval Application- Comment Response

November 22, 2022

Town of Durham Planning Board,

In response to peer review and completion review, I have prepared the following response letter and supporting documentation. The peer review provided a lot of good suggestions, which lead to some changes in the profile and alignment of the road. Two additional outside agency permits were submitted and will hopefully have approval by the scheduled planning board meeting or soon thereafter. The project will require a Permit by Rule for disturbing more than an acre and a preconstruction notification for the Army Corps as a result of disturbing wetlands.

The major changes include changing the stream crossing back to a 60" arched culvert and adjustments to the profile and road alignment.

Thanks,

**Charlie Burnham, P.E.**  
Project Engineer

Attachments:

- A – DEP NRPA Permit Application
- B – Army Corp Permit Application
- C – Soils Map
- D – Replacement Culvert Sizing
- E – Stormwater Report
- F – Engineers Estimate
- G – HOA Documents
- H – Plan Set

## Application

1. List the underdrained soil filter, wooded buffer, and fire pond as Common Property in the Homeowners Association documents (Section 6.32.E.1).

See HOA.

2. Provide operation and maintenance requirements for the underdrained soil filter, wooded buffer, and fire pond in the Homeowners Association documents (Section 6.32.E.1).

See HOA.

3. A Maine DEP Stormwater Permit is required if the disturbed area is greater than one acre. If the impervious area is less than one acre, and the developed area is less than five acres then the Basic Standards must be met which requires a Permit by Rule Application. If there is one acre or greater of impervious area or greater than five acres of developed area then a full permit application is required.

*The disturbed and impervious areas for existing and proposed are summarized in the stormwater treatment summary table. A Permit by Rule application has been submitted to the DEP to meet the Basic Standards. A copy of the application is included as Attachment A.*

4. Provide a plan and calculations showing whether a Maine DEP Stormwater permit is required. If a permit is required, a copy of the permit application shall be submitted to the Town when it is submitted to Maine DEP.

*See above.*

5. Will the lots be developed by the Applicant? If the lots are not proposed to be developed by the Applicant, then the developed/impervious areas on the lots are not required to be counted towards the Maine DEP Stormwater permit thresholds. If any of the lots are to be developed by the Applicant, then the developed/impervious areas for those lots shall be counted towards the Maine DEP Stormwater permit thresholds.

*The lots will not be developed by the applicant.*

6. Provide a Medium Intensity (NRCS) Soil Map for the site to assist in the peer review of the stormwater calculations. Based on the nature of the site and wetlands, we do not see the need for a high intensity soils survey for this project.

*A Soils Map has been included as Attachment C.*

7. The Maine DEP NRPA application states that the stream crossing will consist of a 60" arch culvert. The plans call out a 48" diameter culvert. Clarify and revise as necessary. Provide documentation showing that the culvert has been sized in accordance with Maine DEP requirements.

*The plans have been adjusted to show the 60" arch culvert.*

8. Provide a determination from the US Army Corps of Engineers (USACE) that a permit is not required for the proposed stream crossing. In our opinion, if the channel meets the definition of a stream, then a USACE permit is required. Note that Maine DEP and USACE stream crossing standards prefer culverts with natural stream beds, or depressed inverts with natural stream bed material and culvert spans of 1.2 times the bankful width of the stream. Also note that they prefer that the road embankments be steepened to 2:1 at crossing locations, which will require guardrail

*The Army Corps was contacted, and a Preconstruction Notification was submitted and is included as Attachment B.*

9. Provide culvert sizing calculations for the stream crossing culvert.

*Culvert sizing calculations have been included as Attachment D.*

10. Provide a hydrogeological report to confirm availability of groundwater for the fire pond in accordance with the subdivision regulations (Section 6.7.D.2).

*Plans have been modified to show an 18" clay liner. The pond receives runoff from the roadway. The pond won't be fed by groundwater.*

11. The HydroCAD model for the grassed underdrained soil filter includes a 0.75" orifice. The location of the orifice could not be found on the plans or details. Call out the orifice on the plans or revise the model.

*A note has been added to the outlet calling a cap with a 0.75" orifice.*

12. Revise the post-development HydroCAD model of the fire pond so that the starting volume of the pond is set at the proposed water surface, not at the bottom of the pond. If the intent of the pond is for it to always be filled, the storage volume below the spillway is not effective.

*The fire pond has been adjusted and the permanent pool elevation changed from 193 to 189 (look at the starting elevation for the pond).*

13. Revise the HydroCAD model for the grassed underdrained filter so that the starting volume is set at 167, not the 165 elevation used in the calculation.

*The void ratios for each layer have been set to model the decreased storage in the filter media.*

14. Combining the roadway subcatchment with the hydrologic soil group A wooded area and starting the time of concentration flowpath in the wooded area artificially reduces the calculated runoff from the roadway surface. The roadway and ditch should be modelled as separate subcatchments with separate times of concentration to depict the runoff from the roadway more accurately.

*The wooded areas draining to the road are minimal and it is our opinion that the subcatchments are modeled accurately. Breaking the woods off as a separate subcatchment and running it as a reach through the ditch does not represent the flows*

*as they will exist. Taking 100' (or so) off the channelized flows reduces the times of concentration by fractions of a minute and would have a negligible effect on the runoff.*

15. There appears to be an existing stream crossing upstream of the proposed stream crossing culvert. We understand that the existing culvert at this existing crossing is 15" diameter which appears to be a significant restriction in the channel. This existing stream crossing shall be removed. Restoration of the stream crossing site should be reviewed and discussed with Maine DEP.

*The existing crossing is downstream of the proposed crossing. The crossing has been there for over 20 years as part of original logging operations. The intent is to remove the crossing and has been included in the application for the DEP.*

16. The subdivision application notes that a trail will cross the stream. Provide a detail for the trail crossing of the stream.

*The stream crossing has been removed from the trail system.*

17. Provide stormwater treatment calculations for the underdrained soil filter.

*See Attachment E.*

18. Provide a MaineDOT entrance Permit for the proposed roadway, or evidence of discussions with MaineDOT with their determination of the acceptability of the roadway location.

*DOT Permit is still pending.*

19. Provide a spillway analysis for the underdrain soil filter and the fire pond, assuming that the spillway is the sole outlet in accordance with MDEP requirements. Maine DEP requires that there be one foot of freeboard from the water elevation over the spillway to the top of the berm for the 25-year storm. Additionally, the berm should not overtop during the 100-year storm.

*See Attachment E.*

20. Provide culvert sizing calculations for all cross culverts.

*Peak runoff for the entire site during a 25-year storm is 0.82 cfs). It is our opinion that this is unnecessary.*

21. Provide ditch sizing calculations to ensure adequate ditch capacity and to determine the need for ditch protection caused by erosive velocities.

*The ditch slopes don't go above 4.5% and carry very minimal amounts of water (peak runoff for the entire site during a 25-year storm is 0.82 cfs). It is our opinion that this is unnecessary.*

**Existing Conditions Plan (C-100)**

22. The extent of the existing onsite gravel areas is shown on an aerial view of the site. This area should be shown on the design plans and a note should be provided describing how the previously disturbed area will be stabilized and restored.

*The gravel areas were existing and were not included in the site remediation requirements set forth in the Use Violation from the previous owner. The lot(s) will not be revegetated prior to the selling of the lots. I would imagine it will be used as a laydown yard during construction and the perimeter will be protected using an erosion control fence. Once the lots are developed it will be up to the owner what they would like their yard to be.*

23. Label Route 9 on the Existing Conditions plan and the Overall Site Layout plan.

*Road label has been corrected.*

24. The existing contours should include more labels to facilitate the engineering peer review (all plan sheets with contours).

*More contour labels have been added to all plans.*

**Subdivision Plan**

25. Add the subdivision plan to the plan set for the project.

*Subdivision Plan has been added to the Plan Set.*

26. The final subdivision plan shall be sealed by both the surveyor and design engineer as required by the Maine Board of Licensure for Professional Engineers.

*Subdivision Plan has been stamped by both surveyor and design engineer.*

27. Show electric transformer easements on the subdivision plan.

*Easements added.*

28. Add a note to the subdivision plan stating that driveways for each lot will require a driveway entrance permit from the Road Commissioner.

*Note added.*

29. Call out the snow storage area on the subdivision plan at the T turnaround.

*Note added.*

**Overall Site Layout Plan (C-101)**

30. Add the well exclusion zone for lot 12.

*Well exclusion zone has been add for lot 12.*

31. General note #4 states that trees removed from lot setbacks will be replanted. There is a significant amount of grading and clearing in setbacks shown on lots 3,4,5,6,7,9,12,13.

We recommend that trees be counted and identified on the plans so that the number of trees to be replanted is known before clearing/grading occurs

*Note has been removed and the grading has been reduced to show only the construction of the road and stormwater facilities.*

### **Grading and Erosion Control Plan (C-102)**

32. Additional proposed grading is needed downhill from the fire pond to tie in the existing grades. The flow length of the proposed wooded buffer at the fire pond spillway should be checked after the grading changes.

*Grading has been added below the fire pond.*

33. There are proposed ditches with longitudinal slopes less than 1%. MaineDOT recommends ditch slopes be 1% minimum except in difficult situations where they should never be less than 0.5%. Flatter ditches tend to pond water creating stagnate water and breeding grounds for insects.

*The grading at the beginning of the road has been adjusted to provide at least 0.5% slope and gradually increases to 1%.*

34. Add a note to the grading plans specifying where erosion control blankets should be installed.

*Note was added to provide erosion control blankets on any slopes greater than 3:1.*

35. Additional underdrain appears to be required for the underdrained soil filter. Maine DEP requires a maximum 15 foot spacing of underdrains in an underdrained soil filter, this gives an effective drainage area of 7.5 feet on each side of an underdrain. Provide appropriately spaced underdrains at the proposed underdrained soil filter. Set an underdrain 7.5 feet from an edge of the filter area, then space at 15' on center.

*Underdrain has been provided within 7.5' of the perimeter of the filter area and spaced 15' apart.*

36. Maine DEP and USACE standards for stream crossings require the instream work to occur Between July 15 to September 29. This will be specified by the permits from these agencies. We recommend adding a note identifying the timing of the instream culvert work on the plans and the stream crossing detail.

*The stream crossing has been returned to the 60" arch that will not require any work in the stream.*

37. Verify with MaineDOT whether a culvert will be required at the proposed roadway intersection with Route 9.

*Maine DOT engineers have reviewed the project. There are no ditches along this stretch of Route 9. Therefore, a culvert would just create a ponding problem or drive the ditches to an unreasonable depth in the area.*

38. The plan shows a 15" cross culvert directing ditch flow to the underdrain soil filter. The grading of the ditch at this culvert does not appear to be complete. Water from the ditch may continue to flow past the culvert and down to the stream unless a berm is added to direct flow into the culvert.

*Spot grades below the culvert inlet have been added to clarify the drainage path.*

39. Label Route 9 on the plan.

*Label added.*

40. Show the stabilized construction entrance on the plan.

*Construction entrance has been added to C-102.*

41. Revise the location of the sediment barrier/clearing limits along the 50' wide entrance segment of the proposed roadway to avoid impacts to abutting properties. Alternatively, obtain temporary easements from abutting properties for the encroachments.

*Alignment has been adjusted so that there is no encroachment on an abutter besides the applicant's (Snell is partners with the applicant).*

42. Revise the erosion control sediment barrier so it does not extend across the stream as it will impede stream flow.

*Erosion control fences have been removed crossing the stream and road entrance.*

43. Add the Maine DEP 25' and 75' jurisdictional stream setbacks on all plans that show the streams. Also add the 100' Resource Protection District stream setback. Adding these to all the plans will facilitate the peer review process and help prevent encroachments during construction.

*All requested setbacks have been added to all plans.*

44. It appears that the underdrained soil filter is located within the 100' and 75' stream setback. Maine DEP will require a NRPA permit by rule for impacts adjacent to a protected natural resource if the filter remains in this location. Alternatively, the filter could be relocated outside of the 75' NRPA jurisdictional setback.

*The Underdrain soil filter is in the lowest portion of the previously disturbed area. The intent is to minimize any further disturbance while capturing and treating as much as area as practical. A NRPA has been submitted.*

45. Maine DEP standards recommend adding a sediment forebay to the underdrain filter to reduce future maintenance requirements of the filter media. We recommend adding a sediment forebay for the ditch and culvert inlet into the underdrained soil filter.

*It is our understanding that forebays are more applicable for closed stormwater systems. When the pond is fed by vegetated swales the sediment is negligible. Vegetated swales are included as a pretreatment measure according to the DEP's underdrain soil filter BMP manual.*



46. Lot 13 is mislabeled as Lot 3. Please revise.

*Revised to Lot 13.*

47. Add the lot setbacks on this plan to facilitate the peer review process and to help prevent encroachments during construction.

*Lot setbacks have been added.*

48. The Town Standard road section for private roads allows ditch fore slopes to be 2:1 maximum. Maine DOT standards require that slopes steeper than 3:1 be protected with guardrail. Provide guardrail for all areas where ditch foreslopes are steeper than 3:1. Also provide a guardrail detail on the detail sheets.

*All foreslopes have been changed to 3:1.*

49. The grading of the ditch at the wetland on Lot 12 will result in the entire wetland draining to the ditch, therefore, the entire wetland will be impacted. Will the additional wetland impact require a Tier 1 NRPA permit application from Maine DEP? Alternatively, the ditch grading could be revised to prevent the remaining wetland from draining to the road ditch.

*Grading has been modified. This is a dangerous precedent that would require nearly every culvert replacement or road underdrains to account for adjacent wetlands.*

50. There appears to be a pinch point in the ditch near the T turnaround where it curves around to the fire pond. Additionally, the ditch is quite flat in this area. We recommend revising the ditch grading in this area to minimize water ponding.

*Fire Pond has been regraded.*

51. Provide a sediment forebay at the ditch inlet to the fire pond to reduce sediment from entering the pond and increase future maintenance requirements.

*See comment 45.*

52. Provide a calculation confirming that the infilled 36" culvert at the wetland crossing has adequate capacity.

*It is not a stream crossing. It is a culvert to maintain connectivity for the wetland.*

53. The proposed grading, off the end of the T turnaround appears to unnecessarily increase the disturbed area of the road construction.

*Grading has been tightened up as much as possible.*

54. It appears that the fire pond may be located within the Maine DEP 75' jurisdictional stream setback. If so, this would require Maine DEP NRPA permit by rule for adjacency to a protected natural resource. Alternatively, the fire pond could be relocated outside of the 75' setback.

*It is not. The line shown is the 100' foot stream setback.*

**Plan and Profile (C-200 and C-201)**

55. We recommend adding lot numbers to plan and profile sheets to facilitate the peer review and for general clarification.

*Lot numbers have been added to both profiles drawings.*

56. We recommend adding a north arrow on plan and profile sheets to facilitate the peer review and for general clarification.

*Noted.*

57. Correct the road name for Route 9.

*Road name changed to Hallowell Road.*

58. We recommend adding the lot setbacks on these plans to facilitate the peer review and for general clarification.

*Setbacks added.*

59. We recommend showing the culverts as ovals with the height to scale on the profile views.

*Culverts are too scale on the profile views.*

60. Why is the end of the roadway in a cut condition as shown on the C-201 Plan and Profile? Are the cut and fills for the roadway balanced?

*Grading has been adjusted to minimize cut fills.*

**Erosion Control Notes (C-300)**

61. The Erosion and Sedimentation Control Report states that half of the site is covered with pavement and building slabs. Is this correct? If so, show the area on the existing conditions plan. If not, revise or eliminate the note.

*Report corrected.*

62. The Erosion and Sedimentation Control Report lists a construction start date of Fall 2021. Revise the date.

*Date changed.*

63. The construction schedule of the Erosion Control report lists construction of building foundations and pads. Revise as necessary. Civil Details (C-301, C-302, C-303)

*Foundations and pads will be part of the project regardless of who the builder is.*

64. Add the gradation of the road base and subbase gravels on the detail.

*See C-302.*

65. Add the compaction requirements for pavement and gravel to the road buildup detail, in accordance with the Town standards.

*See C-302.*

66. The roadway detail calls out clearing to the right of way. The Subdivision Plan notes that clearing should not extend to the ROW unless needed. Revise and clarify this discrepancy. Note that the grading plan shows roadway grading extending well beyond the roadway in several locations.

*The subdivision plan notes have been changed. The grading has been minimized to the maximum extent practicable.*

67. The Maine DEP requires certain specifications for the soil filter media. Revise the detail to specify the clay content of less than 2%. Also revise to specify the gradation of the coarse gravel.

*See C-303.*

68. We recommend calling out the seeding of the underdrained soil filter surface.

*See C-303.*

69. Provide details for the trail stream crossing.

*The trail won't cross the stream.*

70. Provide details for the road stream crossing culvert that shows the requirements for Maine DEP and USACE.

*See C-305.*

71. The Typical Roadway Section allows for 2:1 (maximum) ditch sideslopes. We recommend using 3:1 side slopes to reduce the need for guardrail. MaineDOT standards require guardrail where side slopes are steeper than 3:1.

*All slopes have been changed to 3:1.*

72. Provide the berm width for the fire pond and provide a construction detail for the berm.

*The fire pond is a cut. There is minimal berms associated with the construction.*

73. Provide a spillway detail for each pond showing an impermeable barrier set to the required spillway elevation to prevent flow through the rip rap at lower elevations.

*The clay liner/ and hdpe liner will be brought spillway elevations respectively. Riprap will not impact storage volume as you noted.*

74. We recommend adding a detail showing a typical house lot erosion control plan.

75. On the Dry Hydrant detail, list the volume between elevations 185 and 187, as required by Town specifications.

*Volume provided in the hydrocad report volume summary report for the firepond.*

76. Specify the strainer and support.

See C-304.

77. Add a note to the Dry Hydrant detail referencing the Town Standards.

See C-302.

### **Miscellaneous**

78. Provide a plan and calculations that documents the proposed disturbed area onsite and the proposed developed area. If the applicant is not developing the lots, then those areas do not need to be included, unless portions of the lot are being disturbed as part of the road construction.

*See Treatment summary in the stormwater report.*

79. Provide a plan and calculations that documents the existing onsite impervious area and compares it to the proposed onsite impervious area. If the applicant is not developing the lots, then those areas do not need to be included.

*See Treatment summary in the stormwater report.*

80. Based on the current market, the submitted construction estimate feels low. The following revisions are requested:

- a. Increase Erosion Control to \$10,000 LS
- b. Increase Paving (including base and subbase gravels) to \$160/LF
- c. Increase Utilities to \$20/LF
- d. Increase Loam and Seed to \$40,000/acre
- e. Increase Monumentation to \$5,000 LS
- f. Add a cost for the underdrained soil filter
- g. Add a cost for the fire pond and piping



*TOWN OF DURHAM*  
**630 Hallowell Road  
Durham, Maine 04222**

*Office of Code Enforcement  
and Planning*

**Tel. (207) 376-6558  
Fax: (207) 353-5367**

## **SUBDIVISION APPROVAL DECISION FINDING OF FACTS**

**PROJECT NAME:** \_\_\_\_\_ Deer Creek Crossing \_\_\_\_\_

### **A. PROJECT DESCRIPTION**

The application is for a thirteen-lot cluster subdivision off Hallowell Road. There is an existing gravel road that runs across the site. The southern end of the property has a very defined stream running along it. The stream will need to be crossed to access the site. The proposed subdivision is a clustered layout with each lot being at least 45,000 square feet per the allowance for lot-size and frontage regulations for cluster subdivisions.

The open space wraps around the perimeter of the site and includes the areas along the stream. A trail looping around the open space will provide recreational opportunities (hiking, cross country skiing, the observation of wildlife etc.). The open space protects important natural features (streams, hills, forested wetlands, existing rock walls etc.) from the adverse impacts of development. The cluster subdivision will put over 50% of the property into “open space” that belongs to the Homeowner’s Association. The “open space” consists of large dry wooded areas along with the stream around the perimeter of the site.

The subdivision will be served by a 2400 linear-foot private road with a hammerhead turnaround. A dedicated right of way will be extended from the road turnaround to the project boundary for future street interconnection. The lots will be served by individual wells and septic systems. Utilities will be placed underground. A fire pond with dry hydrant will be provided as a water supply for fire protection.

### **B. PROJECT PLAN SUBMISSIONS**

1. Deer Creek Crossing Final Subdivision Plan dated October 17, 2022, prepared by Cornerstone Professional Land Surveying Inc.
2. Sheet C-100 Existing Conditions Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
3. Sheet C-101 Overall Site Layout Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.

4. Sheet C-102 Grading and Erosion Control Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
5. Sheet C-200 Plan and Profile dated May 18, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
6. Sheet C-201 Plan and Profile dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
7. Sheet C-300 Erosion Control Notes dated October 19, 2022, prepared by Grange Engineering LLC.
8. Sheet C-302 Civil Details 2 dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
9. Sheet C-303 Civil Details 3 dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
10. Sheet C-304 Fire Pond Details dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
11. Sheet C-305 Stream Crossing Details dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
12. Sheet D-100 Existing Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
13. Sheet D-100 Proposed Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
14. The Simple Erosion and Sediment Control Plan for Small Sites (House lots) from the DEP Erosion Control Manual.
15. Figure 1 – Lot 6 and Lot 7 Layout dated October 13, 2022, prepared by Grange Engineering, LLC.

## C. SUBDIVISION REVIEW CRITERIA

### Section 6.2 SUBDIVISION REVIEW CRITERIA

- A. When reviewing any application for a subdivision, the Planning Board shall find that the following criteria as found in 30-A M.R.S.A. §4404 as well as all applicable provisions of this Land Use Ordinance have been met before granting approval. The proposed project:
1. **Pollution:** Will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
    - a. The elevation of the land above sea level and its relation to the flood plains;
    - b. The nature of soils and subsoils and their ability to adequately support waste disposal;
    - c. The slope of the land and its effect on effluents;
    - d. The availability of streams for disposal of effluents; and,
    - e. The applicable State and local health and water resources rules and regulations;

**Motion made by \_\_\_\_\_:** The proposed subdivision project will not result in undue water or air pollution. In making this determination, the Board has considered the five adopted criteria for pollution, and the applicant has submitted evidence and testimony of compliance with the performance standards for elevation of land and relation to floodplain management contained in Section 6.25, for soils and wastewater disposal in Section 6.19, for

slope of land and effects on effluents through erosion control plans and stormwater management under Section 6.17 and 6.28, and for state and local health rules under Sections 6.16 for water supply, 6.19 for sewage disposal, and 6.24 for impact on groundwater quality.

**Motion seconded by \_\_\_\_\_ :**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

- Sufficient Water:** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

**Motion made by \_\_\_\_\_ :** The proposed subdivision will be served by individual wells per the requirements of Section 6.16.A and B., and the proposed fire protection water supply has been reviewed and approved by the Fire Chief per the requirements of Section 6.16.C.

**Motion seconded by \_\_\_\_\_ :**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

- Erosion:** Will not cause unreasonable soil erosion or reduction in the land’s capacity to hold water so that a dangerous or unhealthy condition results;

**Motion made by \_\_\_\_\_ :** The proposed subdivision will prevent soil erosion and sedimentation through the procedures outlined in the erosion and sedimentation control plan meeting the requirements of Appendix 2 as determined by the Town’s peer review engineer. Topsoil will be retained and used on site.

**Motion seconded by \_\_\_\_\_ :**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

- Traffic:** 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, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. §704 and any rules adopted under that section;

**Motion made by \_\_\_\_\_ :** The proposed subdivision will not create unreasonable highway or public road congestion or unsafe conditions. Sight distances on Hallowell Road are adequate, and the slight intersection offset with Patriot Way does not constitute a safety hazard. The roadway serving the subdivision has adequate capacity to serve the anticipated levels of traffic and all road construction will meet the engineering standards of Appendix 1 as determined by the Town’s peer review engineer.

**Motion seconded by \_\_\_\_\_ :**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

- Sewage Disposal:** Will provide for adequate sewage waste disposal;

**Motion made by \_\_\_\_\_ :** The proposed subdivision will provide for adequate sewage waste disposal. Soil test pits have been submitted to document that each lot



will have a septic system location that meets Maine wastewater disposal rules without the need for a variance or off-site easement.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

6. **Municipal Solid Waste Disposal:** Will not cause an unreasonable burden on the municipality’s ability to dispose of solid waste if municipal services are to be utilized;

**Motion made by** \_\_\_\_\_ : Solid waste generated by the proposed subdivision can be accommodated within the capacity of the Town’s current solid waste disposal services.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

7. **Aesthetic, Cultural, and Natural Values:** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

**Motion made by** \_\_\_\_\_ : The project will not have undue adverse effects on aesthetic, cultural, and natural values. The project limits clearing of trees to those areas designated on the plan and maintains a 50-foot vegetative buffer along existing roadways. The applicant has consulted with State agencies on historic resources, significant wildlife habitat, and unique natural areas, and available data indicates the absence of such natural and cultural resources on or adjacent to the project site.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

8. **Conformity with Local Ordinances and Plans:** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;

**Motion made by** \_\_\_\_\_ : The proposed subdivision is in conformance with requirements of the Land Use Ordinance, which is consistent with the Comprehensive Plan. The Code Enforcement Officer has conducted inspections of the project site and determined that there are no current violations of the Land Use Ordinance and that standards of the Aquifer Protection District will be met with the proposed road construction.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

9. **Financial and Technical Capacity:** The developer has adequate financial and technical capacity to meet the standards of this Article;

**Motion made by** \_\_\_\_\_ : The applicant has demonstrated financial capacity under Section 6.23.A. by submitting engineering cost estimates for required improvements. A conditional agreement per Section 6.34.C. will require the completion of all



project infrastructure prior to sale of lots or issuance of building permits until a performance guarantee is approved by the Board. The applicant has demonstrated adequate technical capacity under Section 6.23.B. through the submission of technical drawings and studies that have been peer reviewed, and through the provision of an inspection escrow fund to verify satisfactory completion of the project improvements, which is a condition of final approval.

**Motion seconded by \_\_\_\_\_:**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

10. **Surface Waters:** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or river as defined in 38 M.R.S.A. §§ 435-490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

**Motion made by \_\_\_\_\_:** The proposed subdivision is not located within the watershed of Runaround Pond and is not located on property subject to mandatory shoreland zoning. Construction of the new stream crossing and removal of the existing stream crossing have been approved by the Maine Department of Environmental Protection and Army Corps of Engineers. The stormwater treatment facilities have been moved away from the stream in accordance with DEP standards.

**Motion seconded by \_\_\_\_\_:**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

11. **Groundwater:** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

**Motion made by \_\_\_\_\_:** Septic systems will be required to meet the Maine subsurface wastewater disposal rules and wells will be required to meet State rules for well drilling, including the well exclusion zones on each lot as shown on the subdivision plan. There are no documented problems with obtaining an adequate supply of potable water in the project area, and the density of the proposed development and projected household water consumption do not raise concerns for the effect of ground water withdrawals.

**Motion seconded by \_\_\_\_\_:**

**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

12. **Flood Areas:** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain;

**Motion made by \_\_\_\_\_:** No development is proposed within areas mapped as being flood-prone.

**Motion seconded by \_\_\_\_\_:**

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

13. **Fresh Water Wetlands:** All freshwater wetlands within the proposed subdivision have been identified on maps submitted as part of the application, regardless of the size of these wetlands;

**Motion made by** \_\_\_\_\_: All freshwater wetlands within the proposed subdivision have been mapped by qualified professionals.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

14. **Farmland:** All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance has been identified on maps submitted as part of the application;

**Motion made by** \_\_\_\_\_: There is no active farmland nor prime farmland of five or more acres within the project site.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

15. **River, Stream, or Brook:** Any river, stream or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. §480-B.9;

**Motion made by** \_\_\_\_\_: All streams meeting the definition of a regulated stream under the Natural Resources Protection Act have been identified on maps by the applicant and appropriate stream buffers are shown on the subdivision plan.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

16. **Storm Water:** The proposed subdivision will provide for adequate storm water management;

**Motion made by** \_\_\_\_\_: Per Section 5.28.B., the applicant has submitted a stormwater management plan meeting the requirements of DEP regulations and that stormwater management plan has been peer reviewed.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

17. **Spaghetti-Lots Prohibited:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined in 38 M.R.S.A. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5:1) to one;

**Motion made by** \_\_\_\_\_: No lots are proposed within an area regulated by Mandatory Shoreland Zoning that would violate the “spaghetti-lot” rule.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

18. **Great Pond 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;

**Motion made by** \_\_\_\_\_: The project site is not located within the watershed of Runaround Pond.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

19. **Impact on Adjoining Municipalities:** 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.

**Motion made by** \_\_\_\_\_: The proposed residential subdivision will not generate levels of traffic that would cause unreasonable traffic congestion within Durham or any adjacent municipality.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

20. **Land Subject to Liquidation Harvesting:** Timber on the tract being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A §8869.14.

**Motion made by** \_\_\_\_\_: The applicant has submitted certification by a licensed forester that timber harvesting on the site was conducted in compliance with Maine forestry management rules.

**Motion seconded by** \_\_\_\_\_:

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

**D. CLUSTER SUBDIVISION APPROVAL**

**Section 6.33 CLUSTER DEVELOPMENT ALTERNATIVE**

- A. **Purpose of Clustering:** The purpose of these provisions is to allow for flexibility in the design of subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding provisions of Article 4 relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances to relieve hardship, and action of the Zoning Board of Appeals shall not be required.

**Motion made by** \_\_\_\_\_ : The proposed subdivision meets the intent of clustering lots to allow for creation of open space, to provide recreational opportunities, and to protect important natural features and complies with the density limitations and design standards for cluster developments of Section 6.33 B.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

**E. CONDITIONS OF APPROVAL & DECISION**

**Section 6.8. FINAL PLAN APPLICATION PHASE**

**J. Decision on Final Plan Application:** Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in 30-A M.R.S.A., §4404 and the standards of these regulations. If the Board by majority vote finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If by majority vote the Board finds that any of the individual criteria of the statute or the performance standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

**Motion made by** \_\_\_\_\_ : To approve the final subdivision application with the following conditions of approval.

**Motion seconded by** \_\_\_\_\_ :

**Votes to approve:** \_\_\_\_\_ **Votes to deny:** \_\_\_\_\_

1. Per Section 6.10.E., the recording plan must be recorded in the Androscoggin County Registry of Deeds within ninety (90) days of the Planning Board signing. Failure to record within that time frame will require resubmission and reapproval of the final plan.
2. Per Section 6.10.G., no changes, erasures, modifications, or revisions shall be made unless an amended plan is submitted per the terms of Section 6.11.
3. Per Section 6.10.I., the applicant shall commence construction of the required improvements within twelve (12) months and shall substantially complete said improvements within thirty-six (36) months. The applicant shall maintain a performance guarantee for any remaining required improvements throughout the construction period.
4. Per Section 12.A., at least five (5) days prior to the start of construction the applicant shall notify the Road Commissioner in writing of the time of construction commencement so the Town can arrange for inspections by a qualified engineer.
5. Per Section 6.34.C., the Planning Board approves a conditional agreement that requires the completion of all project infrastructure prior to sale of lots or issuance of building permits. The applicant may return to the Planning Board at any point in the construction

to seek approval of a performance guarantee for remaining improvements to allow lot sales and building permit issuance. A performance guarantee shall be submitted for the full cost of erosion and sedimentation controls and site stabilization. Per Section 6.34.F., prior to release of the performance guarantee or any portion thereof, the Road Commissioner or their designee shall determine and provide written certification to the Planning Board that all improvements have been constructed in conformance with the final plan and all applicable codes and ordinances. Partial drawdowns will be allowed.

6. Per Section 6.34.B., no lot in the subdivision may be sold, leased, or otherwise conveyed until the street leading up to and along the frontage of said lot is constructed unless a performance guarantee has been approved and the Fire Chief has provided written verification that said road and lot are accessible by emergency vehicles.
7. Per Section 6.6.C. and 6.34.E., prior to release of the recording plan, the applicant shall replenish the peer review escrow fund to cover the costs of all peer review services incurred by the Town and deposit a check for two (2%) percent of the engineer's construction cost estimate to pay for the cost of Town inspections of the project improvements by a qualified engineer.
8. Prior to the issuance of any certificate of occupancy, the proposed trail shall be fully constructed.
9. The Planning Board approval of Deer Creek Crossing Subdivision is contingent upon the adoption of and compliance with the draft Homeowner Association legal documents submitted by the applicant on November 22, 2022 (Attachment H).

**DATE OF FINAL APPROVAL:**

## 6. Other Business:

### a. Board Discussion of Land Use Ordinance Draft Amendments

- A public opinion survey on the three options is being conducted on the Town website.
- The three options are:
  - Be less restrictive than current zoning and the minimum State requirements per recommendations in the Comprehensive Plan and the need for more housing options.
  - Be more restrictive than current zoning as allowed by the new State requirements based on concerns over impacts of allowing more housing units.
  - Be neutral and simply adopt the new State requirements.
- The Town Planner has drafted Ordinance amendments to move in any of the three policy directions.
- The Planning Board reviewed the survey results at the December 7, 2022 meeting.
- Based on the Planning Board's discussion and decision to move forward with recommendations for presentation of Options 1 and 2 only for consideration by the Select Board, the Town Planner prepared the enclosed talking points for the Chairman.
- The Conservation Commission held a public information meeting on proposed changes to the alignment of the Resource Protection District on December 6, 2022.
- At that meeting, there was discussion of putting two warrant article questions on the 2024 Town Meeting warrant related to realignment of the Resource Protection District.
- The first warrant article on changes to the Resource Protection District would be to fully implement the Comprehensive Plan recommendations to all property in Durham meeting the RP criteria, whether inside or outside the current District boundary.
- The second warrant article on Resource Protection would only apply those criteria within the existing RP boundary, which would result in removal of land inaccurately mapped as floodplain in 2002. This would be a fallback position in case the first warrant article fails, giving relief to affected landowners.
- This seems like a logical approach to take on the affordable housing law questions. A first warrant article can fully implement the Comprehensive Plan recommendations for expanding housing diversity in Durham and if that warrant article fails, a second proposed article can simply bring Durham into

compliance with the new State law (which Durham will need to comply with regardless of language in the Land Use Ordinance).

- The third land use policy area to be addressed is simplifying and clarifying the process for approval of roads serving multiple lots outside of subdivisions.
- Currently the Road Commissioner and Code Officer approve the road design and construction, and the Planning Board approves the maintenance agreement.
- The provisions for approval of these roads, which in most towns are labeled as “private ways,” are scattered in the back lot and roads sections of the Land Use Ordinance, and in the first Ordinance appendix. Those provisions are confusing as to the standards that apply and the process for getting approval.
- The draft revisions simplify the process and clarify the standards, while sticking with the current policies as to the standards.
- As recommended by the Planning Board, approval of private ways serving multiple lots outside of legal subdivisions will be approved at the staff level, including the maintenance agreement.
- The draft amendments will also include statements that acceptance of roads for public maintenance can only be done through a Town Meeting vote, an issue that came up at the last Town Meeting.
- The Historic District Commission has requested more time to review the proposed overhaul of the historic preservation regulations, and no draft amendments will be considered at this Town Meeting.



**TOWN OF DURHAM**  
**630 Hallowell Road**  
**Durham, Maine 04222**

**Office of Code Enforcement  
and Planning**

**Tel. (207) 353-2561**  
**Fax: (207) 353-5367**

**Memo To:** John Talbot, Chairman Durham Planning Board

**From:** George Theborge, Durham Town Planner

**Date:** 12-12-2022

**Re:** Talking Points Affordable Housing Options

At last Wednesday's Planning Board meeting, the Board discussed input from the citizen survey on the three options for responding to the new State law requiring all Maine towns to allow multiple housing units on individual lots. I have developed the following talking points based on our research and the Board discussion to clearly communicate the Board's consideration of that public input along with that taken at the public information meeting on October 12.

TALKING POINTS AFFORDABLE HOUSING OPTIONS FOR 2023 TOWN MEETING:

#### **A. AFFORDABLE HOUSING LAW**

- In April of this year, the Maine Legislature adopted a law requiring all Maine towns to amend their zoning to allow multiple housing units on individual lots.
- Durham is already in substantial compliance as we allow one accessory dwelling unit for any single-family home and we allow duplexes throughout Town.
- The new law will require Durham to allow 3 housing units on any lot where there is an existing home.
- Vacant lots can be limited to 2 units.
- The new law does allow towns to increase lot sizes for the added housing units.

#### **B. RESPONSE OPTIONS EXPLORED BY THE PLANNING BOARD**

##### **OPTION 1 – FOLLOW THE COMPREHENSIVE PLAN RECOMMENDATIONS**

- The new Comprehensive Plan adopted by Durham voters contains policy recommendations that support allowing more housing units on individual lots.
- The new long-range plan recommends a standard lot size of 2 acres, even with multiple units. (Duplexes currently require 2.5 acres)



- The Comprehensive Plan also recommends adopting design standards to help those added units fit into the Town's rural character.
- The first option for responding to the new law is to go with the Comprehensive Plan recommendations, allowing up to 3 housing units on any 2-acre lot.
- A landowner with an existing home or a vacant lot would be allowed to build a single family home with two accessory apartments that could each be half the size of the main dwelling unit.
- A duplex with two, full-size units could also be built as currently allowed, but that duplex could also add one accessory apartment under this option.
- This option would be less restrictive than current zoning and go beyond the State law requirements.

#### **OPTION 2 – FOLLOW THE NEW STATE LAW**

- The second option identified by the Planning Board is to just go with what the State requirements and ignore the Comprehensive Plan recommendations.
- This would allow 3 units with or without size restrictions on a built lot and only 2 units on a vacant lot.
- The current lot size of 2 acres for a single family with an accessory apartment would be maintained, and 2 ½ acres would be required for a duplex or triplex.
- This option would also be less restrictive than current zoning, but only to the extent required by the law.

#### **OPTION 3 – INCREASE LOT SIZES TO OFFSET ADDED HOUSING UNITS**

- Many people have voiced concerns about the potential impacts of added housing on taxes and rural character.
- The Planning Board research identified a third option of increasing lot sizes for the additional units for public input.
- The increased lot sizes could be limited to the State-required additional units.
- This option would be more restrictive than the other two options.

### **C. PUBLIC INPUT FROM MEETING & CITIZEN SURVEY**

- The Planning Board held a public information meeting on October 12.
- At that meeting, which had about a dozen attendees, some people indicated support for increasing housing choices.
- Other people at the meeting expressed concerns for impacts on schools and taxes.
- The Planning Board put out a citizen survey asking for input on the these goals and concerns on the Town website.
- About 200 people responded to the survey.
- The responses were evenly split between being more restrictive out of concern for taxes and rural character and being less restrictive out of concern for limited housing availability.

- Of those who support being less restrictive to allow more housing options, they were evenly divided on whether to follow the Comprehensive Plan or the new State law.

#### **D. PLANNING BOARD RECOMMENDATION**

- The Planning Board reviewed and discussed the public input on December 7.
- The consensus of the Board was to recommend to the Select Board that the Town follow the Comprehensive Plan recommendations based on that Town Meeting vote in 2019 and the State law requiring consistency of ordinances with the adopted Comprehensive Plan.
- The Board also recommends having a second Town Meeting warrant article based on the minimum requirements of the State's affordable housing law in case the vote to adopt the Comprehensive Plan recommendations fails.
- Having the back up option will ensure that the Town's ordinance is not in conflict with the State law that will go into effect on July 1 of 2023.
- The Town Attorney has advised the Code Officer to follow the State law in situations where it conflicts with our Land Use Ordinance.

# Town of Durham Land Use Ordinance

As Adopted at Town Meeting  
April 2, 2022

*Proposed Revisions  
For Town Meeting  
April 1, 2023*

## ***PART 1A – DRAFT AMENDMENTS TO APPLY RESOURCE PROTECTION CRITERIA PER 2018 COMPREHENSIVE PLAN RECOMMENDATIONS (Article 2 and The Official Zoning Map)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2021, 2022

## ARTICLE 2: ESTABLISHMENT OF DISTRICTS

### Section 2.1. ZONING MAP

### Section 2.2. ZONING DISTRICTS

### Section 2.3. DISTRICT BOUNDARIES

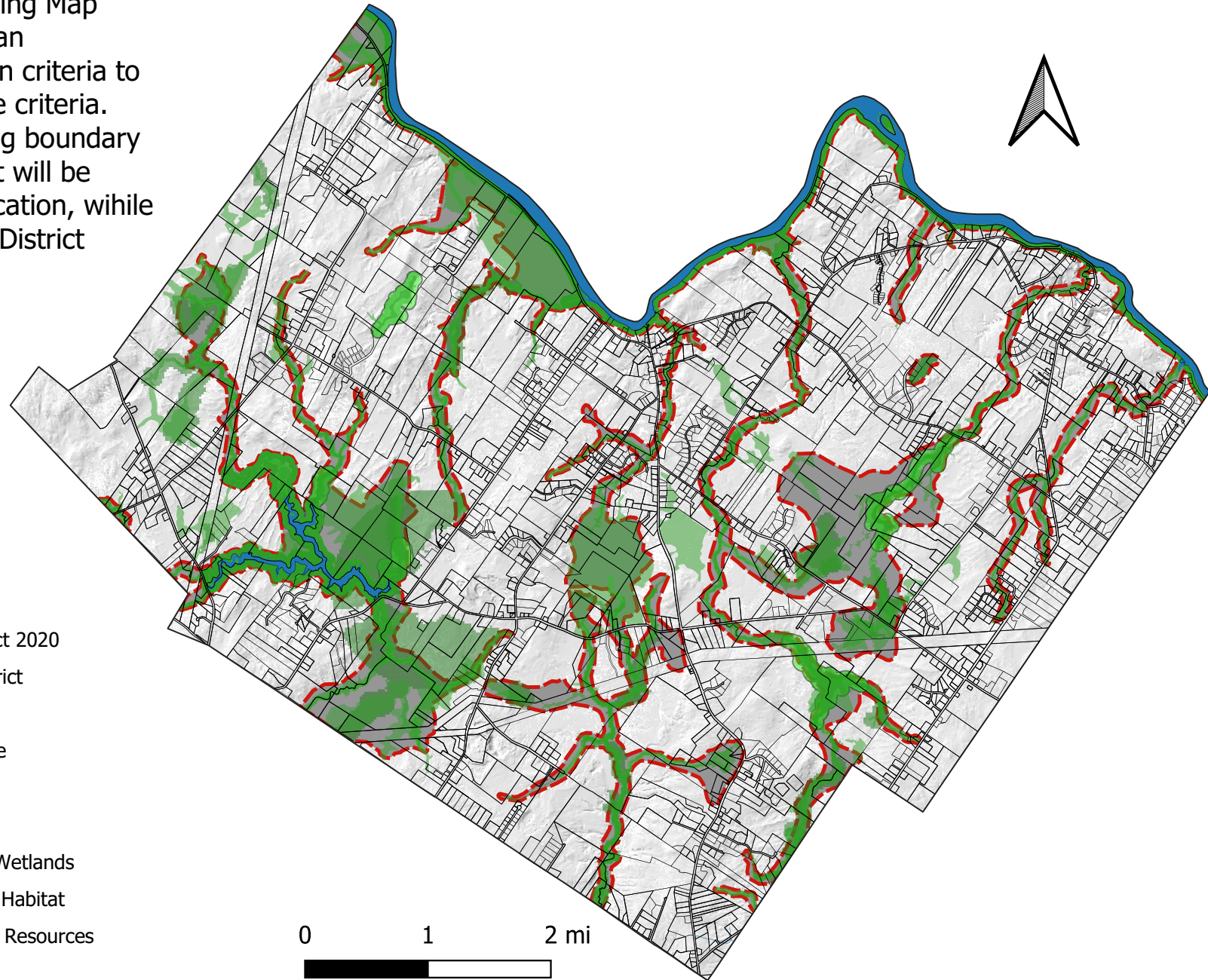
#### A. Division of Lots by District Boundaries

#### B. District Boundaries are defined as follows:










1. **Rural Residential & Agricultural District** is defined as that area not in the Resource Protection District as shown on the Official Zoning Map.
2. **Resource Protection District** boundaries shall be those ~~defined~~ designated on the Official Zoning Map of the Town for Resource Protection as meeting the following Comprehensive Plan criteria:
  - a. 100-year floodplains as determined by the most recent FEMA flood mapping study;
  - b. Areas subject to State mandatory shoreland zoning with the exception of areas designated as Limited Residential Shoreland Zoning (LRSZ);
  - c. Land within one hundred (100') feet of a perennial stream designated on the Zoning Map;
  - d. Land within a forested or emergent wetland that extends for an area of ten (10) or more acres as determined by Primary Map 1, Water Resources & Riparian Habitats, Durham produced by the Maine Department of Inland Fisheries and Wildlife Beginning with Habitat program (January 2018) and designated on the Zoning Map;
  - e. Land within two hundred and fifty (250') of an emergent wetland designated by the Maine Department of Inland Fisheries and Wildlife as being of moderate to high value for waterfowl and wading bird habitat and designated on the Zoning Map; and,
  - f. Land designated as having multiple natural resources as determined by Supplementary Map Natural Resource Co-occurrence, Durham (January 2018) with a rating of six (6) or more attribute values and designated on the Zoning Map.

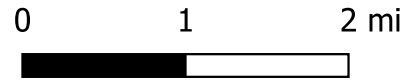
*Note: The current Zoning Map boundaries of the Resource Protection District are based on outdated and inaccurate natural resource inventories and unfairly restrict land use within those boundaries. This amendment clearly spells out the specific comprehensive plan criteria for natural resources that warrant the level of protection provided in this designation. These Resource Protection District will be revised to include all property in Durham meeting any of the six comprehensive plan natural resource criteria.*

The draft amendments to the Zoning Map apply the 2018 Comprehensive Plan recommended Resource Protection criteria to all areas in Durham meeting those criteria. Some properties within the existing boundary of the Resource Protection District will be removed from that zoning classification, while properties outside the current RP District boundary will be added.



### LEGEND

-  Existing Resource Protection District 2020
-  Proposed Resource Protection District
-  100 Year Floodplains
-  Androscoggin River Shoreland Zone
-  Runaround Pond Shoreland Zone
-  100-Ft Stream Buffer
-  Beginning with Habitat 10-Acre + Wetlands
-  Inland Waterfowl and Wading Bird Habitat
-  Beginning with Habitat 6+ Multiple Resources



This map is for informational purposes only. Depictions are based on the best readily available mapping inventories. Specific boundaries of land features and property boundaries require field verification.



# Town of Durham Land Use Ordinance

As Adopted at Town Meeting  
April 2, 2022

*Proposed Revisions  
For Town Meeting  
April 1, 2023*

***PART 1B – DRAFT AMENDMENTS TO  
THE RESOURCE PROTECTION  
DISTRICT  
TO ESTABLISH CLEAR CRITERIA  
AND TO CORRECT MAPPING ERRORS  
(Article 2 & The Official Zoning Map)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

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## ARTICLE 2: ESTABLISHMENT OF DISTRICTS

### Section 2.1. ZONING MAP

### Section 2.2. ZONING DISTRICTS

### Section 2.3. DISTRICT BOUNDARIES

#### A. Division of Lots by District Boundaries

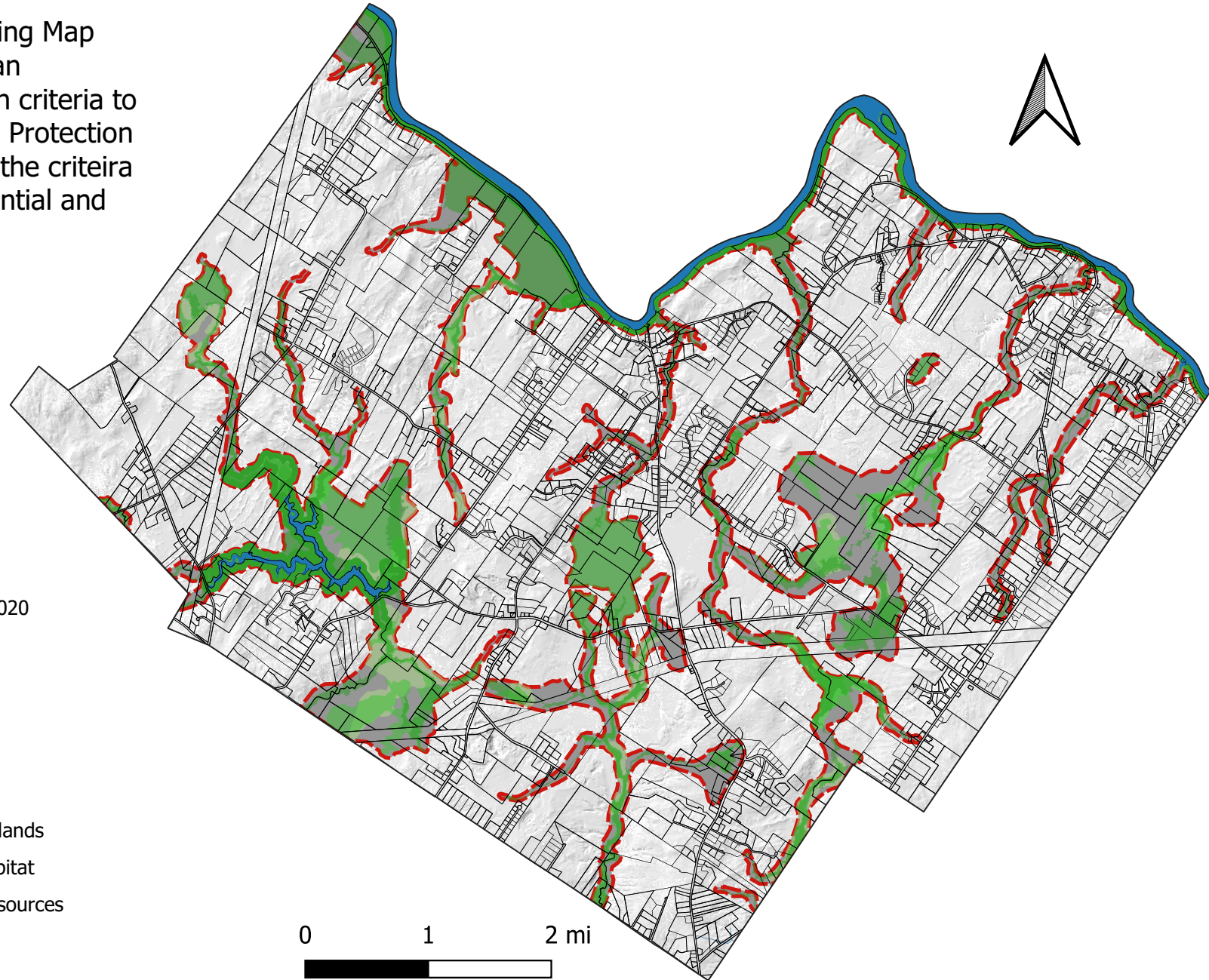
#### B. District Boundaries are defined as follows:

1. **Rural Residential & Agricultural District** is defined as that area not in the Resource Protection District as shown on the Official Zoning Map.
2. **Resource Protection District** boundaries shall be those ~~defined~~ designated on the Official Zoning Map of the Town for Resource Protection as meeting the following Comprehensive Plan criteria:
  - a. 100-year floodplains as determined by the most recent FEMA flood mapping study;
  - b. Areas subject to State mandatory shoreland zoning with the exception of areas designated as Limited Residential Shoreland Zoning (LRSZ);
  - c. Land within one hundred (100') feet of a perennial stream designated on the Zoning Map;
  - d. Land within a forested or emergent wetland that extends for an area of ten (10) or more acres as determined by Primary Map 1, Water Resources & Riparian Habitats, Durham produced by the Maine Department of Inland Fisheries and Wildlife Beginning with Habitat program (January 2018) and designated on the Zoning Map;
  - e. Land within two hundred and fifty (250') of an emergent wetland designated by the Maine Department of Inland Fisheries and Wildlife as being of moderate to high value for waterfowl and wading bird habitat and designated on the Zoning Map; and,
  - f. Land designated as having multiple natural resources as determined by Supplementary Map Natural Resource Co-occurrence, Durham (January 2018) with a rating of six (6) or more attribute values and designated on the Zoning Map.

*Note: The current Zoning Map boundaries of the Resource Protection District are based on outdated and inaccurate natural resource inventories and that restricts land use within those boundaries. This amendment clearly spells out the specific comprehensive plan criteria for natural resources that warrant the level of protection provided in this designation. These criteria will only be applied to property within the current Resource Protection District boundary to correct those mapping errors.*

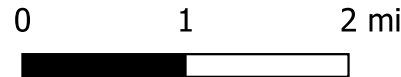
Draft December 2022

The draft amendments to the Zoning Map apply the 2018 Comprehensive Plan recommended Resource Protection criteria to areas within the existing Resource Protection District. Land not meeting any of the criteria will be reclassified as Rural Residential and Agricultural District.



### LEGEND

- Existing Resource Protection District 2020
- Proposed Resource Protection District
- 100 Year Floodplains
- Androscoggin River Shoreland Zone
- Runaround Pond Shoreland Zone
- 100-Ft Stream Buffer
- Beginning with Habitat 10-Acre + Wetlands
- Inland Waterfowl and Wading Bird Habitat
- Beginning with Habitat 6+ Multiple Resources



This map is for informational purposes only. Depictions are based on the best readily available mapping inventories. Specific boundaries of land features and property boundaries require field verification.





# Town of Durham Land Use Ordinance

As Adopted at Town Meeting  
April 2, 2022

*Proposed Revisions  
For Town Meeting  
April 1, 2023*

***PART 2A – DRAFT AMENDMENTS TO  
IMPLEMENT 2018 COMPREHENSIVE  
PLAN RECOMMENDATIONS TO  
ADDRESS HOUSING NEEDS  
AND TO COMPLY WITH THE NEW  
STATE AFFORDABLE HOUSING LAW  
(Articles 4 and 5)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

**PART 2A - AFFORDABLE HOUSING LAW RESPOSE:  
COMPREHENSIVE PLAN 2018 HOUSING GOALS**

## ARTICLE 4: SPATIAL STANDARDS IN ZONING DISTRICTS

### Section 4.1 DISTRICT REQUIREMENTS

#### A. Rural Residential & Agricultural District

1. Minimum Lot Size – 90,000 sq. ft.
  - a. Minimum Buildable Area – Each lot must contain a contiguous 40,000 sq. ft. building envelope which does not contain areas in Resource Protection District, wetlands, or slopes greater than twenty (20%) percent.
2. Minimum Access to Lots – ~~Only one single family detached dwelling or two-family dwelling shall be permitted on a lot.~~ No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width.
3. Minimum Road Frontage – 300 ft.
4. Minimum Setbacks
  - a. Front Lot Line Residential – 50 ft.
  - b. Front Lot Line Non-residential – 100 ft.
  - c. Side Lot Line Residential – 20 ft.
  - d. Side Lot Line Non-residential – 100 ft.
  - e. Rear Lot Line Residential – 20 ft.
  - f. Rear Lot Line Non-residential – 100 ft.
5. Maximum Structure Height – 35 ft.
  - a. For Schools and Municipal Structures – 50 ft.
6. Maximum Coverage for impervious surfaces (including structures) – 25%
7. ~~Minimum Lot Size Two-Family Dwelling – 110,000 sq. ft.~~ Maximum Number of Dwelling Units per Lot – 3 units (1 single family with 2 accessory apartments or 1 two-family dwelling with 1 accessory apartment), subject to subdivision requirements.

*Note: The Maine Legislature passed a law requiring all municipalities to allow multiple dwelling units on lots wherever single-family homes are allowed. Durham already allows accessory apartments and duplexes, and the 2018 Comprehensive Plan makes recommendations for expanding housing options while making those added units fit into the rural character of the Town. The proposed amendments follow the Comprehensive Plan recommendations, comply with the new State law, and treat all landowners equally.*

## ARTICLE 5: PERFORMANCE STANDARDS

### Section 5.1. ACCESSORY APARTMENTS

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for town residents while protecting the ~~single-family~~ rural character of ~~residential neighborhoods~~ the community. Accessory apartments may be utilized for rental purposes as well as in-law accommodations subject to the following requirements. If the accessory apartment does not meet all of said requirements, then a conditional use permit shall be required:

- A. The dwelling shall have only one main entrance and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. No open or enclosed outside stairways shall be permitted above the first story.
- B. The main dwelling unit shall have at least fifteen hundred (1500 sq. ft.) square feet of floor area and ~~the~~ accessory apartments shall not exceed fifty (50%) percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.
- C. ~~Only one accessory apartment shall be permitted per lot. It~~ An accessory apartment shall be made part of the main residence or located in a separate building whose primary function is not as a dwelling unit, such as a garage or barn.
- D. Accessory apartments shall not be permitted for any nonconforming structure or use, where the nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

*Note: Note: The Maine Legislature passed a law requiring all municipalities to allow multiple dwelling units on lots wherever single-family homes are allowed. Durham already allows accessory apartments and duplexes, and the 2018 Comprehensive Plan makes recommendations for expanding housing options while making those added units fit into the rural character of the Town. The proposed amendments follow the Comprehensive Plan recommendations, comply with the new State law, and treat all landowners equally. Under the amendments to implement recommendations of the Comprehensive Plan, any single-family home will be allowed to have up to two accessory apartments but they will be limited in size.*

# Town of Durham Land Use Ordinance

As Adopted at Town Meeting  
April 2, 2022

*Proposed Revisions  
For Town Meeting  
April 1, 2023*

## ***PART 2B – DRAFT AMENDMENTS TO COMPLY WITH THE NEW STATE AFFORDABLE HOUSING LAW (Articles 4 and 5)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

**PART 2B - AFFORDABLE HOUSING LAW RESPONSE:  
MINIMUM COMPLIANCE WITH STATE MANDATE**

**ARTICLE 4: SPATIAL STANDARDS IN ZONING DISTRICTS**

**Section 4.1 DISTRICT REQUIREMENTS**

A. Rural Residential & Agricultural District

1. Minimum Lot Size – 90,000 sq. ft.
  - a. Minimum Buildable Area – Each lot must contain a contiguous 40,000 sq. ft. building envelope which does not contain areas in Resource Protection District, wetlands, or slopes greater than twenty (20%) percent.
2. Minimum Access to Lots – ~~Only one single family detached dwelling or two-family dwelling shall be permitted on a lot.~~ No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width.
3. Minimum Road Frontage – 300 ft.
4. Minimum Setbacks
  - a. Front Lot Line Residential – 50 ft.
  - b. Front Lot Line Non-residential – 100 ft.
  - c. Side Lot Line Residential – 20 ft.
  - d. Side Lot Line Non-residential – 100 ft.
  - e. Rear Lot Line Residential – 20 ft.
  - f. Rear Lot Line Non-residential – 100 ft.
5. Maximum Structure Height – 35 ft.
  - a. For Schools and Municipal Structures – 50 ft.
6. Maximum Coverage for impervious surfaces (including structures) – 25%
7. Minimum Lot Size Two-Family Dwelling – 110,000 sq. ft.
8. Maximum Number of Dwelling Units per Lot:
  - a. Lots with an Existing Dwelling on April 1, 2023 - Two additional dwelling units for a maximum of three units (subject to subdivision requirements).
  - b. Vacant Lots – Maximum of two dwelling units.

*Note: The proposed amendments bring Durham into compliance with a new State Affordable Housing law that requires all municipalities to allow multiple housing units wherever single-family homes are allowed.*

## ARTICLE 5: PERFORMANCE STANDARDS

### Section 5.1. ACCESSORY APARTMENTS

The purpose of the provisions concerning accessory apartments is to provide a diversity of housing for town residents while protecting the ~~single-family rural~~ community character of ~~residential neighborhoods~~ the community. Accessory apartments may be utilized for rental purposes as well as in-law accommodations subject to the following requirements. If the accessory apartment does not meet all of said requirements, then a conditional use permit shall be required:

- A. The dwelling shall have only one main entrance and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. No open or enclosed outside stairways shall be permitted above the first story.
- B. The main dwelling unit shall have at least fifteen hundred (1500 sq. ft.) square feet of floor area and ~~the~~ accessory apartments shall not exceed fifty (50%) percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces, nor public hallways or other common areas.
- C. ~~Only one accessory apartment shall be permitted per lot. It~~ An accessory apartment shall be made part of the main residence or located in a separate building whose primary function is not as a dwelling unit, such as a garage or barn.
- D. Accessory apartments shall not be permitted for any nonconforming structure or use, where the nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

***Note: Note: The Maine Legislature passed a law requiring all municipalities to allow multiple dwelling units on lots wherever single-family homes are allowed. The new State law does not allow towns to restrict property owners to a single accessory apartment. Up to three dwelling units are required for any lot with one existing dwelling unit on it.***

# Town of Durham Land Use Ordinance

As Adopted at Town Meeting  
April 2, 2022

*Proposed Revisions  
For Town Meeting  
April 1, 2023*

## ***PART 3 – DRAFT AMENDMENTS TO SIMPLIFY AND CLARIFY THE PROCESS FOR APPROVAL OF NEW ROADS OUTSIDE OF SUBDIVISIONS (Articles 4 and 5)***

NOTE: Proposed changes are indicated with ~~strikethrough~~ text indicating language to be deleted and underlined text indicating language to be inserted. Explanatory notes are in ***(bold italic text enclosed by parentheses)***.

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***NOTE: In April of 2022, the Maine Legislature passed an affordable housing law that requires all municipalities to allow up to two dwelling units on any lot where a single-family home is currently allowed.***

## **Section 5.7. BACK LOTS**

Back lots may be developed although they lack frontage on a Town and/or state maintained accepted road if the development is in accordance with the following provisions:

- A. If a back lot is accessible only by a legally enforceable right-of-way, it may be used for one single back lot ~~family dwelling~~ if the following conditions are met:
1. The right-of-way must be deeded to the owner of the back lot and be a minimum of fifty (50') feet in width.
  2. Creation of the 50-foot right-of-way to serve the back lot shall not create a nonconforming front lot by reducing such lot's road frontage below the minimum for that district, or, if the front lot is already nonconforming, reduce its road frontage at all. Where the right-of-way is given by easement or irrevocable license, or some grant less than a fee interest, the land over which the back lot access is created by deed or by easement such servitude is placed may not be counted toward meeting road frontage requirements for the front lot.
  3. No more than one right-of-way for back lot development may be created out of any lot fronting on a Town and/or state maintained road unless each subsequent right-of-way is created out of at least an additional three hundred and fifty (350') feet of Town road frontage, and the road entrances to such Town road are at least six hundred (600') feet apart.
  4. The dimension of the back lot which borders upon the right-of-way shall be at least three hundred (300') feet in length and the depth of the lot perpendicular to said frontage shall be at least two hundred (200') feet for at least three hundred (300') feet along the right-of-way. The back lot shall have a minimum of five (5) acres not including any land constituting the right of way.
  5. The driveway shall be required to be sixteen (16') twenty (20') feet wide with twelve (12") inches of aggregate subbase, six (6") inches of aggregate base, and appropriate drainage as shown in Appendix 1, Section 1.3, Figure 3 of this Ordinance, however no shoulders or pavement are required.

***NOTE: The following provisions for approval of "private ways" serving multiple back lots will be relocated to Section 5.23 to consolidate the existing provisions for approval of such developments, creating a clear division between single back lots. Single back lots can be expanded into private ways in the future, but only if all requirements for private ways are followed, including upgrading the driveway to the private way standards of Section 5.23 for road width and maintenance agreement.***



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~~B. A legally enforceable right-of-way may be used for more than one backlot or single-family dwelling if the following conditions are met:~~

- ~~1. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.~~
  - ~~a. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the Planning Board. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws.~~
- ~~2. A maintenance agreement as described in Section 5.22 of this Article shall be recorded in the Androscoggin County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.~~
- ~~3. No residential building permit for a dwelling shall be issued for second and subsequent Back Lots until the requirements of this Ordinance have been met.~~
- ~~4. The right-of-way and road must be brought up to subdivision road standards as found in Appendix 1, Section 1.3 of this Ordinance, with the exception of the paving requirement.~~

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### **Section 5.23. ROADS PRIVATE WAYS**

*NOTE: Section 5.23 is intended to provide a mechanism for the creation of private ways outside of subdivisions that serve multiple exempt lots. The provisions for approval of such roads are split between Section 5.7 for “back lots” and this section for “roads,” creating confusion on the approval process for both. The proposed revisions will consolidate the private way provisions in this section, and the standards will remain those that are currently in effect for such roads. The Planning Board indicated that the approval of such private ways should be entirely done by Town staff rather than having the Planning Board review the maintenance agreement. Finally, the amendments clearly state that road acceptance requires a Town Meeting vote.*

- A. The Town shall not accept as a Town Road any private road or way that is not built to public road standards. Acceptance of any private road as a Town Road requires a vote of approval at Town Meeting.
- B. After March 6, 2004 any person or persons, prior to:
  1. Developing a private road or way developed to provide access to two or more dwelling units or a structure intended for commercial, industrial or light industrial uses; or,
  2. Extending an existing private road or way which will thereafter serve two or more dwelling units, or a structure intended for commercial, industrial or light industrial uses; or,
  3. Putting to use for the first time an existing private road or way to serve two or more dwelling units or a structure intended for commercial, industrial or light industrial uses,shall be required to seek and obtain approvals for a private way plan meeting the following requirements:
- C. A street plan shall be prepared by a professional engineer, along with a cross section and drainage plan. The plan shall be labeled “Plan of a Private Way” and shall provide an approval block for the signatures of the Code Enforcement Office and Road Commissioner. The Plan shall delineate the proposed way and each of the lots to be served by the private way. The plan shall be recorded in the Androscoggin Registry of Deeds prior to construction of the second or subsequent dwelling.
  1. The street plan shall bear notes: (1) The Town of Durham will not be responsible for the maintenance, repair, or plowing of the privately owned road and (2) Further lot divisions utilizing the privately owned road are prohibited without prior approval of the Road Commissioner. Nothing contained in this paragraph shall prevent a privately owned road from becoming a Town way pursuant to the state and local laws. Acceptance of any road for public maintenance requires a vote at Town Meeting.
  5. A maintenance agreement meeting the requirements of subsection D. below shall be recorded in the Androscoggin County Registry of Deeds. The

Durham Land use Ordinance Adopted 4-2-2005, updated, 2006, 2007, 2008, 2009, 2016, 2019, 2020, 2021, 2022

maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.

6. No residential building permit for a dwelling shall be issued for the second and subsequent lots until the requirements of this Ordinance have been met.
7. The right-of-way and road must be brought up to subdivision road standards as found in Appendix 1. Section 1.3 of this Ordinance with the exception of the paving requirement.

D. Applicants for private way approval shall submit for the approval of the ~~Planning Board~~ Road Commissioner a maintenance agreement or escrow agreement executed by the owners of the lots containing the dwelling units or structures which shall be using the private road or way, in registry recordable form, which agreement provides for the obligations of each owner of the lots on which such dwelling units or structures are located with respect to the maintenance, repair and snow plowing of such road or way. The applicant shall prepare and submit for approval of the ~~Planning Board~~ Road Commissioner a maintenance agreement which shall specify the rights and responsibilities of the owners of the lots on the road or way in question among themselves with respect to responsibility for the costs of construction, maintenance, repair, and plowing.

E. The maintenance agreement shall also include:

1. A detailed statement of how the ownership interests in the private way will be structured (i.e., whether ownership will be single or joint, whether lot owners will own the fee or have easements, etc.).
2. A statement that in the event any of the lots shown on the plan are divided or in the event any remaining land of the declarant is subsequently divided into lots which are served by the private way, then such resulting lot or lots shall become subject to the maintenance agreement and to any modifications to the maintenance agreement advisable to adjust the duties and responsibilities equitably among the owners of all the lots served by the private way.
3. An acknowledgment by the declarant and any other persons signing the maintenance agreement that the Town of Durham is not responsible for the construction, maintenance, repair or plowing of the private way.
4. A statement that the duties and obligations imposed by the maintenance agreement run with the land and shall be transferred to purchasers or other transferees of any portion of the real estate subject to the maintenance agreement and that, upon such transfer, the Planning Board shall be notified in writing and provided with a copy of any changes or amendments to the maintenance agreement.
5. A requirement that the maintenance agreement be referenced in all deeds to any lots served by the private way.
6. If the private way subject to the maintenance agreement is an extension of an existing private way which served lots created prior to March 6, 2004, a statement that the applicant for private way approval has contacted the owners

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of such lots, has offered them the opportunity to make their properties subject to the maintenance agreement and that they have either accepted or declined that offer; and that the Declarant has submitted to the Code Officer a notarized affidavit confirming the Declarant's compliance with this paragraph.

7. An agreement which permits the other signatories of the maintenance agreement to place a lien on the property of any signatory who has not paid the share of expenses allocated to them in the amount of the unpaid assessment for costs for the private way.
8. Upon approval of the agreement the person or persons submitting the agreement shall record it in the Androscoggin County Registry of Deeds so that the obligations therein shall be covenants that run with the land upon which the dwelling units or structures are located. No building permit or other approval required by this Ordinance for the dwelling units or structure to be served by such road or way, shall be issued or approved unless this provision has been complied with.