

## **CONTINUATION OF APRIL 10, 2024 MEETING**

**DURHAM PLANNING BOARD  
SPECIAL MEETING AGENDA  
Durham Fire Station, 6:30 p.m.  
April 24, 2024**

*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. Pledge of Allegiance
3. Acceptance of Prior Meeting Minutes (April 10, 2024)
4. Amendments to the Agenda
5. Continuing Business:
  - a) Conditional Use Application for Maine Custom Woodlands LLC to Expand a Business at 1326 Hallowell Rd., Map 8, Lot 12 (Public comment will not be taken)
  - b) Completeness Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)
  - c) Substantive Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)
  - d) Completeness Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)
  - e) Substantive Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)

**4. Acceptance of the Minutes of Prior Meetings (April 10, 2024)**



# Town Of Durham

## Planning Board Minutes

### Fire Station Meeting Room, 6:30 pm

### April 10, 2024

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#### 1. Roll Call & Determination of a Quorum

**In attendance:** John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Brian Lanoie, Marc Derr, Tyler Hutchison (Alternate), and George Thebarger (Town Planner).

**Absent (excused):** Anne Torregrossa

#### 2. Pledge of Allegiance

#### 3. Amendments to the Agenda: None

#### 4. Acceptance of the Minutes of prior meeting (March 6, 2024)

**Allan Purinton moved** to accept the March 6, 2024 meeting minutes, **Juliete Caplinger seconded**, motion carried **5 – 0**.

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

##### a.) Town Officials:

##### George Thebarger

- The Town Meeting approved Land Use Ordinance amendments for housing density (Part 1), solar standards (Part 2), and fees (Part 3). A budget for codification of the Land Use Ordinance was also passed.
- The Select Board will be meeting on May 7 to discuss possible land use policy direction and projects for the coming year.
- The Community Center Visioning process will also be put in motion with an introductory meeting later in May.

##### b.) Residents - None

##### c.) Non-residents – None

**6. Continuing Business:**

- a) **Public Hearing on Applications for Transmission Line Section 62 Rebuild & Transmission Line Section 64 Rerate, Map 9, Lot 16, Map 12, Lot 25, & Map 13, Lot 12. (Public comment will be taken)**
- Sam Rice of updated the Board on the supplemental submissions that addressed questions raised by the Board at the last meeting.
  - He also summarized communications with the Fire Chief, Road Commissioner, and Code Officer.
  - The public hearing was opened and closed with no member of the public requesting to speak.
- b) **Conditional Use Application for Transmission Line Section 62 Rebuild & Transmission Line Section 64 Rerate, Map 9, Lot 16, Map 12, Lot 25, & Map 13, Lot 12. (Public comment will not be taken)**
- The Chairman read the draft findings for substantive deliberation by the Board:

**Section 7.4 CONDITIONAL USE REVIEW CRITERIA**

A. **Review Criteria:** Before it issues a conditional use permit, the Planning Board shall find, as a matter of fact, that the proposed use meets the following criteria:

1. **Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

**Findings:**

- a. The Project will maintain the same safe and healthful conditions that currently exist in the transmission line corridor.
- b. The Project will not result in any sewage disposal.
- c. CMP provided its permits from the US Army Corp of Engineers and the Maine DEP. These approvals demonstrate that the Project has been designed to meet or exceed compliance with all applicable laws, ordinances, codes, and regulations with respect to air and water quality. Minor temporary influences of air quality may occur as a result of construction related activities, such as engine exhaust, but will be insignificant due to their limited duration and location within the existing transmission line corridor.
- d. The Project will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts.

**Motion seconded by Brian Lanoie: Votes to approve: 5 Votes to deny: 0**

2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

**Findings:**

- a. No new permanent roads or driveway entrances are proposed.
  - b. Prior to construction activities, CMP will establish temporary access points from public or private roadways in areas where access does not currently exist. An adequate number of access points will be determined in locations that provide safe access with respect to sight distances, intersections, and applicable traffic generators. All temporary access points will meet MDOT Highway Driveway and Entrance Rules as specified in Title 17 Chapter 299.
  - c. During the construction phase, some material and equipment deliveries may require vehicles to stop on or back into a street right-of-way. During these infrequent occasions, spotters or flaggers will be used to assist vehicles into or out of the corridor.
  - d. Post-construction, CMP will utilize the currently existing roads that enable CMP to access the corridor for occasional routine and emergency transmission line maintenance and repair. This continued use will not cause additional highway or public road congestion.
  - e. CMP has consulted with the Durham Road Commissioner who proposed conditions of approval related to obtaining permits, the design and removal of temporary access points, erosion and sedimentation controls, and bonding for potential road damage.
  - f. The Project will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

- 3. Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood.

**Findings:**

- a. The Project is located within the existing CMP transmission line corridor and is consistent with existing uses.
  - b. The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.
  - c. The applicant has consulted with the Fire Chief who has scheduled specialized training for emergencies involving high voltage lines.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Brian Lanoie:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

- 4. Environmental Impacts:** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.

**Findings:**

- a. CMP's Environmental Guidelines (Application Exhibit 7) will be applied to minimize soil disturbance and to protect water quality.
  - b. CMP's permits from the USACE and the Maine DEP demonstrate that the Project has been designed to meet or exceed compliance with all applicable laws, ordinances, codes, and regulations with respect to sedimentation, erosion, and water supplies.
  - c. The Project will not result in sedimentation or erosion or have an adverse effect on water supplies.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

5. **Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.

**Findings:**

- a. The Project will be constructed within the existing CMP transmission line corridor.
  - b. The Project is a rebuild and a rerate of existing transmission lines and therefore is not only compatible but is identical to existing uses.
  - c. The Project will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

6. **Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

**Findings:**

- a. The rebuilt and re-rated transmission lines will not create any noise that is different from present conditions.
  - b. As part of the state permitting of the New England Clean Energy Connect project, CMP evaluated transmission line noise in a sound study, which demonstrates that the Project in Durham will be below the Section 5.19 noise limits.
  - c. The Project will comply with Section 5.19's prohibition on construction activities between 9 p.m. and 6:30 a.m.
  - d. The Project will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

- 7. Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

**Findings:**

- a. The Project is located within the existing CMP transmission line corridor on land owned by CMP.
- b. CMP provided evidence of title, right, or interest in Application Exhibit 3.
- c. CMP has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by John Talbot:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

- 8. Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

**Findings:**

- ~~a. The Project is being funded as part of NECEC project, which will be fully funded by Massachusetts ratepayers.~~
- b. Not only has CMP secured funding for the Project, but CMP is a subsidiary of AVANGRID, Inc., a leading sustainable energy company with approximately \$41 billion in assets and operations in 24 U.S. states. CMP provided as Application Exhibit 9 a Letter of Commitment to Fund from Michael Panichi, Vice President & Treasurer of AVANGRID, Inc., which is the parent company of CMP.
- c. CMP has extensive experience in the design, construction, and operation of electric infrastructure projects and will utilize existing staff capabilities for this Project. To support the Project, CMP has engaged a team of highly qualified and experienced engineers, permitting specialists, consultants, and contractors.
- d. CMP has stated its commitment and has the financial and technical ability to comply with any reasonable conditions imposed by the Planning Board pursuant to subsection 7.5



- The Chairman moved to strike the first finding as being irrelevant to the demonstration of financial capacity. Marc Derr seconded the motion and the amendment passed unanimously.

**Motion made by John Talbot:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

**B. Compliance with Land Use Ordinance Standards:** The proposed conditional use shall meet all applicable criteria and design or performance standards in all articles of the Land Use Ordinance.

1. **Article 5 - Performance Standards:** The Project conforms with the following applicable standards for specific uses and issues:

**5.4 Air Emissions:** The Project will not cause air pollution, and no degradation of air quality will result from the Project. Minor air emissions will result from construction-related activities, such as exhaust from diesel engines, but will be limited in duration and given the generally rural nature of the site, Section 5.4 criteria will be met. All activities will also comply with applicable federal and state regulations.

**5.10 Construction & Plumbing Standards:** All construction will be in accordance with CMP's transmission standards, general industry standards, and good utility practices including all necessary live line working clearances, strength factors, and reliability factors that are governed by the National Electrical Safety Code ("NESC"). The transmission lines and all facilities will be operated in full compliance with CMP safety standards, which fully comply with federal Occupational Safety & Health Administration requirements.

**5.11 Erosion Control:** CMP's Environmental Guidelines, which are used as a routine part of all transmission and substation projects, contain erosion and sedimentation control requirements, standards, and methods that will protect soil and water resources during construction of the various Project components. It contains specific BMPs appropriate for electric transmission line construction. These guidelines will be followed in the rebuild and rerate of these transmission lines in Durham and are consistent with the requirements of the Shoreland Zoning Ordinance, as well as Section 5.11(A)-(D). CMP's Environmental Guidelines will serve as the soil erosion and sedimentation control plan to be submitted for approval per Article 9 Section 9.11(R)(1). Upon completion of the project, all disturbed areas will be permanently revegetated or otherwise permanently stabilized. This includes the restoration of all areas disturbed by pole installation, temporary access roadways, construction, and resource crossings. In limited circumstances, minor grading within 10 feet of a property line may be required in order to accommodate temporary access roads which will be restored at the end of the Project.

**5.14 Historic Resources:** CMP conducted extensive pre-historic archaeological, historic archaeological, and historic architectural investigations and surveys along the Project route, for State purposes under Chapter 375.11 of the MDEP rules and for federal action under Section 106 of the National Historic Preservation Act (“NHPA”) (16 U.S.C § 470f). CMP consulted with the Maine Historic Preservation Commission (“MHPC”) throughout the state and federal permit application development and approval process. These surveys identified one site in Durham that is eligible for NHPA recommendation; however, this site will be avoided by construction activity; temporary construction fencing to prohibit disturbance of the site will be installed prior to construction activities.

**5.16 Landscaping:** The transmission line corridor will be revegetated through natural recruitment to a scrub-shrub habitat as required by the VMP (Exhibit 6) and Environmental Guidelines (Application Exhibit 7). CMP will maintain a forested buffer along the western extent of the Project that provides landscaping that screens views of the Project. Where the existing transmission lines are visible from nearby locations, including where the Project crosses open agricultural areas, no additional landscaping is proposed because it would not be practical or effective given the existing state of the landscape. Because the Project will be located within an existing corridor and adjacent to another existing transmission line, it will not adversely affect the scenic quality of the adjoining neighborhoods nor encroach on abutting land uses and the landscape will be preserved in its natural state to the maximum extent possible.

**5.19 Noise Limits:** The rebuilt and re-rated transmission lines will not create any noise that is different from present conditions. Nevertheless, as part of the state permitting of the NECEC Project, CMP evaluated transmission line noise in a sound study, which demonstrates that the Project in Durham will be below the Section 5.19 noise limits. The Project further will comply with the prohibition on construction activities between 9 p.m. and 6:30 a.m.

**5.20 Odor Emissions:** Minor temporary odor emissions as a result of construction-related activities, such as exhaust from diesel engines, may occur. Given the limited duration of construction activities and the generally rural nature of the site, any influences on overall odor emissions will be insignificant in Durham. Accordingly, the Project will not cause or allow the emission of odorous air contaminants from any source that would result in detectable odors at the lot line of the source in excess of the limits set forth in Section 5.20. All activities will also comply with applicable federal and state regulations.

**5.25 Storage of Materials:** There will be short-term storage in upland areas of wooden poles, wire, and other hardware to be used for the rebuild and rerate of these transmission lines. Materials will be neatly organized and stored so as to not harbor vermin, and to prevent stagnation of water. All materials stored outdoors will be stored in such a manner as to prevent the breeding and harboring of insects, rats, or other vermin. Only materials used for construction in the immediate area will be

stored in these areas.

**5.29 Vibrations:** During the normal operation of the transmission lines there will be no vibrations at or beyond lot lines.

**5.30 Water Quality Impacts:** The Project will not deposit on or into the ground or discharge any pollutant to the waters of the State. To protect water quality and minimize spill potential during construction, no fueling or maintenance of vehicles will be performed within 100 feet of wetlands, streams, or other sensitive or protected natural resources, unless done on a paved road. As described in the VMP (Exhibit 6), CMP uses and will continue to use a selective herbicide program to treat areas once every four years to maintain early successional scrub shrub growth. Herbicide will be selectively applied (using a low-pressure backpack-mounted applicator) to individual capable specimens to prevent growth (or re-growth of a cut plant) of individual plants. Herbicides will not be used within 100-foot riparian buffers.

2. **Article 9 – Shoreland Zoning:** Three poles (62-52, 62-53 and 62-54) which already exist within the Limited Residential Shoreland Zoning District will be replaced as part of the Section 62 rebuild and one existing pole (64-197) that will receive maintenance as part of the Section 64 rerate is located in the RP district of Libby Brook. A shoreland zoning permit is not required, but the Project conforms with following applicable Article 9, Sections 9.11 and 9.13(G) Land Use Standards and Criteria:

**9.11.C. Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or Located Below the Normal High-Water Line of a Water Body or Within a Wetland; and Shoreline Stabilization:** There will be no in-stream work, and CMP will provide the riparian buffers described in the VMP (Application Exhibit 6) and implement its environmental protection requirements described in its Environmental Guidelines (Application Exhibit 7) and Environmental Control Requirements (Application Exhibit 8), such that impacts will be minimized.

**9.11.H. Stormwater Runoff:** The Project is designed to minimize stormwater runoff by deploying stormwater control methods described in the Environmental Guidelines (Application Exhibit 7). Temporary access roads and any construction activities will be carefully planned and designed to utilize existing natural runoff control features, such as upland vegetated buffers, and diversion and dissipation techniques such as water bars, check dams, or settling basins. Diversion and dissipation areas will be maintained as necessary to ensure proper functioning. Shrubby vegetation will be retained to the maximum extent practicable and soil exposure during construction will be minimized in both area and duration. After construction is complete, all areas will be returned to preconstruction contours, reseeded as needed, and allowed to revegetate to a scrub-shrub condition. The Project will not alter stormwater runoff from predevelopment conditions.

**9.11.K. Essential Services: Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.** The Project will be

located within CMP's existing transmission line corridor and will be built entirely on land that CMP owns. The existing transmission line corridor will not require widening to accommodate the upgraded transmission lines. CMP's existing, maintained transmission line corridor crosses the RP and LR districts in Durham. Pole number 64-197, which is an existing pole that is partially located within the RP district of Libby Brook, will receive maintenance (installation of cross brace) as part of the Project. The Project will not be "installed" in the RP district associated with Runaround brook or the unnamed tributary to Runaround Brook but will simply pass overhead. CMP has minimized the impact of the transmission line upgrades by continuing to locate them within the existing corridor.

There is no reasonable alternative to this Essential Service passing over the RP district in Durham. Locating the transmission line upgrades within an existing transmission line corridor minimizes impacts on the surrounding uses and resources, including natural resources and visual impacts. Within the corridor, CMP has sited each pole to avoid or minimize impacts on surrounding uses and protected natural resources to the greatest extent practicable and has compensated for impacts that cannot be avoided. The Project includes one pole location in the RP district associated with Libby Brook.

**9.11.O. Exemptions to Clearing or Removal of Vegetations other than Timber**

**Harvesting:** The Project meets the exemption of clearing and vegetation removal requirements in the Shoreland Zone as per Section 9.11(O)(2) because Project does not involve construction of principal or accessory "structures" as defined in the Land Use Ordinance.

**9.11.P. Hazard Trees, Dead Trees and Storm-Damaged Trees:** Current transmission line corridor maintenance will continue on the rebuilt and rerouted lines. During such maintenance, hazard trees, storm damaged trees, and dead trees may be identified; those trees are typically on the edge of the transmission line corridor and are identified as hazard trees because they pose an imminent threat of violating the minimum separation standard or are at risk of falling onto and contacting the lines due to disease, unstable shape, or potential instability. Hazard trees are typically removed immediately upon identification. Removal of hazard, storm-damaged trees, and dead trees, where the stumps remain and no new cleared areas are created, will be conducted only when necessary and is allowed in the shoreland zone without a permit after consultation with the CEO.

**9.11.R. Erosion and Sedimentation Control:** CMP's Environmental Guidelines (Application Exhibit 7) will serve as the soil erosion and sedimentation control plan to be submitted for approval. Certified erosion control specialists will be present at the site each day these activities occur for a duration that is sufficient to ensure that proper erosion and sedimentation control practices consistent with this standard are followed. Erosion and sedimentation control measures will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion has been completed.

**9.11.S. Soil Analysis:** Based on the Soil Survey Geographic Database compiled by the

United States Department of Agriculture – Natural Resources Conservation Service, the Project will be located on soils in or upon which the proposed uses and transmission poles can be established and maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, during and after construction.

**9.11.T. Water Quality:** The Project will not deposit on or into the ground or discharge any pollutant to the waters of the State. To protect water quality and minimize spill potential during construction, no fueling or maintenance of vehicles will be performed within 100 feet of wetlands, streams, or other protected or sensitive natural resources, unless done on a paved road. As described in the VMP (Exhibit 6), CMP uses and will continue to use a selective herbicide program to treat areas once every four years to maintain early successional scrub shrub growth. Herbicide will be selectively applied (using a low-pressure backpack-mounted applicator) to individual capable specimens to prevent growth (or re-growth of a cut plant) of individual plants. Herbicides will not be used within the 100-foot riparian buffers within the RP district at Runaround brook, an unnamed tributary to Runaround brook, and Libby brook. The multiple methods, plans, and procedures to prevent water quality degradation during construction, operation, and maintenance of the NECEC are incorporated into the Environmental Control Requirements (Application Exhibit 8), VMP (Application Exhibit 6), and Environmental Guidelines (Application Exhibit 7).

**9.11.U. Archaeological Sites:** CMP has conducted extensive potential pre-historic archaeological, historic archaeological, and historic architectural investigations and surveys along the Project route. No identified site is located in the mapped shoreland zones crossed by the Project in Durham.

#### **Section 9.13(G) Criteria for the Issuance of a Shoreland Zoning Permit**

- 1. Maintain safe and healthful conditions:** The Project will maintain the same safe and healthful conditions that currently exist in the transmission line corridor. The infrastructure and equipment in the transmission line corridor is regularly maintained to established industry standards to ensure the safety of utility workers and the general public. All construction will be in accordance with CMP's transmission standards, general industry standards, and good utility practices including all necessary live line working clearances, strength factors, and reliability factors as governed by the NESC. The transmission line and all facilities will be operated in full compliance with CMP safety standards, which fully comply with federal Occupational Safety & Health Administration requirements.
- 2. Not result in water pollution, erosion, or sedimentation to surface waters:** As described above with respect to Shoreland Zoning Ordinance Sections 9.11(H), (N), (R), (S), and (T) the Project will not result in water pollution, erosion, or sedimentation to surface waters.
- 3. Adequately provide for the disposal of all wastewater:** Not applicable. There will be no wastewater disposal required for this Project.
- 4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or**

**other wildlife habitat:** In order to identify existing resources, field biologists documented wildlife while conducting field surveys for the Project. In addition, CMP also conducted fish and wildlife database searches and contacted state and federal natural resource agencies to obtain existing data on wildlife and fisheries resources in the vicinity of the project components. The existing corridor occurs in wetlands within the Limited Residential District associated with an unnamed wetland. One single pole location (pole number 62-53) is partially located within a wetland at the LR District associated with an unnamed wetland and one existing single pole location (pole number 64-197) which will receive maintenance, is currently located within a wetland at the RP district associated with Libby Brook. Pole number 62-53 will result in approximately seven square feet of permanent wetland impacts. Six USACE vernal pools are located within the LR district at an unnamed wetland crossed by the existing corridor in Durham. No USACE vernal pools have been identified within the mapped RP district crossed by the existing corridor in Durham. No transmission poles are planned to be installed within vernal pools as part of the Project in the Town of Durham.

There are no rare, threatened or endangered species, inland waterfowl and wading bird habitats, or other significant wildlife habitat identified within the mapped shoreland zone crossed by the Project corridor in Durham.

There will be no in-stream work, and CMP will require the applicable riparian buffers, described in its VMP (Exhibit 6) and will implement its environmental protection requirements described in its Environmental Guidelines (Exhibit 7) and Environmental Control Requirements (Exhibit 8), such that impacts will be minimized and there will be no adverse impacts to fisheries and aquatic life.

5. **Conserve shore cover and visual, as well as actual, points of access to inland waters:** Not applicable. The Project will take place entirely within the existing corridor and does not include alterations to points of access to inland waters.
  6. **Protect archaeological and historic resources as designated in the Comprehensive Plan:** As discussed above with respect to Shoreland Zoning Ordinance Section 15(U), the Project will not impact any archaeological or historic resources in Durham.
  7. **Is in conformance with the provisions of Section 9.11., Land Use Standards:** As described above, the Project complies with all applicable provisions of the Ordinance.
3. **Article 11 – Floodplain Management:** Pursuant to Section 11.8, the Planning Board has reviewed the Floodplain Management standards and makes the following findings:
- **Proposals are consistent with the need to minimize flood damage.** The Project will not cause flooding or flood damage.
  - **Public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.** No



sewer, gas, or water systems are proposed as part of this Project. The Project involves upgrades to two existing electric transmission lines, and CMP has appropriately located the Project to avoid any flood damage.

- **Adequate drainage is provided so as to reduce exposure to flood hazards.** The area occupied by existing poles will not increase as a result of the Section 62 rebuild or the Section 64 rerate, therefore there will be no increase in stormwater runoff from the Project. The Project will not cause or increase flooding or cause a flood hazard to any neighboring structures. Furthermore, the Project will not affect runoff/infiltration relationships. The Project will minimize stormwater runoff by deploying stormwater control methods described in the Environmental Guidelines (Application Exhibit 7). The Project will not alter stormwater runoff from predevelopment conditions.
- **All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.** The Project's natural resource maps depict the FEMA flood boundaries in Durham. The requirement for base flood elevations apply only to the new construction or substantial improvement of "structures" as defined in the Land Use Ordinance. The aerial crossing of the transmission line and its poles do not meet this definition, and base flood elevations are therefore not required.
- **Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Section 11.6 of this ordinance.** The proposed Project does not include "structures" as that term is defined by the Land Use Ordinance. The Project is otherwise in compliance with Section 11.6, Development Standards, as described in the Floodplain Management Permit Application.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Alan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Juliette Caplinger:** Votes to approve: 5 Votes to deny: 0

#### 6. Continuing Business:

- c) **Completeness Review of Site Plan Application for Transmission Line Section 62 Rebuild & Transmission Line Section 64 Rerate, Map 9, Lot 16, Map 12, Lot 25, & Map 13, Lot 12. (Public comment will not be taken)**
- d) **Substantive Review of Site Plan Application for Transmission Line Section 62 Rebuild & Transmission Line Section 64 Rerate, Map 9, Lot 16, Map 12, Lot 25, & Map 13, Lot 12. (Public comment will not be taken)**

- The Chairman read the draft findings for substantive deliberation by the Board:

## A. SUBMISSION REQUIREMENTS

### Section 8.5. SITE PLAN REVIEW MANDATORY SUBMISSIONS

The following items shall be submitted as part of the Site Plan Review Application, unless the applicant submits a written waiver request, and is granted a waiver from the submission requirement by the Planning Board, pursuant to Section 8.7.A.

The applicant submitted and the Board reviewed the following documents:

1. Application narrative dated February 16, 2024, by Burns-McDonnell Engineering of Portland, Maine.
2. Site Plan Review Application Dated February 8, 2024.
3. Site Plan Review Checklist dated February 16, 2024.
4. Site Plan Review Waiver Request dated February 8, 2024.
5. State of Maine Public Utilities Commission Order dated May 3, 2019.
6. Maine Department of Environmental Protection Site Location Permit dated May 11, 2020.
7. Maine Land Use Planning Commission Site Location Permit dated January 8, 2020.
8. Spreadsheet listing deeded interests in property with copies of deeds.
9. Project Scope and Natural Resources Maps dated January 29, 2024.
10. Undated Transmission Line Configuration Cross Sections showing Existing, Permitted, and Proposed pole configurations.
11. New England Clean Energy Connect Post-Construction Vegetation Management Plan dated October 2020.
12. Central Main Power Environmental Guidelines for Construction and Maintenance Activities on Transmission Line and Substation Projects by TRC Engineering of Augusta Maine dated June 29, 2018.
13. Environmental Control Requirements for CMP Contractors & Subcontractors Oil, Hazardous Materials, and Waste dated February 2017
14. Letter evidencing Financial Capacity from Michael Panichi, Vice President & Treasurer of Avangrid Inc. & Avangrid Networks, Inc. of Portland Maine dated January 12, 2024.
15. Letter from Colin Clark, DEP Shoreland Zoning Coordinator, on interpretation of Chapter 1000, Guidelines for Municipal Shoreland Zoning Ordinances on how essential services are interpreted with respect to transmission lines dated June 8, 2020.
16. Spreadsheet of Deed Restrictions, Easements, Rights-of-Way, and other Encumbrances with copies of legal documents.
17. Memorandum of Agreement between CMP and State and Federal Agencies on Protection of Historic Properties dated June 18, 2020.
18. List of Abutter and Abutter Notices.
19. Supplemental materials requested by the Board:
  - a. Supplemental Cover Letter dated March 28, 2024;
  - b. Project Scope and Natural Resources Maps Updated (Exhibit 4 Revised);
  - c. Email Correspondence with Fire Chief Robert Tripp dated March 11&15, 2024; and,
  - d. Email Message from Sam Rice to Road Commissioner dated April 1, 2024.

The applicant requested the following waivers from the submission requirements:



1. **Section 8.5.C requirement for a site plan scaled at 100 feet to the inch.** CMP requested that the Board authorize a scale of 250 feet to one inch, as on the maps in Application Exhibit 4, because the scale of the Project is of such magnitude as to make a larger scale map unnecessary and cumbersome. A relaxation of the terms of this ordinance related to the map scale requirement is granted because the proposed scale of 250 feet to one inch will substantially secure the objectives of the requirements if so waived, the public health, safety, and welfare will still be protected, and this waiver will not nullify the intent or purpose of the Comprehensive Plan or the Site Plan Review Ordinance, and the performance standards of the Site Plan Review Ordinance will be met.
2. **Section 8.5.C.4 boundary survey.** CMP requested that the Board waive the requirement for a boundary survey existing information from the Town of Durham's Assessors Maps and CMP's source deeds in Application Exhibit 3 demonstrate CMP's ownership. The upgraded transmission lines will occur in the center of the 400-foot-wide property. There will be no possibility of encroaching on abutting property boundaries, and thus sufficient information is available to establish, on the ground, all property boundaries without a formal survey. The waiver would not nullify the intent and purpose of the Comprehensive Plan or this Ordinance, and the performance standards of the Site Plan Review Ordinance will be met.
3. **8.5.C.24 plan signature block.** In lieu of this requirement, the Planning Board will attach to this Findings of Facts and Decision document the Project maps provided by CMP such that the signature affixed to this Findings of Facts and Decision document will substantially secure the objectives of the requirements if so waived, the public health, safety, and welfare will still be protected, and this waiver will not nullify the intent or purpose of the Comprehensive Plan or the Site Plan Review Ordinance, and the performance standards of the Site Plan Review Ordinance will be met.

**Motion made by Brian Lanoie:** The applicant has met the submission requirements for site plan approval except for those specifically waived by the Planning Board per Section 8.7.A.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

## B. SITE PLAN REVIEW CRITERIA

### Section 8.6. SITE PLAN REVIEW MANDATORY SUBMISSIONS

#### A. Utilization of the Site:

1. The Project is sited within an existing CMP transmission line corridor and does not require tree removal; therefore, it is located in those portions of the site that have the most suitable conditions for development. CMP's transmission line corridor will continue to be maintained in an early successional scrub/shrub habitat. Vegetation will continue to be removed and controlled in the manner described in the VMP (Application Exhibit 6). Throughout construction, shrub and herbaceous vegetation will remain in place to the extent practicable to minimize soil disturbance.
2. The location of new transmission line poles was engineered to avoid impacting environmentally sensitive areas to the greatest extent practicable and equipment access through environmentally sensitive areas will be avoided as much as practicable.

3. The practices provided in the VMP and the Environmental Guidelines will be applied to minimize the extent and duration of soil disturbance and the potential for erosion and sedimentation and to protect adjacent natural resources.
4. Natural drainage areas will be preserved to the maximum extent practicable.
5. The plan for the development reflects the natural capabilities of the site to support development.
  - The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The site plan reflects natural capabilities of site to support the development, buildings and parking are located on suitable land, environmentally sensitive portions of site have been avoided & protected, and natural drainage is maintained to the maximum extent practical.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

**B. Adequacy of Road System:**

1. The Project will generate no additional traffic other than construction vehicles during construction.
2. CMP will obtain required permits from the Durham Road Commissioner.
  - The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Marc Derr:** Access roads have capacity to take the added traffic proposed and the project does not generate peak hour trips that affect traffic safety on those roads.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

**C. Vehicular Access into the Site:**

1. No new permanent roads or driveways are required for the Project, and the Project will have no unreasonable negative impact on the Town's Road system.
2. CMP has consulted with the Durham Road Commissioner and the Road Commissioner has proposed conditions of approval to address potential impacts of the project on Town-maintained roads.
3. All temporary access points will be constructed pursuant to CMP's Environmental Guidelines (Application Exhibit 7) and will meet Maine Department of Transportation Highway Driveway and Entrance Rules as specified in Title 17 Chapter 299.
4. During operation of the transmission line, CMP will utilize access points similar to those currently used for occasional routine and emergency transmission line operation, maintenance and repair. This use will not cause unreasonable highway or public road congestion. No curb cuts are proposed.
5. During the construction phase, some material and equipment deliveries may require vehicles to stop on or back into a street. During these infrequent occasions, spotters or flaggers will be used to assist vehicles into or out of the corridor. Any temporary access

way or temporary access way lane will be designed in profile and grading and be located to allow at least the minimum sight distance measured in each direction consistent with the Town's ordinances.

- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Brian Lanoie:** The project entrances meet safe sight distances, are appropriately spaced, and meet traffic safety standards.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

#### **D. Internal Vehicular Circulation**

1. Not applicable. No internal drives will be constructed.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **E. Parking Layout and Design**

1. Not applicable. No parking lots will be constructed.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **F. Utilities**

1. Not applicable. No utilities serving on-site facilities will be installed.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

#### **G. Lighting Design Standards**

1. Not applicable. No lighting will be installed per the utility corridor use type.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **H. Signage**

1. Not applicable. No signage will be installed.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **I. Fire Protection**

1. CMP has committed to outreach and communications regarding fire support related to the construction and operation of the Project. CMP will notify the local fire department prior to the commencement of construction activities of the type of work that will occur, its location, and when the activities have concluded.

2. CMP, in cooperation with local emergency responders, will establish emergency response procedures and protocols that will be followed in the event emergency response to the Project area is required.
3. CMP will review fire support issues in meetings with the CEO and planning officials, and with the public in Planning Board proceedings. This will include a summary of discussions with local fire response personnel regarding records of any past fire events on the corridor, an assessment of locally-available resources, and any additional provisions that have been included in the construction contractors' scope of work, which will be provided to support local emergency response.
4. Fire suppression requirements for the Project are no different than those for the transmission lines as they currently exist.
5. The water supply will sustain fire suppression requirements recommended for the Project consistent with the recommendations of the National Fire Protection Association for the fire loading level of the proposed development under NFPA 1142, Water Supplies for Suburban and Rural Fire Fighting.
6. The applicant has consulted with the Fire Chief who has scheduled specialized training for emergencies involving high voltage lines.

**Motion made by Juliet Caplinger:** The water supply will sustain fire suppression requirements of NFPA 1142, Water Supplies for Suburban & Rural Fire Fighting.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **J. General Buffering Standards**

1. Not applicable. No change in the utility corridor is proposed that would change the visual impacts or warrant special screening.

**Motion made by John Talbot:** This criterion is not applicable to the project.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

#### **K. Historic & Archaeological Resources**

1. CMP conducted extensive pre-historic archaeological, historic archaeological, and historic architectural investigations and surveys along the Project route, for State purposes under Chapter 375.11 of the MDEP rules and for federal action under Section 106 of the National Historic Preservation Act ("NHPA") (16 U.S.C § 470f). CMP consulted with the Maine Historic Preservation Commission ("MHPC") throughout the state and federal permit application development and approval process.
2. These surveys identified one site in Durham that is eligible for NHPA recommendation; however, this site will be avoided by construction activity; temporary construction fencing to prohibit disturbance of the site will be installed prior to construction activities.
3. Appropriate measures have been proposed to protect historic and archaeological resources.

**Motion made by Allan Purinton:** The project includes appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

#### **L. Financial Capacity**

1. ~~CMP secured funding for the Project, which will be fully funded by Massachusetts ratepayers. Furthermore,~~ CMP is a subsidiary of AVANGRID, Inc., a leading sustainable energy company with approximately \$41 billion in assets and operations in 24 U.S. states. AVANGRID has two primary lines of business: Avangrid Networks and Avangrid Renewables. Avangrid Networks owns eight electric and natural gas utilities, serving 3.3 million customers in New York and New England.
2. CMP provided as Application Exhibit 9 a Letter of Commitment to Fund from Michael Panichi, Vice President & Treasurer of AVANGRID, Inc., which is the parent company of CMP. Pursuant to the Land Use ordinance, this letter of commitment is prima facie evidence of adequate financial capacity.
  - John Talbot moved to strike the first sentence of the first finding and first word of the second sentence as being irrelevant to the demonstration of financial capacity. Marc Derr seconded the motion and the amendment passed unanimously.

**Motion made by John Talbot:** The applicant has adequate financial resources to construct improvements in keeping with the standards.

**Motion seconded by Allan Purinton: Votes to approve: 5 Votes to deny: 0**

#### **M. Technical Ability**

1. CMP has extensive experience in the design, construction, and operation of electric infrastructure projects and will utilize existing staff capabilities for this Project. CMP's delivery system includes 2,919 miles of overhead transmission lines and 23,734 miles of distribution lines, and 205 substations. To support the Project, CMP has engaged a team of highly qualified and experienced engineers, permitting specialists, consultants, and contractors.

**Motion made by Allan Purinton:** The applicant has adequate experience with site development and/or has retained qualified consultants & contractors to complete the project in keeping with the standards.

**Motion seconded by Brian Lanoie: Votes to approve: 5 Votes to deny: 0**

### **PLANNING BOARD DECISION**

**Motion made by John Talbot:** The Planning Board grants site plan approval of the CMP Transmission Line Section 62 Rebuild and Transmission Line Section 64 Rerate subject to the following conditions of approval to be noted on the site plan:

1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.

2. Per Section 8.4.K., if the applicant wishes to make any changes to the approved site plan, the applicant must meet all the requirements for a site plan approval for that changed part of the application, i.e., the applicant will go through the site plan review process only for the section of the permit they want changed.
3. Per Section 8.4.L., the applicant shall commence construction of the required improvements within twelve (12) months of plan approval and shall complete said improvements within thirty-six (36) months.
4. Per Section 8.4.M., one copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved site plan, including any conditions of approval.
5. All roadway access points will require a road entrance permit issued by the Road Commissioner.
6. CMP will install properly designed temporary access points to allow for unobstructed stormwater drainage within existing road ditches along the Town and private road rights-of-way. CMP's contractors will construct timber mat spans over existing road ditches at temporary road access points. Construction contractors may also utilize a temporary culvert buried in riprap, depending on the site-specific conditions as approved by the Road Commissioner. Access points, including any matting or temporary culverts utilized, will be removed once construction and restoration is complete.
7. CMP will also require its construction contractors to follow erosion and sedimentation control best management practices, including care to avoid tracking mud and debris onto public roadways. If determined necessary to prevent mud or sediment tracking, CMP's contractors will install a berm of crushed stone or erosion control mix at access points to reduce tracking of soil onto the roadway. The contractor is responsible for regular maintenance of access points and roadway entrances, including any street sweeping that may be required. Regular inspections will be performed by CMP's environmental inspectors and MDEP's third party inspectors. Inspection reports shall be provided to the Road Commissioner and Code Officer.
8. CMP and its contractors shall abide by spring seasonal weight restrictions on posted roads and equipment with a gross vehicle weight rating over 23,000 pounds will not use roadways as long as seasonal postings are in place.
9. Prior to commencing construction, CMP or its contractors are to post a bond or other performance guarantee for \$1 million satisfactory to the Road Commissioner to reimburse for expenses necessarily incurred in repairing damage caused to the roads by the project contractors.

**Motion seconded by Juliet Caplinger. Votes to approve: 5 Votes to deny: 0**

**7. New Business:**

- a) **Completeness Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)**
- b) **Substantive Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)**

Applicant: Michael Copp (Rick Meek – Terradyn Consultants LLC representing Mr. Copp)

- The Board reviewed preliminary subdivision plan submissions for completeness.
- Juliet Caplinger moved to find the application incomplete and the Planning Board unable to process the application due to the applicant's need to address the current violation of Section 6.10.I of the Land Use Ordinance. To make a determination of compliance with the Town's subdivision regulations the Board requires the following information per the conditions of approval of the Ruby Farmview Subdivision:
  1. The date of posting of the original performance bond for completion of the project infrastructure;
  2. The date of issuance of the occupancy permits for the first four lots in the subdivision;
  3. Engineer's estimate of costs of completing Ruby Farmview Subdivision;
  4. Town Attorney legal review of the proposed performance bond at applicant's expense; and,
  5. Town Attorney confirmation that the Planning Board has authority to grant an after the fact extension of the original subdivision approval at applicant's expense.
- Alan Purinton seconded the motion and it passed by a vote of 5-0.

**c) Conditional Use Application for Midcoast Heating & Cooling to Operate a Business at 28 Soper Road, Map 4, Lot 97 (Public comment will not be taken)**

Applicant: Matt Sullivan

- Mr. Sullivan explained that the proposal makes no changes to the building or the site.
- The prior car dealership is gone.
- All storage will be inside the building.
- All components of the equipment will be delivered to the project sites.
- All materials removed from job sites will go directly to recycling facilities and will not be stored at the business.
- The Chairman read the draft findings:

**LIST OF SUBMISSIONS:**

1. Conditional Use Application for change of use of an existing building.

**Section 7.4 CONDITIONAL USE REVIEW CRITERIA**

- A. Review Criteria:** Before it issues a conditional use permit, the Planning Board shall find, as a matter of fact, that the proposed use meets the following criteria:



1. **Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

**Findings:**

- a. The application states that the site has a septic system and trash removal.
  - b. The business will use the building for office and storage space.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

**Findings:**

- a. No customers will visit the office as all work is done at the customers' residences.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

**Motion seconded by Brian Lanoie: Votes to approve: 5 Votes to deny: 0**

3. **Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from **those** created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.

**Findings:**

- a. The business has little to no traffic at the office.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public safety impacts.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**



4. **Environmental Impacts:** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.

**Findings:**

- a. The building is existing and there are no plans to add buildings or change anything existing.
  - b. No hazardous materials are stored onsite. Any chemicals more than a spray can are delivered to the project site and disposed offsite.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for environmental impacts.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

5. **Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with **respect** to physical size, visual impact, intensity of use, and proximity to other structures.

**Findings:**

- a. The proposed use has less traffic than the prior use.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Marc Derr:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for scale and intensity of use.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

6. **Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with **respect** to the generation of noise and hours of operation.

**Findings:**

- a. The proposed business office will be open from 8 am to 4:30 pm Monday through Thursday and 8 am to 1 pm on Friday. Closed weekends.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Juliet Caplinger:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for noise & hours of operation.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

**7. Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

**Findings:**

- a. The applicant has a lease.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for right, title, or interest.

**Motion seconded by John Talbot: Votes to approve: 5 Votes to deny: 0**

**8. Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

**Findings:**

- a. No construction or changes are proposed.
- The Chairman asked for any proposed additions, changes, or deletions in the draft findings and no motions were offered.

**Motion made by Allan Purinton:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for financial & technical ability.

**Motion seconded by Juliet Caplinger: Votes to approve: 5 Votes to deny: 0**

**Section 7.5 CONDITIONS OF APPROVAL**

**A. Planning Board Approval Conditions:** Upon consideration of the criteria listed in subsection 7.4, the Planning Board may by majority vote attach such conditions, in addition to those required by other provisions of this Ordinance, as it finds necessary to ensure compliance with those criteria and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance.

**Motion made by John Talbot:** To apply the following conditions of approval to the permit for conditional use.

**Motion seconded by Marc Derr: Votes to approve: 5 Votes to deny: 0**

- 1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.

**Motion made by John Talbot:** The Planning Board grants conditional use approval of the Midcoast Heating and Cooling project at 28 Soper Road, Map 4, Lot 97.

**Motion seconded by Marc Derr. Votes to approve: 5 Votes to deny: 0**

**7. New Business:**

- d) **Conditional Use Application for Maine Custom Woodlands LLC to Expand a Business at 1326 Hallowell Rd., Map 8, Lot 12 (Public comment will not be taken)**
- e) **Completeness Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)**
- f) **Substantive Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)**
- **Alan Purinton moved** to continue the meeting on April 24 at 6:30 p.m. at the Fire Station with the applications of Maine Custom Woodlands LLC being considered first on the agenda. **Brian Lanoie seconded the motion and it passed unanimously.**

**8. Adjourn**

**Juliet Caplinger moved** to adjourn the meeting. **Allan Purinton seconded;** motion carried **5 – 0**. Meeting adjourned at 8:50 pm.

**d) Conditional Use Application for Maine Custom Woodlands LLC to Expand a Business at 1326 Hallowell Rd., Map 8, Lot 12 (Public comment will not be taken)**

- Maine Custom Woodlands is seeking conditional use approval to expand their existing business on Hallowell Road.
- In 2009, the Planning Board granted conditional use approval for an equipment maintenance facility with offices.
- The applicants are proposing to construct a lumber sawmill operation in an existing graveled area of the property.
- The hours of operation will be 7 am to 7 pm Monday through Saturday.
- The sawmill will be powered by an external generator shown on the site plan. The conditional use application, however, indicates the generator will be enclosed in an insulated building to mitigate sound levels.
- The Fire Chief in 2009 indicated that the original building and use did not require any special fire protection measures.
- The proposed sawmill is a different use that may involve greater fire hazards.
- The updated Land Use Ordinance calls for an on-site fire protection water supply source.



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

*Office of Code Enforcement  
and Planning*

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

## **DRAFT CONDITIONAL USE APPROVAL FINDING OF FACTS AND DECISION**

**PROJECT NAME:** Maine Custom Woodlands

### **LIST OF SUBMISSIONS:**

1. Project Narrative by Trillium Engineering Group dated March 19, 2024
2. Conditional Use Application for Expansion of Existing Business
3. 2009 Conditional Use Permit with Supporting Documentation
4. Warranty Deed & CMP Easement
5. Abutter Notifications and Receipts
6. Boundary Survey Plan by Andrew C. Bradford Land Surveying Inc. dated September 2008
7. Parcel 2 Survey Plan by Andrew C. Bradford Land Surveying Inc. dated September 2008
8. MIF&W Documents Addressing Natural Resources dated March 4, 2024
9. Letter from Andrew Brunner of Key Bank dated March 13, 2024
10. Project Cost Estimates
11. Technical Qualifications of Maine Custom Woodlands Principals
12. Maine Custom Woodlands Sound Level Testing 2024
13. Generator Specifications
14. Lighting Specs
15. Structural Docs

### **Section 7.4 CONDITIONAL USE REVIEW CRITERIA**

A. **Review Criteria:** Before it issues a conditional use permit, the Planning Board shall find, as a matter of fact, that the proposed use meets the following criteria:

1. **Public Health Impacts:** The proposed use will not create unsanitary or unhealthful conditions by reason of sewage disposal, emissions to the air or water, or other aspects of its design or operation.

**Findings:**

- a. The applicants stated in their application that there is no change in conditions from the original conditional use permit.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public health impacts.

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

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

- 2. **Traffic Safety Impacts:** The proposed use will not create unsafe vehicular or pedestrian traffic conditions when added to existing and foreseeable traffic in its vicinity.

**Findings:**

- a. There will be an increase in traffic in and out of the existing entrance on State Route 9 by approximately 20 commercial vehicles per week, or about four spread throughout the day.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for traffic safety impacts.

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

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

- 3. **Public Safety Impacts:** The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal services than existing uses in the neighborhood.

**Findings:**

- a. The proposed building is being constructed at the site of an existing timber harvesting and trucking company.
- b. Abutters consist primarily of gravel pits, power lines, and undeveloped land.

- c. The closest residential structure is +/- 1400 feet away.
- d. The sawmill facility will not require any municipal services.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for public safety impacts.

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

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

- 4. Environmental Impacts:** The proposed use will not result in sedimentation or erosion, or have an adverse effect on water supplies.

**Findings:**

- a. The sawmill is being constructed on an existing cleared and graveled surface.
- b. During construction all necessary erosion control resources will be utilized, as defined by Maine DEP Best Management Practices (BMPs).
- c. Disturbed areas will be stabilized at project completion.
- d. The sawmill facility will not require more water supply than is currently being used on the property.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for environmental impacts.

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

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

- 5. Scale & Intensity of Use:** The proposed use will be compatible with existing uses in the neighborhood, with respect to physical size, visual impact, intensity of use, and proximity to other structures.

**Findings:**

- a. Maine Custom Woodlands has been established and operating at 1326 Hallowell Road since 2009.

- b. The sawmill building will match the existing structure on site.
- c. There will be no impact on the neighborhood.
- d. The closest residential structure is +/- 1400 feet away.
- e. Current surrounding uses are large power lines, gravel pits, and a mulch/firewood, wood waste facility.
- f. The sawmill is being constructed on a site approved for equipment maintenance, wood storage, and offices.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for scale and intensity of use.

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

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

**6. Noise & Hours of Operation:** The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.

**Findings:**

- a. No change in hours of operation: Monday - Saturday, 7 AM to 7 PM.
- b. Additional noise would consist of a generator to run the sawmill.
- c. The generator will be contained in an insulated steel structure and any generator noise will be below the allowable threshold listed in the Durham Town Ordinance - 55db per the noise study.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for noise & hours of operation.

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

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



- 7. **Right, Title, or Interest:** The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.

**Findings:**

- a. Maine Custom Woodlands is the owner of the property and is constructing the building.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for right, title, or interest.

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

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

- 8. **Financial & Technical Ability:** The applicant has the financial and technical ability to meet the standards of this Section and to comply with any conditions imposed by the Planning Board pursuant to subsection 7.5.

**Findings:**

- a. The estimated cost is \$500,000 per the attached project budget and supporting financial estimates.
- b. The applicants submitted a letter from Key Bank confirming sufficient funds available to complete the project.

**Motion made by \_\_\_\_\_:** The applicant has satisfied a reasonable burden of proof of compliance with the criterion for financial & technical ability.

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

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

**Section 7.5 CONDITIONS OF APPROVAL**

**A. Planning Board Approval Conditions:** Upon consideration of the criteria listed in subsection 7.4, the Planning Board may by majority vote attach such conditions, in addition to those required by other provisions of this Ordinance, as it finds necessary to ensure compliance with those criteria and all other applicable requirements of this Ordinance. Violation of any of those conditions shall be a violation of this Ordinance.

**Motion made by \_\_\_\_\_:** To apply the following conditions of approval to the permit for conditional use.

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

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

1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

**PLANNING BOARD DECISION**

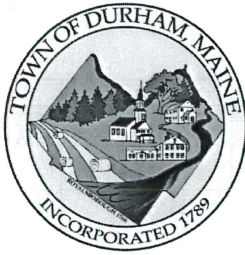
**Motion made by \_\_\_\_\_:** The Planning Board grants conditional use approval of the CMP Transmission Line Section 62 Rebuild and Transmission Line Section 64 Rerate project subject to the adopted conditions of approval.

**Motion seconded by \_\_\_\_\_.**

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

**Date of Decision: \_\_\_\_\_**

- e) **Completeness Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)**
- Maine Custom Woodlands is seeking site plan approval to construct a 6000 square foot lumber sawmill on their current site.
  - The applicants have submitted a survey and site plan, along with associated documentation.
  - The first three pages of the Site Plan Review Checklist contain the list of mandatory submissions for site plan applications. The following checklist items are not addressed in the application:
    - Water supply system for fire protection purposes.
    - Traffic entering and exiting sight distances at the project entrance.
    - The location of exterior lighting.
  - The Fire Chief in 2009 indicated that the original building and use did not require any special fire protection measures.
  - The proposed sawmill is a different use that may involve greater fire hazards.
  - The updated Land Use Ordinance calls for an on-site fire protection water supply source.
  - The applicants provided no sight distances measurements for the project entrance on Route 9, but they appear to be more than adequate with no horizontal or vertical curves in the roadway that would limit sight distances.
  - The Planning Board approved using floodlighting to illuminate the site in 2009.
  - The packet contains draft complete and incomplete application letters.
  - If the Board by majority vote determines that the submissions are adequate to determine compliance with the site plan review standards, you can proceed with substantive review of the application.



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**630 Hallowell Road**  
**Durham, Maine 04222**

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**SITE PLAN REVIEW CHECKLIST**  
**SECTION 8.5 SITE PLAN REVIEW SUBMISSIONS SECTION 8.6 –**  
**PERFORMANCE STANDARDS**

PROJECT NAME Maine Custom Woodlands 2024 Build DATE 04/19/2024

This checklist has been prepared to assist applicants in developing their applications. It should be used as a guide. The checklist does not substitute for the site plan review criteria or the requirements of Article 8 of the Land Use Ordinance. The Planning Board also will be using the checklist to make sure that your application is complete and meets all standards. **Fill out all shaded columns in the checklist by initialing a box in each row.** Indicate if the information has been submitted or if a waiver is requested. The application need not contain separate plans as implied below. The perimeter survey, site plan and general engineering plans may be contained on the same drawing for site plan approval. However, detailed engineering drawings such as grading plans, utility plans, stormwater plans, and erosion/sedimentation plans should be presented on separate sheets.

SITE PLAN REVIEW REGULATIONS		Submitted by Applicant	Waiver Requested (with waiver request form)	Received by Planning Board	Waiver Granted
8.4 D.	Required public notice sent to abutting property owners				
8.5	<b>SITE PLAN REVIEW SUBMISSIONS REQUIRED FOR COMPLETENESS REVIEW (10 Copies of application form &amp; all materials)</b>				
A.	Completed application form	See Attached	NOT WAIVABLE		NOT WAIVABLE
B.	Location map w/ required information	See Attached	NOT WAIVABLE		NOT WAIVABLE
C.	Site plan at readable scale (1"=100' maximum)	See Plans	NOT WAIVABLE		NOT WAIVABLE
C.1	Proposed project name, Town, & Map & Lot #s	See app	NOT WAIVABLE		NOT WAIVABLE
C.2	Names of owner, applicant, plan preparer & abutters	See app & Attached	NOT WAIVABLE		NOT WAIVABLE



Site Plan Review Checklist – Project Name Maine Custom Woodlands 2024 Build

SITE PLAN REVIEW REGULATIONS		Submitted by Applicant	Waiver Requested (with waiver request form)	Received by Planning Board	Waiver Granted
C.3	Documentation of legal rights to develop property	See attached deed	NOT WAIVABLE		NOT WAIVABLE
C.4	Standard boundary survey	See Attached	NOT WAIVABLE		NOT WAIVABLE
C.5	Copy of most recent deed w/ any encumbrances	See Attached	NOT WAIVABLE		NOT WAIVABLE
C.6	All septic system test pit logs	N/A			
C.7	Proposed water supplies for domestic & firefighting purposes	N/A			
C.8	All wetlands mapped	See plans for wetlands			
C.9	Location of any water features & indication of location in or out of Runaround Pond watershed	N/A			
C.10	Topography at 5 ft. & 2 ft. contours (for areas where construction will occur)	See Plans			
C.11	Zoning district and any district boundaries	See Attached	NOT WAIVABLE		NOT WAIVABLE
C.12	Location (w/ size) of existing & proposed culverts & drainage ways shown	See Plans			
C.13	Existing streets, easements, buildings, parks, & deeded open spaces (on or adjacent)	See Plans			
C.14	Traffic entrance(s) sight distances external & internal roads	See Plans			
C.15	Location & width of existing & proposed access drives	See Plans			
C.16	Proposed waste disposal types & facilities	N/A			
C.17	Proposed driveways, parking & loading areas, walkways, & circulation	See Plans			
C.18	Proposed landscaping & buffering	N/A			

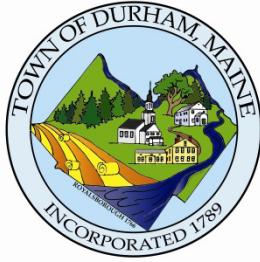
Site Plan Review Checklist – Project Name Maine Custom Woodlands 2024 Build

SITE PLAN REVIEW REGULATIONS		Submitted by Applicant	Waiver Requested (with waiver request form)	Approved by Planning Board	Waiver Granted
C.19	Location, dimensions, ground floor elevation of all buildings & expansions	See Plans	NOT WAIVABLE		NOT WAIVABLE
C.20	Location and details of all signage	N/A			
C.21	Location & type of exterior lighting	Bld mounted, see attached			
C.22	Location of all utilities, including fire protection systems	See Plans			
C.23	General description of proposed use or activity	See Narrative			
C.24	Signature block for Planning Board Chair	See Plans			
C.25	Flood mapping if in FEMA flood area	N/A			
C.26	Wildlife habitat identified per MIF&W mapped or confirmed absent	See Attached			
C.27	Historic & archaeological resources identified per MHPC or confirmed absent	See '09 Approved Permit			
C.28	Erosion & Sediment Plan	See Plans			
C.29	Stormwater Plan	See Plan C101			
C.30	Phosphorus Plan (if in watershed of Runaround Pond)	N/A			
<b>D.</b>	<b>ADDITIONAL STUDIES THAT MAY BE REQUIRED BY THE BOARD</b> (Based on project type & size, site issues, or issues that come up during review)				
D.1	High intensity soil survey	N/A			
D.2	Hydrogeological assessment for groundwater withdrawal	N/A			
D.3	Traffic trip generation (required for larger projects)	See Proj. Narrative			
D.4	Traffic impact study (required for larger projects or if safety issues are identified)	See Proj. Narrative			
E.	Additional information required by Planning Board to verify compliance with standards (requires vote of the Board)	-			

**f) Substantive Review of Site Plan Review Application for Maine Custom Woodlands LLC to Construct a Nonresidential Building at 1326 Hallowell Rd., Map 8, Lot 12. (Public comment will not be taken)**

- Maine Custom Woodlands is seeking site plan approval to construct a 6000 square foot lumber sawmill on developed portions of their current site.
- The applicants propose installing a stormwater management system for the existing site to accommodate the increase in impervious surfaces.
- The Planning Board approved using floodlighting to illuminate the site in 2009.
- The applicant has provided lighting specifications for new wall mounted fixtures, but locations and resulting illumination levels are not indicated.
- The Fire Chief in 2009 indicated that the original building and use did not require any special fire protection measures.
- The proposed sawmill is a different use that may involve greater fire hazards.
- The updated Land Use Ordinance calls for an on-site fire protection water supply source.
- The packet contains draft findings of fact and approval conditions.





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## **DRAFT SITE PLAN APPROVAL FINDING OF FACTS AND DECISION**

**PROJECT NAME:**

Maine Custom Woodlands

**A. SUBMISSION REQUIREMENTS**

**Section 8.5. SITE PLAN REVIEW MANDATORY SUBMISSIONS**

The following items shall be submitted as part of the Site Plan Review Application, unless the applicant submits a written waiver request, and is granted a waiver from the submission requirement by the Planning Board, pursuant to Section 8.7.A.

The applicant submitted and the Board reviewed the following documents:

1. Project Narrative by Trillium Engineering Group dated March 19, 2024
2. Site Plan Review Application for Building & Site Improvements by Trillium Engineering Group dated March 14, 2024, Revised March 19, 2024
3. 2009 Conditional Use Permit with Supporting Documentation
4. Warranty Deed & CMP Easement
5. Abutter Notifications and Receipts
6. Boundary Survey Plan by Andrew C. Bradford Land Surveying Inc. dated September 2008
7. Parcel 2 Survey Plan by Andrew C. Bradford Land Surveying Inc. dated September 2008
8. MIF&W Documents Addressing Natural Resources dated March 4, 2024
9. Letter from Andrew Brunner of Key Bank dated March 13, 2024
10. Project Cost Estimates
11. Technical Qualifications of Maine Custom Woodlands Principals
12. Maine Custom Woodlands Sound Level Testing 2024
13. Generator Specifications
14. Lighting Specs
15. Structural Docs

**Motion made by \_\_\_\_\_:** The applicant has met the submission requirements for site plan approval except for those specifically waived by the Planning Board per Section 8.7.A.

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

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



**B. SITE PLAN REVIEW CRITERIA**

**Section 8.6. SITE PLAN REVIEW APPROVAL CRITERIA & DESIGN STANDARDS**

**A. Utilization of the Site:**

- 1. The proposed building and stormwater improvements will be located on currently cleared portions of the project site that lack any environmentally sensitive areas.

**Motion made by \_\_\_\_\_:** The site plan reflects natural capabilities of site to support the development, buildings and parking are located on suitable land, environmentally sensitive portions of site have been avoided & protected, and natural drainage is maintained to the maximum extent practical.

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

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

**B. Adequacy of Road System:**

- 1. The project is located on State Route 9, an arterial with adequate capacity to accommodate the proposed development.
- 2. The existing facility employs 10 employees generating 20 daily vehicle trips and 5 trucks per day generate an additional 20 trips for a total of 40 trips per day.
- 3. With the proposed expansion, vehicle trips per day will increase to 68.
- 4. Traffic generation is well below the 100 trips per day threshold for an MDOT permit.

**Motion made by \_\_\_\_\_:** Access roads have capacity to take the added traffic proposed and the project does not generate peak hour trips that affect traffic safety on those roads.

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

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

**C. Vehicular Access into the Site:**

1. The project entrance on Route 9 appears to have good sight distances looking north and south.

**Motion made by \_\_\_\_\_:** The project entrances meet safe sight distances, are appropriately spaced, and meet traffic safety standards.

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

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

**D. Internal Vehicular Circulation**

1. The site is relatively level with adequate room for safe operations.
2. The building locations and configurations provide access to fire fighting vehicles on multiple sides.

**Motion made by \_\_\_\_\_:** The site plan minimizes cut and fill alterations and provides adequate room for safe operations, the entrance and circulation are adequate for the types of vehicles anticipated, and fire lanes around buildings are adequate and clearly marked.

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

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

**E. Parking Lot Layout & Design:** No parking proposed.

**F. Utilities**

1. Existing sanitary and water services are available on site.
2. Electrical lines are underground.
3. The conditional use application states that the proposed generator for the sawmill will be contained in an insulated steel structure to maintain sound levels below the Ordinance limit of 55db.
4. The generator specifications indicate that the noise level of the generator ranges from 70 to 73 dba.
5. The site plan shows the generator being located outside on the north side of sawmill.

**Motion made by \_\_\_\_\_:** Adequate utilities are provided.  
**Motion seconded by \_\_\_\_\_:**  
**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

**G. Lighting Design Standards**

1. The applicant submitted specifications for building mounted lighting.
2. No lighting plan has been submitted to show existing and proposed illumination levels on the project site.

**Motion made by \_\_\_\_\_:** Adequate lighting is provided for the proposed use.  
**Motion seconded by \_\_\_\_\_:**  
**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

**H. Signage:** No signage proposed

**I. Fire Protection**

1. The project has no on-site water source for fire protection.
2. The conditional use approval in 2009 was based in part on a letter from the former Fire Chief that there were no special requirements for the proposed use.

**Motion made by \_\_\_\_\_:** The water supply will sustain fire suppression requirements of NFPA 1142, Water Supplies for Suburban & Rural Fire Fighting.  
**Motion seconded by \_\_\_\_\_:**  
**Votes to approve: \_\_\_\_\_ Votes to deny: \_\_\_\_\_**

**J. General Buffering Standards**

1. The developed portions of the project site are located approximately 500 feet from Route 9 with natural vegetation as buffers between it and Cushing Road on the south side of the property.
2. The CMP power line is the abutting property on the north.
3. Another wood products and processing facility is the abutter to east.

**Motion made by \_\_\_\_\_:** The applicant’s landscaping plan adequately buffers abutters and the public from views of parking, garbage storage, utilities, and outdoor storage and is designed for adequate long-term maintenance.

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

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

**K. Historic & Archeological Resources:** No historic or archeological resources.

**L. Financial Capacity**

1. The applicants submitted project cost estimates totaling approximately \$500,000.
2. The applicants submitted a letter from a financial institution stating that adequate financial resources are available for the project.

**Motion made by \_\_\_\_\_:** The applicant has adequate financial resources to construct improvements in keeping with the standards.

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

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

**M. Technical Ability**

1. Maine Custom Woodlands submitted documentation of technical capacity to operate the proposed facility.
2. The development team includes Trillium Engineering (designers), Irish Span Industries (building construction), Second Generation Construction (foundation work), and L&M Electrical.

**Motion made by** \_\_\_\_\_ : The applicant has adequate experience with site development and/or has retained qualified consultants & contractors to complete the project in keeping with the standards.

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

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

**PLANNING BOARD DECISION**

**Motion made by** \_\_\_\_\_ : The Planning Board grants site plan approval of the Maine Custom Woodlands subject to the following conditions of approval to be noted on the site plan:

1. The project is to be constructed in accordance with the plans, maps, diagrams, specifications, textual submissions, and testimony presented by the applicant and approved by the Board.
2. Per Section 8.4.K., if the applicant wishes to make any changes to the approved site plan, the applicant must meet all the requirements for a site plan approval for that changed part of the application, i.e., the applicant will go through the site plan review process only for the section of the permit they want changed.
3. Per Section 8.4.L., the applicant shall commence construction of the required improvements within twelve (12) months of plan approval and shall complete said improvements within thirty-six (36) months.
4. Per Section 8.4.M., one copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved site plan, including any conditions of approval.
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_

**Motion seconded by** \_\_\_\_\_ .

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

**Date of Decision:** \_\_\_\_\_

**7. New Business:**

**a) Completeness Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)**

- The applicant is requesting amended approval of the Ruby Farmview Subdivision on Swamp Road to add a small spur road and four additional lots.
- The Planning Board conducted a sketch plan review of the project and a site walk in September of last year.
- The applicant has submitted a preliminary plan checklist that tracks submission requirements on pages 1 through 3 of the checklist.
- The applicant has requested waivers for a high intensity soil survey and hydrogeological analysis (Pg. 3 of the Preliminary Subdivision Plan application). These are not mandatory submissions but studies that may be required if the Board deems them necessary. Therefore, no waivers are needed for these two items.
- On April 10, the Board determined that the application cannot be considered for completion until the applicant clarifies the status of compliance with the original Ruby Farmview Subdivision approval conditions and the subdivision regulations.
- A copy of the letter of incomplete application is included in the packet.



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## NOTICE OF INCOMPLETE APPLICATION

Date: April 16, 2024  
Name: Michael Copp  
Address: 190 Pinkham Brook Road, Durham, Maine

Dear Mr. Copp;

The Durham Planning Board reviewed your application for preliminary subdivision review of an expansion of the Ruby Farmview Subdivision (Map 5, Lot 78B). In accordance with Section 6.6.H., the Board has determined that your application is incomplete, and the Board cannot begin a formal review of your application until the following information is provided to help the Board determine the status of completion of the original subdivision and your compliance with the Town's subdivision regulations.

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

1. The date of posting of the original performance bond for completion of the project infrastructure;
2. The date of issuance of the occupancy permits for the first four lots in the subdivision;
3. Engineer's estimate of the costs of completing Ruby Farmview Subdivision;
4. Town Attorney legal review of the proposed performance bond at applicant's expense (unless approved template for irrevocable letter is used or cash deposit); and,
5. Town Attorney confirmation that the Planning Board has authority to grant an after the fact time extension of the original subdivision approval at applicant's expense (applicant can apply for reapproval per Section 6.10.I).

Sincerely,

George Theberge, Town Planner

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Notice of Incomplete Application Ruby Farmview Subdivision Expansion



**Town of Durham**  
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*Office of Code Enforcement and Planning*

**SUBDIVISION PLAN REVIEW CHECKLIST**  
**SECTION 6.7 PRELIMINARY PLAN SUBMISSIONS**  
**SECTION 6.14 – PERFORMANCE STANDARDS**

**SUBDIVISION NAME** Ruby Farmview Subdivision    **DATE** 02/29/2024

This checklist has been prepared to assist applicants in developing their applications. It should be used as a guide. The checklist does not substitute for the statutory criteria or the requirements of Article 6 of the Land Use Ordinance. The Planning Board also will be using the checklist to make sure that your application is complete and meets all standards. **Fill out all shaded columns in the checklist by initialing a box in each row.** Indicate if the information has been submitted or if a waiver is requested. The application need not contain separate plans as implied below. The perimeter survey, subdivision plan and general engineering plans may be contained on the same drawing for preliminary plan approval. However, detailed engineering drawings such as road profiles, drainage swales and erosion/sedimentation plans should be presented on separate sheets at the final plan stage.

SUBDIVISION REGULATIONS		Submitted by Applicant	Waiver Requested (with waiver request form)	Received by Planning Board	Waiver Granted
<b>6.6 D.&amp;E.</b>	<b>Required public notice sent to:</b> 1) abutting property owners, 2) abutting town if project abuts or crosses boundary, and 3) Durham Elementary School if within well source water protection area (30-A MRSA §4403.3.A)				
<b>6.7</b>	<b>PRELIMINARY PLAN SUBMISSIONS REQUIRED FOR COMPLETENESS REVIEW (10 Copies of application form &amp; all materials)</b>				
A.	Completed application form	RLM	NOT WAIVABLE		NOT WAIVABLE
B.	Location map w/ required information	RLM	NOT WAIVABLE		NOT WAIVABLE
C.	Preliminary plan at readable scale	RLM	NOT WAIVABLE		NOT WAIVABLE
C.1	Proposed subdivision name, Town, & Map & Lot #s	RLM	NOT WAIVABLE		NOT WAIVABLE
C.2	Documentation of legal rights to develop	RLM	NOT WAIVABLE		NOT WAIVABLE



Subdivision Name: Ruby Farmview Subdivision

<b>SUBDIVISION REGULATIONS</b>		<b>Submitted by Applicant</b>	<b>Waiver Requested (with waiver request form)</b>	<b>Received by Planning Board</b>	<b>Waiver Granted</b>
C.3	Standard boundary survey	RLM	NOT WAIVABLE		NOT WAIVABLE
C.4	Copy of most recent deed w/ any encumbrances	RLM	NOT WAIVABLE		NOT WAIVABLE
C.5	List of proposed deed restrictions (actual draft legal documents at final plan)	RLM			
C. 6	All septic system test pit logs & map w/ lots	RLM	NOT WAIVABLE		NOT WAIVABLE
C.7	Proposed water supplies for domestic & firefighting purposes	RLM	NOT WAIVABLE		NOT WAIVABLE
C.8	Well exclusion zones (100 ft. from septic systems or per hydrogeological evaluation)	RLM			
C. 9	Names of owner, applicant, plan preparers, & abutters	RLM	NOT WAIVABLE		NOT WAIVABLE
C.10	All wetlands mapped	RLM	NOT WAIVABLE		NOT WAIVABLE
C.11	Topography at 5 ft. & 2 ft. contours (for areas where construction will occur)	RLM			
C.12	Farm lands and farm soils if 5 acres or more	RLM - N/A			
C.13	Number of acres, location of existing & property lines & site features (e.g., stone walls, large rock outcrops)	RLM			
C.14	Location of any water features & indication of location in or out of Runaround Pond watershed	RLM - N/A			
C.15	Zoning district and any district boundaries	RLM	NOT WAIVABLE		NOT WAIVABLE
C.16	Location (w/ size) of existing & proposed culverts & drainage ways shown	RLM			
C.17	Existing streets, easements, buildings, parks, & deeded open spaces	RLM			

Subdivision Name: Ruby Farmview Subdivision

<b>SUBDIVISION REGULATIONS</b>		<b>Submitted by Applicant</b>	<b>Waiver Requested (with waiver request form)</b>	<b>Received by Planning Board</b>	<b>Waiver Granted</b>
C.18	Traffic entrance(s) sight distances external & internal roads	RLM			
C.19	Location & width of existing & proposed streets	RLM			
C.20	Proposed lot lines w/ dimensions & area	RLM	NOT WAIVABLE		NOT WAIVABLE
C.21 & 22	Proposed common open spaces (if any) & proposed uses	RLM - N/A			
C.23	Proposed building envelopes & cleared areas	RLM			
C.24	Any flood prone areas per FEMA maps	RLM	NOT WAIVABLE		NOT WAIVABLE
C.25	Any State-identified significant habitats or unique natural areas	RLM	NOT WAIVABLE		NOT WAIVABLE
C.26	Any identified historic resources (listed or eligible for listing)	RLM	NOT WAIVABLE		NOT WAIVABLE
<b>D.</b>	<b>ADDITIONAL STUDIES THAT MAY BE REQUIRED BY THE BOARD</b> (Based on project type & size, site issues, or issues that come up during review)				
D.1	High intensity soil survey	(At final plan stage)		(At final plan stage)	
D.2	Hydrogeological assessment of groundwater availability and potential impacts	(At final plan stage)		(At final plan stage)	
D.3	Traffic trip generation (required for larger projects)	(At final plan stage)		(At final plan stage)	
D.4	Traffic impact study (required for larger projects or if safety issues are identified)	(At final plan stage)		(At final plan stage)	
E.	Additional information required by Planning Board to verify compliance with standards (requires vote of the Board)	(At final plan stage)		(At final plan stage)	

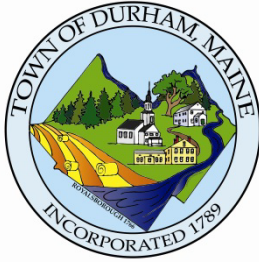
**b) Substantive Review of Ruby Farmview Subdivision Amendment to Add 4 Lots, Map 5, Lot 78-B. (Public comment will not be taken)**

- By waiting five years since the original Planning Board approval, the proposed expansion is exempt from the DEP's site location law permitting.
- By waiting five years to complete the infrastructure improvements of the original subdivision, the applicant is in violation of Section 6.10.I, which requires developers to complete construction of the subdivision's infrastructure within 36 months of approval. Under Section 6.10.A, the Planning Board cannot grant final approval of this project as long as the applicant is in violation of a previously approved subdivision plan.
- The Board may be able to grant an extension of the time limit for completion to a time certain with a performance guarantee for the remaining improvements. The packet includes a request for that extension. The applicant has requested an extension to September 30, 2024 with a performance bond in effect through December 29, 2024.
- In making that decision, the Board may want to get an engineering assessment of the remaining improvements and a cost estimate for completing them.
- The Board may also want to get an attorney's opinion on whether the current performance guarantee and any future proposal are enforceable.
- The subdivision performance bond issued on December 29, 2020 required the developer to complete the subdivision improvements within one year of the approval date, which was either the date of the bond issuance or the Planning Board subdivision approval.
- The applicant submitted two "Bond Verification" documents that theoretically extended the terms of original bond through December 23, 2023 and now will extend it through December 29, 2024, despite a lapse of at least a year in the performance guarantee. This document may or may not legally establish current and future obligation to complete the project.
- Another problem with this form of performance guarantee is that it requires the developer to complete the improvements within one year of the date of approval. It then requires that any legal action by the Town for a default to be taken within that same timeframe. Under these terms, one could argue that the Town can't claim a default until the year is up and then can't act on it per the one-year time limit for legal action.
- A third problem with this form of performance guarantee is that it requires the Town to undertake a lawsuit or action for recovery, meaning the Town will need to incur legal costs in enforcing the bond if it is enforceable.
- For all of these reasons, the Land Use Ordinance was updated in 2020 to apply the following requirements for subdivision performance guarantees:

*The proposed form of performance guarantee to ensure proper and complete construction of the streets, utilities, and other improvements required by the*

*regulations in a form approved by the Town Attorney. Any changes to the standard format approved by the Town Attorney shall be submitted for their review and approval at the expense of the applicant (Section 6.9.B.16).*

- The standard irrevocable letter of credit prepared with assistance of the Town Attorney requires that the subdivision improvements be completed and certified at least 60 days prior to expiration of the performance guarantee, which provides adequate time for the Town to act in cases of default. A claim against the performance guarantee for default can be taken directly to the issuing institution and does not require court action.
- The applicant could be required to use that Town Attorney-approved instrument or pay for a review of the proposed subdivision bond by the Town Attorney.
- Another option is for the applicant to request a conditional agreement under Section 6.34.C, whereby no performance guarantee is required for the improvements, but a restriction is placed on the plan that no lot can be sold and no building permit issued until the improvements are completed or a performance guarantee for the remaining improvements is approved by the Board.
- The applicant is requesting a waiver of the requirement for an on-site water source for fire protection. The Fire Chief supports this waiver based on the policy of the Department at the time of the original subdivision approval and per the requirement to provide the homes with individual sprinkler systems.
- The applicant is also requesting a waiver of the requirement to provide for future street interconnection with adjacent parcels.
- The Board should consider requesting an engineering peer review of the project design.
- Per the project plans, the road construction will require alteration of 4,735 square feet of wetlands, which should require a DEP permit and will potentially be considered as an extension of prior wetland alterations in the original subdivision.
- The letter dated January 30, 2024 from IF&W indicates that species on the State's Endangered and Special Concern lists have been documented in the area of the project and they recommend that a 300-foot buffer be maintained along named and unnamed streams or a biological survey of the project site be conducted. There do not appear to be any named or unnamed streams within the project site or on adjacent parcels.
- The submissions do not include a map showing the septic system test pit locations as required by Section 6.7.C.6.
- The packet contains a set of draft conditions of approval. Draft findings of fact will be prepared for the final plan decision.



**TOWN OF DURHAM**  
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 and Planning*

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**PRELIMINARY SUBDIVISION APPROVAL**  
**Ruby Farmview Subdivision Phase 2**  
**Draft Conditions of Approval**

1. Per Section 6.6.C, the Planning Board will request technical peer review of the following submissions:
  - a. Engineering plans;
  - b. Stormwater management plans; and,
  - c. Engineer's estimates for project construction.
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. \_\_\_\_\_.
  - b. \_\_\_\_\_,
  - c. \_\_\_\_\_,
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. Completion of Ruby Lane construction;
  - b. New Access road construction;
  - c. Electrical service;
  - d. Stormwater management system; and,
  - e. Erosion and sedimentation control system.
4. Per Section 6.7.C.6, the final plan application shall include a map showing the locations of all sewage disposal test pits.
5. 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.
6. Per Section 6.10.F and Section 6.10.I, the Planning Board will consider a phased subdivision approval with completion of Phase 1 by September 30, 2024. Phase 2 will be subject to the

standard time limits for completion provided that acceptable performance guarantees are in place for both phases.

7. 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 wetlands shown on the recording plan and referenced in the plan notes.
8. 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.
9. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
10. 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, and erosion and sedimentation controls along with a letter of commitment from a lending institution referencing said engineer's cost estimates.
11. 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 #9 above, which can be a cash deposit, irrevocable letter of credit in a form satisfactory to the Town Attorney (template provided), or a conditional agreement per Section 6.34.C. Any other proposed performance guarantee must be reviewed by the Town Attorney at the applicant's expense.